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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1250; Directorate Identifier 2010–NM–031–AD; Amendment 39–17176; AD 2012–17–13]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 707–100 long body, –200, –100B long body, and –100B short body series airplanes; Model 707–300, –300B, –300C, and –400 series airplanes; and Model 720 and 720B series airplanes. This AD was prompted by reports of stress corrosion cracking in the chord segments made from 7079 aluminum in the horizontal stabilizer rear spar, and potential early fatigue cracking in the chord segments made from 7075 aluminum. For certain airplanes, this AD requires using redefined flight cycle counts, determining the type of material of the horizontal stabilizer, rear spar, and upper and lower chords on the inboard and outboard ends of the rear spar; repetitively inspecting for cracking of the horizontal stabilizer components; and repairing or replacing the chord, or modifying chord segments made from 7079 aluminum, if necessary. For all airplanes, this AD requires inspecting certain structurally significant items, and repairing discrepancies if necessary. We are issuing this AD to detect and correct stress corrosion and/or potential early fatigue cracking in the horizontal stabilizer, which could compromise the structural integrity of the stabilizer.

DATES: This AD is effective October 16, 2012.

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Berhane Alazar, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6577; fax: 425–917–6590; email: *berhane.alazar@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM published in the **Federal Register** on November 28, 2011 (76 FR 72863). For certain airplanes, that NPRM proposed to require using redefined flight cycle counts, determining the type of material of the horizontal stabilizer, rear spar, and upper and lower chords on the inboard and outboard ends of the rear spar; repetitively inspecting for cracking of the horizontal stabilizer components; and repairing or replacing the chord, or modifying the chord segments made from 7079 aluminum, if necessary. For all airplanes, that NPRM also proposed to require inspecting certain structurally significant items, and repairing discrepancies if necessary.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comment received on the proposal (76 FR 72863, November 28, 2011) and the FAA's response.

Request To Correct Certain Fatigue Cracking Assertions

Boeing reported that the NPRM (76 FR 72863, November 28, 2011), in various locations, stated incorrectly that fatigue cracking occurred in rear spar chords made from 7075 aluminum. According to Boeing, fatigue cracking has been reported in spar chords made from 7079 aluminum only. Boeing requested that we revise the NPRM to remove reference to ''fatigue cracking'' when addressing the failure mode of the rear spar chords made from 7075 aluminum.

We partially agree with the request. Chords made from 7075 aluminum have better fatigue characteristics than those made from 7079 aluminum. But all metals fatigue to a varying degree. We have therefore revised this final rule to characterize these conditions as ''potential early fatigue'' to address Boeing's concern and clarify that the accelerated fatigue occurrence was a consequence of abnormal use of the airplane as used in military touch-and-go training.

Additional Change Made to This AD

Note 1 to paragraph (i) of the NPRM (76 FR 72863, November 28, 2011) defined a special detailed inspection. We have removed that note in this final rule. A special detailed inspection is defined in Boeing 707 Alert Service Bulletin A3515, dated December 19, 2007, and it is unnecessary to repeat that definition in the AD.

Conclusion

We reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting the AD

with the changes described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (76 FR 72863, November 28, 2011) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (76 FR 72863, November 28, 2011).

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

Interim Action

We consider this AD interim action. If final action is later identified, we might consider further rulemaking then.

Costs of Compliance

We estimate that this AD affects 10 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this AD.

TABLE—ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per product	Number of U.S.-registered airplanes	Fleet cost
Inspections	24 to 32	$85	$0	$2,040 to $2,720 per inspection cycle.	10	$20,400 to $27,200 per inspection cycle.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012–17–13 The Boeing Company: Amendment 39–17176; Docket No. FAA–2011–1250; Directorate Identifier 2010–NM–031–AD.

(a) Effective Date

This AD is effective October 16, 2012.

(b) Affected ADs

This AD affects AD 85–12–01, Amendment 39–5073 (50 FR 26690, June 28, 1985), as revised by AD 85–12–01 R1, Amendment 39–5439 (51 FR 36002, October 8, 1986).

(c) Applicability

This AD applies to The Boeing Company Model 707-100 long body, -200, -100B long body, and -100B short body series airplanes; Model 707-300, -300B, -300C, and -400 series airplanes; and Model 720 and 720B series airplanes; certificated in any category; as identified in Boeing 707 Alert Service Bulletin A3515, dated December 19, 2007, and Boeing 707 Alert Service Bulletin A3516, dated April 4, 2008.

(d) Subject

Air Transport Association (ATA) of America Code 55: Stabilizers.

(e) Unsafe Condition

This AD was prompted by reports of stress corrosion cracking in the chord segments made from 7079 aluminum in the horizontal stabilizer rear spar, and potential early fatigue cracking in the chord segments made from 7075 aluminum. The Federal Aviation Administration is issuing this AD to detect and correct stress corrosion and/or potential early fatigue cracking in the horizontal stabilizer, which could compromise the structural integrity of the stabilizer.

(f) Compliance

You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

(g) Flight Cycle Counting Procedure

Flight cycles, as used in this AD, must be counted as defined in Boeing 707 Alert Service Bulletin A3515, dated December 19, 2007 (for Model airplanes); or Boeing 707 Alert Service Bulletin A3516, dated April 4, 2008 (for Model airplanes, and Model 720 and 720B series airplanes).

(h) Determination of Material of the Components of the Horizontal Stabilizer

For airplanes identified in Boeing 707 Alert Service Bulletin A3515, dated December 19, 2007: At the earlier of the times specified in paragraphs (h)(1) and (h)(2) of this AD, determine the type of material of the horizontal stabilizer, rear spar, upper chords, and lower chords on the inboard and outboard ends of the rear spar, in accordance with Part 2 of the Accomplishment Instructions of Boeing 707 Alert Service Bulletin A3515, dated December 19, 2007.

(1) Within 180 days after the effective date of this AD.

(2) Before further flight after any horizontal stabilizer is replaced after the effective date of this AD.

(i) Repetitive Inspections of 7075 Aluminum Components

For airplanes with horizontal stabilizer components made from 7075 aluminum, as determined during the inspection required by paragraph (h) of this AD: Within 180 days after the effective date of this AD, and before further flight after any replacement of the horizontal stabilizer, do a special detailed inspection for cracking of the upper chord on the inboard end of the rear spar on both the left and right side horizontal stabilizers, from stabilizer station—13.179 to 92.55, in accordance with Part 3 of the Accomplishment Instructions of Boeing 707 Alert Service Bulletin A3515, dated December 19, 2007. Repeat the inspections thereafter at intervals not to exceed 500 flight cycles, and before further flight after any replacement of the horizontal stabilizer, except as provided by paragraph (j) of this AD. If any cracking is found, before further flight, either repair the cracking in accordance with Part 3 of the Accomplishment Instructions of Boeing 707 Alert Service Bulletin A3515, dated December 19, 2007, except as required by paragraph (n) of this AD; or replace the chord with a new chord, in accordance with Part 6 of the Accomplishment Instructions of Boeing 707 Alert Service Bulletin A3515, dated December 19, 2007.

(j) Repetitive Inspections on Airplanes With Replaced Chord

For airplanes on which the chord is replaced with a new chord in accordance with Part 6 of the Accomplishment Instructions of Boeing 707 Alert Service Bulletin A3515, dated December 19, 2007: Within 4,000 flight cycles after the chord replacement, do the inspections required by paragraph (i) of this AD, and repeat the inspections thereafter at the times specified in paragraph (i) of this AD.

(k) Repetitive Inspections of 7079 Aluminum Components

For airplanes with horizontal stabilizers that have components of the chords of the rear spar made from 7079 aluminum, as determined during the inspection required by paragraph (h) of this AD: Within 180 days after the effective date of this AD, do the actions required by paragraphs (k)(1), (k)(2), and (k)(3) of this AD, and repeat those actions at the applicable intervals specified in paragraphs (k)(1), (k)(2), and (k)(3) of this AD.

(1) Do a special detailed inspection for cracking of the upper chord of the inboard side of the rear spar of both the left and right side horizontal stabilizers from stabilizer station—13.179 to 92.55, in accordance with Part 3 of the Accomplishment Instructions of Boeing 707 Alert Service Bulletin A3515, dated December 19, 2007. Repeat the inspection thereafter at intervals not to exceed 250 flight cycles or 180 days, whichever occurs first. If any cracking is found during any inspection required by this paragraph, before further flight, either repair the cracking, in accordance with Part 3 of the Accomplishment Instructions of Boeing 707 Alert Service Bulletin A3515, dated December 19, 2007, except as required by paragraph (n) of this AD; or replace the chord with a new chord, in accordance with Part 6 of the Accomplishment Instructions of Boeing 707 Alert Service Bulletin A3515, dated December 19, 2007.

(2) Do a high frequency eddy current inspection for cracking of the web flanges of the upper and lower chords of the rear spar in the left and right side horizontal stabilizers from stabilizer stations 92.55 to 272.55, in accordance with Part 4 of the Accomplishment Instructions of Boeing 707 Alert Service Bulletin A3515, dated December 19, 2007. Repeat the inspection thereafter at intervals not to exceed 1,000 flight cycles or 180 days, whichever occurs first. If any cracking is found during any inspection required by this paragraph, before further flight, do the actions specified in paragraph (k)(2)(i) or (k)(2)(ii) of this AD.

(i) Determine whether the cracking meets the limits specified in Part 4 of the Accomplishment Instructions of Boeing 707 Alert Service Bulletin A3515, dated December 19, 2007, and whether a previous repair has been done; determine if all 7079 upper and lower chord segments installed on the horizontal stabilizer have had the Part II, Group 1, Preventative Modification specified in Boeing 707 Service Bulletin 3356 done; and do all applicable repairs and modifications, in accordance with the Accomplishment Instructions of Boeing 707 Alert Service Bulletin A3515, dated December 19, 2007. Do the actions required by this paragraph in accordance with Part 4 of the Accomplishment Instructions of Boeing 707 Alert Service Bulletin A3515, dated December 19, 2007, except as required by paragraph (n) of this AD. Do all applicable repairs and modifications before further flight.

(ii) Replace the chord with a new chord, in accordance with Part 6 of the Accomplishment Instructions of Boeing 707 Alert Service Bulletin A3515, dated December 19, 2007.

(3) Do low frequency eddy current (LFEC) inspections for cracking of the forward skin flanges of the upper and lower chords of the rear spar in the left and right side horizontal stabilizers from stabilizer stations—13.179 to 272.55 (for lower chords) and 92.55 to 272.55 (for upper chords), in accordance with Part 5 of the Accomplishment Instructions of Boeing 707 Alert Service Bulletin A3515, dated December 19, 2007. Repeat the inspections thereafter at intervals not to exceed 1,000 flight cycles or 180 days, whichever occurs first. If any cracking is found during any inspection required by this paragraph, before further flight, do the actions specified in either paragraph (k)(3)(i) or paragraph (k)(3)(ii) of this AD.

(i) Repair any cracking, determine whether all 7079 upper and lower chord segments installed on the horizontal stabilizer have had the Part II—Preventative Modification specified in Boeing 707 Service Bulletin 3381 done, and do all applicable modifications, in accordance with the Accomplishment Instructions of Boeing 707 Alert Service Bulletin A3515, dated December 19, 2007. Do the actions required by this paragraph in accordance with Part 5 of the Accomplishment Instructions of Boeing 707 Alert Service Bulletin A3515, dated December 19, 2007, except as required by paragraph (n) of this AD. Do all applicable modifications before further flight.

(ii) Replace the chord with a new chord, in accordance with Part 6 of the Accomplishment Instructions of Boeing 707 Alert Service Bulletin A3515, dated December 19, 2007.

(l) Modification/Chord Replacement

For airplanes identified in Boeing 707 Alert Service Bulletin A3515, dated December 19, 2007, with horizontal stabilizers that have rear spar chord components made from 7079 aluminum and have not had embodied the modification of Part II of Boeing 707 Service Bulletin 3381, dated July 25, 1980; or Boeing 707 Service Bulletin 3381, Revision 1, dated July 31, 1981: Before further flight after determining the type of material in accordance with paragraph (h) of this AD, modify all 7079 chord segments installed on the horizontal stabilizer, in accordance with Part 5 of the Accomplishment Instructions of Boeing 707 Alert Service Bulletin A3515, dated December 19, 2007; or replace the chord, in accordance with Part 6 of the Accomplishment Instructions of Boeing 707 Alert Service Bulletin A3515, dated December 19, 2007.

(m) Supplemental Structural Inspection Document Inspections

For all airplanes: Within 180 days or 1,000 flight cycles after the effective date of this AD, whichever occurs first, do the inspections of the applicable structurally significant items specified in and in accordance with the Accomplishment Instructions of Boeing 707 Alert Service Bulletin A3516, dated April 4, 2008. If any cracking is found, before further flight, repair in accordance with the procedures specified in paragraph (q) of this AD. The inspections required by AD 85–12–01 R1, Amendment 39–5439 (51 FR 36002, October 8, 1986), are still required, except, as of the effective date of this AD, the flight-cycle interval for the repetitive inspections specified in paragraph 1.E., ''Compliance,'' of Boeing 707 Alert Service Bulletin A3516, dated April 4, 2008, must be counted in accordance with the requirements of paragraph (g) of this AD.

(n) Exception to the Service Information: Contacting FAA for Crack Repair

If any cracking is found during any inspection required by this AD, and Boeing 707 Alert Service Bulletin A3515, dated December 19, 2007, specifies to contact Boeing for appropriate action: Before further flight, repair the cracking using a method approved in accordance with the procedures specified in paragraph (q) of this AD.

(o) Exception to the Service Information: Certain Compliance Procedures

Where Boeing 707 Alert Service Bulletin A3515, dated December 19, 2007, specifies that operators ''refer to'' nondestructive test (NDT) procedures, the procedures must be done in accordance with the service

information identified in paragraphs (o)(1), (o)(2), and (o)(3) of this AD, as applicable.

(1) Figure 20, ''Electrical Conductivity Measurement for Aluminum,'' of Subject 51–00–00, ''Structures-General,'' of Part 6—Eddy Current, of the Boeing 707/720 Nondestructive Test Manual, Document D6–48023, Revision 118, dated July 15, 2011.

(2) Subject 55–10–07, ''Horizontal Stabilizer,'' of Part 6—Eddy Current, of the Boeing 707/720 Nondestructive Test Manual, Document D6–48023, Revision 118, dated July 15, 2011.

(3) Subject 51–01–00, ''Orientation and Preparation for Testing'' of Part 1—General, of the Boeing 707/720 Nondestructive Test Manual, Document D6–48023, Revision 118, dated July 15, 2011.

(p) Parts Installation Prohibition

As of the effective date of this AD, no person may install any horizontal stabilizer assembly with any chord segment having a part number other than that identified in paragraph 2.C.2. of Boeing 707 Alert Service Bulletin A3515, dated December 19, 2007, on any airplane.

(q) Alternative Methods of Compliance (AMOCs)

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

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(r) Related Information

For more information about this AD, contact Berhane Alazar, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6577; fax: 425–917–6590; email: *berhane.alazar@faa.gov.*

(s) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on October 16, 2012.

(i) Boeing 707 Alert Service Bulletin A3515, dated December 19, 2007.

(ii) Boeing 707 Alert Service Bulletin A3516, dated April 4, 2008.

(iii) Subject 51–00–00, ''Structures—General,'' Figure 20, ''Electrical Conductivity Measurement for Aluminum,'' of Part 6—Eddy Current, of the Boeing 707/720 Nondestructive Test Manual, Document D6–48023, Revision 118, dated July 15, 2011. The revision level of this document is identified in only the manual revision Transmittal Sheet.

(iv) Subject 55–10–07, ''Horizontal Stabilizer,'' of Part 6—Eddy Current, of the Boeing 707/720 Nondestructive Test Manual, Document D6–48023, Revision 118, dated July 15, 2011. The revision level of this document is identified in only the manual revision Transmittal Sheet.

(v) Subject 51–01–00, ''Orientation and Preparation for Testing'' of Part 1—General, of the Boeing 707/720 Nondestructive Test Manual, Document D6–48023, Revision 118, dated July 15, 2011. The revision level of this document is identified in only the manual revision Transmittal Sheet.

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

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

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

Issued in Renton, Washington, on August 24, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–21533 Filed 9–10–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0927; Directorate Identifier 2012–SW–052–AD; Amendment 39–17178; AD 2012–18–02]

RIN 2120–AA64

Airworthiness Directives; Agusta S.p.A. Helicopters

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

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for Agusta S.p.A. (Agusta) Model AB412 and AB412 EP helicopters with certain hoist hook assemblies (hook) installed. This AD requires inspecting the hook for correct assembly of the nut and body. This AD is prompted by a report that a hook separated from the cable of a helicopter. These actions are intended to prevent detachment of the hook from the helicopter and subsequent loss of an external load, possibly resulting in personal injury.

DATES: This AD becomes effective September 26, 2012.

The Director of the Federal Register approved the incorporation by reference of certain documents listed in this AD as of September 26, 2012.

We must receive comments on this AD by November 13, 2012.

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, any comments received, and other information. The

street address for the Docket Operations Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments prior to it becoming effective. However, we invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that resulted from adopting this AD. The most helpful comments reference a specific portion of the AD, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit them only one time. We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this rulemaking during the comment period. We will consider all the comments we receive and may conduct additional rulemaking based on those comments.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD No. 2012–0086–E, dated May 18, 2012 (EASA AD 2012–0086–E), to correct an unsafe condition for Agusta Model AB412 and AB412EP helicopters. EASA advises of a report where a hoist hook separated from an AB412 helicopter. EASA states the initial investigation revealed that the nut and housing hook were not properly assembled. According to EASA, this condition could lead to separation of the hook and detachment of an external load from the hoist, resulting in personal injury or damage to property on the ground. For these reasons, EASA issued EASA AD 2012–0086–E to require inspecting the hook before the next flight, and after every subsequent reassembly of the hook.

FAA's Determination

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

Related Service Information

We reviewed AgustaWestland Bollettino Tecnico (BT) No. 412–132, dated May 2, 2012, and BT No. 412–133, dated May 17, 2012, which describe procedures for inspecting the nut and housing hook to determine whether the two locking screws are inserted into the slot of the housing. Both BTs also describe procedures for assembling the hook if the nut and body are not properly aligned.

AD Requirements

This AD requires, before further flight, and after any reassembly of the hook:

- Inspecting the nut and housing hook to determine whether the two locking screws are inserted into the slot of the housing.
- Correcting the assembly, before further flight, if the locking screws are not properly inserted in the slots of the housing.

Costs of Compliance

There are no costs of compliance with this AD because there are no helicopters with this type certificate on the U.S. Registry.

FAA's Justification and Determination of the Effective Date

There are no helicopters with this type certificate on the U.S. Registry. Therefore, we believe it is unlikely that we will receive any adverse comments or useful information about this AD from U.S. Operators.

Since an unsafe condition exists that requires the immediate adoption of this AD, we determined that notice and opportunity for public comment before issuing this AD are unnecessary because there are none of these products on the U.S. Registry.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify that this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012–18–02 AGUSTA S.P.A.: Amendment 39–17178; Docket No. FAA–2012–0927; Directorate Identifier 2012–SW–052–AD.

(a) Applicability

(1) This AD applies to Model AB412 and AB412EP helicopters with:

(i) Hoist part-number (P/N) 412–8800–01–202 (Breeze Eastern P/N BL–20200–402) or P/N 412–8800–01–412 (Breeze Eastern P/N BL–20200–412), with a hook assembly (hook) P/N HK–118–2 installed; or

(ii) Hoist P/N BL–20200–75 (Breeze Eastern) or P/N BL–20200–95 (Breeze Eastern), with a hook P/N BL–5740–8 installed, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as the hook body locking screws not properly inserted into the slot on the housing, which could result in detachment of the hook and subsequent loss of an external load or person from the helicopter hoist.

(c) Effective Date

This AD becomes effective September 26, 2012.

(d) Compliance

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

(e) Required Actions

(1) For hook, P/N HK–118–2, before further flight, and thereafter after every disassembly and reassembly of the hook, inspect the hook for correct assembly of the nut and housing hook by doing the following.

(i) Using a .5 millimeter (mm) thickness feeler gauge, position the feeler gauge on the handwheel as shown in Figure 2 of AgustaWestland Bollettino Tecnico (BT) No. 412–132, dated May 2, 2012 (BT 412–132).

(ii) If feeler gauge cannot be inserted, the nut and housing are correctly assembled.

(iii) If feeler gauge can be inserted, as shown in Figure 3 of BT 412–132, reassemble the hook by following the Accomplishment Instructions, paragraphs 5 through 20, and figures 4 and 5, of BT 412–132.

(2) For hook, P/N BL–5740–8, before further flight, and thereafter after every disassembly and reassembly of the hook, inspect the hook for correct assembly of the nut and body by doing the following.

(i) Pull down the rubber bumper to expose the body and setscrews.

(ii) Determine if the two setscrews are inserted in the two slots as shown in Figure 2 of AgustaWestland BT No. 412–133, dated May 17, 2012 (BT 412–133).

(iii) If the setscrews are inserted in the slots, the nut and body are correctly assembled. Return the rubber bumper to its proper position.

(iv) If the two setscrews are not inserted in the slots, as shown in Figure 3 of BT 412–133, reassemble the hook by following the Accomplishment Instructions, paragraphs 5 through 20, and figures 4 and 5, of BT 412–133.

(f) Alternative Methods of Compliance (AMOCs)

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

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

(g) Additional Information

(1) The subject of this AD is addressed in European Aviation Safety Agency AD No. 2012–0086–E, dated May 18, 2012.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 2550: External Load Handling Equipment.

(i) Material Incorporated by Reference

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

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

(i) AgustaWestland Bollettino Tecnico No. 412–132, dated May 2, 2012.

(ii) AgustaWestland Bollettino Tecnico No. 412–133, dated May 17, 2012.

(3) For AgustaWestland service information identified in this AD, contact AgustaWestland, Customer Support & Services, Via Per Tornavento 15, 21019 Somma Lombardo (VA) Italy, ATTN: Giovanni Cecchelli; telephone 39–0331–711133; fax 39 0331 711180; or at *http://www.agustawestland.com/technical-bullettins*.

(4) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

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

Issued in Fort Worth, Texas, on August 28, 2012.

Lance T. Gant,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2012–21722 Filed 9–10–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0946; Directorate Identifier 2012–CE–037–AD; Amendment 39–17187; AD 2012–18–10]

RIN 2120–AA64

Airworthiness Directives; GA200 (Pty) Ltd Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments

SUMMARY: We are adopting a new airworthiness directive (AD) for GA200 (Pty) Ltd Models GA200 and GA200C airplanes. This AD results from mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as failure of the strut bolt through the main spar. We are issuing this AD to require actions to address the unsafe condition on these products.

DATES: This AD is effective September 14, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of September 14, 2012.

We must receive comments on this AD by October 26, 2012.

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

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

For service information identified in this AD, contact GippsAero, P.O. Box

881, Morwell, Victoria 3840, Australia, telephone: + 61 (0) 3 5172 1200; fax + 61 (0) 3 5172 1201; email: *support@gippsaero.com;* Internet: *www.gippsaero.com.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090; email: *doug.rudolph@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The Civil Aviation Safety Authority (CASA), which is the aviation authority for the Commonwealth of Australia, has issued AD AD/GA200/1, dated August 23, 2012 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> As a result of a reported case of failure of the strut bolt through the main spar on a GA200C aircraft, GippsAero has issued a mandatory service bulletin to alert operators and maintenance organisations and to provide inspection and rectification actions.
>
> This Airworthiness Directive makes this inspection and rectification action mandatory. Failure to complete the actions required by this service bulletin may result in wing strut bolt failure, resulting in wing structural failure.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

GippsAero has issued Mandatory Service Bulletin SB–GA200–2012–08, Issue 1, dated August 22, 2012. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the AD

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

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because failure to complete the actions required by this service bulletin may result in wing strut bolt failure, resulting in wing structural failure. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0946; Directorate Identifier 2012–CE–037–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Costs of Compliance

We estimate that this AD will affect 3 products of U.S. registry. We also estimate that it would take about 2 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts would cost about $0 per product.

Based on these figures, we estimate the cost of the AD on U.S. operators to be $510, or $170 per product.

In addition, we estimate that any necessary follow-on actions would take about 2 work-hours and require parts costing $400 for a cost of $570 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2012–18–10 GA200 (Pty) Ltd: Amendment 39–17187; Docket No. FAA–2012–0946; Directorate Identifier 2012–CE–037–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective September 14, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to GA200 (Pty) Ltd Models GA200 and GA200C airplanes, all serial numbers, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 57: Wings.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. We are issuing this AD to require actions to address the unsafe condition on these products.

(f) Actions and Compliance

Unless already done, do the following actions.

(1) Within 10 hours time-in-service (TIS) after September 14, 2012 (the effective date of this AD), and repetitively thereafter at intervals not to exceed every 100 hours TIS, do the inspections required following GippsAero Mandatory Service Bulletin SB–GA200–2012–08, Issue 1, dated August 22, 2012.

(2) If you find any discrepancy in any of the inspections required by paragraph (f)(1) of this AD, before further flight, take corrective actions following GippsAero Mandatory Service Bulletin SB–GA200–2012–08, Issue 1, dated August 22, 2012.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090; email: *doug.rudolph@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(3) Reporting Requirements: For any reporting requirement in this AD, a federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(h) Related Information

Refer to MCAI Civil Aviation Safety Authority AD AD/GA200/1, dated August 23, 2012, and GippsAero Mandatory Service Bulletin SB–GA200–2012–08, Issue 1, dated August 22, 2012, for related information.

(i) Material Incorporated by Reference

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

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

(i) GippsAero Mandatory Service Bulletin SB–GA200–2012–08, Issue 1, dated August 22, 2012.

(ii) Reserved.

(3) For GA200 (Pty) Ltd service information identified in this AD, contact GippsAero, PO Box 881, Morwell, Victoria 3840, Australia, telephone: + 61 (0) 3 5172 1200; fax + 61 (0) 3 5172 1201; email: *support@gippsaero.com;* Internet: *www.gippsaero.com.*

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

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

Issued in Kansas City, Missouri on August 31, 2012.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–22050 Filed 9–10–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–1181; Airspace Docket No. 11–ANM–20]

Amendment of Class E Airspace; Boise, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace areas at Boise Air Terminal (Gowen Field), Boise, ID. This action also adjusts the geographic coordinates of the airport. The Boise VHF Omni-Directional Radio Range Tactical Air Navigational Aid (VORTAC) is no longer needed as a reference. The Donnelly Tactical Air Navigation System (TACAN) has been decommissioned and controlled airspace reconfigured. This action also makes a minor change to the legal description in reference to Class E airspace 9,000 feet Mean Sea Level (MSL). This improves the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Effective date, 0901 UTC, November 15, 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: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

On February 7, 2012, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend controlled airspace at Boise Air Terminal (Gowan Field), Boise, ID (77 FR 6026). Interested parties were invited to participate in this rulemaking effort by submitting written comments

on the proposal to the FAA. No comments were received. Subsequent to publication, the FAA found the Boise navigation aid is no longer needed and should be removed from the Class E airspace area designated as an extension.

On June 28, 2012, the FAA published in the **Federal Register** a supplemental notice of proposed rulemaking (SNPRM) to remove reference to the navigation aid listed under Class E airspace designated as an extension at Boise Air Terminal, Boise, ID (77 FR 38552). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

The FAA's Aeronautical Products Office requested the legal description for the Class E airspace extending upward from 700 feet above the surface be rewritten for clarity. With the exception of editorial changes and the changes described above, this rule is the same as that proposed in the SNPRM.

Class E airspace designations are published in paragraph 6003 and 6005, respectively, of FAA Order 7400.9V dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class E airspace designated as an extension, at Boise Air Terminal (Gowan Field), Boise, ID. The legal description is rewritten to better describe the airspace area by removing reference to the Boise VORTAC. Class E airspace extending upward from 700 feet above the surface has been reconfigured due to the decommissioning of the Donnelly TACAN, and is rewritten for clarity. The geographic coordinates of the airport are adjusted in accordance with the FAA's aeronautical database. This ensures the safety and management of IFR operations within the National Airspace System.

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified 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 U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Boise Air Terminal (Gowen Field), Boise, ID.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air)

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends

14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011 is amended as follows:

Paragraph 6003 Class E airspace Areas Designated as an Extension.

* * * * *

ANM ID E3 Boise, ID [Amended]

Boise Air Terminal (Gowen Field), ID
(Lat. 43°33′52″ N., long. 116°13′22″ W.)

That airspace extending upward from the surface within 3.5 miles each side of the Boise Air Terminal 300° bearing extending from the 5-mile radius of the Boise Air Terminal to 9.5 miles northwest of the airport; and within .5 miles west and 5.6 miles east of the Boise Air Terminal 179° bearing extending from the 5-mile radius of the airport to 6.1 miles south of the airport; and that airspace within 4.3 miles each side of the Boise Air Terminal 114° bearing extending from the 5-mile radius of the airport to 11.7 miles southeast of the airport.

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

* * * * *

ANM ID E5 Boise, ID [Amended]

Boise Air Terminal (Gowen Field), ID
(Lat. 43°33′52″ N., long. 116°13′22″ W.)

That airspace extending upward from 700 feet above the surface bounded by a line beginning at lat. 43°56′00″ N., long. 116°33′04″ W.; to lat. 43°51′15″ N., long. 116°25′03″ W., thence via the 19.3-mile radius of the Boise Air Terminal (Gowen Field), clockwise to long. 116°14′03″ W.; to lat. 43°45′00″ N., long. 116°14′03″ W.; to lat. 43°31′00″ N., long. 115°52′03″ W.; to lat. 43°20′00″ N., long. 115°58′03″ W.; to lat. 43°25′00″ N., long. 116°25′03″ W.; to lat. 43°27′00″ N., long. 116°29′03″ W.; to lat. 43°25′12″ N., long. 116°32′23″ W.; to lat. 43°29′25″ N., long. 116°37′53″ W.; to lat. 43°32′45″ N., long. 116°49′04″ W.; to lat. 43°37′35″ N., long. 116°47′04″ W.; to lat. 43°42′00″ N., long. 116°57′04″ W., thence to the point of beginning; that airspace extending upward from 1,200 feet above the surface within the 30.5-mile radius of the airport beginning at the 122° bearing of the airport, thence via a line to the intersection of the 34.8-mile radius of the airport and the 224° bearing of the airport, thence clockwise along the 34.8-mile radius of the airport to that airspace 7 miles each side of the 269° bearing of the airport extending from the 34.8-mile radius to 49.6 miles west of the airport, and within 7 miles northeast and 9.6 miles southwest of the 295° bearing of the airport extending from the 34.8-mile radius to 65.3 miles northwest of the airport, to lat. 44°00′27″ N., long. 117°10′58″ W., thence along the 042° bearing to V–253, thence south along V–253, thence along the 30.5-mile radius of the airport to the point of beginning; that airspace southeast of the airport extending upward from 9,000 feet MSL bounded on the north by V–444, on the east by V–293, on the south by V–330 on the southwest by V–4; that airspace northeast of the airport extending upward from 11,500 feet MSL, bounded on the northeast by V–293, on the south by V–444, on the southwest

by the 30.5-mile radius of the airport and on the west by V–253.

Issued in Seattle, Washington, on August 30, 2012.

Steven L. Vale,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2012–22235 Filed 9–10–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–1213; Airspace Docket No. 11–ANM–23]

Amendment of Class E Airspace; Dillon, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace extending upward from 700 feet above the surface, and adds controlled surface airspace at Dillon, MT, to accommodate aircraft using new Area Navigation (RNAV) Global positioning System (GPS) standard instrument approach procedures at Dillon Airport. This improves the safety and management of Instrument Flight Rules (IFR) operations at the airport. The geographic coordinates of the airport also are adjusted.

DATES: Effective date, 0901 UTC, November 15, 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: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

On March 15, 2012, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend Class E airspace at Dillon Airport, Dillon, MT (77 FR 15295). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. One comment was received.

The commenter recommended establishing Class E surface airspace and also expanding the Class E airspace extending upward from 700 feet above the surface for aircraft safety. The FAA found merit in this comment and proposed to further amend the NPRM.

On July 11, 2012, the FAA published in the **Federal Register** a supplemental notice of proposed rulemaking (SNPRM) to create Class E surface airspace and further amend existing Class E airspace at Dillon Airport, Dillon, MT (77 FR 40834). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6002 and 6005, respectively, of FAA Order 7400.9V dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by creating Class E surface airspace, and further modifying Class E airspace extending upward from 700 feet above the surface, at Dillon Airport, Dillon, MT, to accommodate IFR aircraft executing new RNAV (GPS) standard instrument approach procedures at the airport. This action is necessary for the safety and management of IFR operations. The geographic coordinates are adjusted to be in concert with the FAAs aeronautical database.

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified 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 U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes and amends controlled airspace at Dillon Airport, Dillon, MT.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air)

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011 is amended as follows:

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

ANM MT E2 Dillon, MT [New]

Dillon Airport, MT

(Lat. 45°15′19″ N., long. 112°33′09″ W.)

Within a 6.1-mile radius of Dillon Airport. This Class E airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

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

* * * * *

ANM MT E5 Dillon, MT [Modified]

Dillon Airport, MT
(Lat. 45°15′19″ N., long. 112°33′09″ W.)

That airspace extending upward from 700 feet above the surface within a 9.2-mile radius of Dillon Airport; that airspace extending upward from 1,200 feet above the surface within a 45-mile radius of Dillon Airport.

Issued in Seattle, Washington, on August 30, 2012.

Steven L. Vale,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2012–22269 Filed 9–10–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0539; Airspace Docket No. 12–ANM–10]

Establishment of Class E Airspace; Circle Town, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Circle Town County Airport, Circle Town, MT to accommodate aircraft using new Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures at Circle Town County Airport. This improves the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Effective date, 0901 UTC, November 15, 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: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

On July 5, 2012, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish controlled airspace at Circle Town, MT (77 FR 39651). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. The FAA received one comment from the National Business Aviation Association (NBAA).

The NBAA recommended the FAA lower some of the adjacent Class E airspace extending upward from 14,500 feet Mean Sea Level (MSL) to the east, south and west of the airport down to 1,200 feet above the surface to accommodate orderly en route descent into the airport. The NBAA is also concerned that the Minimum Instrument Flight Rules Altitude (MIA) outside the 1,200 feet above the surface would affect air traffic services into the airport. Finally, the commenter points out that extending the Class E 1,200-foot area would provide relief to Salt Lake City Air Route Traffic Control Center (ARTCC).

The FAA believes that lowering this airspace is outside the scope of this rulemaking at this time, and would not serve the immediate purpose of establishing the airspace necessary for the safety of aircraft within the Circle Town, MT, airport area.

Class E airspace designations are published in paragraph 6005, of FAA Order 7400.9V dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E airspace extending upward from 700 feet above the surface, at Circle Town County Airport, to accommodate IFR aircraft executing new RNAV (GPS) standard instrument approach procedures at the airport. This action is necessary for the safety and management of IFR operations.

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified 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 U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at Circle Town County Airport, Circle Town, MT.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air)

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011 is amended as follows:

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

* * * * *

ANM MT E5 Circle Town, MT [New]

Circle Town County Airport
(Lat. 47°25′06″ N., long. 105°33′39″ W.)

That airspace extending upward from 700 feet above the surface within 12.1-mile radius of the Circle Town County Airport; that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 47°59′00″ N., long. 106°16′00″ W.; to lat. 47°49′00″ N., long. 105°59′00″ W.; to lat. 47°49′00″ N., long. 105°24′00″ W.; to lat. 47°40′00″ N., long. 105°26′00″ W.; to lat. 47°25′00″ N., long. 105°00′00″ W.; to lat. 47°05′00″ N., long. 105°25′00″ W., to lat. 47°22′00″ N., long. 106°06′00″ W.; to lat. 47°27′00″ N., long. 106°17′00″ W.; to lat. 47°50′00″ N., long. 106°26′00″ W.; thence to the point of origin.

Issued in Seattle, Washington on August 30, 2012.

Steven L. Vale,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2012–22270 Filed 9–10–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0617; Airspace Docket No. 12–ANM–18

Establishment of Class E Airspace; Fort Garland, CO]

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Trinchera Ranch Airstrip Airport, Fort Garland, CO. Controlled airspace is necessary to accommodate aircraft using new Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures at Trinchera Ranch Airstrip Airport. This improves the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Effective date, 0901 UTC, November 15, 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: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

On July 12, 2012, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish controlled airspace at Fort Garland, CO (77 FR 41108). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005, of FAA Order 7400.9V dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E airspace extending upward from 700 feet above the surface, at Trinchera Ranch Airstrip Airport, to accommodate IFR aircraft executing new RNAV (GPS) standard instrument approach procedures at the airport. This action is necessary for the safety and management of IFR operations.

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified 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 U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at Trinchera Ranch Airstrip Airport, Fort Garland, CO.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air)

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011 is amended as follows:

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

* * * * *

ANM CO E5 Fort Garland, CO [New]

Trinchera Ranch Airstrip Airport, CO
(Lat. 37°27′50″ N., long. 105°24′25″ W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of Trinchera Ranch Airstrip Airport; that airspace extending upward from 1,200 feet above the surface in an area bounded by a line beginning at lat. 37°38′00″ N., long. 105°31′00″ W.; to lat. 37°33′00″ N., long. 105°12′00″ W.; to lat. 37°24′00″ N., long. 105°07′00″ W.; to lat. 37°04′00″ N., long. 105°23′30″ W.; to lat. 37°03′00″ N., long. 105°43′00″ W.; to lat. 37°15′00″ N., long. 105°50′00″ W.; to lat. 37°29′00″ N., long. 105°42′00″ W., thence to the point of beginning.

Issued in Seattle, Washington on August 30, 2012.

Steven L. Vale,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2012–22271 Filed 9–10–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 74

[Docket No. FDA–2011–C–0050]

D&C Red No. 6 and D&C Red No. 7; Change in Specification; Confirmation of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of August 7, 2012, for the final rule that published in the **Federal Register** of July 6, 2012 (77 FR 39921) and that revised the requirements for D&C Red No. 6 and D&C Red No. 7 by replacing the current specification for ''Ether-soluble matter'' with a maximum limit of 0.015 percent for the recently identified impurity 1-[(4-methylphenyl)azo]-2-naphthalenol.

DATES: *Effective Date Confirmed:* August 7, 2012.

FOR FURTHER INFORMATION CONTACT: Teresa A. Croce, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 240–402–1281.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 6, 2012, FDA amended the color additive regulations in §§ 74.1306 and 74.1307 (21 CFR 74.1306 and 74.1307) by replacing the current specification for ''Ether-soluble matter'' with a maximum limit of 0.015 percent for the recently identified impurity 1-[(4-methylphenyl)azo]-2-naphthalenol. FDA also removed Appendix A in 21 CFR part 74, which pertains to the ether-soluble matter specification. The changes to §§ 74.1306 and 74.1307 also affect the color additive regulations in §§ 74.2306 and 74.2307 (21 CFR 74.2306 and 74.2307) because the identity and specifications in §§ 74.1306 and 74.1307 are referenced by §§ 74.2306 and 74.2307.

FDA gave interested persons until August 6, 2012, to file objections or requests for a hearing. The Agency received no objections or requests for a hearing on the final rule. Therefore, FDA finds that the effective date of the final rule that published in the **Federal Register** of July 6, 2012, should be confirmed.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, and redelegated to the Director, Office of Food Additive Safety, notice is given that no objections or requests for a hearing were filed in response to the July 6, 2012, final rule. Accordingly, the amendments issued thereby became effective August 7, 2012.

Dated: September 5, 2012.

Dennis M. Keefe,

Director, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition.

[FR Doc. 2012–22296 Filed 9–10–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0722]

RIN 1625–AA08

Safety Zone; Miami Paddle Challenge, Biscayne Bay, Miami, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of Biscayne Bay located west of Key Biscayne and south of Rickenbacker Causeway in Miami, Florida during the Miami Paddle Challenge, a series of paddle boat races. The Miami Paddle Challenge is scheduled to take place on Sunday, September 29, 2012. The temporary safety zone is necessary for the safety of race participants, participant vessels, spectators, and the general public during the event. Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port Miami or a designated representative.

DATES: This rule is effective and will be enforced from 6 a.m. through 4 p.m. on September 29, 2012.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2012–7222 and are available online by going to *http://www.regulations.gov,* inserting USCG–2012–7222 in the ''SEARCH'' box, and then clicking ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary final rule, call or email Lieutenant Junior Grade Mike H. Wu, Sector Miami Prevention Department, Coast Guard; telephone (305) 535–7576, email *mike.h.wu@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 a safety zone was not determined to be necessary until August 1, 2012. As a result, the Coast Guard did not have sufficient time to publish an NPRM and to receive public comments prior to the Miami Paddle Challenge. Any delay in the effective date of this rule would be contrary to the public interest as immediate action is needed to minimize potential danger to the public, race participants, and spectator craft.

For the same reason discussed above, 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**.

B. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and other

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

The purpose of the rule is to provide for the safety of life on navigable waters of the United States during the Miami Paddle Challenge.

C. Discussion of the Final Rule

On Sunday, September 29, 2012, Miami Children's Hospital is sponsoring the Miami Paddle Challenge. Over 150 paddle boats are expected to participate in the event. Participant paddle boats will include: kayaks, surfskis, paddleboards, outriggers, sculls, canoes, dories, and dragon boats.

The temporary safety zone encompasses certain waters of Biscayne Bay located west of Key Biscayne and south of Rickenbacker Causeway in Miami, Florida. The safety zone will be enforced from 6 a.m. until 4 p.m. on September 29, 2012.

Non-participant persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port Miami or a designated representative. Non-participant persons and vessels desiring to enter, transit through, anchor in, or remain within the safety zone may contact the Captain of the Port Miami by telephone at 305–535–4472, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the safety zone is granted by the Captain of the Port Miami or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Miami or a designated representative. The Coast Guard will provide notice of the safety zone by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

D. Regulatory Analyses

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

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

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter, transit through, anchor in, or remain within that portion of the Biscayne Bay encompassed within the safety zone from 6 a.m. until 4 p.m. on September 29, 2012. For the reasons discussed in the Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. 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 calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and

Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

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

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might 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 concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves the establishment of a temporary safety zone to protect the public on navigable waters of the United States. An environmental analysis checklist 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. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add a temporary § 165.20T07–0722 to read as follows:

§ 165.20T07–0722 Safety zone; Miami Paddle Challenge, Biscayne Bay, Miami, FL.

(a) *Biscayne Bay, Florida.* All waters of Biscayne Bay located west of Key Biscayne and south of Rickenbacker Causeway encompassed within an imaginary line connecting the following points: starting at Point 1 in position 25°44′43″ N, 80°11′40″ W; thence southwest to Point 2 in position 25°40′29″ N, 80°14′58″ W; thence northwest to Point 3 in position 25°40′39″ N, 80°15′14″ W; thence northeast to Point 4 in position 25°44′45″ N, 80°11′59″ W; thence east back to origin. All coordinates are North American Datum 1983.

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

(c) *Regulations.*

(1) Non-participant persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port Miami or a designated representative. Non-participant persons and vessels may request authorization to enter, transit through, anchor in, or remain within the regulated area by contacting the Captain of the Port Miami by telephone at 305–535–4472, or a designated representative via VHF radio on channel 16. If authorization is granted by the Captain of the Port Miami or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Miami or a designated representative.

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

(d) *Effective Date.* This rule is effective from 6 a.m. until 4 p.m. on September 29, 2012.

Dated: August 23, 2012.

C.P. Scraba,

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

[FR Doc. 2012–22294 Filed 9–10–12; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2012–0280; FRL–9724–8]

Approval and Promulgation of Implementation Plans; Virginia; Revisions to the State Implementation Plan Approved by EPA Through Letter Notice Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; administrative change.

SUMMARY: EPA is taking final action on administrative changes to the Virginia State Implementation Plan (SIP). The changes consist of revised regulatory citations found in Virginia's regulations pertaining to municipal solid waste landfills and open burning which EPA previously approved through a Letter Notice. EPA has determined that this action falls under the ''good cause'' exemption in the Administrative Procedure Act (APA). This exemption in the APA authorizes agencies to dispense with public participation and to make an action effective immediately, thereby avoiding the 30-day delayed effective date otherwise provided for in the APA.

DATES: This action is effective September 11, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2012–0280. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (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 through *www.regulations.gov* or in hard copy for public inspection 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 Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford at (215) 814–2108, or by email at *frankford.harold@epa.gov.*

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

I. What is being addressed in this document?

EPA is taking final action on administrative changes to the Virginia SIP. On March 16, 2012, Virginia submitted a SIP revision which revises regulatory citations found in Regulations 9VAC5 Chapter 40, Part I, Article 43 (Municipal Solid Waste Landfills) and Chapter 130, Part I (Regulation for Open Burning). The amended text changes those citations which cross-reference Virginia's current Solid Waste Management Regulations (9VAC5–20–81). The affected SIP-approved regulations are sections 5–40–5810, 5–40–5820, 5–40–5850, 5–40–5880, 5–40–5920, 5–130–20, and 5–130–40. EPA has determined that the revisions are minor SIP changes without any substantive changes, and that they comply with all applicable requirements of the CAA and EPA regulations concerning such SIP revisions. EPA approved these revisions through a Letter Notice to the Virginia Department of Environmental Quality (VADEQ) dated June 1, 2012 consistent with the procedures outlined in both EPA's Notice of Procedural Changes on SIP processing published on January 19, 1989 at 54 FR 2214 and a memorandum dated April 6, 2011 entitled ''Regional Consistency for the Administrative Requirements of State Implementation Plan Submittals and the Use of Letter Notices'' from Janet McCabe, Deputy Assistant Administrator for the Office of Air and Radiation to the EPA Regional Administrators.

II. What action is EPA taking?

Today's action merely codifies in 40 CFR 52.2420(c) the administrative amendments approved by EPA through its June 1, 2012 Letter Notice to VADEQ. EPA has determined that this action falls under the ''good cause'' exemption in section 553(b)(3)(B) of the Administrative Procedure Act (APA). This exemption authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make an action effective immediately, thereby avoiding the 30-day delayed effective date otherwise provided for in the APA. With respect to the SIP revision described above, today's administrative action simply codifies provisions which are already in effect as a matter of law in Federal and approved state programs. Under section 553 of the APA, an agency may find good cause where procedures are ''impractical, unnecessary, or contrary to the public interest.'' Public comment for this administrative action is ''unnecessary'' because the revisions are administrative and non-substantive in nature. Immediate notice of this action in the **Federal Register** benefits the public by providing the public notice of the updated Virginia SIP. Approval of these revisions will ensure consistency between state and Federally-approved rules. EPA has determined that these changes will not relax the SIP or adversely impact air emissions.

III. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information that: (1) Are generated or developed before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege Law, Va. Code § 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by Federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. * * *'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.'' Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or

any, state audit privilege or immunity law.

IV. Statutory and Executive Order Reviews

A. General Requirements

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

B. Submission to Congress and the Comptroller General

The Congressional Review Act (CRA) (5 U.S.C. 801 et seq.), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. 5 U.S.C. 808(2). In taking action on this SIP revision, EPA already made such a finding. Thus, the SIP revisions announced in this notice became effective upon EPA's June 1, 2012 Letter Notice to Virginia. Today's administrative action simply codifies a provision which is already in effect as a matter of law in Federal and approved state programs. EPA will submit a report containing this action and other 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 action in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 13, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action to codify in 40 CFR 52.2420(c) the administrative amendments approved by EPA through its June 1, 2012 Letter Notice to VADEQ may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and record keeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 23, 2012.

W.C. Early,

Acting Regional Administrator, Region III.

40 CFR Part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for 40 CFR part 52 continues to read as follows:

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

Subpart VV—Virginia

■ 2. In § 52.2420, the table in paragraph (c) is amended by revising the entries for Sections 5–40–5810, 5–40–5820, 5–40–5850, 5–40–5880, 5–40–5920, 5–130–20 and 5–130–40. The amendments read as follows:

§ 52.2420 Identification of plan

(c) * * *

EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES

State citation	Title/Subject	State effective date	EPA approval date	Explanation [former SIP citation]
*	*	*	*	*
9 VAC 5, Chapter 40 Existing Stationary Sources [Part IV]				
*	*	*	*	*
Part II Emission Standards				

EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES—Continued

State citation	Title/Subject	State effective date	EPA approval date	Explanation [former SIP citation]
*	*	*	*	*
Article 43 Municipal Solid Waste Landfills (Rule 4–43)				
*	*	*	*	*
5–40–5810	Definitions	8/17/11	6/1/12 by Letter Notice	The SIP effective date is 6/1/12.
5–40–5820	Standard for air emissions	8/17/11	6/1/12 by Letter Notice	The SIP effective date is 6/1/12.
*	*	*	*	*
5–140–5850	Compliance	8/17/11	6/1/12 by Letter Notice	The SIP effective date is 6/1/12.
*	*	*	*	*
5–40–5880	Reporting	8/17/11	6/1/12 by Letter Notice	The SIP effective date is 6/1/12.
*	*	*	*	*
5–40–5920	Permits	8/17/11	6/1/12 by Letter Notice	The SIP effective date is 6/1/12.
*	*	*	*	*
9 VAC 5, Chapter 130 Regulations for Open Burning [Formerly 9VAC5 Chapter 40, Part II, Article 40]				
Part I General Provisions				
*	*	*	*	*
5–130–20	Definitions	8/17/11	6/1/12 by Letter Notice	The SIP effective date is 6/1/12.
*	*	*	*	*
5–130–40	Permissible open burning	8/17/11	6/1/12 by Letter Notice	The SIP effective date is 6/1/12.
*	*	*	*	*

* * * * *

[FR Doc. 2012–22207 Filed 9–10–12; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2007–0544; FRL–9684–7]

RIN 2060–AQ41

National Emission Standards for Hazardous Air Pollutants From the Pulp and Paper Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action finalizes the residual risk and technology review conducted for the pulp and paper industry source category regulated under national emission standards for hazardous air pollutants. The EPA is required to conduct residual risk and technology reviews under the Clean Air Act. This action finalizes amendments to the national emission standards for hazardous air pollutants that include a requirement for 5-year repeat emissions testing for selected process equipment; revisions to provisions addressing periods of startup, shutdown and malfunction; a requirement for electronic reporting; additional test methods for measuring methanol emissions; and technical and editorial changes. The amendments are expected to ensure that control systems are properly maintained over time, ensure continuous compliance with standards and improve data accessibility; we estimate facilities nationwide will spend $2.1 million per year to comply.

DATES: This final action is effective on September 11, 2012. The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of September 11, 2012.

ADDRESSES: The EPA has established a docket for this action under Docket ID Number EPA–HQ–OAR–2007–0544. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov,* or in hard copy at the EPA Docket Center, EPA West Building, Room Number 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Standard Time, Monday through Friday. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket and Information Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For questions about this final action, contact Mr. John Bradfield, Office of Air Quality Planning and Standards, (E143–03), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–3062; fax number: (919) 541–3470; and email address: *bradfield.john@epa.gov.*

SUPPLEMENTARY INFORMATION: For specific information regarding the risk modeling methodology, contact Mr. James Hirtz, Health and Environmental Impacts Division (C539–02), Office of

Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–0881; fax number: (919) 541–0840; and email address: *hirtz.james@epa.gov.* For information about the applicability of the national emission standards for hazardous air pollutants to a particular entity, contact the appropriate person listed in Table 1 to this preamble.

TABLE 1—LIST OF EPA CONTACTS FOR THE NESHAP ADDRESSED IN THIS FINAL ACTION

NESHAP for:	OECA Contact [1]	OAQPS Contact [2]
Pulp and Paper.	Sara Ayres, (202) 564–5391, *ayres.sara@epa.gov*.	John Bradfield, (919) 541–3062, *bradfield.john@epa.gov.*

[1] EPA's Office of Enforcement and Compliance Assurance.
[2] EPA's Office of Air Quality Planning and Standards.

Preamble Acronyms and Abbreviations. Several acronyms and terms used to describe industrial processes, data inventories and risk modeling are included in this preamble. While this may not be an exhaustive list, to ease the reading of this preamble and for reference purposes, the following terms and acronyms are defined here:

ANSI American National Standards Institute
ASME American Society of Mechanical Engineers
ASTM American Society for Testing and Materials
CAA Clean Air Act
CBI Confidential Business Information
CCA Clean Condensate Alternative
CDX EPA's Central Data Exchange
CEDRI EPA's Compliance and Emissions Data Reporting Interface
CFR Code of Federal Regulations
CWA Clean Water Act
DC District of Columbia
DC Cir. United States Court of Appeals for the District of Columbia Circuit
EIA Economic Impact Analysis
EJ Environmental Justice
EPA Environmental Protection Agency
ERT Electronic Reporting Tool
FR **Federal Register**
FTIR Fourier Transform Infrared
HAP Hazardous Air Pollutants
HVLC High Volume Low Concentration
IBR Incorporation by Reference
ICR Information Collection Request
km Kilometer
LVHC Low Volume High Concentration
MACT Maximum Achievable Control Technology
MACT Code Code within the NEI used to identify processes included in a source category
MIR Maximum Individual Risk
NAICS North American Industry Classification System
NCASI National Council for Air and Stream Improvement
NEI National Emissions Inventory
NESHAP National Emissions Standards for Hazardous Air Pollutants
NRDC Natural Resources Defense Council
NTTAA National Technology Transfer and Advancement Act of 1995
NW Northwest
OAQPS EPA's Office of Air Quality Planning and Standards
ODTP Oven-Dried Ton of Pulp
OECA EPA's Office of Enforcement and Compliance Assurance
OMB Office of Management and Budget
O&M Operations and Maintenance
ppmw Parts Per Million by Weight
PRA Paperwork Reduction Act
RFA Regulatory Flexibility Act
RIA Regulatory Impact Analysis
RTR Residual Risk and Technology Review
S. Ct. United States Supreme Court
SBA Small Business Administration
SISNOSE Significant Economic Impact on a Substantial Number of Small Entities
SSM Startup, Shutdown, and Malfunction the Court United State Court of Appeals for the District of Columbia Circuit
TOSHI Target Organ-Specific Hazard Index
tpy Tons Per Year
TTN EPA's Technology Transfer Network
UMRA Unfunded Mandates Reform Act of 1995
U.S. United States
U.S.C. United States Code
VCS Voluntary Consensus Standards
WWW Worldwide Web
yr Year

Background Information Document. On December 27, 2011 (76 FR 81328), the EPA proposed revisions to the pulp and paper industry NESHAP based on evaluations performed by the EPA in order to conduct our RTR. In this action, we are finalizing decisions and revisions for the rule. A summary of the public comments on the proposal and the EPA's responses to those comments is available in Docket ID Number EPA–HQ–OAR–2007–0544. *Organization of this Document.* The following outline is provided to aid in locating information in the preamble.

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

I. General Information

A. Executive Summary

1. Purpose of the Regulatory Action

Section 112(f)(2) of the CAA requires us to determine for source categories subject to MACT standards, whether the MACT emissions standards provide an ample margin of safety to protect public health. This review, known as the residual risk review—is a one-time review that must occur within 8 years of issuance of the MACT standard. Section 112(d)(6) of the CAA requires the EPA to review and revise section 112 emissions standards, as necessary, taking into account developments in practices, processes and control technologies, emission standards promulgated under section 112 no less often than every 8 years. We issued the NESHAP for the pulp and paper industry (40 CFR part 63, subpart S) in 1998 and are due for review under CAA sections 112(d)(6) and 112(f)(2). In addition to conducting the RTR for subpart S, we are evaluating the SSM

provisions in the rule in light of the D.C. Circuit Court of Appeals decision in *Sierra Club* v. *EPA,* 551 F.3d 1019 (D.C. Cir. 2008). As explained below, in the *Sierra Club* case, the D.C. Circuit vacated the SSM exemption provisions in the General Provisions for non-opacity and opacity standards.

To address the RTR assessments and SSM exemptions, proposed amendments to subpart S were developed, signed by the EPA Administrator on December 15, 2011, and published in the **Federal Register** on December 27, 2011. A 60-day period ending February 27, 2012, was provided for the public to submit comments on the proposal to the EPA. This action addresses the public comments on the proposal and finalizes the amendments to subpart S. The amendments are expected to ensure that control systems are properly maintained over time, ensure continuous compliance with standards and improve data accessibility.

2. Summary of Major Provisions

As part of an ongoing effort to improve compliance with various federal air emission regulations, we are requiring repeat air emissions performance testing once every 5 years for facilities complying with the standards for kraft, soda and semi-chemical pulping vent gases; sulfite pulping processes; and bleaching systems. We are also finalizing changes to the subpart S NESHAP and the General Provisions applicability table to eliminate the SSM exemption. To increase the ease and efficiency of data submittal and improve data accessibility, we are requiring mills to submit electronic copies of performance test reports to the EPA's WebFIRE database. To allow mills greater flexibility in demonstrating compliance with emission limits for total HAP measured as methanol, we are including four additional test methods for measuring methanol emissions from pulp and paper processes, as alternatives to EPA Method 308. We are also making a number of technical and editorial changes, including clarifying the location in the CFR of applicable test methods, incorporating by reference several non-EPA test methods and revising the General Provisions applicability table to align with those sections of the General Provisions that have been amended or reserved over time.

3. Costs and Benefits

Table 2 summarizes the costs and benefits of this action. See section V of this preamble for further discussion.

TABLE 2—SUMMARY OF THE COSTS AND BENEFITS OF THE FINAL AMENDMENTS TO THE NESHAP FOR THE PULP AND PAPER INDUSTRY

Requirement	Capital cost [million]	Annual cost [million]	Net benefit
Repeat emissions testing	$5.4	$1.3	N/A
Incremental reporting/ record-keeping	0.50	0.74	N/A
Total nationwide	5.9	2.1	N/A

B. Does this action apply to me?

Regulated Entities. Categories and entities potentially regulated by this action are shown in Table 3 of this preamble.

TABLE 3—NESHAP AND INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS FINAL ACTION

NESHAP and source category	NAICS Code [1]	MACT Code [2]
Pulp and Paper (Subpart S)	322	1626–1

[1] North American Industry Classification System.

[2] Maximum Achievable Control Technology.

Table 3 of this preamble is not intended to be exhaustive but rather provides a guide for readers regarding entities likely to be affected by the final action for the source category listed. To determine whether your facility would be affected, you should examine the applicability criteria in the appropriate NESHAP. As defined in the Source Category Listing Report published by the EPA in 1992, the pulp and paper production source category includes any facility engaged in the production of pulp and/or paper.[1] This category includes, but is not limited to, integrated mills (where pulp and paper or paperboard are manufactured on-site), non-integrated mills (where either pulp or paper/paperboard are manufactured on-site, but not both), and secondary fiber mills (where waste paper is used as the primary raw material). Examples of pulping methods include kraft, soda, sulfite, semi-chemical and mechanical.

If you have any questions regarding the applicability of this NESHAP, please contact the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

C. Where can I get a copy of this document?

In addition to being available in the docket, an electronic copy of this final action will also be available on the WWW through the TTN. Following signature, a copy of the final action will be posted on the TTN's policy and guidance page for newly proposed and promulgated rules at the following address: *http://www.epa.gov/ttn/caaa/new.html.* The TTN provides information and technology exchange in various areas of air pollution control.

Additional information is available on the RTR Web page at *http://www.epa.gov/ttn/atw/rrisk/rtrpg.html.* This information includes source category descriptions and detailed emissions and other data that were used as inputs to the risk assessments.

D. Judicial Review

Under section 307(b)(1) of the CAA, judicial review of this final action is available only by filing a petition for review in the Court by November 13, 2012. Under section 307(b)(2) of the CAA, the requirements established by these final rules may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce the requirements.

Section 307(d)(7)(B) of the CAA further provides that ''[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review.'' This section also provides a mechanism for us to convene a proceeding for reconsideration, ''[i]f the person raising an objection can demonstrate to EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule.'' Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave. NW., Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA,

[1] USEPA. Documentation for Developing the Initial Source Category List—Final Report, USEPA/OAQPS, EPA–450/3–91–030, July, 1992.

1200 Pennsylvania Ave. NW., Washington, DC 20460.

II. Background

Section 112 of the CAA establishes a two-stage regulatory process to address emissions of HAP from stationary sources. In the first stage, after the EPA has identified categories of sources emitting one or more of the HAP listed in CAA section 112(b), CAA section 112(d) calls for the EPA to promulgate NESHAP for those sources. ''Major sources'' are those that emit or have the potential to emit 10 tpy or more of a single HAP or 25 tpy or more of any combination of HAP. For major sources, these technology-based standards must reflect the maximum degree of emissions reductions of HAP achievable (after considering cost, energy requirements and nonair quality health and environmental impacts) and are commonly referred to as MACT standards.

For MACT standards, the statute specifies certain minimum stringency requirements, which are referred to as floor requirements and may not be based on cost considerations. See CAA section 112(d)(3). For new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best controlled similar source. The MACT standards for existing sources can be less stringent than floors for new sources but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing five sources for categories or subcategories with fewer than 30 sources). In developing MACT, we must also consider control options that are more stringent than the floor under CAA section 112(d)(2). We may establish standards more stringent than the floor, based on the consideration of the cost of achieving the emissions reductions, any nonair quality health and environmental impacts and energy requirements. In promulgating MACT standards, CAA section 112(d)(2) directs us to consider the application of measures, processes, methods, systems or techniques that reduce the volume of or eliminate HAP emissions through process changes, substitution of materials or other modifications; enclose systems or processes to eliminate emissions; collect, capture or treat HAP when released from a process, stack, storage or fugitive emissions point; and/or are design, equipment, work practice or operational standards.

In the second stage of the regulatory process, we undertake two different analyses, as required by the CAA. First, section 112(d)(6) of the CAA calls for us to review the technology-based standards and to revise them ''as necessary (taking into account developments in practices, processes, and control technologies)'' no less frequently than every 8 years. Second, within 8 years after promulgation of the MACT standards, CAA section 112(f) calls for us to evaluate the risk to public health remaining after application of the standards and to revise the standards, if necessary, to provide an ample margin of safety to protect public health or to prevent, taking into consideration costs, energy, safety and other relevant factors, an adverse environmental effect. Under section 112(f)(2), the EPA may re-adopt the existing MACT standards if the EPA determines that those standards are sufficiently protective. *Natural Resources Defense Council (NRDC)* v. *EPA,* 529 F.3d 1077, 1083 (DC Cir. 2008).

On December 27, 2011, the EPA published a proposed rule in the **Federal Register** for the pulp and paper industry NESHAP, 40 CFR part 63, subpart S based on the RTR analyses that the EPA conducted under CAA sections 112(d)(6) and 112(f)(2) (76 FR 81328). Today's action provides the EPA's final determinations and regulatory amendments pursuant to the RTR provisions of CAA section 112.

In addition, several other aspects of the subpart S MACT rule were reviewed and considered for revision at proposal, and after review of the public comment received, we are taking the following actions:

- Finalizing the requirement for 5-year repeat emissions testing for selected process equipment.
- Revising the requirements in the NESHAP related to emissions during periods of SSM.
- Finalizing the requirement for electronic reporting of performance test data.
- Adding test methods for measuring methanol emissions.
- Finalizing changes to address technical and editorial corrections in the rule.

III. Summary of the Final Rule

A. What are the final rule amendments for the pulp and paper industry source category?

The NESHAP for the pulp and paper industry was promulgated on April 15, 1998 (63 FR 18504). The standards are codified at 40 CFR part 63, subpart S. The pulp and paper industry consists of facilities engaged in the production of pulp and/or paper/paperboard. This category includes, but is not limited to, integrated mills (where pulp and paper or paperboard are manufactured on-site), non-integrated mills (where paper/paperboard or pulp are manufactured, but not both), and secondary fiber mills (where waste paper is used as the primary raw material). The subpart S MACT standard applies to major sources of HAP emissions from the pulp production areas (e.g., pulping system vents, pulping process condensates) at chemical, mechanical, secondary fiber and non-wood pulp mills; bleaching operations; and papermaking systems. A separate NESHAP (40 CFR part 63, subpart MM) applicable to chemical recovery processes at kraft, soda, sulfite and stand-alone semi-chemical pulp mills was promulgated on January 12, 2001 (66 FR 3180). Today's rule takes final action only with respect to the RTR for subpart S. The source category covered by subpart S includes 171 facilities. As explained below, we are re-adopting the MACT standards pursuant to section 112(f)(2). We also conducted a section 112(d)(6) review and evaluated developments in practices, processes and control technologies applicable to all the emission sources subject to the pulp and paper MACT. After reviewing the comments provided at proposal, we have determined that our conclusion that there have been no developments in practices, processes and control technologies since the subpart S standard was originally promulgated was correct. Although we proposed revisions to the kraft pulping process condensate standards based on our conclusion at proposal that existing technologies were achieving greater than the 92 percent minimum level of control, we re-analyzed the performance data and impacts of revising the kraft condensate standards in response to public comments and have decided not to promulgate amendments to those standards because we found that the costs and impacts associated with the HAP reduction were not reasonable. Consequently, we are not revising the MACT standards for subpart S pursuant to our 112(d)(6) review as explained further below.

In addition, this section describes the other final rule amendments to the pulp and paper industry NESHAP. These revisions include the addition of repeat emissions testing for selected process equipment; changes to the requirements that apply during periods of SSM; the addition of electronic reporting requirements; and various minor changes to address technical and editorial corrections.

1. Repeat Emissions Testing

As part of an ongoing effort to improve compliance with the standard, we are adding 40 CFR 63.457(a)(2) to require repeat air emissions performance testing once every 5 years for facilities complying with the standards for kraft, soda and semi-chemical pulping vent gases (40 CFR 63.443(a)); sulfite processes (40 CFR 63.444); and bleaching systems (40 CFR 63.445). Repeat performance tests are already required by permitting authorities for some facilities.[2] Requiring periodic repeat performance tests will help to ensure that control systems are maintained properly over time and a more rigorous testing requirement will better assure compliance with the standard.[3]

In this action, repeat air emissions testing will be required for mills complying with the kraft pulping process condensate standards in 40 CFR 63.446 using a steam stripper since stripper off-gases are, by definition, part of the LVHC system. We are clarifying that repeat air emissions testing will not be required for: (1) Knotter or screen systems with HAP emission rates below the criteria specified in 40 CFR 63.443(a)(1)(ii); or (2) decker systems using fresh water or paper machine white water, or decker systems using process water with a total HAP concentration less than 400 ppmw as specified in 40 CFR 63.443(a)(1)(iv).

2. Startup, Shutdown and Malfunction

We are also finalizing changes to the subpart S NESHAP to eliminate the SSM exemption, as discussed further in section III.B below. The changes include:

(1) Revising 40 CFR 63.443(e), 63.446(g) and 63.459(b)(11)(ii) to eliminate reference to periods of SSM;

(2) Revising 40 CFR 63.453(q) to incorporate the general duty from 40 CFR 63.6(e)(1)(i) to minimize emissions;

(3) Adding 40 CFR 63.454(g), and 40 CFR 63.455(g) to require reporting and recordkeeping requirements associated with periods of malfunction;

(4) Adding 40 CFR 63.456 (formerly reserved) to include an affirmative defense to civil penalties for violations of emissions limits caused by malfunctions that meet the criteria for establishing the affirmative defense;

(5) Adding 40 CFR 63.457(o) to specify the conditions for performance tests; and

(6) Revising Table 1 to specify that 40 CFR 63.6(e)(1)(i) and (ii), 40 CFR 63.6(e)(3), 40 CFR 63.6(f)(1); 40 CFR 63.7(e)(1), 40 CFR 63.8(c)(1)(i) and (iii), and the last sentence of 40 CFR 63.8(d)(3); 40 CFR 63.10(b)(2)(i), (ii), (iv) and (v); 40 CFR 63.10(c)(10), (11) and (15); and, 40 CFR 63.10(d)(5) of the General Provisions do not apply.

3. Electronic Reporting

To increase the ease and efficiency of data submittal and improve data accessibility, we are requiring mills to submit electronic copies of performance test reports to the EPA's WebFIRE database, as discussed in section III.D below. The electronic reporting requirement is being added under 40 CFR 63.455(h).

4. Additional Test Methods for Measuring Methanol Emissions

To allow mills greater flexibility in demonstrating compliance with emission limits for total HAP measured as methanol, we are revising 40 CFR 63.457(b)(5)(i) to include four additional test methods for measuring methanol emissions from pulp and paper processes, as alternatives to EPA Method 308 of part 63, appendix A. The four additional test methods are:

(1) Method 18 of part 60, appendix A–6;

(2) Method 320 of part 63, appendix A;

(3) ASTM D6420–99, determined to be an acceptable alternative to EPA Method 18; and

(4) ASTM D6348–03, determined to be an acceptable alternative to EPA Method 320.

We are also revising 40 CFR 63.14(b)(28) and (b)(54) to IBR ASTM D6420–99 and ASTM D6348–03, respectively.

5. Other

We are also finalizing the following minor changes to the subpart S NESHAP and part 63 General Provisions to address technical and editorial corrections:

(1) Revising 40 CFR 63.457(b)(1) to specify part 60, appendix A–1 for Method 1 or 1A;

(2) Revising 40 CFR 63.457(b)(3) to specify part 60, appendix A–1 for Method 2, 2A, 2C or 2D;

(3) Revising 40 CFR 63.457(b)(5)(ii) to specify part 60, appendix A–8 for Method 26A;

(4) Revising 40 CFR 63.457(d) to specify part 60, appendix A–7 for Method 21;

(5) Revising 40 CFR 63.457(k)(1) to specify part 60, appendix A–2 for Method 3A or 3B, and include ASME PTC 19.10—part 10 as an alternative to Method 3B;

(6) Revising 40 CFR 63.457(c)(3)(ii) to replace NCASI Method DI/MEOH–94.02 with the more recent version of this method, NCASI Method DI/MEOH–94.03;

(7) Revising 40 CFR 63.14(f)(1) to incorporate by reference NCASI Method DI/MEOH–94.03;

(8) Redesignating 40 CFR 63.14(f)(3) and (f)(4) as 40 CFR 63.14(f)(4) and (f)(5) and adding 40 CFR 63.14(f)(3) to incorporate by reference NCASI Method DI/HAPS–99.01;

(9) Revising 40 CFR 63.14(i)(1) to incorporate by reference ANSI/ASME PTC 19.10–1981; and

(10) Revising Table 1 so it aligns more closely to the sections in subpart A which have been amended or reserved over time.

B. What are the requirements during periods of startup, shutdown and malfunction?

In 2008, the Court vacated portions of two provisions in the EPA's CAA section 112 regulations governing the emissions of HAP during periods of SSM. *Sierra Club* v. *EPA,* 551 F.3d 1019 (D.C. Cir. 2008), *cert.* denied, 130 S. Ct. 1735 (U.S. 2010). Specifically, the Court vacated the SSM exemption contained in 40 CFR 63.6(f)(1) and 40 CFR 63.6(h)(1), that are part of a regulation, commonly referred to as the ''General Provisions Rule,'' that the EPA promulgated under section 112 of the CAA. When incorporated into CAA section 112(d) regulations for specific source categories, these two provisions exempt sources from the requirement to comply with the otherwise applicable CAA section 112(d) emission standard during periods of SSM.

Consistent with *Sierra Club* v. *EPA,* we have eliminated the SSM exemption in this rule. We have also revised Table 1 (the General Provisions table) in several respects. For example, we have eliminated the General Provisions' requirement that the source develop a SSM plan. We have also eliminated or revised certain recordkeeping and reporting that related to the SSM exemption. The EPA has attempted to ensure that we have not included in the regulatory language any provisions that are inappropriate, unnecessary or redundant in the absence of the SSM exemption.

In establishing the standards for startup and shutdown, we reviewed the information available to us from the 2011 pulp and paper ICR pertaining to equipment and control and compliance demonstration methods during startup and shutdown. Some commenters

[2] Located in 11 states.

[3] For information on the cost associated with the repeat testing requirement, see the memorandum in the docket titled, *Costs, Environmental, and Energy Impacts for the Promulgated Subpart S Risk and Technology Review.*

suggested that we establish different standards for periods of startup and shutdown. However, the information available to us regarding startup and shutdown does not show that emissions are higher during startup or shutdown or indicate a need for alternate standards for these periods. Further, the commenters have not shown that sources cannot comply with the standards as proposed and have not provided information to support development of alternative standards that would apply during startup and shutdown periods.

Our findings relative to startup and shutdown for the universe of pulp and paper processes regulated under subpart S (which offers a variety of compliance options) are discussed in detail in the response-to-comments document and in a memorandum in the docket.[4] Based upon these findings, and consistent with our proposal, the EPA has not established different standards for startup and shutdown periods.

Periods of startup, normal operations and shutdown are all predictable and routine aspects of a source's operations. However, by contrast, malfunction is defined as a ''sudden, infrequent, and not reasonably preventable failure of air pollution control and monitoring equipment, process equipment or a process to operate in a normal or usual manner * * *'' (40 CFR 63.2). The EPA has determined that CAA section 112 does not require that emissions that occur during periods of malfunction be factored into development of CAA section 112 standards. Under section 112, emissions standards for new sources must be no less stringent than the level ''achieved'' by the best controlled similar source and for existing sources generally must be no less stringent than the average emission limitation ''achieved'' by the best performing 12 percent of sources in the category. There is nothing in section 112 that directs the agency to consider malfunctions in determining the level ''achieved'' by the best performing or best controlled sources when setting emission standards. Moreover, while the EPA accounts for variability in setting emissions standards consistent with the section 112 case law, nothing in that case law requires the agency to consider malfunctions as part of that analysis. Section 112 uses the concept of ''best controlled'' and ''best performing'' unit in defining the level of stringency that section 112 performance standards must meet. Applying the concept of ''best controlled'' or ''best performing'' to a unit that is malfunctioning presents significant difficulties as malfunctions are sudden and unexpected events.

Further, accounting for malfunctions would be difficult, if not impossible, given the myriad different types of malfunctions that can occur across all sources in the category and given the difficulties associated with predicting or accounting for the frequency, degree and duration of various malfunctions that might occur. As such, the performance of units that are malfunctioning is not ''reasonably'' foreseeable. See, e.g., *Sierra Club* v. *EPA,* 167 F. 3d 658, 662 (D.C. Cir. 1999) (the EPA typically has wide latitude in determining the extent of data-gathering necessary to solve a problem. We generally defer to an agency's decision to proceed on the basis of imperfect scientific information, rather than to ''invest the resources to conduct the perfect study.''). See also, *Weyerhaeuser* v. *Costle,* 590 F.2d 1011, 1058 (D.C. Cir. 1978) (''In the nature of things, no general limit, individual permit, or even any upset provision can anticipate all upset situations. After a certain point, the transgression of regulatory limits caused by 'uncontrollable acts of third parties,' such as strikes, sabotage, operator intoxication or insanity, and a variety of other eventualities, must be a matter for the administrative exercise of case-by-case enforcement discretion, not for specification in advance by regulation.''). In addition, the goal of a best controlled or best performing source is to operate in such a way as to avoid malfunctions of the source and accounting for malfunctions could lead to standards that are significantly less stringent than levels that are achieved by a well-performing non-malfunctioning source. The EPA's approach to malfunctions is consistent with section 112 and is a reasonable interpretation of the statute.

In the event that a source fails to comply with the applicable CAA section 112(d) standards as a result of a malfunction event, the EPA would determine an appropriate response based on, among other things, the good faith efforts of the source to minimize emissions during malfunction periods, including preventative and corrective actions, as well as root cause analyses to ascertain and rectify violations. The EPA would also consider whether the source's failure to comply with the CAA section 112(d) standard was, in fact, ''sudden, infrequent, not reasonably preventable'' and was not instead ''caused in part by poor maintenance or careless operation.'' 40 CFR 63.2 (definition of malfunction).

Finally, the EPA recognizes that even equipment that is properly designed and maintained can sometimes fail and that such failure can sometimes cause a violation of the relevant emission standard. (See, e.g., *State Implementation Plans: Policy Regarding Excessive Emissions During Malfunctions, Startup, and Shutdown* (Sept. 20, 1999); *Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions* (Feb. 15, 1983)). The EPA is therefore adding to the final rule an affirmative defense to civil penalties for violations of emission standards that are caused by malfunctions. See 40 CFR 63.441 (defining ''affirmative defense'' to mean, in the context of an enforcement proceeding, a response or defense put forward by a defendant, regarding which the defendant has the burden of proof and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding). We also have added other regulatory provisions to specify the elements that are necessary to establish this affirmative defense; the source must prove by a preponderance of the evidence that it has met all of the elements set forth in 40 CFR 63.456. (See 40 CFR 22.24). The criteria ensure that the affirmative defense is available only where the event that causes a violation of the emission standard meets certain criteria. For example, to successfully assert the affirmative defense, the source must prove by a preponderance of the evidence that the violation was ''caused by a sudden, infrequent, and unavoidable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner * * *.'' The criteria also are designed to ensure that steps are taken to correct the malfunction, to minimize emissions in accordance with 40 CFR 63.456 and to prevent future malfunctions. For example, the source must prove by a preponderance of the evidence that ''[r]epairs were made as expeditiously as possible when a violation occurred * * *'' and that ''[a]ll possible steps were taken to minimize the impact of the violation on ambient air quality, the environment and human health * * *.'' In any judicial or administrative proceeding, the Administrator may challenge the assertion of the affirmative defense and, if the respondent has not met its burden of proving all of the requirements in the affirmative defense, appropriate penalties may be assessed

[4] See *Review of Pulp and Paper Information Collection Request (ICR) Responses Pertaining to Startup and Shutdown of Subpart S Equipment,* in the docket for the subpart S rulemaking.

in accordance with section 113 of the CAA (see also 40 CFR 22.27).

The EPA is including an affirmative defense in the final rule in an attempt to balance a tension, inherent in many types of air regulation, to ensure adequate compliance while simultaneously recognizing that despite the most diligent of efforts, emission standards may be violated under circumstances beyond the control of the source. The EPA must establish emission standards that ''limit the quantity, rate, or concentration of emissions of air pollutants on a continuous basis.'' 42 U.S.C. 7602(k) (defining ''emission limitation and emission standard''). See generally *Sierra Club* v. *EPA,* 551 F.3d 1019, 1021 (D.C. Cir. 2008). Thus, the EPA is required to ensure that section 112 emissions standards are continuous. The affirmative defense for malfunction events meets this requirement by ensuring that even where there is a malfunction, the emission standard is still enforceable through injunctive relief. While ''continuous'' standards, on the one hand, are required, there is also case law indicating that in many situations, it is appropriate for the EPA to account for the practical realities of technology. For example, in *Essex Chemical* v. *Ruckelshaus,* 486 F.2d 427, 433 (D.C. Cir. 1973), the D.C. Circuit acknowledged that in setting standards under CAA section 111 ''variant provisions'' such as provisions allowing for upsets during startup, shutdown and equipment malfunction ''appear necessary to preserve the reasonableness of the standards as a whole and that the record does not support the 'never to be exceeded' standard currently in force.'' See also, *Portland Cement Association* v. *Ruckelshaus, 486 F.2d 375 (D.C. Cir. 1973).* Though intervening case law such as *Sierra Club* v. *EPA* and the CAA 1977 amendments call into question the relevance of these cases today, they support the EPA's view that a system that incorporates some level of flexibility is reasonable. The affirmative defense simply provides for a defense to civil penalties for violations that are proven to be beyond the control of the source. By incorporating an affirmative defense, the EPA has formalized its approach to upset events. In a CWA setting, the Ninth Circuit required this type of formalized approach when regulating ''upsets beyond the control of the permit holder.'' *Marathon Oil Co.* v. *EPA,* 564 F.2d 1253, 1272–73 (9th Cir. 1977). See also, *Mont. Sulphur & Chem. Co.* v. *United States EPA,* 2012 U.S. App. LEXIS 1056 (Jan 19, 2012) (rejecting industry argument that reliance on the affirmative defense was not adequate). But see, *Weyerhaeuser Co.* v. *Costle,* 590 F.2d 1011, 1057–58 (D.C. Cir. 1978) (holding that an informal approach is adequate). The affirmative defense provisions give the EPA the flexibility to both ensure that its emission standards are ''continuous'' as required by 42 U.S.C. 7602(k), and account for unplanned upsets and thus support the reasonableness of the standard as a whole.

C. What are the effective and compliance dates of the standards?

The revisions to subpart S being promulgated in this action are effective on September 11, 2012. The compliance date for the revisions we are finalizing today is September 11, 2012, with the exception of the following: (1) The first of the 5-year repeat tests must be conducted within 36 months of the effective date of the standards, by September 7, 2015, and thereafter within 60 months from the date of the previous performance test; and (2) the date to submit performance test data through ERT is within 60 days after the date of completing each performance test.

D. What are the requirements for submission of performance test data to the EPA?

As stated in the proposed rule preamble, the EPA is taking a step to increase the ease and efficiency of data submittal and data accessibility. Specifically, the EPA is requiring owners and operators of pulp and paper facilities to submit electronic copies of required performance test reports.

As mentioned in the proposed rule preamble, data will be collected through an electronic emissions test report structure called the ERT. The ERT will generate an electronic report, which will be submitted to the EPA's CDX through the CEDRI. A description of the ERT can be found at: *http://www.epa.gov/ttn/chief/ert/index.html,* and CEDRI can be accessed through the CDX Web site: (*http://www.epa.gov/cdx*).

The requirement to submit performance test data electronically to the EPA does not create any additional performance testing and will apply only to those performance tests conducted using test methods that are supported by the ERT. A listing of the pollutants and test methods supported by the ERT is available at the previously mentioned ERT Web site. Through this approach, industry is expected to save time in the performance test submittal process. Additionally this rulemaking benefits industry by cutting back on recordkeeping costs as the performance test reports that are submitted to the EPA using CEDRI are no longer required to be kept on-site.

As mentioned in the proposed rule preamble, state, local and tribal agencies will benefit from more streamlined and accurate review of electronic data that will be available on the EPA WebFIRE database. Additionally, performance test data will become available to the public through WebFIRE. Having such data publicly available enhances transparency and accountability. The major advantages of electronic reporting are more fully explained in the proposed rule preamble (76 FR 81348).

In summary, in addition to supporting regulation development, control strategy development and other air pollution control activities, having an electronic database populated with performance test data will save industry, state, local, tribal agencies and the EPA significant time, money and effort, while improving the quality of emissions inventories and, as a result, air quality regulations.

IV. Summary of Significant Changes Since Proposal

A. Changes to the Risk Assessment Performed Under CAA Section 112(f)

As noted at proposal (76 FR 81344), the risk analysis performed for the pulp and paper source category indicated that the cancer risks to the individual most exposed are no higher than 10 in 1 million due to actual or MACT-allowable emissions. These risks are considerably less than 100 in 1 million, which is the presumptive upper limit of risk acceptability. The risk analysis also showed generally low cancer incidence (1 case every 100 years); no potential for adverse environmental effects or human health multipathway effects; no potential for chronic noncancer impacts; and, as explained in the proposal and further below, while a potential exists for some acute inhalation impacts, they are likely to be minimal because the potential impacts occur in uninhabited areas where terrain prevents ready access by the public. Also, we received comment on the risk assessment that is addressed in our comment response.[5]

The number of people exposed to cancer risks of 1 in 1 million or greater due to emissions from the source category was determined to be relatively low (76,000). The number of people exposed at the MIR cancer risk of 10 in 1 million or greater due to emissions

[5] See the memorandum in the docket titled, *National Emission Standards for Hazardous Air Pollutants From the Pulp and Paper Industry (40 CFR Part 63, Subpart S) Residual Risk and Technology Review, Final Amendments Response to Public Comments on December 27, 2011 Proposal.*

from the source category was significantly lower (40). Considering all of this health information and the uncertainties discussed in the proposal preamble (76 FR 81338–40), the risks from the pulp and paper source category were deemed to be acceptable. 76 FR 81344.

Our analysis of facilitywide risks showed five mills with maximum chronic cancer risks between 10 and 30 in 1 million and four mills with maximum chronic noncancer TOSHI between 1 and 2. For the facility with the highest facilitywide risk (i.e., 30 in 1 million), emissions from the pulp and paper (subpart S) source category only contributed 27 percent to the chronic cancer risk and 23 percent to the chronic noncancer risk.

As directed by section 112(f)(2), we conducted an analysis to determine if the standard provides an ample margin of safety analysis to protect public health. Under the ample margin of safety analysis, we first considered the health impacts for the source category. Then we analyzed the potential for emissions reductions within the source category by evaluating available control technologies and their capabilities for reduction of the residual risk remaining after the implementation of MACT controls. Then we evaluated the potential costs and energy impacts of these additional controls.[6] Based on this analysis, we conclude that the current standard protects public health with an ample margin of safety. (76 FR 81344) We solicited comment on the proposal (76 FR 81349–51), asking for any additional data that may help to reduce the uncertainties inherent in the risk assessments and other analyses. We were specifically interested in receiving corrections to the mill-specific HAP emissions data used in the risk modeling. The mill-specific emissions data were available for download on the EPA's RTR web page at: *http://www.epa.gov/ttn/atw/rrisk/rtrpg.html.* Commenters on the subpart S proposal were asked to determine whether any of the data were unrepresentative or inaccurate and to submit their comments on the data downloaded from the RTR web page.

A total of 81 mills submitted specific revisions to their mill-specific data. The EPA reviewed the data revisions to determine whether they would influence the outcome of the risk assessment results as proposed. Specifically, the mills submitted data revisions that remove pollutants, change emission release point type from fugitive to stack and change stack/fugitive emission parameters. Our review indicated that these changes would reduce emissions and/or impacts. Consequently, we have determined that the results of the revisions would most likely adjust the risk results for the subpart S source category downward (i.e., reduce risk) if we were to remodel the category. Therefore, we have decided not to remodel risk for purposes of promulgating the subpart S residual risk review because our conservative approach at proposal overstates existing risk and reinforces the conclusions from the risk modeling conducted at proposal. A memorandum for the docket was prepared that summarizes the data revisions received and supports the decision not to remodel risk.[7] A separate document presents the results of the EPA's risk analysis.[8] We conclude based on the Residual Risk Assessment cited here that the risks from the subpart S pulp and papermaking source category are acceptable and that the current standard protects the public health with an ample margin of safety. Consequently, we are re-adopting the MACT standards for subpart S pursuant to our 112(f)(2) review.

B. Changes to the Technology Review Performed Under CAA Section 112(d)(6)

As a result of our initial technology review, we proposed on December 27, 2011, to strengthen the kraft pulping process condensate standards in 40 CFR 63.446 by increasing the HAP removal requirement from 92 to 94 percent (or an equivalent pound/ODTP or ppmw limit). Several commenters opposed the proposed revisions to the kraft pulping process condensate standards, for reasons including calculation methodology issues, data misinterpretation, undetermined impacts on mills utilizing the clean condensate compliance alternative and additional steam and energy impacts for rule compliance. A detailed discussion of these comments can be found in the Response to Comment Document.[9]

In response to these comments, we have: (1) Re-analyzed the condensate collection information provided in the ICR; (2) evaluated the design criteria (and energy impacts) of the steam strippers and biotreatment units typically used by facilities to assure compliance with 40 CFR 63.446; (3) reviewed additional cost and control information that supplements the data collected in the ICR; and (4) considered the effects of the proposed standards on CCA mills.

In our re-analysis, we estimated the potential nationwide cost associated with increasing condensate treatment from 92 to 94 percent reduction would be $423 million (capital) and $85.1 million/yr. We estimated a HAP emissions reduction of 2,300 tpy, for a cost effectiveness of $37,000/ton of HAP. This estimate includes the costs associated with a repeat CCA demonstration and switching from CCA to HVLC pulping vent gas control at mills where the CCA approach would be adversely affected. Our revised cost estimates for a 94 percent reduction standard are significantly higher than the cost estimates that we developed at proposal for a 94 percent reduction standard because we determined that a greater number of mills would be affected after the potential impacts on CCA mills. Also, the cost-to-sales ratios for the three affected small businesses are also higher with one small business now estimated to have a ratio of 15 percent.[10] For this reason alone, we would decline to revise the standard under (d)(6) because we find increasing the standard from 92 percent to 94 percent not cost effective. In addition, after review of the comments, we recognize that we failed to fully consider the energy and secondary air emissions impacts associated with the 94 percent reduction limit for these mills, due to increased steam demand for new and upgraded stripper systems. Upon review of the information in the record, we believe these factors also weigh against revising the MACT standards. In the proposal, we estimated energy and secondary emissions impacts based on increased electricity requirements for biological treatment. We did not assume there were any additional impacts from new and upgraded steam strippers because they were expected to be more energy efficient, however, commenters indicated that additional steam would be required for these facilities. We have

[6] For a full discussion of this analysis, see the memorandum in the docket titled, *Ample Margin of Safety Analysis for Pulping and Papermaking Processes.*

[7] See the memorandum in the docket titled, *Recommendations Concerning Residual Risk Remodeling for the Pulp and Paper Industry.*

[8] See *Residual Risk Assessment for the Pulp and Paper Source Category,* in the docket for the subpart S rulemaking.

[9] See the memorandum in the docket titled, *National Emission Standards for Hazardous Air Pollutants From the Pulp and Paper Industry (40 CFR Part 63, Subpart S) Residual Risk and Technology Review, Final Amendments Response to Public Comments on December 27, 2011, Proposal.*

[10] For further information on the costs and impacts associated with the 93 and 94 percent reduction options considered for promulgation of the kraft pulping process condensate standards, see the memorandum in the docket titled, *Costs, Environmental, and Energy Impacts for the Promulgated Subpart S Risk and Technology Review.*

considered these energy and secondary air emissions impacts for steam strippers for the final rule as a result of the public comments.[11]

Similarly, we also analyzed the potential nationwide costs and impacts of increasing the 92 percent reduction standard to 93 percent reduction. For a 93 percent reduction standard, estimated capital costs would be $396 million and estimated annualized costs would be $74.4 million/yr, with a HAP emission reduction of 989 tpy, or approximately $75,000/ton of HAP. Additionally, the cost-to-sales ratio is nearly 6 percent for one of the three small businesses.[12] For this reason alone, we would decline to revise the standard under (d)(6) because we find increasing the standard from 92 percent to 93 percent not cost effective. In addition, after review of the comments, we recognize that we failed to fully consider the energy and secondary air emissions impacts associated with the 93 percent reduction limit for these mills, due to increased steam demand for new and upgraded stripper systems. Upon review of the information in the record, we believe these factors also weigh against revising the MACT standards.

Based on this re-analysis, we do not consider the costs and impacts associated with the HAP reduction that would be achieved under either the 93 or 94 percent reduction options to be reasonable. Consequently we are not revising the MACT standards pursuant to section 112(d)(6).

C. Other Changes Since Proposal

1. Repeat Emissions Testing

In response to a comment, we have added language to clarify that the 5-year repeat testing is not required for: (1) Knotter or screen systems with HAP emission rates below the criteria specified in 40 CFR 63.443(a)(1)(ii); or (2) decker systems using fresh water or paper machine white water or decker systems using process water with a total HAP concentration less than 400 ppm by weight as specified in 40 CFR 63.443(a)(1)(iv).

2. Compliance Dates

Commenters requested clarification of the electronic reporting effective date since the proposed rule stated that performance test data must be submitted ''[a]s of January 1, 2012 and within 60 days of completing each performance test * * *''. The commenters noted that the January 1, 2012, date would require submission of performance testing before the final rule was in effect. In response to this comment, we have deleted reference to January 1, 2012, from the final rule. Electronic reports would be submitted within 60 days after completing each performance test.

3. Excess Emissions Allowances

Some commenters expressed concern regarding the EPA's request for comment in the preamble to the proposed rule (76 FR 81346) as to whether to remove or modify the excess emissions allowance provisions in 40 CFR 63.443(e), 63.446(g) and 63.459(b)(11)(ii). We are deferring final action on the excess emissions allowances until a later date in order to analyze more recent information on the allowances that we have obtained from industry. After we have completed our analysis of the data, we expect to publish a proposed rule describing the changes to the excess emissions allowance provisions that we believe are warranted and provide a further opportunity for public comment before taking final action with respect to the excess emissions allowance provisions.

4. Affirmative Defense

We have made certain changes to 40 CFR 63.456 for the final rule to clarify the circumstances under which a source may assert an affirmative defense. The changes to 40 CFR 63.456 clarify that a source may assert an affirmative defense to a claim for civil penalties for violations of standards that are caused by malfunctions. A source can avail itself of the affirmative defense when there has been a violation of the emission standards due to an event that meets the definition of malfunction under 40 CFR 63.2 and qualifies for assertion of an affirmative defense under § 63.456. In the proposal, we used terms such as ''exceedance'' or ''excess emissions'' in 40 CFR 63.456, which created unnecessary confusion as to when the affirmative defense could be used. In the final rule, we have eliminated those terms and used the word ''violation'' to make clear that the affirmative defense to civil penalties is available only where an event that causes a violation of the emissions standard meets the criteria for the assertion of an affirmative defense under § 63.456.

We have also eliminated the 2-day notification requirement that was included in 40 CFR 63.456(b) at proposal because we expect to receive sufficient notification of malfunction events that result in violations in other required compliance reports, such as the malfunction report required under 40 CFR 63.455(g). In addition, we have revised the 45-day affirmative defense reporting requirement that was included in 40 CFR 63.456(b) at proposal to require sources to include the report in the first compliance, deviation or excess emission report due after the initial occurrence of the violation, unless the compliance, deviation or excess emission report is due less than 45 days after the violation. In that case, the affirmative defense report may be included in the second compliance, deviation or excess emission report due after the initial occurrence of the violation. Because the affirmative defense report is now included in a subsequent compliance, deviation or excess emission report, there is no longer a need for the proposed 30-day extension for submitting a stand-alone affirmative defense report. Consequently, we are not including this provision in the final rule.

V. Summary of Cost, Environmental and Economic Impacts

A. What are the affected facilities?

There are currently 171 major source pulp and paper mills operating in the United States. The affected source for kraft, soda, sulfite or semi-chemical pulping processes is the total of all HAP emission points in the pulping and bleaching systems. The affected source for mechanical, secondary or non-wood pulping processes is the total of all HAP emission points in the bleaching system. We estimate that 114 of the 171 major source mills operate subpart S processes that are affected by this final rule.

B. What are the air quality impacts?

These final amendments will require an estimated 114 mills to conduct repeat testing for pulping and bleaching operations and all major sources with equipment subject to the subpart S standards to operate without the SSM exemption. We were unable to quantify the specific emissions reductions associated with repeat emissions testing or eliminating the SSM exemption. However, repeat testing will tend to reduce emissions by providing incentive for facilities to maintain their control systems and make periodic adjustments to ensure peak performance. Eliminating the SSM exemption will reduce emissions by requiring facilities to meet the applicable standard during SSM periods.

Section IV.B of this preamble presents estimates of the air quality impacts associated with the kraft pulping process condensate regulatory options that were not selected for inclusion in this final rule.

[11] *Id.*

[12] *Id.*

C. What are the cost impacts?

Pulp and paper mills will incur costs to conduct repeat testing and record malfunctions in support of the new affirmative defense in the rule. Costs associated with elimination of the startup and shutdown exemption were estimated as part of the reporting and recordkeeping costs and include time for re-evaluating previously developed SSM record systems. Nationwide capital costs are estimated to be $5.9 million. The total nationwide annualized costs associated with these new requirements are estimated to be $2.1 million per year.

Section IV.B of this preamble presents cost estimates associated with the kraft pulping process condensate regulatory options that were not selected for inclusion in this final rule.

D. What are the economic impacts?

We performed an EIA of the final rule for pulp and paper consumers and producers nationally. The EIA, which documents the data sources and methods used and provides detailed results, can be found in the docket for the final rule. This section provides an overview of key results.

The final rule induces minimal changes in the average national price of paper and paperboard products. Paper and paperboard product prices increase less than 0.01 percent on average, while production levels decrease less that 0.01 percent on average, as a result of the final rule. Consumers are estimated to experience a reduction in economic welfare of about $1.1 million as the result of slightly higher prices and slightly reduced consumption. Although producers' welfare losses are mitigated to some degree by slightly higher prices, market conditions limit their ability to pass on all of the compliance costs. As a result, they also are estimated to experience a loss in economic welfare of about $1.0 million as a result of the final rule.

E. What are the benefits?

Because this rulemaking is not likely to have an annual effect on the economy of $100 million or more, we have not conducted a RIA or a benefits analysis. Since we were unable to quantify the emissions reductions associated with the new requirements in the final rule (repeat testing and elimination of the SSM exemption), we were also unable to quantify the monetary benefits associated with these new requirements.

VI. Statutory and Executive Order Reviews

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

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action'' because it raises novel legal and policy issues. Accordingly, the EPA submitted this action to OMB for review under Executive Order 12866 and 13563 (76 FR 3821, January 21, 2011), and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

The information collection requirements in this final rule have been submitted for approval to OMB under the PRA, 44 U.S.C. 3501, *et seq.* The ICR document prepared by the EPA has been assigned EPA ICR number 2452.02. The information collection requirements are not enforceable until OMB approves them. The information requirements are based on notification, recordkeeping and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emissions standards. These recordkeeping and reporting requirements are specifically authorized by CAA section 114 (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to agency policies set forth in 40 CFR part 2, subpart B.

This final rule includes new paperwork requirements for repeat testing for selected process equipment, as described in 40 CFR 63.457(a)(2). More specifically, we are requiring stack testing every 5 years for total HAP for chemical pulping operations and bleaching operations at pulp and paper mills. This final rule also includes new paperwork requirements for recordkeeping of malfunctions, as described in 40 CFR 63.454(g) (conducted in support of the affirmative defense provisions, as described in 40 CFR 63.456).

When a malfunction occurs, sources must report the event according to the applicable reporting requirements of 40 CFR part 63, subpart S. An affirmative defense to civil penalties for violations of emission limits that are caused by malfunctions is available to a source if it can demonstrate that certain criteria and requirements are satisfied. The criteria ensure that the affirmative defense is available only where the event that causes a violation of the emission limit meets the narrow definition of malfunction in 40 CFR 63.2 (sudden, infrequent, not reasonable preventable and not caused by poor maintenance and or careless operation) and where the source took necessary actions to minimize emissions. In addition, the source must meet certain notification and reporting requirements. For example, the source must prepare a written root cause analysis and submit a written report to the Administrator documenting that it has met the conditions and requirements for assertion of the affirmative defense.

The EPA is adding affirmative defense to the estimate of burden in the ICR. To provide the public with an estimate of the relative magnitude of the burden associated with an assertion of the affirmative defense position adopted by a source, the EPA has provided administrative adjustments to the ICR that show what the notification, recordkeeping and reporting requirements associated with the assertion of the affirmative defense might entail. The EPA's estimate for the required notification, reports and records for any individual incident, including the root cause analysis, totals $3,258, and is based on the time and effort required of a source to review relevant data, interview plant employees and document the events surrounding a malfunction that has caused a violation of an emissions limit. The estimate also includes time to produce and retain the record and reports for submission to the EPA. The EPA provides this illustrative estimate of this burden because these costs are only incurred if there has been a violation and a source chooses to take advantage of the affirmative defense.

Given the variety of circumstances under which malfunctions could occur, as well as differences among sources' operation and maintenance practices, we cannot reliably predict the severity and frequency of malfunction-related excess emissions events for a particular source. It is important to note that the EPA has no basis currently for estimating the number of malfunctions that would qualify for an affirmative defense. Current historical records would be an inappropriate basis, as source owners or operators previously operated their facilities in recognition that they were exempt from the requirement to comply with emissions standards during malfunctions. Of the number of excess emissions events reported by source operators, only a

small number would be expected to result from a malfunction (based on the definition above), and only a subset of violations caused by malfunctions would result in the source choosing to assert the affirmative defense. Thus, we expect the number of instances in which source operators might be expected to avail themselves of the affirmative defense will be extremely small. For this reason, we estimate no more than two such occurrences per year for all sources subject to subpart S over the 3-year period covered by this ICR. We expect to gather information on such events in the future and will revise this estimate as better information becomes available.

The estimated recordkeeping and reporting burden associated with subpart S after the effective date of the final rule is estimated to be 52,300 labor hours at a cost of $4.94 million per year and total non-labor capital and O&M costs of $841,000 per year. This estimate includes reporting costs, such as reading and understanding the rule requirements, conducting required activities (e.g., stack testing, inspections), and preparing notifications and compliance reports and recordkeeping costs associated with malfunctions, monitoring and inspections. The total burden for the federal government is estimated to be 6,870 hours per year at a total labor cost of $310,000 per year. Burden is defined at 5 CFR 1320.3(b).

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 the EPA's regulations in 40 CFR are listed in 40 CFR part 9. When this ICR is approved by OMB, the agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control numbers for the approved information collection requirements contained in this final rule.

C. Regulatory Flexibility Act

The 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 SISNOSE. Small entities include small businesses, small organizations and small governmental jurisdictions.

For purposes of assessing the impacts of this final rule on small entities, small entity is defined as: (1) A small business as defined by the SBA'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. For this source category, which has the general NAICS subsector code 322 (i.e., Paper Manufacturing), the SBA small business size standard is 500 to 750 employees (depending on the specific NAICS code) according to the SBA small business standards definitions.

The EPA analyzed impacts on small businesses by comparing estimated annualized engineering compliance costs at the company-level to company revenue. The analysis found that the ratio of compliance cost to company revenue falls below 1 percent for the three small companies that are likely to be affected by the finalized rule. After considering the economic impacts of this final rule on small entities, I certify that this action will not have a SISNOSE. See the EIA in the docket for this rule for more details on this analysis.

Although this final rule will not have a SISNOSE, the EPA nonetheless has tried to reduce the impact of this rule on small entities. The proposed amendment tightening the kraft pulping process condensate standards was not finalized after the EPA re-evaluated the amendment and its costs and impacts in response to public comments (see section IV.B of this preamble for further information). The repeat testing requirement was established in a way that minimizes the costs for testing and reporting while still providing the agency the necessary information needed to ensure continuous compliance with the final standards. Also, the final malfunction recordkeeping requirement was designed to provide all pulp and paper companies, including small entities, with a means of supporting an affirmative defense in the event of a violation occurring during a malfunction.

D. Unfunded Mandates Reform Act

This action does not contain a federal mandate under the provisions of Title II of the UMRA, 2 U.S.C. 1531–1538 for state, local or tribal governments or the private sector. This final rule is not expected to impact state, local or tribal governments. The nationwide annual cost of this final rule for affected sources is $2.1 million. Thus, this rule is not subject to the requirements of sections 202 or 205 of the UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This rule does not apply to such governments and will not impose any obligations upon them.

E. Executive Order 13132: Federalism

This final rule 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. None of the facilities subject to this action are owned or operated by state governments and nothing in this final rule will supersede state regulations. The burden to the respondents and the states is less than $2.1 million for the entire source category. Thus, Executive Order 13132 does not apply to this final rule.

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

This final rule does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It will not have substantial direct effect on tribal governments, 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, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action. However, the EPA did outreach and consultation on this rule. The EPA presented this information to the tribes prior to proposal of this rule via a call with the National Tribal Air Association. In addition, the EPA presented the information on the sources and the industry at the National Tribal Forum in Spokane, Washington. The EPA also offered consultation by letters sent to all tribal leaders. We held that consultation with the Nez Perce, Forest County Potowatomi and Leech Lake Band of Ojibewa on October 6, 2011. Additionally, a public outreach webinar was conducted during the comment period on January 31, 2012, to review the proposed rule. The webinar was coordinated with the tribal governments and the general public.

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

This final rule is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not

economically significant as defined in Executive Order 12866, and because the agency does not believe the environmental health risks or safety risks addressed by this action present a disproportionate risk to children. This action will not relax the control measures on existing regulated sources, and the EPA's risk assessment results—included in the preamble (76 FR 81344) and docket (EPA–HQ–OAR–2007–0544) for the proposed rule—demonstrate that the existing regulation is associated with an acceptable level of risk and an ample margin of safety to protect public health.

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

This action is not a ''significant energy action'' as defined under Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. This action will not create any new requirements for sources in the energy supply, distribution or use sectors.

I. National Technology Transfer and Advancement Act

Section 12(d) of the NTTAA, Public Law No. 104–113, 12(d) (15 U.S.C. 272 note), directs the EPA to use VCS 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 VCS bodies. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable VCS.

This final rulemaking involves technical standards. The EPA has decided to use three VCS in this final rule.

One VCS, ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses,'' is cited in this final rule for its manual method of measuring the content of the exhaust gas as an acceptable alternative to EPA Method 3B of appendix A–2. This standard is available at *http://www.asme.org* or by mail at the ASME, Post Office Box 2900, Fairfield, NJ 07007–2900; or at Global Engineering Documents, Sales Department, 15 Inverness Way East, Englewood, CO 80112.

A second VCS, ASTM D6420–99 (2010), ''Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography/Mass Spectrometry'' is cited as an acceptable alternative to EPA Method 18. A third VCS, ASTM D6348–03 (2010), ''Test Method for Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform Infrared (FTIR) Spectroscopy,'' was determined to be an acceptable alternative to EPA Method 320. EPA Methods 18 and 320 are added as alternatives to EPA Method 308 in this final rule for measurement of methanol emissions. The two VCS alternatives are available for purchase from ASTM International, 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428–2959; or ProQuest, 300 North Zeeb Road, Ann Arbor, MI 48106.

While the EPA has identified another 14 VCS as being potentially applicable to this final rule, we have decided not to use these VCS in this rulemaking. The use of these VCS would be impractical because they do not meet the objectives of the standards cited in this rule. See the docket for this rule for the reasons for these determinations.

Under 40 CFR 63.7(e)(2)(ii) and (f) and 63.8(f) of the NESHAP General Provisions, a source may apply to the EPA for permission to use alternative test methods or alternative monitoring requirements in place of any required testing methods, performance specifications or procedures in the final rule and any amendments.

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 EJ. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make EJ part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies and activities on minority populations and low income populations in the United States.

The EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority, low income or indigenous populations because it does not affect the level of protection provided to human health or the environment.

These final standards will not relax the control measures on sources regulated by the rule and, therefore, will not cause emissions increases from these sources. In fact, as noted in section III.A of this preamble, the repeat testing provisions included in this final rule will tend to reduce emissions by providing incentive for facilities to maintain their control systems and make periodic adjustments to ensure peak performance. Also, eliminating the SSM exemption will reduce emissions by requiring facilities to meet the applicable standard during SSM periods.

Additionally, the agency has reviewed this rule to determine if there is an overrepresentation of minority, low income or indigenous populations near the sources such that they may face disproportionate exposure from pollutants that could potentially be mitigated by this rulemaking. Although this analysis gives some indication of populations that may be exposed to levels of pollution that cause concern, it does not identify the demographic characteristics of the most highly affected individuals or communities.

The demographic data show that while most demographic categories are below, or within, 2 percentage points of national averages, the African-American population exceeds the national average by 3 percentage points (15 percent versus 12 percent), or +25 percent. The facility-level demographic analysis results are presented in the November 2011 memorandum titled, *Review of Environmental Justice Impacts: Pulp and Paper,* a copy of which is available in the docket for this action (EPA–HQ–OAR–2007–0544).

The analysis of demographic data used proximity-to-a-source as a surrogate for exposure to identify those populations considered to be living near affected sources, such that they have measurable exposures to current HAP emissions from these sources. The demographic data for this analysis were extracted from the 2000 census data, which were provided to the EPA by the U.S. Census Bureau. Distributions by race are based on demographic information at the census block level and all other demographic groups are based on the extrapolation of census block group level data to the census block level. The socio-demographic parameters used in the analysis included the following categories: Racial (White, African American, Native American, Other or Multiracial, and All Other Races); Ethnicity (Hispanic); and Other (Number of people below the poverty line, Number of people with ages between 0 and 18, Number of people with ages greater than or equal to 65, Number of people with no high school diploma).

In determining the aggregate demographic makeup of the communities near affected sources, the EPA focused on those census blocks within 3 miles of affected sources and determined the demographic composition (e.g., race, income, etc.) of these census blocks and compared them to the corresponding compositions nationally. The radius of 3 miles (or approximately 5 km) is consistent with other demographic analyses focused on areas around potential sources.[13] [14] [15] [16] In addition, air quality modeling experience has shown that the area within 3 miles of an individual source of emissions can generally be considered the area with the highest ambient air levels of the primary pollutants being emitted for most sources, both in absolute terms and relative to the contribution of other sources (assuming there are other sources in the area, as is typical in urban areas). While facility processes and fugitive emissions may have more localized impacts, the EPA acknowledges that because of various stack heights, there is the potential for dispersion beyond 3 miles. To the extent that any minority, low income or indigenous subpopulation is disproportionately impacted by the current emissions as a result of the proximity of their homes to these sources, that subpopulation also stands to see increased environmental and health benefit from the emissions reductions that may result from this rule.

The EPA did outreach and consultation on this rule on the subject of federal actions to address EJ issues. The EPA requested input on EJ issues prior to proposal of this rule in regional conference calls and at the EPA's national EJ conference in 2011. Additionally, a public outreach webinar was conducted during the comment period on January 31, 2012, to review the proposed rule. As noted above, the webinar was coordinated with the tribal governments and the general public.

[13] U.S. GAO (Government Accountability Office). *Demographics of People Living Near Waste Facilities.* Washington DC: Government Printing Office; 1995.

[14] Mohai P, Saha R. *Reassessing Racial and Socioeconomic Disparities in Environmental Justice Research. Demography.* 2006;43(2): 383–399.

[15] Mennis J. *Using Geographic Information Systems to Create and Analyze Statistical Surfaces of Populations and Risk for Environmental Justice Analysis. Social Science Quarterly,* 2002;83(1):281–297.

[16] Bullard RD, Mohai P, Wright B, Saha R, *et al. Toxic Waste and Race at Twenty 1987–2007.* United Church of Christ. March, 2007.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that, before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this final rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). The final rule will be effective on September 11, 2012.

National Emission Standards for Hazardous Air Pollutants From the Pulp and Paper Industry

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: July 31, 2012.

Lisa P. Jackson,

Administrator.

For the reasons stated in the preamble, the Environmental Protection Agency is amending Title 40, chapter I of the Code of Federal Regulations as follows:

PART 63—[AMENDED]

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

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

Subpart A—[Amended]

■ 2. Section 63.14 is amended by:
■ a. Revising paragraph (b)(28);
■ b. Revising paragraph (b)(54);
■ c. Revising paragraph (f)(1);
■ d. Redesignating paragraphs (f)(3) and (4) as paragraphs (f)(4) and (5);
■ e. Adding new paragraph (f)(3); and
■ f. Revising paragraph (i)(1).

The revisions read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(b) * * *

(28) ASTM D6420–99 (Reapproved 2004), Standard Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography-Mass Spectrometry, approved 2004, IBR approved for §§ 60.485, 60.485a, 63.457, 63.772, 63.2351, 63.2354, and table 8 to subpart HHHHHHH of this part.

* * * * *

(54) ASTM D6348–03, Standard Test Method for Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform Infrared (FTIR) Spectroscopy, approved 2003, IBR approved for §§ 63.457, 63.1349, table 4 to subpart DDDD of this part, and table 8 to subpart HHHHHHH of this part.

* * * * *

(f) * * *

(1) NCASI Method DI/MEOH–94.03, Methanol in Process Liquids and Wastewaters by GC/FID, Issued May 2000, IBR approved for §§ 63.457 and 63.459 of subpart S of this part.

* * * * *

(3) NCASI Method DI/HAPS–99.01, Selected HAPs In Condensates by GC/FID, Issued February 2000, IBR approved for § 63.459(b) of subpart S of this part.

* * * * *

(i) * * *

(1) ANSI/ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus],'' IBR approved for §§ 63.309, 63.457(k), 63.865, 63.3166, 63.3360, 63.3545, 63.3555, 63.4166, 63.4362, 63.4766, 63.4965, 63.5160, 63.9307, 63.9323, 63.11148, 63.11155, 63.11162, 63.11163, 63.11410, 63.11551, 63.11945, table 5 to subpart DDDDD of this part, table 1 to subpart ZZZZZ of this part, table 4 to subpart JJJJJJ of this part, and table 5 to subpart UUUUU of this part.

* * * * *

Subpart S—[Amended]

* * * * *

■ 3. Section 63.441 is amended by adding a definition for ''affirmative defense,'' in alphabetical order, to read as follows:

§ 63.441 Definitions.

* * * * *

Affirmative defense means, in the context of an enforcement proceeding, a response or defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding.

* * * * *

■ 4. Section 63.443 is amended by revising paragraph (e) introductory text to read as follows:

§ 63.443 Standards for the pulping system at kraft, soda, and semi-chemical processes.

* * * * *

(e) Periods of excess emissions reported under § 63.455 shall not be a violation of § 63.443(c) and (d) provided that the time of excess emissions divided by the total process operating time in a semi-annual reporting period does not exceed the following levels:

* * * * *

■ 5. Section 63.446 is amended by revising paragraph (g) to read as follows:

§ 63.446 Standards for kraft pulping process condensates.

* * * * *

(g) For each control device (e.g., steam stripper system or other equipment serving the same function) used to treat pulping process condensates to comply with the requirements specified in paragraphs (e)(3) through (5) of this section, periods of excess emissions reported under § 63.455 shall not be a violation of paragraphs (d), (e)(3) through (5), and (f) of this section provided that the time of excess emissions divided by the total process operating time in a semi-annual reporting period does not exceed 10 percent. The 10 percent excess emissions allowance does not apply to treatment of pulping process condensates according to paragraph (e)(2) of this section (e.g., the biological wastewater treatment system used to treat multiple (primarily non-condensate) wastewater streams to comply with the Clean Water Act).

* * * * *

■ 6. Section 63.453 is amended by adding paragraph (q) to read as follows:

§ 63.453 Monitoring requirements.

* * * * *

(q) At all times, the owner or operator must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. Determination of whether such operation and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

■ 7. Section 63.454 is amended by revising paragraph (a) and adding paragraph (g) to read as follows:

§ 63.454 Recordkeeping requirements.

(a) The owner or operator of each affected source subject to the requirements of this subpart shall comply with the recordkeeping requirements of § 63.10, as shown in Table 1 of this subpart, and the requirements specified in paragraphs (b) through (g) of this section for the monitoring parameters specified in § 63.453.

* * * * *

(g) *Recordkeeping of malfunctions.* The owner or operator must maintain the following records of malfunctions:

(1) Records of the occurrence and duration of each malfunction of operation (i.e., process equipment) or the air pollution control and monitoring equipment.

(2) Records of actions taken during periods of malfunction to minimize emissions in accordance with § 63.453(q), including corrective actions to restore malfunctioning process and air pollution control and monitoring equipment to its normal or usual manner of operation.

■ 8. Section 63.455 is amended by adding paragraphs (g) and (h) to read as follows:

§ 63.455 Reporting requirements.

* * * * *

(g) *Malfunction reporting requirements.* If a malfunction occurred during the reporting period, the report must include the number, duration and a brief description for each type of malfunction which occurred during the reporting period and which caused or may have caused any applicable emission limitation to be exceeded. The report must also include a description of actions taken by an owner or operator during a malfunction of an affected source to minimize emissions in accordance with § 63.453(q), including actions taken to correct a malfunction.

(h) The owner or operator must submit performance test reports as specified in paragraphs (h)(1) through (4) of this section.

(1) The owner or operator of an affected source shall report the results of the performance test before the close of business on the 60th day following the completion of the performance test, unless approved otherwise in writing by the Administrator. A performance test is ''completed'' when field sample collection is terminated. Unless otherwise approved by the Administrator in writing, results of a performance test shall include the analysis of samples, determination of emissions and raw data. A complete test report must include the purpose of the test; a brief process description; a complete unit description, including a description of feed streams and control devices; sampling site description; pollutants measured; description of sampling and analysis procedures and any modifications to standard procedures; quality assurance procedures; record of operating conditions, including operating parameters for which limits are being set, during the test; record of preparation of standards; record of calibrations; raw data sheets for field sampling; raw data sheets for field and laboratory analyses; chain-of-custody documentation; explanation of laboratory data qualifiers; example calculations of all applicable stack gas parameters, emission rates, percent reduction rates, and analytical results, as applicable; and any other information required by the test method and the Administrator.

(2) Within 60 days after the date of completing each performance test (defined in § 63.2) as required by this subpart, the owner or operator must submit the results of the performance tests, including any associated fuel analyses, required by this subpart to the EPA's WebFIRE database by using the Compliance and Emissions Data Reporting Interface (CEDRI) that is accessed through the EPA's Central Data Exchange (CDX) (*http://www.epa.gov/cdx*). Performance test data must be submitted in the file format generated through use of the EPA's Electronic Reporting Tool (ERT) (see *http://www.epa.gov/ttn/chief/ert/index.html*). Only data collected using test methods on the ERT Web site are subject to this requirement for submitting reports electronically to WebFIRE. Owners or operators who claim that some of the information being submitted for performance tests is confidential business information (CBI) must submit a complete ERT file including information claimed to be CBI on a compact disk, flash drive or other commonly used electronic storage media to the EPA. The electronic media must be clearly marked as CBI and mailed to U.S. EPA/OAPQS/CORE CBI Office, Attention: WebFIRE Administrator, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same ERT file with the CBI omitted must be submitted to the EPA via CDX as described earlier in this paragraph. At the discretion of the delegated authority, the owner or operator must also submit these reports, including the CBI, to the delegated authority in the format specified by the delegated authority. For any performance test conducted using

test methods that are not listed on the ERT Web site, the owner or operator must submit the results of the performance test to the Administrator at the appropriate address listed in § 63.13.

(3) Within 60 days after the date of completing each CEMS performance evaluation test as defined in § 63.2, the owner or operator must submit relative accuracy test audit (RATA) data to the EPA's CDX by using CEDRI in accordance with paragraph (2) of this section. Only RATA pollutants that can be documented with the ERT (as listed on the ERT Web site) are subject to this requirement. For any performance evaluations with no corresponding RATA pollutants listed on the ERT Web site, the owner or operator must submit the results of the performance evaluation to the Administrator at the appropriate address listed in § 63.13.

(4) All reports required by this subpart not subject to the requirements in paragraphs (h)(2) and (3) of this section must be sent to the Administrator at the appropriate address listed in § 63.13. The Administrator or the delegated authority may request a report in any form suitable for the specific case (e.g., by commonly used electronic media such as Excel spreadsheet, on CD or hard copy). The Administrator retains the right to require submittal of reports subject to paragraphs (h)(2) and (3) of this section in paper format.

■ 9. Section 63.456 is added to read as follows:

§ 63.456 Affirmative defense for violation of emission standards during malfunction.

In response to an action to enforce the standards set forth in §§ 63.443(c) and (d), 63.444(b) and (c), 63.445(b) and (c), 63.446(c), (d), and (e), 63.447(b) or § 63.450(d), the owner or operator may assert an affirmative defense to a claim for civil penalties for violations of such standards that are caused by malfunction, as defined at 40 CFR 63.2. Appropriate penalties may be assessed, however, if the owner or operator fails to meet the burden of proving all of the requirements in the affirmative defense. The affirmative defense shall not be available for claims for injunctive relief.

(a) To establish the affirmative defense in any action to enforce such a standard, the owner or operator must timely meet the reporting requirements in paragraph (b) of this section, and must prove by a preponderance of evidence that:

(1) The violation:

(i) Was caused by a sudden, infrequent, and unavoidable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner, and

(ii) Could not have been prevented through careful planning, proper design or better operation and maintenance practices; and

(iii) Did not stem from any activity or event that could have been foreseen and avoided, or planned for; and

(iv) Was not part of a recurring pattern indicative of inadequate design, operation, or maintenance; and

(2) Repairs were made as expeditiously as possible when a violation occurred. Off-shift and overtime labor were used, to the extent practicable to make these repairs; and

(3) The frequency, amount and duration of the violation (including any bypass) were minimized to the maximum extent practicable; and

(4) If the violation resulted from a bypass of control equipment or a process, then the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage; and

(5) All possible steps were taken to minimize the impact of the violation on ambient air quality, the environment and human health; and

(6) All emissions monitoring and control systems were kept in operation if at all possible, consistent with safety and good air pollution control practices; and

(7) All of the actions in response to the violation were documented by properly signed, contemporaneous operating logs; and

(8) At all times, the affected source was operated in a manner consistent with good practices for minimizing emissions; and

(9) A written root cause analysis has been prepared, the purpose of which is to determine, correct, and eliminate the primary causes of the malfunction and the violation resulting from the malfunction event at issue. The analysis shall also specify, using best monitoring methods and engineering judgment, the amount of any emissions that were the result of the malfunction.

(b) *Report.* The owner or operator seeking to assert an affirmative defense shall submit a written report to the Administrator with all necessary supporting documentation, that it has met the requirements set forth in paragraph (a) of this section. This affirmative defense report shall be included in the first periodic compliance, deviation report or excess emission report otherwise required after the initial occurrence of the violation of the relevant standard (which may be the end of any applicable averaging period). If such compliance, deviation report or excess emission report is due less than 45 days after the initial occurrence of the violation, the affirmative defense report may be included in the second compliance, deviation report or excess emission report due after the initial occurrence of the violation of the relevant standard.

■ 10. Section 63.457 is amended by:
■ a. Revising paragraph (a);
■ b. Revising paragraph (b)(1) introductory text;
■ c. Revising paragraph (b)(3);
■ d. Revising paragraph (b)(4);
■ e. Revising paragraph (b)(5)(i);
■ f. Revising paragraph (b)(5)(ii) introductory text;
■ g. Revising paragraph (c)(3)(ii);
■ h. Revising paragraph (d)(1);
■ i. Revising paragraph (k)(1); and
■ j. Adding paragraph (o).

The revisions read as follows:

§ 63.457 Test methods and procedures.

(a) *Performance tests.* Initial and repeat performance tests are required for the emissions sources specified in paragraphs (a)(1) and (2) of this section, except for emission sources controlled by a combustion device that is designed and operated as specified in § 63.443(d)(3) or (4).

(1) Conduct an initial performance test for all emission sources subject to the limitations in §§ 63.443, 63.444, 63.445, 63.446, and 63.447.

(2) Conduct repeat performance tests at five-year intervals for all emission sources subject to the limitations in §§ 63.443, 63.444, and 63.445. The first of the 5-year repeat tests must be conducted by September 7, 2015, and thereafter within 60 months from the date of the previous performance test. Five-year repeat testing is not required for the following:

(i) Knotter or screen systems with HAP emission rates below the criteria specified in § 63.443(a)(1)(ii).

(ii) Decker systems using fresh water or paper machine white water, or decker systems using process water with a total HAP concentration less than 400 parts per million by weight as specified in § 63.443(a)(1)(iv).

(b) * * *

(1) Method 1 or 1A of part 60, appendix A–1, as appropriate, shall be used for selection of the sampling site as follows:

* * * * *

(3) The vent gas volumetric flow rate shall be determined using Method 2, 2A, 2C, or 2D of part 60, appendix A–1, as appropriate.

(4) The moisture content of the vent gas shall be measured using Method 4 of part 60, appendix A–3.

(5) * * *

(i) Method 308 in Appendix A of this part; Method 320 in Appendix A of this part; Method 18 in appendix A–6 of part 60; ASTM D6420–99 (Reapproved 2004) (incorporated by reference in § 63.14(b)(28) of subpart A of this part); or ASTM D6348–03 (incorporated by reference in § 63.14(b)(54) of subpart A of this part) shall be used to determine the methanol concentration. If ASTM D6348–03 is used, the conditions specified in paragraphs (b)(5)(i)(A) though (b)(5)(i)(B) must be met.

(A) The test plan preparation and implementation in the Annexes to ASTM D6348–03, sections A1 through A8 are required.

(B) In ASTM D6348–03 Annex A5 (Analyte Spiking Technique), the percent (%) R must be determined for each target analyte (Equation A5.5 of ASTM D6348–03). In order for the test data to be acceptable for a compound, %R must be between 70 and 130 percent. If the %R value does not meet this criterion for a target compound, the test data is not acceptable for that compound and the test must be repeated for that analyte following adjustment of the sampling or analytical procedure before the retest. The %R value for each compound must be reported in the test report, and all field measurements must be corrected with the calculated %R value for that compound using the following equation: Reported Result = Measured Concentration in the Stack × 100)/%R.

(ii) Except for the modifications specified in paragraphs (b)(5)(ii)(A) through (b)(5)(ii)(K) of this section, Method 26A of part 60, appendix A–8 shall be used to determine chlorine concentration in the vent stream.

* * * * *

(c) * * *

(3) * * *

(ii) For determining methanol concentrations, NCASI Method DI/MEOH–94.03. This test method is incorporated by reference in § 63.14(f)(1) of subpart A of this part.

* * * * *

(d) * * *

(1) Method 21, of part 60, appendix A–7; and

* * * * *

(k) * * *

(1) The emission rate correction factor and excess air integrated sampling and analysis procedures of Methods 3A or 3B of part 60, appendix A–2 shall be used to determine the oxygen concentration. The samples shall be taken at the same time that the HAP samples are taken. As an alternative to Method 3B, ASME PTC 19.10–1981 [Part 10] may be used (incorporated by reference, see § 63.14(i)(1)).

* * * * *

(o) Performance tests shall be conducted under such conditions as the Administrator specifies to the owner or operator based on representative performance of the affected source for the period being tested. Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

■ 11. Section 63.459 is amended by:

■ a. Revising paragraph (b)(5)(iv)(A) introductory text;

■ b. Revising paragraph (b)(5)(iv)(A)(*2*);

■ c. Revising paragraph (b)(8)(ii);

■ d. Revising paragraph (b)(8)(iii); and

■ e. Revising paragraph (b)(11)(ii).

The revisions read as follows:

§ 63.459 Alternative standards.

* * * * *

(b) * * *

(5) * * *

(iv) * * *

(A) The owner or operator shall measure the methanol concentration of the outfall of any basin, using NCASI Method DI/MEOH 94.03 (incorporated by reference, see § 63.14), when the VA/A ratio of that basin exceeds the following:

* * * * *

(*2*) The highest VA/A ratio at which the outfall of any basin has previously measured non-detect for methanol, using NCASI Method DI/MEOH 94.03 (incorporated by reference, see § 63.14).

* * * * *

(8) * * *

(ii) The owner or operator shall use NCASI Method DI/HAPS–99.01 (incorporated by reference, see § 63.14) to collect a grab sample and determine the HAP concentration of the Raw Mill Effluent, Pulping Process Condensates, and Anaerobic Basin Discharge for the quarterly performance test conducted during the first quarter each year.

(iii) For each of the remaining three quarters, the owner or operator may use NCASI Method DI/MEOH 94.03 (incorporated by reference, see § 63.14) as a surrogate to collect and determine the HAP concentration of the Raw Mill Effluent, Pulping Process Condensates, and Anaerobic Basin Discharge.

* * * * *

(11) * * *

(ii) Periods of excess emissions shall not constitute a violation provided the time of excess emissions divided by the total process operating time in a semi-annual reporting period does not exceed one percent. All periods of excess emission shall be reported, and shall include:

* * * * *

■ 12. Table 1 to subpart S is revised to read as follows:

TABLE 1 TO SUBPART S OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPART S[a]

Reference	Applies to subpart S	Comment
63.1(a)(1)–(3)	Yes	
63.1(a)(4)	Yes	Subpart S (this table) specifies applicability of each paragraph in subpart A to subpart S.
63.1(a)(5)	No	Section reserved.
63.1(a)(6)	Yes	
63.1(a)(7)–(9)	No	Sections reserved.
63.1(a)(10)	No	Subpart S and other cross-referenced subparts specify calendar or operating day.
63.1(a)(11)–(12)	Yes	
63.1(b)(1)	No	Subpart S specifies its own applicability.
63.1(b)(2)	No	Section reserved.
63.1(b)(3)	Yes	
63.1(c)(1)–(2)	Yes	
63.1(c)(3)–(4)	No	Sections reserved.
63.1(c)(5)	Yes	
63.1(d)	No	Section reserved.
63.1(e)	Yes	
63.2	Yes	

TABLE 1 TO SUBPART S OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPART S [a]—Continued

Reference	Applies to subpart S	Comment
63.3	Yes	
63.4(a)(1)–(2)	Yes	
63.4(a)(3)–(5)	No	Sections reserved.
63.4(b)	Yes	
63.4(c)	Yes	
63.5(a)	Yes	
63.5(b)(1)	Yes	
63.5(b)(2)	No	Section reserved.
63.5(b)(3)–(4)	Yes	
63.5(b)(5)	No	Section reserved.
63.5(b)(6)	Yes	
63.5(c)	No	Section reserved.
63.5(d)	Yes	
63.5(e)	Yes	
63.5(f)	Yes	
63.6(a)	Yes	
63.6(b)(1)–(5)	No	Subpart S specifies compliance dates for sources subject to subpart S.
63.6(b)(6)	No	Section reserved.
63.6(b)(7)	No	Subpart S specifies compliance dates for sources subject to subpart S.
63.6(c)(1)–(2)	No	Subpart S specifies compliance dates for sources subject to subpart S.
63.6(c)(3)–(4)	No	Sections reserved.
63.6(c)(5)	No	Subpart S specifies compliance dates for sources subject to subpart S.
63.6(d)	No	Section reserved.
63.6(e)(1)(i)	No	See § 63.453(q) for general duty requirement.
63.6(e)(1)(ii)	No	
63.6(e)(1)(iii)	Yes	
63.6(e)(2)	No	Section reserved.
63.6(e)(3)	No	
63.6(f)(1)	No	
63.6(f)(2)–(3)	Yes	
63.6(g)	Yes	
63.6(h)(1)–(2)	No	Pertains to continuous opacity monitors that are not part of this standard.
63.6(h)(3)	No	Section reserved.
63.6(h)(4)–(9)	No	Pertains to continuous opacity monitors that are not part of this standard.
63.6(i)(1)–(14)	Yes	
63.6(i)(15)	No	Section reserved.
63.6(i)(16)	Yes	
63.6(j)	Yes	
63.7(a)	Yes	
63.7(b)	Yes	
63.7(c)	Yes	
63.7(d)	Yes	
63.7(e)(1)	No	Replaced with § 63.457(o), which specifies performance testing conditions under subpart S.
63.7(e)(2)–(4)	Yes	
63.7(f)	Yes	
63.7(g)(1)	Yes	
63.7(g)(2)	No	Section reserved.
63.7(g)(3)	Yes	
63.7(h)	Yes	
63.8(a)(1)–(2)	Yes	
63.8(a)(3)	No	Section reserved.
63.8(a)(4)	Yes	
63.8(b)(1)	Yes	
63.8(b)(2)	No	Subpart S specifies locations to conduct monitoring.
63.8(b)(3)	Yes	
63.8(c)(1)–(c)(1)(i)	No	See § 63.453(q) for general duty requirement (which includes monitoring equipment).
63.8(c)(1)(ii)	Yes	
63.8(c)(1)(iii)	No	
63.8(c)(2)–(3)	Yes	
63.8(c)(4)	No	Subpart S allows site specific determination of monitoring frequency in § 63.453(n)(4).
63.8(c)(5)	No	Pertains to continuous opacity monitors that are not part of this standard.
63.8(c)(6)–(8)	Yes	
63.8(d)(1)–(2)	Yes	
63.8(d)(3)	Yes, except for last sentence, which refers to an SSM plan.	SSM plans are not required

TABLE 1 TO SUBPART S OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPART S [a]—Continued

Reference	Applies to subpart S	Comment
63.8(e)	Yes	
63.8(f)(1)–(5)	Yes	
63.8(f)(6)	No	Subpart S does not specify relative accuracy test for CEMs.
63.8(g)	Yes	
63.9(a)	Yes	
63.9(b)(1)–(2)	Yes	Initial notifications must be submitted within one year after the source becomes subject to the relevant standard.
63.9(b)(3)	No	Section reserved.
63.9(b)(4)–(5)	Yes	
63.9(c)	Yes	
63.9(d)	No	Special compliance requirements are only applicable to kraft mills.
63.9(e)	Yes	
63.9(f)	No	Pertains to continuous opacity monitors that are not part of this standard.
63.9(g)(1)	Yes	
63.9(g)(2)	No	Pertains to continuous opacity monitors that are not part of this standard.
63.9(g)(3)	No	Subpart S does not specify relative accuracy tests, therefore no notification is required for an alternative.
63.9(h)(1)–(3)	Yes	
63.9(h)(4)	No	Section reserved.
63.9(h)(5)–(6)	Yes	
63.9(i)	Yes	
63.9(j)	Yes	
63.10(a)	Yes	
63.10(b)(1)	Yes	
63.10(b)(2)(i)	No	
63.10(b)(2)(ii)	No	See § 63.454(g) for recordkeeping of (1) occurrence and duration and (2) actions taken during malfunction.
63.10(b)(2)(iii)	Yes	
63.10(b)(2)(iv)–(v)	No	
63.10(b)(2)(vi)–(xiv)	Yes	
63.10(b)(3)	Yes	
63.10(c)(1)	Yes	
63.10(c)(2)–(4)	No	Sections reserved.
63.10(c)(5)–(8)	Yes	
63.10(c)(9)	No	Section reserved.
63.10(c)(10)–(11)	No	See § 63.454(g) for malfunction recordkeeping requirements.
63.10(c)(12)–(14)	Yes	
63.10(c)(15)	No	
63.10(d)(1)–(2)	Yes	
63.10(d)(3)	No	Pertains to continuous opacity monitors that are not part of this standard.
63.10(d)(4)	Yes	
63.10(d)(5)	No	See § 63.455(g) for malfunction reporting requirements.
63.10(e)(1)	Yes	
63.10(e)(2)(i)	Yes	
63.10(e)(2)(ii)	No	Pertains to continuous opacity monitors that are not part of this standard.
63.10(e)(3)	Yes	
63.10(e)(4)	No	Pertains to continuous opacity monitors that are not part of this standard.
63.10(f)	Yes	
63.11–63.15	Yes	

[a] Wherever subpart A specifies ''postmark'' dates, submittals may be sent by methods other than the U.S. Mail (e.g., by fax or courier). Submittals shall be sent by the specified dates, but a postmark is not required.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 95

[ET Docket No. 08–59; FCC 12–54]

Medical Area Body Network

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document expands the Commission's Medical Device Radiocommunications Service (MedRadio) rules to permit the development of new Medical Body Area Network (MBAN) devices in the 2360–2400 MHz band. The MBAN technology will provide a flexible platform for the wireless networking of multiple body transmitters used for the purpose of measuring and recording physiological parameters and other patient information or for performing diagnostic or therapeutic functions, primarily in health care facilities. This platform will enhance patient safety, care and comfort by reducing the need to physically connect sensors to essential monitoring equipment by cables and wires. This decision is the latest in a series of actions to expand the spectrum available for wireless medical use. The Commission finds that the risk of increased interference is minimal and is greatly outweighed by the benefits of the MBAN rules.

DATES: Effective October 11, 2012, except for §§ 95.1215(c), 95.1217(a)(3), 95.1223, and 95.1225, which contain information collection requirements that

are not effective until approved by the Office of Management and Budget. The Commission will publish a document in the **Federal Register** announcing the effective dates for those amendments. The Director of the Federal Register will approve the incorporation by reference in § 95.1223 concurrently with the published Office of Management and Budget approval of this section.

FOR FURTHER INFORMATION CONTACT: Brian Butler, Office of Engineering and Technology, 202–418–2702, *Brian.Butler@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's First Report and Order, ET Docket No. 08–59, FCC 12–54, adopted May 24, 2012 and released May 24, 2012. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room, CY–B402, Washington, DC 20554. The full text may also be downloaded at: *www.fcc.gov.* People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Summary of the First Report and Order

1. This First Report and Order (R&O) expands the Commission's part 95 MedRadio rules to permit the development of new Medical Body Area Network (MBAN) devices in the 2360–2400 MHz band. The MBAN technology will provide a flexible platform for the wireless networking of multiple body transmitters used for the purpose of measuring and recording physiological parameters and other patient information or for performing diagnostic or therapeutic functions, primarily in health care facilities. This platform will enhance patient safety, care and comfort by reducing the need to physically wire sensors to essential monitoring equipment. As the numbers and types of medical radio devices continue to expand, these technologies offer tremendous power to improve the state of health care in the United States. The specific MBAN technology that can be deployed under our revised rules promises to enhance patient care as well as to achieve efficiencies that can reduce overall health care costs.

2. The *Report and Order* adopts rules for MBAN operations on a secondary, non-interference basis under our ''license-by-rule'' framework. To address spectrum compatibility concerns with respect to incumbent operations under this approach, the Commission is establishing a process by which MBAN users will register and coordinate the use of certain equipment. In a concurrent Further Notice of Proposed Rulemaking, the Commission proposes the criteria for designating the frequency coordinator who will manage these activities. Notably, the Commission bases many of these procedures on a joint proposal (hereinafter the ''Joint Proposal'') submitted by representatives of incumbent Aeronautical Mobile Telemetry (AMT) licensees and the MBAN proponents—parties that, when the Commission issued the *Notice of Proposed Rulemaking* (NPRM) in this proceeding, strongly disagreed as to whether MBAN and AMT operations could successfully coexist in the same frequency band. Cooperative efforts such as this are beneficial in helping us realize the vital goal of promoting robust and efficient use of our limited spectrum resources.

3. The Commission concludes that there are significant public interest benefits associated with the development and deployment of new MBAN technologies. Existing wired technologies inevitably result in reduced patient mobility and increased difficulty and delay in transporting patients. Caregivers, in turn, can spend inordinate amounts of time managing and arranging monitor cables, as well as gathering patient data. The introduction of Wireless Medical Telemetry Service (WMTS) in health care facilities has overcome some of the obstacles presented by wired sensor networks. Nonetheless, the WMTS is restricted to in-building networks that are often used primarily for monitoring critical care patients in only certain patient care areas. The MBAN concept would allow medical professionals to place multiple inexpensive wireless sensors at different locations on or around a patient's body and to aggregate data from the sensors for backhaul to a monitoring station using a variety of communications media. The Commission concludes that an MBAN represents an improvement over traditional medical monitoring devices (both wired and wireless) in several ways, and will reduce the cost, risk and complexity associated with health care. The Commission also concludes that these benefits can be achieved with minimal cost. The only cost resulting from these new regulations is the risk of increased interference, and we are have minimizing that risk by adopting rules that permit an MBAN device to operate only over relatively short distances and as part of a low power networked system. This approach will permit us to provide frequencies where an MBAN can co-exist with existing spectrum users and engage in robust frequency re-use, which will result in greater spectral efficiency. As a result, the Commission believes that the risk of increased interference is low and is greatly outweighed by the substantial benefits of this new technology.

4. The rules adopted are based on and largely reflect the provisions of the *Joint Proposal* but differ from them in certain respects. The *Joint Proposal* is a comprehensive plan that draws from both the existing MedRadio and WMTS rules to specify MBAN operational requirements for body-worn sensors and hubs, but is drafted as a new subpart under part 95 of our Rules. It expands upon these rules, however, to include a detailed set of requirements for MBAN management within a health care facility. It also proposes that MBAN use in the 2360–2390 MHz band be limited mostly to indoor use and subject to specific coordination procedures and processes to protect AMT users in that band, whereas MBAN use in the 2390–2400 MHz band could occur at any location and without coordination. The *Joint Proposal* describes an MBAN as consisting of a master transmitter (hereinafter referred to as a ''hub''), which is included in a device close to the patient, and one or more client transmitters (hereinafter referred to as ''body-worn sensors'' or ''sensors''), which are worn on the body and only transmit while maintaining communication with the hub that controls its transmissions. The hub would convey data messages to the body-worn sensors to specify, for example, the transmit frequency that should be used. The hub and sensor devices would transmit in the 2360–2400 MHz band. The hub would aggregate patient data from the body-worn sensors under its control and, using the health care facility's local area network (LAN) (which could be, for example, Ethernet, WMTS or Wi-Fi links), transmit that information to locations where health care professionals monitor patient data. The hub also would be connected via the facility's LAN to a central control point that would be used to manage all MBAN operations within the health care facility. To protect AMT operations

from harmful interference, the *Joint Proposal* would have the Commission designate an MBAN frequency coordinator who would coordinate MBAN operations in the 2360–2390 MHz band with the AMT frequency coordinator. The control point would serve as the interface between the MBAN coordinator and the MBAN hub control operation in the 2360–2390 MHz band. The control point would receive an electronic key, which is a data message that specifies and enables use of specific frequencies by the MBAN devices. The control point, in turn, would generate a beacon or control message to convey a data message to the hub via the facility's LAN that specifies the authorized frequencies and other operational conditions for that MBAN.

5. The Commission's rules are based on the basic framework set forth in the *Joint Proposal,* particularly that an MBAN is comprised of two component devices—one that is worn on the body (sensor) and another that is located either on the body or in close proximity to it (hub)—that are used to monitor a patient's physiological functions and to communicate the data back to a monitoring station. Thus, the Commission will specify an MBAN to be a low power network of body sensors controlled on a localized basis by a single hub device, and use this framework as the context for our discussions. An MBAN shares many characteristics with other established medical radio services and applications. For example, MBAN devices would operate consistent with the definitions for body-worn devices in the MedRadio rules. Also, the data transmitted over the wireless link from the body-worn sensors to the nearby controlling hub would consist of physiological readings and other patient-related information that is transmitted via radiated electromagnetic signals, which follows the definition of medical telemetry in the WMTS rules. The Commission is therefore authorizing MBAN operations under our existing part 95 MedRadio rules, and the requirements adopted are limited to the operation of MBAN devices within the 2360–2400 MHz band.

6. The Commission adopted rules that focus primarily on the service and technical rules for operating MBAN sensors and hubs, as well as the registration and coordination requirements to protect primary AMT operations in the 2360–2390 MHz band. The adopted rules do not extend to the communications links between the hubs and central control points and the MBAN hubs and the MBAN frequency coordinator. The Commission recognizes that MBAN users will have to consider additional factors when they deploy their systems—such as how to relay the data collected at the MBAN hubs to control points at remote locations by technologies that do not use the 2360–2400 MHz band, and what method the users will use to establish communication links to an MBAN coordinator. However, the Commission also recognizes that each health care facility is unique and needs flexibility to decide how best to accomplish these backhaul/interface functions. Thus, the Commission does not include here the *Joint Proposal's* recommendations to codify certain aspects of their vision—for example, requiring a health care facility to designate a central control point and specific communication procedures between the control point and the MBAN frequency coordinator or the hub. Instead, it expects that MBAN users, the frequency coordinators, and equipment manufacturers will work together cooperatively to utilize the technologies and procedures that will permit MBAN and AMT services to share spectrum while fully protecting AMT licensees' operations and while fully integrating MBAN use into the health care ecosystem.

7. In the Report and Order, the Commission first discussed MBAN spectrum requirements and determined that a secondary allocation in the 2360–2400 MHz band is best suited to support MBAN operations. Second, it concludes that MBAN operations would be most efficiently implemented by modifying our existing part 95 MedRadio rules. Third, the Commission discusses the service and technical rules that will apply to MBAN operations. Finally, it discusses the registration and coordination requirements for MBAN operation in the 2360–2390 MHz band. As part of our analysis, the Commission recognizes that the *Joint Proposal* has been endorsed by parties that had previously objected to the original GEHC Petition, and that the record of this proceeding now contains conflicting pleadings by the same parties. In such cases, the Commission looked to those pleadings associated with the *Joint Proposal* and will not address any earlier, inconsistent submissions by the same party, based on our assumption that the earlier filings have been superseded by the more recent filings.

Spectrum for MBAN Operation

8. The Commission finds that the best way to promote MBAN development is by allocating the entire 40 megahertz of spectrum in the 2360–2400 MHz band proposed in the *NPRM* for MBAN use, on a secondary basis. The Commission does so by adding a new footnote to our Table of Frequency Allocations (Table) as proposed. It concludes that the 2360–2400 MHz band is particularly well suited for MBAN use, given the ability of MBAN devices to be able to share the band with incumbent users. The Commission is also persuaded that the ready availability of chipsets and technology that can be applied to this band will promote quick development of low-cost MBAN equipment. This, in turn, will reduce developmental expenses, encourage multiple parties to develop MBAN applications, and will promote the widespread use of beneficial MBAN technologies. Such deployment will reduce health care expenses, improve the quality of patient care, and could ultimately save lives.

9. The Commission also concludes that the 40 megahertz of spectrum in the 2360–2400 MHz band it proposed to allocate in the *NPRM* is an appropriate allocation for MBAN use. Both General Electric Healthcare (GEHC) and Philips Healthcare Systems (Philips) discuss how peak MBAN deployments would require as much as 20 megahertz of spectrum to be available if on an exclusive basis, and assert that a full 40 megahertz allocation would maximize the opportunity for MBAN devices that operate on a secondary basis to avoid interference to and from primary users. The Commission finds these arguments persuasive. Any MBAN device designed to operate in the 2360–2400 MHz band will also have to be designed to operate in a manner that will protect incumbent licensees, and a 40-megahertz allocation will provide sufficient spectrum flexibility to serve this goal. In addition, this allocation will enable greater frequency diversity and promote reliable MBAN performance. This is particularly true given the Commission's decision, to allow an MBAN device to operate with an emission bandwidth up to 5 megahertz. Additionally, the Commission finds that the 40-megahertz allocation is appropriate because it will allow for reliable MBAN operations in high-density settings, such as waiting rooms, elevator lobbies, and preparatory areas, where multiple MBAN-equipped patients will congregate. For example, AdvaMed notes that a smaller spectrum allocation might not allow for the use of devices by multiple vendors in the same hospital and thereby drive up costs, and also claims that more limited spectrum access would not support all of the currently conceived MBAN device applications. It is clear that such a scenario would increase costs by

reducing competition and effectively limiting the use of multiple MBAN devices; this, in turn, could deprive many patients of the health care and cost-saving benefits that MBAN operations are poised to deliver. For all of these reasons, the Commission agree that the 40 MHz of spectrum proposed in the *NPRM* ''will maximize opportunities to avoid interference through frequency separation, support the coexistence of multiple and competitive MBAN networks, and provide the spectrum needed for future innovation.''

10. The Commission further concludes that an MBAN will be able to share the 2360–2400 MHz band with incumbent users. The *Joint Proposal* offers a way for MBAN devices to operate in a manner compatible with incumbent AMT licensees. By proposing unrestricted use of the 2390–2400 MHz band segment and a coordination process for MBAN users in the 2360–2390 MHz portion of the band along with suggesting the use of established engineering guidelines to determine if MBAN use can occur within line-of-sight of an AMT site without causing interference, the *Joint Proposal* describes how MBAN users could successfully operate in the band on a secondary basis. The commission concludes that it is necessary for us to establish a coordination process and related procedures and guidelines to ensure that the primary AMT operations in the band are adequately protected from MBAN users.

11. MBAN operators in the 2390–2400 MHz band will also have to account for amateur radio users, which are authorized on a primary basis in this spectrum. Both Philips and GEHC assert that interference from MBAN devices to amateur radio is unlikely, citing factors such as the low transmission power and low duty cycle proposed for MBAN devices, as well as geographic separation and the frequency agility of MBAN devices. ARRL, The National Association for Amateur Radio, (ARRL) does not anticipate that an MBAN would cause ''a significant amount of harmful interference'' to amateur users, but it cautions that some amateur operations—such as weak signal communications, that occur on a ''completely unpredictable basis''–could receive interference. The Commission believes that MBAN devices can successfully share the band with the amateur service. These frequencies are part of the larger ''13 cm band'' in which amateur radio operators already share the adjacent 2400–2450 MHz portion of the band with low-powered equipment authorized under part 15 of our rules. The Commission expects that the amateur service will likewise be able to share the 2390–2400 MHz portion of the band with MBAN devices because the power limits for MBAN operations will be even lower than that allowed for the unlicensed equipment that operates in the 2400–2450 MHz range. It further believes that MBAN and amateur operations are highly unlikely to occur in close proximity to each other. An MBAN, which will use very low transmitted power levels compared to the amateur service, is not intended for mass market types of deployment and instead will be used only under the direction of health care professionals. The Commission also believes that the majority of MBAN operations in the 2390–2400 MHz band will be located indoors. It envisions that the most likely outdoor use will occur in ambulances or while patients are otherwise in transit, thus we do not believe that prolonged outdoor use in a single location is likely. In such a situation, any interference that might occur would likely be transitory in nature and would not seriously degrade, obstruct or repeatedly interrupt amateur operations and thus would not be considered harmful under our definition of harmful interference. In the unlikely event that an atypical scenario occurs where amateur operators do receive harmful interference from MBAN operations, the Commission notes that amateur operators would be entitled to protection from MBAN interference.

12. The Commission also addressed the potential for interference from licensed amateur operations to MBAN operations. ARRL states that amateur operation in the band is unpredictable. The ''substantial power levels and exceptionally high antenna gain figures used by radio Amateurs in the 2390–2400 MHz band will provide no reliability of MBANs in this segment whatsoever,'' it observes, calling the results of such interference ''potentially disastrous.'' MBAN proponents assert that MBAN devices will have built-in capabilities such as spectrum sensing techniques to detect in-band amateur signals and frequency agility capability to move MBAN transmissions to other available channels. As to ARRL's concerns about MBAN's reliability and the risk presented by interference caused by amateur operation, GEHC acknowledges that ''medical device manufacturers seeking to develop equipment consistent with the MBAN rules would need to build robust products in order to satisfy FDA requirements and to ensure customer acceptance,'' but does not view that as a barrier to its efforts to develop and deploy MBAN devices. The Commission finds that factors such as the incorporation of established techniques to avoid interference into MBAN devices, the use of low duty cycles, and the separation distances between MBAN devices and amateur operations that are likely to occur in real world situations will minimize any potential for interference to MBAN devices from amateur users. Nevertheless, MBAN operations will occur on a secondary basis and MBAN operators will thus be required to accept any interference they receive from primary amateur licensees operating in accordance with the rules.

13. The 2370–2390 MHz band is used for radio astronomy operations in Arecibo, Puerto Rico. Prior to the filing of the *Joint Proposal,* both GEHC and Philips suggested using an exclusion zone to protect the Arecibo site. Subsequently, the Joint Parties suggested that MBAN users simply notify the Arecibo facility prior to operation in accordance with our existing rules. The Commission finds that the existing MedRadio Rules, which provide a prior notification requirement, are sufficient to ensure protection of radio astronomy operations at the Arecibo site.

14. Lastly, the Commission observes that, because MBAN operations will be permitted adjacent to other bands that host a variety of different services, MBAN users will have to take into account the operating characteristics of those adjacent-band services. The upper end of the band, 2400 MHz, is immediately adjacent to the spectrum used by unlicensed devices—such as Wi-Fi and wireless local area network (WLAN) devices—as well as industrial, scientific and medical (ISM) equipment operating under Part 18 of our Rules, both of which are widely used in health care settings. As MBAN users manage their facilities, they will need to consider the potential for adverse interaction between their MBAN, Wi-Fi, and ISM resources.

15. MBAN equipment will also operate immediately adjacent to the Wireless Communications Service (WCS) at 2360 MHz. As with any new service, it is incumbent on MBAN developers to evaluate and account for the operational characteristics of adjacent band services—in this case, WCS—when designing receivers and associated equipment. The Commission finds that it is unlikely WCS operations would preclude effective MBAN use given that MBAN operations near 2360 MHz will be in institutional settings under the control of a health care provider and because MBAN users will

have a large swath of spectrum in which to place their operations. Moreover, the record indicates that GEHC has already anticipated designing MBAN devices that use contention-based protocols and frequency agility to account for potential out of band emissions into the 2360–2400 MHz band. For these reasons, and notwithstanding filings made by the Wireless Communications Association, International (''WCAI''), the Commission finds no reason to adopt specific rules relating to adjacent-band WCS operations.

16. The Commission will add a new footnote US101 to the Table of Allocations to provide a secondary mobile, except aeronautical mobile, allocation in the 2360–2400 MHz band for use by the MedRadio Service. It is making this allocation through a unique footnote rather than a direct entry in the Table, or modification of the existing US276, in order to provide consistency across the entire band and to emphasize the limited nature of this allocation. It will place footnote US101 in both the Federal Table and non-Federal Table to facilitate MBAN use in a variety of settings such as in health care facilities operated by the Department of Veterans Affairs or the United States military, as well as non-Federal health care facilities. Because use of these frequencies will be on a secondary basis, MBAN stations will not be allowed to cause interference to and must accept interference from primary services, including AMT licensees operating under the primary mobile allocation in the 2360–2390 MHz and 2390–2395 MHz bands and Amateur Radio service licensees that operate on a primary basis in the 2390–2395 MHz and 2395–2400 MHz bands.

17. The *Joint Proposal* was based on secondary MBAN use of the 2360–2400 MHz band, and no commenters supporting either the 2360–2400 MHz band or any alternate spectrum proposals endorse giving MBAN operations primary status. The Commission's decision to provide 40 megahertz of spectrum in the 2360–2400 MHz band for MBAN use is based on our decision to require MBAN users to share the spectrum with incumbent users, as well as among different MBAN devices, and that, therefore MBAN devices require a larger spectrum block than would be the case if spectrum were allocated to MBAN use on an exclusive basis. A secondary allocation is consistent with our approach. The Commission is also confident that its decision to authorize MBAN service on a secondary basis will not adversely affect the usefulness of MBAN devices. The Commission notes that the supportive comments filed by numerous manufacturers indicate a readiness to produce devices capable of relaying essential patient data in a reliable manner within this regulatory framework.

18. This action affirms the tentative conclusion from the *NPRM* that the Commission should allocate spectrum not currently used by existing medical radio services to support new MBAN operations. Although ARRL suggests that MBAN devices could make use of spectrum currently used by the WMTS, the Commission agrees with Philips that the WMTS bands are not suitable for MBAN devices because of the existing widespread use of WMTS applications in hospitals. The Commission does not believe that WMTS and MBAN devices would be able to successfully co-exist on the same frequencies simultaneously within the same facilities, leaving health care facilities with the dilemma of choosing between two valuable health care tools. A better course is to accommodate MBAN users in other frequencies. The Commission further notes that all of the other frequency bands identified in this proceeding for possible MBAN use have limitations that make them less desirable than the 2360–2400 MHz band. For example, Philips claims that the alternative bands are ''substantially inferior to the 2360–2400 MHz band'' for MBAN use, and predicts that ''devices would be unlikely to succeed for both cost and technical reasons, and the opportunity to benefit from better healthcare using these devices likely would be substantially delayed or lost.'' The Commission agrees, and briefly discusses each of the alternate band proposals.

19. The 2400–2483.5 MHz band is also unsuitable for widespread MBAN use, given the ISM equipment and unlicensed devices that operate in the band. While GEHC and Philips discussed the benefits of employing low-power technology and chipsets that have been widely deployed in the 2.4 GHz band and which can be readily modified to use the adjacent 2360–2400 MHz spectrum, they emphatically rejected the possibility of deploying MBAN operations above 2400 MHz. GEHC notes that the 2.4 GHz band is heavily populated by unlicensed intentional radiators and ISM devices deployed by hospitals and carried by patients, visitors, doctors and staff. The 5150–5250 MHz band which used by unlicensed national information infrastructure (U–NII) devices operating under Subpart E of the Commission's part 15 rules, is even less desirable. As with the 2.4 GHz band, many unlicensed devices already intensively use the 5150–5250 MHz band in health care settings. Moreover, as GEHC notes, use of 5150–5250 MHz band would require a higher transmit power and result in shorter battery life and it is not aware of readily available chipsets that could be incorporated into MBAN devices.

A. Licensing Framework

20. The Commission concludes that authorizing MBAN use on a license-by-rule basis within its part 95 rules is the best approach. These devices share many characteristics with medical radiocommunications technologies that are already authorized under a license-by-rule approach, and the Commission finds that this framework can promote the rapid and robust development of MBAN devices without subjecting users to an unnecessarily burdensome individual licensing process. Moreover, the Commission is adopting appropriate technical rules and coordination procedures to ensure that MBAN devices can successfully operated on a secondary basis in the 2.3 GHz band without the need for individual licenses.

21. While an MBAN may be similar to WMTS in purpose—both involve the measurement and recording of physiological parameters and other patient-related information—the Commission finds that they are closer to MedRadio devices in their implementation. Like MedRadio devices, MBAN devices will be designed to operate at low power levels. Moreover, the two MBAN components—the body-worn sensor and the nearby hub—are functionally analogous to the medical body-worn device and associated MedRadio programmer/control transmitter that are provided for in our MedRadio rules. Although the Commission recognizes that it could codify the MBAN rules as a separate rule subpart, it concludes that the best course is to modify the existing MedRadio rules. This is the same approach the Commission recently took when providing for the development of new ultra-low power wideband networks consisting of multiple transmitters implanted in the body that use electric currents to activate and monitor nerves and muscles. Moreover this approach avoids duplicating existing rules that logically apply to both MBAN and existing MedRadio devices. This, in turn, will ensure that any future rules that affect MBAN and other MedRadio applications will be updated in a comprehensive and consistent manner. Also, because the MedRadio rules already distinguish

between each of the various types of MedRadio devices when necessary by, for example, setting forth particular operational rules and authorized frequencies, we will still be able to add MBAN-specific rules when and where appropriate.

22. The *NPRM* sought comment on the definitions the Commission should apply to an MBAN and its components, and proposed four terms that it could codify in our final rules. Because the Commission has decided to authorize MBAN operations under our MedRadio rules, it is not necessary to adopt such a comprehensive set of definitions. The Commission instead modified the Appendix to Subpart E of Part 95 of our Rules to add a single new definition—Medical body area network (MBAN) to read as follows:

> Medical Body Area Network (MBAN). An MBAN is a low power network consisting of a MedRadio programmer/control transmitter and multiple medical body-worn devices all of which transmit or receive non-voice data or related device control commands for the purpose of measuring and recording physiological parameters and other patient information or performing diagnostic or therapeutic functions via radiated bi- or uni-directional electromagnetic signals

This definition is slightly different from that proposed in the *NPRM.* It reflects appropriate MedRadio terminology and includes a description of the telemetry functions of an MBAN that were originally part of the separate definition the Commission proposed for the term ''Medical body area device.'' The other terms it had proposed to define are already encompassed within the existing MedRadio definitions. The existing definition for a MedRadio programmer/control transmitter is a transmitter that is designed to operate outside the human body for the purpose of communicating with a receiver connected to a body-worn device in the MedRadio Service. Because this definition already describes how an MBAN control transmitter functions, it is not necessary for us to adopt a separate definition for an ''MBAN control transmitter.'' Although the MedRadio programmer/control transmitter definition is broadly written to permit other functions—such as communicating with implanted devices or acting as a programmer—the Commission recognizes that such features will not be necessary for MBAN operations and observe that a device that does not include them could still conform to the definition. In a similar vein, it finds that the existing definition for a Medical body-worn device already describes how an MBAN sensor operates and can be used in lieu of the proposed ''Medical body area device.'' Finally, the existing ''MedRadio transmitter'' definition is analogous to our proposed ''MBAN transmitter'' term. The Commission finds that this overall approach to the MBAN definitions shares the same advantages as, and is consistent with, the decision to provide for MBAN operations as part of the existing MedRadio rules. It also notes that while the Joint Parties proposed numerous definitions in conjunction with their draft rules, their focus was on specific technical and operational definitions. The Commission will not adopt these terms, as we agree with AdvaMed that it is not necessary to define other components of an MBAN because there will be different ways to meet the overall MBAN definition and the Commission should afford manufacturers flexibility for innovation.

Service and Technical Rules

23. The Commission now sets forth the specific service and technical parameters that will define an MBAN. Because it has chosen to regulate MBAN devices under the MedRadio rules, the Commission has analyzed those rules to determine which need to be modified for MBAN devices and which are already suitable for MBAN use. The Commission focuses primarily on those service and technical rules that require further modification.

Service Rules

24. *Operator Eligibility.* In the *NPRM,* the Commission proposed that MBAN use be subject to the same operator eligibility requirements that are in place for the MedRadio Service. Section 95.1201 of our rules permits operation of MedRadio transmitters by duly authorized health care professionals, by persons using MedRadio transmitters at the direction of a duly authorized health care professional, and by manufacturers and their representatives for the purpose of demonstrating such equipment to duly authorized health care professionals. The Commission concludes that this rule should be applied to MBAN operations without further modification.

25. The Joint Parties ask that the Commission expand MBAN eligibility to permit manufacturers and vendors (and their representatives) to operate MBAN transmitters for developing, demonstrating and testing purposes. Although the Joint Parties state that this would mirror analogous provisions in the WMTS rules, in fact the WMTS rules permit manufacturers and their representatives to operate such equipment only for purposes of ''demonstrating'' such equipment. There is similar language in the current MedRadio rules that permits operation of MedRadio equipment by manufacturers ''and their representatives.'' This language permits vendors to demonstrate MBAN equipment as representatives of a manufacturer. Thus, the Commission is not modifying the current rule to state this specifically. It further notes that the current rule would not preclude authorized healthcare professionals from contracting for the services of third parties to operate an MBAN. Additionally, for the reasons discussed regarding the frequency coordinators' roles, the Commission did not modify this rule to include frequency coordinators as eligible operators of MBAN equipment. With respect to expanding the MedRadio rule to permit equipment operation by manufacturers for developing and testing purposes, it is not persuaded that such a rule revision is necessary. The Commission's experimental licensing rules provide the appropriate process for granting non-licensees operational authority for developing and testing MedRadio devices, including MBAN devices.

26. *Permissible Communications.* In the *NPRM,* the Commission observed that the existing rules allow a MedRadio device to be used for diagnostic and therapeutic purposes to relay non-voice data, and asked whether such requirements would be appropriate for MBAN operations. The *NPRM* also asked how communications should be structured within a particular MBAN. Specifically, the Commission asked whether communications between body-worn MBAN devices or communications between MBAN devices within one network with those in another should be allowed, and whether a single programmer/controller should be permitted to control body-worn devices associated with multiple MBAN networks simultaneously or those associated with more than one patient. The Commission adopted communications rules that are generally consistent with the existing MedRadio provisions and modified § 95.1209 of its rules accordingly.

27. As an initial matter, no commenter objected to allowing an MBAN to communicate both diagnostic and therapeutic information. The Commission will apply § 95.1209(a) of its rules, as written, to MBAN operations. While this rule provides considerable flexibility to provide data and visual information, it does not allow voice data, as requested by AT&T. The Commission believes that the current MedRadio and WMTS prohibitions regarding voice data are

part of a proven framework in which to base MBAN operations, and note that AT&T's suggestion relates to general speculation about potential future MBAN functionality as opposed to a specific application it intends to deploy.

28. The Commission will require an MBAN to consist of a single programmer/control transmitter (or hub) that controls multiple (*i.e.,* non-implanted) sensor devices. The intent of defining an MBAN in this way is to prevent direct communications between programmer/controllers which would facilitate mesh type networks using MBAN controllers to potentially extend the range of an MBAN beyond the confines of the medical facility. Consequently, it will not permit direct communications between body-worn sensors or direct communication between programmer/control transmitters. Under the existing § 95.1209(c), programmer/control transmitters will be able to interconnect with other telecommunications systems. This will allow backhaul from a single patient-based MBAN control transmitter to a monitoring station that receives and processes MBAN body sensor data from multiple patients using frequencies other than the 2360–2400 MHz band. The Commission recognizes that some commenters would have us allow one programmer/control transmitter to be controlled by a separate programmer/control transmitter or permit direct communications between body-worn sensor devices. It does not adopt these proposals. The Commission believes that the rules it adopted provide more certainty that an MBAN will operate in compliance with it rules or a coordination agreement because each programmer/control transmitter and its associated body-worn sensors will operate in response to a control message received over the facility's LAN. As the Commission gain further experience with MBAN operations, it may revisit these restrictions.

29. The Commission believes that there is no need to specify that each MBAN control transmitter be limited to controlling the body sensor transmitters for a single patient, nor that specific protocols should be associated with such transmissions. The low power levels permitted for MBAN transmitters will already limit the effective range for communications to a small number of patients, and thus such use does not raise any unique interference concerns. Consistent with the approach it has taken in the MedRadio proceeding, the Commission also declines to restrict an MBAN from performing functions that are ''life-critical'' or ''time-sensitive.'' The Commission continues to believe that these types of determinations are best made by health care professionals in concert with FDA-required risk management processes. Operators of MBAN systems and health care facilities are reminded that even the ''life-critical'' operation permitted on a secondary basis must accept interference from the primary spectrum users in the 2360–2400 MHz band.

30. *Authorized Locations.* The Commission sought comment on whether it would be appropriate to restrict the use of MBAN transmitting antennas to indoor locations in certain frequency bands, and noted that its WMTS rules restrict antennas to indoor use only, while the MedRadio rules provide for the use of temporary outdoor antennas. The Commission modified §§ 95.1203 and 95.1213 of the MedRadio rules to provide for indoor-only MBAN operation in the 2360–2390 MHz band and MBAN operation at any location in the 2390–2400 MHz band.

31. The Commission's decision on this issue is consistent with the approach suggested in the *Joint Proposal.* It finds that limiting MBAN operation in the 2360–2390 MHz band to indoor locations within health care facilities is a reasonable and effective way to limit potential interference and promote sharing between MBAN and AMT users. It is also consistent with the coordination procedures being adopted. Although AT&T suggests that any rule restricting use to indoors would limit the usefulness of an MBAN, the Commission disagrees and notes that GEHC and other likely equipment developers have not been deterred by the prospect of indoor-only operation. Moreover, in the 2390–2400 MHz band, where there are fewer AMT interference concerns, the Commission is able to provide MBAN users with the added flexibility of operating in any location. The Commission rejected the suggestion by the Joint Parties that it modify the rules to permit outdoor operation in the 2360–2390 MHz band in cases of a ''medical emergency declared by duly authorized governmental authorities after emergency coordination with the AMT coordinator.'' The Commission finds that the suggested exception does not clearly define ''medical emergency'' or ''authorized governmental authorities'' and would essentially delegate authority to unnamed third parties to determine when outdoor MBAN operation is permitted. Instead, the Commission observed that there are other approaches that would as readily address this issue. Health care facilities can consider using MBAN devices that are capable of shifting to the 2390–2400 MHz band—where it is not necessary to receive prior approval to operate outdoors—in anticipation of situations where there may not be time to perform a quick coordination, such as an emergency in a part of the health care facility that requires some patients to be temporarily moved outdoors. For extraordinary circumstances involving outdoor use of the 2360–2390 MHz band, MBAN licensees will have to follow the same course of action as other licensees when emergencies occur, and ask the applicable licensing bureau (in this case, the Wireless Telecommunications Bureau) for a temporary waiver to permit such operation. The Commission expects that, in *bona fide* emergency situations, the MBAN and AMT licensees and the frequency coordinators will all cooperate to identify frequencies that can be made available for emergency MBAN operations as quickly as possible while ensuring flight safety.

32. *Equipment Authorization.* In the *NPRM,* the Commission asked if each MBAN transmitter authorized to operate in the 2360–2400 MHz band should be required to be certificated, if manufacturers of MBAN transmitters should be subject to disclosure statement and labeling requirements that are analogous to those in the existing MedRadio rules (including the identification of MBAN transmitters with a serial number), and if MBAN transmitters should be required to be marketed and sold only for the permissible communications the Commission allows for the service. These provisions allow for the deployment and operation of existing MedRadio devices in a consistent and predictable manner, and the Commission concludes that they will do the same for MBAN equipment. The Commission therefore will apply the existing MedRadio provisions in §§ 95.603(f), 95.605, 95.1215, 95.1217, and 95.1219 of the Commission's rules to MBAN operations, modified as necessary to refer to MBAN devices and their associated frequency bands.

33. Although no commenter specifically addressed this issue, the Commission notes that the certification requirement in § 95.603(f) of the rules does not apply to transmitters that are not marketed for use in the United States, but are being used in the United States by individuals who have traveled to the United States from abroad and comply with the applicable technical requirements. This provision will apply to MBAN devices. The disclosure statement and labeling requirements, which are similar to those suggested in the *Joint Proposal,* are based on requirements that have been in place

since 1999. Although WCAI had expressed concern that similar labeling rules originally suggested by GEHC might be inadequate to notify MBAN users of their responsibilities as secondary licensees, the Commission concludes that the proposed labeling rules are appropriate. The Commission has analyzed the potential for interference to and from MBAN devices—including in the adjacent-band scenarios of interest to WCAI—and determined that its rules will support MBAN operation on a secondary basis. Moreover, because MBAN devices are similar to other MedRadio devices in that they will operate at low power and under the direction of a duly authorized health care professional, it is appropriate for us to apply the existing MedRadio labeling language for the programmer/controller transmitter that has served us well for many years. However, the Commission will modify the requirement for labeling a MedRadio transmitter with a serial number. The current rule requires that all MedRadio transmitters shall be identified with a serial number. GEHC has stated that ''* * * It would not be appropriate to require that individual MBAN transmitters be equipped with a unique serial number, given the fact that individual sensor nodes may be disposable.'' Although the Commission is not aware that this requirement has presented any problems for the manufacture and use of existing body-worn MedRadio devices, it will only require individual MBAN programmer/controller transmitters to be labeled with a unique serial number but not require individual MBAN body-worn sensor devices to be labeled this way due to their expected low-cost and disposable nature. Finally, as proposed in the *NPRM,* the Commission will allow the FCC ID number associated with the transmitter and the information required by § 2.925 of the FCC rules to be placed in the instruction manual for the transmitter in lieu of being placed directly on the transmitter. The size and placement of MBAN equipment may make it impractical to place this information directly on the transmitter, and the personnel responsible for overall MBAN operations within a health care facility are not likely to be physically located in patient care areas where MBAN transmitters will be used.

34. *Other Service Issues.* The Commission will also adopt the proposals in the *NPRM* that MBAN devices will not be required to transmit a station identification announcement, and that all MBAN transmitters are made available for inspection upon request by an authorized FCC representative. These requirements are the same as the existing MedRadio rules, and no commenters objected to applying these provisions to MBAN users. The Commission also updated § 95.1211 of its rules (''Channel Use Policy'') to reference the 2360–2400 MHz band.

Technical Rules

35. *Authorized Bandwidth and Channel* Aggregation. In the *NPRM,* the Commission sought comment on whether to apply the MedRadio approach of specifying only the maximum permitted bandwidth, but not any particular channel plan, with respect to MBAN devices in their authorized frequency band(s). The record reflects broad support for this approach, and the Commission modified § 95.633 to specify a 5-megahertz maximum authorized bandwidth for MBAN devices. This approach is consistent with the existing MedRadio rules.

36. The Commission's decision to specify a 5 megahertz authorized bandwidth is also consistent with recommendations from the Joint Parties and other commenters. Although the *NPRM* suggested a 1 megahertz limit, the Commission agrees with the Joint Parties and other commenters that 5 megahertz is a more appropriate limit. By allowing the larger authorized bandwidth, we can still accommodate MBAN devices that use a 1 megahertz bandwidth, while also providing flexibility for the development of MBAN devices that can use higher data rates and that have higher throughput for applications that require larger amounts of data. The Commission will also permit device manufacturers to aggregate multiple transmission channels in a single device, so long as the total emission bandwidth used by all devices in any single patient MBAN communication session does not exceed the maximum authorized bandwidth of 5 megahertz. This, too, is consistent with the existing channel use provisions of the MedRadio Service.

37. *Transmitter Operation and Power Limits.* In the *NPRM,* the Commission sought comment on the appropriate maximum transmitter power for MBAN devices. It proposed to limit individual MBAN devices to a maximum transmit power of 1 mW equivalent isotropic radiated power (EIRP) measured in a 1 megahertz bandwidth, which followed GEHC's proposal. The *Joint Proposal* suggested use of a maximum EIRP of 20 mW measured in a 5 megahertz bandwidth for the 2390–2400 MHz band, but maintained the original 1 mW EIRP maximum for the 2360–90 MHz band. Based on the information provided in the record and the Commission's decision to adopt a maximum bandwidth of 5 megahertz, the Commission will modify § 95.639 of its rules to specify the power limits in the *Joint Proposal.*

38. The need for a different power limit in the upper portion of the MBAN band was addressed by Philips. The 2390–2400 MHz portion of the MBAN spectrum will have no restrictions regarding location or mobile use, and thus all in-home MBAN use will occur in this band. Philips provides a detailed discussion of the differences between home and hospital MBAN use, and contends that there are unique circumstances—such as the possibility that an adverse health event could result in the patient falling on the MBAN transmitter and the need to provide patients with full mobility within their homes—that warrant a higher power level for this 10 megahertz band. It also notes that the upper band's proximity to the ISM band means that the MBAN may have to overcome excess noise in some instances to ensure a reliable link budget. AdvaMed echoes Philips in support of a 20 mW maximum EIRP in the 2390–2400 MHz band. The Commission finds that there is good reason to make a distinction in the maximum power it authorizes in the lower 2360–2390 MHz and in the upper 2390–2400 MHz bands.

39. The Commission is adopting additional transmitter operation rules for MBAN devices to implement other MBAN requirements. MBAN devices may not operate outside the confines of a health care facility in the 2360–2390 MHz band. MBAN devices that operate in the 2360–2390 MHz band must comply with registration and coordination requirements, and operate in the band consistent with the terms of any coordination agreement. The Joint Parties proposed that these dual requirements—no outdoor use and compliance with a coordination agreement—could be met by requiring that the MBAN master transmitter receive a ''beacon'' signal or control message that conveyed the permitted scope of operation in the band and that the device cease operating in the band automatically if it could not receive the signal. In their proposal, the control point in the health care facility would transmit this beacon or control message to the MBAN master transmitter using the facility's LAN.

40. Although the Commission generally agrees with the Joint Parties' suggestions, because each health care facility's communications infrastructure

and physical layout will present unique capabilities and challenges, it will not establish any requirements for how control messages are distributed within a health care facility. The Commission revised § 95.628 of the rules, which specifies the technical requirements for MedRadio transmitters, so that the MBAN programmer/controller transmitters must be capable of receiving and complying with a control message specifying its particular operating parameters within the band. Specifically, an MBAN programmer/control transmitter may not commence operation and must automatically cease operating in the 2360–2390 MHz band if it does not receive a control message. It must also comply with a control message that directs it to limit its transmissions to segments of the band or to cease operation in the band. The Commission notes that the Joint Parties did not propose a specific period of time within which the MBAN transmitter must receive a control message to begin or continue operating. The proposal also did not prescribe a specific format or protocol for the control message. It will require applicants for equipment certification to attest that they comply with the requirement that MBAN equipment receive the control message by describing the protocols that the devices employ including the expected periodicity for reception of control messages that will allow the MBAN transmitter to begin or continue operating in the band. Additionally, the Commission expects that the control message will be an electronic message since it is expected to be sent using the health care facility's LAN. This helps to ensure that the MBAN meets the requirement for operating indoors on the 2360–2390 MHz band, since it will have to be tethered to a wireline network or within signal range of a wireless network within the facility.

41. *Unwanted Emissions.* In the *NPRM,* the Commission noted that the part 95 MedRadio rules set forth limits on unwanted emissions from medical transmitting devices operating in the 401–406 MHz band and sought comment on the appropriateness of applying the same general limits to MBAN operations in the 2360–2400 MHz bands. The Commission finds that the provisions in § 95.635(d) of its rules, which specify limits on unwanted emissions, are appropriate. Accordingly, the Commission modified this rule to reflect the use of the 2360–2400 MHz band by MBAN devices. It notes that the Joint Parties' proposal supports using the proposed limits on unwanted radiation and no party objected to the use of these figures. In addition, use of the MedRadio limits is consistent with our approach of accommodating MBAN operations under the existing MedRadio rules where practical.

42. *Frequency Stability.* In the *NPRM,* the proposed to require that MBAN transmitters comply with the MedRadio rules and maintain a frequency stability of +/− 100 ppm of the operating frequency over the ambient environmental temperature range: (1) 25 °C to 45 °C in the case of MBAN transmitters; and (2) 0 °C to 55 °C in the case of MBAN control transmitters. GEHC states that +/− 100 ppm is an acceptable limit for MBAN devices, but does not discuss the temperature range over which that stability should be required. The Commission is using the existing MedRadio definitions to regulate the MBAN sensor and hub devices. Under this construction, the existing temperature range for MedRadio programmer/control transmitters set forth in § 95.628(d)(2) of the rules will apply to MBAN hub devices without modification. Because no MBAN sensor will be implanted, the Commission further concludes that the 25 °C to 45 °C range it has for implanted devices should not apply to sensors. Instead it will use the broader 0 °C to 55 °C specification.

43. *RF Safety.* In the *NPRM,* the Commission noted that portable radiofrequency (RF) transmitting devices are subject to § 2.1093 of the rules, pursuant to which an environmental assessment concerning human exposure to RF electromagnetic fields must be prepared under § 1.1307, and that these rule sections also govern existing MedRadio devices. The Commission also has an open RF safety proceeding (ET Docket No. 03–137) in which it proposed to conduct a comprehensive review of its rules regarding human exposure to RF electromagnetic fields. Thus, the *NPRM* only sought comment on whether MBAN transmitters should be deemed portable devices. The Commission will apply existing § 95.1221 of its rules to MBAN devices, which will classify them as portable devices that are subject to §§ 2.1093 and 1.1307 of the rules. The record reflects support for treating MBAN devices in this manner. The Commission sees no reason to treat MBAN devices differently than existing MedRadio devices with respect to RF safety matters.

44. *Frequency Monitoring.* In the *NPRM,* the Commission sought comment on whether a frequency monitoring requirement should be required for MBAN devices to promote inter- and intra-service sharing and, if so, how it should develop such a protocol. The Commission encouraged commenters supporting implementation of a contention based protocol to discuss what kinds of contention protocols (*i.e.,* listen-before-talk (LBT) frequency monitoring, time slot synchronization, and frequency hopping) should or should not be utilized, and to explain in detail why or why not.

45. The Commission, citing an evolving record, finds that it is not necessary to specify protocols to ensure spectrum sharing among MBAN systems. Initial filings by GEHC as well as the Joint Parties indicated a desire to codify a sharing protocol requirement. Several parties that support contention protocols nevertheless have urged us to avoid adopting specific rules. In more recent pleadings, the Joint Parties state that, while manufacturers believe that MBAN devices are likely to incorporate a mechanism to avoid interference when operating in close proximity (such as within medical facilities), they do not wish for us to adopt detailed procedures that might inadvertently inhibit the development of innovative methods that would allow them to make more intensive use of the spectrum. The Commission believes that the best course is to refrain from mandating a sharing protocol requirement, particularly because it appears that these matters are already being addressed within the standards setting process. In addition, it believes that the relatively low power levels used by MBAN transmitters make it possible that the use of sharing protocols might be unnecessary in many situations. The Commission further concludes that MBAN manufacturers will determine the appropriate level of communications reliability through the risk management activities involved with medical device design that is subject to oversight by the Food and Drug Administration (FDA), and that they should be given the flexibility to meet that level of communications reliability through whatever means they find appropriate. The Commission also finds that because it is requiring frequency coordination for MBAN and AMT sharing, it is not necessary to adopt frequency monitoring rules to promote spectrum sharing between these services.

46. *Duty Cycle.* In the *NPRM,* the Commission sought comment on whether it should adopt specific duty cycle limits for MBAN transmitters in our rules and whether such limits would be needed to allow the functioning of a contention-based protocol for achieving reliable MBAN system performance, or for other

reasons. The Commission finds that it is not necessary to specify a duty cycle in its rules. The record indicates that manufacturers are likely to employ duty cycles even without a specific requirement to do so because it will allow them to achieve important operational goals. The Commission believes that the ongoing efforts of standards setting bodies to address MBAN use are adequate to address any relevant duty cycle considerations.

Registration and Coordination for the 2360–2390 MHz Band

47. The Commission adopted registration and coordination rules for MBAN operations in the 2360–2390 MHz band. Registration and coordination are two separate but related processes. A health care facility that intends to operate an MBAN in the 2360–2390 MHz band must register the MBAN with a frequency coordinator (''the MBAN coordinator'') that the Commission will designate. The registration requirement will ensure that the locations of all MBAN operations in the 2360–2390 MHz band are recorded in a database. As part of the coordination process, the MBAN coordinator will first determine if a proposed MBAN in the 2360–2390 MHz band will be within line-of-sight of an AMT receiver. If the MBAN transmitter is within line-of-sight of an AMT receive site, the MBAN and AMT coordinators will work cooperatively to assess the risk of interference between the two operations and determine the measures that may be needed to mitigate interference risk. The MBAN coordinator will notify the health care facility when coordination is complete and the MBAN must operate consistent with the terms of any agreement reached by the coordinators. If no agreement is reached, the MBAN will not be permitted to operate in the band. The health care facility may not operate the MBAN in the band until it receives the appropriate operating parameters from the MBAN coordinator. The Commission also adopted procedures to accommodate new AMT receive sites as well as changes to MBAN deployment and operations.

48. The registration and coordination requirements adopted accomplish several key principles of the Joint Parties' proposal to protect AMT receive sites. First, an MBAN will not be allowed to operate in the 2360–2390 MHz band until the frequency coordinators determine the risk of interference between the two services and the MBAN coordinator notifies the health care facility whether the device can operate in the band and the terms and conditions of operation. Second, the parties agree that MBAN operation within the line-of-sight of an AMT receive facility should serve as the baseline criteria that would trigger an analysis of interference risk and mitigation techniques. The importance of this baseline is underscored in the Joint Parties' proposed rules which include an expectation that both MBAN and AMT licensees will avoid line-of-sight operations whenever possible. Finally, the Commission expects that the MBAN and AMT coordinators will work cooperatively to evaluate potential interference situations and thus the Commission will require that they reach mutually satisfactory coordination agreements before MBAN operation is allowed at any specific location. Nevertheless, the Commission recognizes that AMT operates under a primary allocation and is entitled to protection from MBAN operations that will occur on a secondary basis. The Commission anticipates that the AMT coordinator will only enter into agreements that ensure an appropriate level of protection for the primary AMT operations.

49. The Commission concludes that the use of frequency coordination procedures is an efficient and effective way for MBAN and AMT services to successfully share the 2360–2390 MHz band. Unlike exclusion zones, which would prohibit any MBAN operation within a specified distance of an AMT receive site, coordination provides the parties flexibility to determine whether and under what conditions both services could operate in the band at a given location. Because all MBAN operations in the band will be required to register and the information will be maintained in a database, a coordinator can readily identify those locations that are within line-of-sight of an AMT receive site and thus will require a coordination agreement with incumbent or new AMT receive sites.

50. The rules that the Commission is adopting incorporate many, but not all, of the suggestions made by the Joint Parties, including their determination that the rules governing MBAN use of the 2360–2390 MHz band will be sufficient to protect AMT operations. The rules adopted provide the flexibility manufacturers, licensees and coordinators need to accommodate changes in both AMT and MBAN operations and assurance to AMT users that their future access to the spectrum will not be hampered.

Registration Requirement

51. The Commission adopts a new rule, § 95.1223, which requires health care facilities to register all MBAN devices they propose to operate in the 2360–2390 MHz band with a frequency coordinator designated by the Commission. MBAN operation in the 2360–2390 MHz band prior to registration is prohibited. The Commission believes that registration of all MBAN operations in the band will create a regulatory environment that promotes MBAN use and protects AMT operations. In order to register MBAN devices that operate in 2360–2390 MHz frequency range, a health care facility must provide to the MBAN coordinator the following information:

- Specific frequencies or frequency range(s) within the 2360–2390 MHz band to be used, and the capabilities of the MBAN equipment to use the 2390–2400 MHz band;
- Effective isotropic radiated power;
- Number of programmer/controller transmitters in use at the health care facility as of the date of registration including manufacturer name(s) and model numbers and FCC identification number;
- Legal name of the health care facility;
- Location of programmer/controller transmitters (*e.g.,* geographic coordinates, street address, building);
- Point of contact for the health care facility (*e.g.,* name, title, office, phone number, fax number, email address). This would typically be an administrator or other official who has a high level of authority within the facility; and
- Contact information (*e.g.,* name, title, office, phone number, fax number, email address) for the party that is responsible for ensuring that MBAN operations within the health care facility are discontinued or modified in the event such devices have to cease operating in all or a portion of the 2360–2390 MHz band due to interference or because the terms of coordination have changed. This person would typically be an employee or contractor. The health care facility also must state whether, in such cases, its MBAN operation is capable of defaulting to the 2390–2400 MHz band and that it is responsible for ceasing MBAN operations in the 2360–2390 MHz band or defaulting traffic to other hospital systems.

52. To ensure that the registration data maintained by the MBAN coordinator is accurate and up to date, the Commission is requiring heath care facilities to keep their registration information current and to notify the MBAN coordinator of any material changes to the location or operating parameters of a registered MBAN.

Because changes in MBAN location or operation could place that MBAN within line-of-sight of an AMT receive site, the Commission will prohibit the MBAN from operating under the changed parameters until the MBAN coordinator has determined if a new or revised coordination agreement with the AMT coordinator is required, and if so, coordination with the AMT coordinator is completed. The Commission will also require a health care facility to notify the MBAN coordinator whenever an MBAN programmer/controller transmitter in the 2360–2390 MHz band is permanently taken out of service, unless it is replaced with transmitter(s) using the same technical characteristics as those reported on the health care facility's registration.

53. The Commission does not adopt a suggestion by the Joint Parties to require health care facilities to implement a ''transition plan'' that they must file with the MBAN coordinator in order to register an MBAN operating in the 2360–2390 MHz band. The Commission is not persuaded that requiring a transition plan as suggested by the Joint Parties is necessary to ensure that interference with AMT operations, if it occurs, can be quickly resolved. Instead, the Commission adopts other requirements that would be less burdensome and provide some flexibility in accomplishing the same objective. In particular, it requires a health care facility, as part of the registration process with the MBAN coordinator, to state whether its MBAN is capable of defaulting its operations to the 2390–2400 MHz band or to other hospital systems. The Commission finds that this approach effectively puts the facility on notice that it is responsible for taking whatever actions necessary to prevent or correct any harmful interference with AMT operations and also appropriately leaves the responsibility of defining and ensuring patient safety in the hands of medical professionals rather than the Commission or Commission designated frequency coordinators. Also, the Commission is requiring that an MBAN transmitter not operate in the 2360–2390 MHz band unless it is able to receive and comply with a control message that notifies the device to limit or cease operations in the band. This requirement should ensure that MBAN devices always operate in compliance with any coordination agreement and quickly respond to any interference situation. The Commission also concludes that the rules it is adopting will provide health care facilities with sufficient flexibility to decide how best to manage its communication and medical networks because each situation is unique in terms of network capability and management capability.

54. The Commission does not believe that a frequency coordinator should be responsible for approving a health care facility's plans for complying with the rules or its plans for managing its internal systems for communications or patient care. The transition plan as described by the Joint Parties goes beyond the scope of the registration and coordination functions the Commission is requiring to ensure interference protection to AMT licensees, and those plans might overlap the risk assessment that is within the FDA's purview. The Commission does not believe that a frequency coordinator is an appropriate party for approving such plans or that the Commission should confer such approval authority on a frequency coordinator. The approach it adopts will allow health care facilities to manage their own MBAN systems or enter agreements as they determine to be appropriate for their individual situation, rather than adopting an approach that would require a health care facility to enter into service agreements with MBAN vendors. Finally, while the Commission does not require health care facilities to file a transition plan with the MBAN coordinator, it anticipates that health care facilities will create such plans in routine practice. The Commission encourages them to share such information with the MBAN coordinator to facilitate the coordination process.

55. The Commission has adopted a registration requirement for the 2360–2390 MHz band because it will facilitate coordination with AMT operations in that band; coordination is not needed and will not be required for an MBAN to operate in the 2390–2400 MHz band. The Commission's rules recognize that some MBAN equipment may operate across the whole 2360–2400 MHz band, but some equipment may be designed to operate only in the 2390–2400 MHz band which can be used for indoor or outdoor use without coordination. In the latter case, a registration requirement would unnecessarily burden hospitals that do not need assistance from the MBAN coordinator. Even if the Commission was persuaded that a registration requirement in the upper band would serve some useful purpose, the Commission's rules should not discriminate as to which facilities should be required to register. The rules require that any facility that registers MBAN equipment that operates in the 2360–2390 MHz specify whether its equipment can default to the 2390–2400 MHz band since this information will enable the coordinator to help the facility manage its MBAN operations consistent with any coordination agreements.

Coordination Requirement

56. The Commission finds that use of a coordination framework that is based on the Joint Parties' proposal will allow for the operation of MBAN devices in the 2360–2390 MHz band while also providing adequate interference protection for AMT receivers, and the Commission will codify these coordination procedures in new § 95.1223(c) of our rules. As the first step in the coordination process, the MBAN coordinator will determine whether a proposed MBAN location is within line-of-sight of AMT operations. The Commission will require that the MBAN coordinator provide the AMT coordinator with the MBAN registration information and obtain the AMT coordinator's concurrence that the MBAN is beyond line-of-sight prior to the MBAN beginning operations in the band. If the MBAN is within line-of-sight, the MBAN and AMT coordinators will assess the risk of interference between the two operations and determine the measures that may be needed to mitigate interference risk. In determining compatibility between proposed line-of-sight MBAN and AMT operations, the coordinators will use ITU–R M.1459, subject to accepted engineering practices and standards that are mutually agreeable to both coordinators and that take into account the local conditions and operating characteristics of the AMT and proposed MBAN facilities. The Joint Parties have proposed specific analytical techniques for determining whether proposed MBAN locations are within line-of-sight and how to determine actual path loss. The Commission declines to specify these procedures in our rules. It recognizes that the MBAN and AMT coordinators will have to agree to the procedures they will use to determine when coordination is required and how it is done, but the Commission is also confident that the coordinators will be technically competent and will fully cooperate to develop mutually agreeable procedures to create coordination agreements. The Commission is also convinced that codifying specific procedures would potentially reduce flexibility on the part of both coordinators to adapt the coordination procedures as MBAN technologies mature.

57. The Joint Parties have suggested procedures to follow when AMT users

need to expand their operations beyond existing receiver locations. Since they are authorized on a primary basis in the 2360–2390 MHz band, AMT users are entitled to expand as necessary to provide for aeronautical testing purposes. Because health care facilities need to be certain of their ability to rely on MBAN devices and also need time to adapt to the increased AMT requirements, the Joint Parties propose that an AMT licensee planning to expand its operations would first consider using locations that are not within line-of-sight to existing MBAN locations. If locations outside the line-of-sight to MBAN operations are not available, the AMT coordinator would give the MBAN coordinator at least seven days notice that MBAN users would have to cease or modify their operations. Under this proposal, the MBAN operator would still be eligible to enter into a new or modified coordination agreement with the new AMT operator, but the MBAN operator would nevertheless be required to vacate its operations at the end of the seven-day period if no coordination agreement is reached. The Commission adopts this proposal because it finds that it provides for the continuing requirements of the AMT community and preserves their growth potential, while also providing adequate notice to MBAN operators to adapt to any new AMT requirements.

58. The Joint Parties have also suggested procedures to follow when AMT users experience interference from MBAN operations. The Commission agrees that it is important to consider the possibility that unexpected interference situations may occur, and it adopted rules that will aid MBAN users in identifying and resolving interference complaints. The channel use policy rule the Commission adopted conditions MBAN use on not causing harmful interference to and accepting interference from authorized stations operating in the 2360–2400 MHz band. As part of the registration process for operating MBAN devices in the 2360–2390 MHz band, the Commission will also require an MBAN user to provide an MBAN coordinator with a point of contact for the health care facility that is responsible for making changes to MBAN operating parameters (such as discontinuing operations or changing frequencies), to state whether its MBAN operation is capable of defaulting to the 2390–2400 MHz band, and to acknowledge that it, in the event of interference, it is responsible for ceasing MBAN operations in the 2360–2390 MHz band or defaulting traffic to other hospital systems. The Commission requires the MBAN coordinator, as part of its duties, to work with the health care facility to identify an interference source in response to a complaint from the AMT coordinator. Together, these rules give MBAN users clear notice that they must be prepared to cease use of the 2360–2390 MHz band in the event of interference, require them to disclose the person who is able to modify or cut off MBAN use within a health care facility, and obligate the MBAN coordinator—the party who has a record of MBAN use and who will logically be contacted by the AMT coordinator about interference—to identify alternative frequencies for MBAN use or to direct the MBAN to cease operation. Under the procedures suggested by the Joint Parties, if a health care facility is notified of MBAN interference to an AMT receive antenna, the MBAN system should be required to immediately cease transmission. The Commission concludes that the rules it is implementing describes can accomplish the same overall goal of identifying and resolving interference to AMT from MBAN users in a way that also clearly sets forth the roles and responsibilities of the parties. The Commission fully expects that licensees will work together to resolve any instances of harmful interference under the rules it adopted and the procedures described.

Coordinator Functions

59. To implement the registration and coordination requirements, the Commission will designate an MBAN coordinator(s) after resolution of the proceedings addressed in the *Further Notice*. The Commission has directed the staff to act expeditiously to prepare a decision in response to the Further Notice and to initiate the selection of an MBAN coordinator(s), with a target of completing the process by June 2013. The Commission adopts a new rule, § 95.1225, which sets forth the specific functions that the MBAN coordinator will perform. The MBAN coordinator must:

- Register health care facilities that operate an MBAN in the 2360–2390 MHz band, maintain a database of these MBAN transmitter locations and operational parameters, and provide the Commission with information contained in the database upon request;
- Determine if an MBAN is within line-of-sight of an AMT receive facility in the 2360–2390 MHz band and coordinate MBAN operations with the designated AMT coordinator;
- Notify a registered health care facility when an MBAN has to change frequency within the 2360–2390 MHz band or to cease operating in the band consistent with a coordination agreement between the MBAN and the AMT coordinators; and
- Develop procedures to ensure that registered health care facilities operate an MBAN consistent with the coordination requirements.
- Regarding the AMT coordinator functions, in 1969 the Commission designated Aerospace & Flight Test Radio Coordinating Council (AFTRCC) as the AMT coordinator under its rules. AFTRCC performs coordination for non-Federal Government licensees and coordinates with the Federal Government Area Frequency Coordinators for day-to-day scheduling of missions. In the *NPRM,* the Commission acknowledged AFTRCC's role as AMT coordinator and sought comment on the organization's involvement in MBAN and AMT spectrum-sharing. The Commission expects that AFTRCC will represent both Federal and non-Federal AMT interests when coordinating with the MBAN coordinator, thereby eliminating the need for MBAN licensees to separately coordinate with Federal AMT systems. This should significantly reduce the time needed to complete coordination and should facilitate timely deployment of MBAN operations.

Final Regulatory Flexibility Analysis

60. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (NPRM).[2] The Commission sought written public comment on the proposals in the *NPRM,* including comment on the IRFA. No comments were received addressing the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[3]

A. Need for and Objective of the Report and Order

61. The Report and Order (R&O) expands our part 95 Medical Device Radiocommunication Service (MedRadio) rules to permit the development of new Medical Body Area Network (MBAN) devices. MBAN

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996).

[2] *See* Amendment of the Commission's Rules to Provide Spectrum for the Operation of Medical Body Area Networks, ET Docket No. 08–59, Notice of Proposed Rulemaking *(NPRM*), 24 FCC Rcd 9589, 9615–18 (2009).

[3] *See* 5 U.S.C. 604.

devices will be linked into wireless networks of multiple body transmitters used for measuring and recording physiological parameters and other patient information or for performing diagnostic or therapeutic functions, primarily in health care facilities. By reducing the need to physically connect sensors to essential monitoring equipment by cables and wires, MBAN technology will enhance patient care and promote efficiencies that can in turn reduce overall health care costs.

62. The *R&O* concludes that the 2360–2400 MHz band is particularly well suited for MBAN use, given the propagation characteristics of these frequencies, the ability of MBAN devices to be able to share the band with incumbent users, and the ready availability of chipsets and technology that can be leveraged for MBAN development. The *R&O* establishes a 40 megahertz secondary allocation for MedRadio, with use limited to MBAN operations, through the addition of a footnote to the Table of Frequency Allocations (Table). Because MBAN operation is authorized on a secondary basis, an MBAN must accept interference from and not cause interference to primary services that share the 2360–2400 MHz band. The *R&O* adopts technical and service rules to govern MBAN operation. MBAN devices will operate under existing part 95 MedRadio rules, as modified to account for device networking, wider bandwidth, and higher transmission power. The *R&O* adopts new registration and coordination rules to ensure protection of Aeronautical Mobile Telemetry (AMT) operations in the 2360–2390 MHz band.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

63. No comments were filed in response to the IFRA in this proceeding. In addition no comments were submitted concerning small business issues.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

64. Pursuant to the Small Business Jobs Act of 2010, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Adopted Rules Will Apply

65. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the rules and policies adopted herein.[4] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' [5] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[6] A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[7] Nationwide, there are a total of approximately 27.5 million small businesses, according to the SBA. As an initial matter, the Commission notes that its decision will permit MBAN use of the 2390–2400 MHz band, which is also allocated to the Amateur Radio Service on a primary basis. Individuals who are the control operators of amateur radio stations are not ''small entities,'' as defined in the RFA.

66. *Personal Radio Services.* The MBAN devices will be subject to part 95 of our rules (''Personal Radio Services''). The Commission has not developed a small business size standard specifically applicable to these services. Therefore, for purposes of this analysis, the Commission uses the SBA small business size standard for the category Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees.[8] Census data for 2007 show that there were 1,383 firms that operated that year.[9] Of those, 1,368 had fewer than 100 employees. Personal radio services provide short-range, low power radio for personal communications, radio signaling, and business communications not provided for in other services. The Personal Radio Services include spectrum licensed under part 95 of our rules and cover a broad range of uses.[10] Many of the licensees in these services are individuals and thus are not small entities. In addition, due to the fact that licensing of operation under part 95 is accomplished by rule (rather than by issuance of individual license), and due to the shared nature of the spectrum utilized by some of these services, the Commission lacks direct information other than the census data above upon which to base an estimation of the number of small entities under an SBA definition that might be directly affected by the proposed rules adopted.

67. *Wireless Communications Equipment Manufacturers.* The Census Bureau does not have a category specific to medical device radiocommunication manufacturing. The appropriate category is that for wireless communications equipment manufacturers. The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.'' The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: All such firms having 750 or fewer employees.[11] According to Census bureau data for 2007, there were a total of 919 firms in this category that operated for the entire year. Of this total, 771 had fewer than 100 employees and 148 had more than 100 employees.[12] Thus, under this size standard, the majority of firms can be considered small.

68. Aeronautical Mobile Telemetry (AMT). Currently there are 9 AMT licensees in the 2360–2395 MHz band. It is unclear how many of these will be affected by our new rules. The Commission has not yet defined a small business with respect to aeronautical mobile telemetry services. Therefore, for purposes of this analysis, the

[4] 5 U.S.C. 603(b)(3).

[5] 5 U.S.C. 601(6).

[6] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small-business concern'' in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''

[7] 15 U.S.C. 632 (1996).

[8] *See* 13 CFR 121.201, NAICS code 517210.

[9] U.S. Census Bureau, 2007 Economic Census, Sector 51, 2007 NAICS code 517210 (rel. Oct. 20, 2009), *http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-_skip=700&-ds_name=EC0751SSSZ5&-_lang=en.*

[10] 47 CFR part 90.

[11] 13 CFR 121.201 NAICS code 334220.

[12] *See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-_skip=4500&-ds_name=EC0731SG3&-_lang=en.*

Commission uses the SBA small business size standard for the category Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees.[13] Census data for 2007 show that there were 1,383 firms that operated that year.[14] Of those 1,368 had fewer than 100 employees. Thus, under this size standard, the majority of firms can be considered small. The rules we adopt provide the flexibility manufacturers, licensees and coordinators need to accommodate changes in both AMT and MBAN operations and assurance to AMT users that their future access to the spectrum will not be hampered.

E. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

69. Under the adopted rules, MBAN operators will not require individual licenses but instead will qualify for license-by-rule operation [15] pursuant to Section 307(e) of the Communications Act (Act).[16] While there is no requirement to file with the Commission, parties seeking to utilize the 2360–2390 MHz band must register with a frequency coordinator. The Commission will designate the MBAN frequency coordinator(s). The frequency coordinator will require the following information from an entity that seeks to operate an MBAN in the 2360–2390 MHz band:

- Specific frequencies or frequency range(s) within the 2360–2390 MHz band to be used, and the capabilities of the MBAN equipment to use the 2390–2400 MHz band;
- Effective isotropic radiated power;
- Number of programmer/controller transmitters in use at the health care facility as of the date of registration including manufacturer name(s) and model numbers and FCC identification number;
- Legal name of the health care facility;
- Location of programmer/controller transmitters;
- Point of contact for the health care facility; and
- Contact information for the party that is responsible for ensuring that MBAN operations within the health care facility are discontinued or modified in the event such devices have to cease operating in all or a portion of the 2360–2390 MHz band due to interference or because the terms of coordination have changed. The health care facility also must state whether, in such cases, its MBAN operation is capable of defaulting to the 2390–2400 MHz band and that it is responsible for ceasing MBAN operations in the 2360–2390 MHz band or defaulting traffic to other hospital systems.

70. The Commission imposes these notification requirements in recognition that MBAN device operations have the potential to interfere with the sensitive receivers and high gain antennas used by the primary AMT licensees. The *Report and Order* also establishes a coordination procedure that will be used when the MBAN coordinator determines that MBAN devices in the 2360–2390 MHz band would be operating under conditions where such interference might occur—specifically, within the line-of-sight of AMT operations. The coordination process would allow the MBAN coordinator and the AMT coordinator to determine whether and under what circumstances MBAN equipment could be used without interfering with the primary AMT operations. The *Report and Order* concludes that the adoption of reasonable coordination requirements will adequately protect AMT operations while enabling MBAN devices to be widely deployed in health care facilities. The Commission concludes that the registration and coordination requirements effectively balance the interests of the interested parties and are preferable to other options, such as using alternate frequency bands or establishing large exclusion zones around AMT locations.

71. The *R&O* adopts service and technical rules that apply to all entities that manufacture and use MBAN devices. The rules generally require that MBAN devices be able to operate in the presence of other primary and secondary users in these frequency bands. MBAN operations in the 2360–2390 MHz are restricted to indoor locations to protect AMT operations. The MBAN programmer/controller must ensure that its network operates in the 2360–2390 MHz band only if it is in receipt of a control message. As directed by a control message, the MBAN programmer/controller must be capable of: (1) Redirecting the MBAN to newly specified spectrum in the 2360–2390 MHz band; or (2) redirecting the MBAN to spectrum in the 2390–2400 MHz band. An MBAN programmer/controller that does not receive a control message within the timeframe programmed into the device by the manufacturer must ensure that its MBAN ceases operation in the 2360–2390 MHz band.[17]

72. MBAN use shall be restricted for use by persons only for diagnostic and therapeutic purposes and only to the extent that such devices have been provided to a human patient under the direction of a duly authorized health care professional.[18] An MBAN consists of only body-worn devices. A single MBAN programmer/controller may direct more than one MBAN. MBAN programmer/controller devices may not directly communicate with each other and MBAN component devices may not directly communicate with each other.[19]

73. An MBAN may transmit in an authorized bandwidth of 5 megahertz.[20] MBAN transmitters may transmit in the 2360–2390 MHz band, the maximum EIRP over the frequency bands of operation shall not exceed the lesser of 1 mW or 10*log (B) dBm, where B is the 20 dB emission bandwidth in MHz. MBAN transmitters may transmit in the 2390–2400 MHz band, the maximum EIRP over the frequency bands of operation shall not exceed the lesser of 20 mW or 16+10*log (B) dBm, where B is the 20 dB emission bandwidth in MHz. The MBAN must meet specific limits on unwanted emissions.[21] MBAN transmitters will be required to maintain a frequency stability as specified in the current MedRadio rules of ± 100 ppm of the operating frequency over the range 0°C to 55°C.[22]

74. MBAN transmitters must be certificated except for such transmitters that are not marketed for use in the United States, are being used in the United States by individuals who have traveled to the United States from abroad, and comply with the applicable technical requirements. Manufacturers of MBAN transmitters must include with each transmitting device a disclosure statement and each MBAN programmer/controller must be labeled with a statement.[23] An MBAN may be operated anywhere that CB station operation is authorized under § 95.405,

[13] *See* 13 CFR 121.201, NAICS code 517210.

[14] U.S. Census Bureau, 2007 Economic Census, Sector 51, 2007 NAICS code 517210 (rel. Oct. 20, 2009), *http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-_skip=700&-ds_name=EC0751SSSZ5&-_lang=en.*

[15] *See* 47 CFR 95.1201.

[16] Under Section 307(e) of the Act, the Commission may authorize the operation of radio stations by rule without individual licenses in certain specified radio services when the Commission determines that such authorization serves the public interest, convenience, and necessity. The services set forth in this provision for which the Commission may authorize operation by rule include: (1) The Citizens Band Radio Service; (2) the Radio Control Service; (3) the Aviation Radio Service; and (4) the Maritime Radio Service. *See* 47 U.S.C. 307(e)(1).

[17] Paras. 48–49, *supra.*

[18] Paras. 33–34, *supra.*

[19] Paras. 35–38, *supra.*

[20] Paras. 44–45, *supra.*

[21] Paras. 46–47, *supra.*

[22] Para. 51, *supra.*

[23] Paras 41–42, *supra.*

except in the 2360–2390 MHz band MBAN use is restricted to indoor operation within a health care facility registered with the MBAN coordinator, and an MBAN is not required to transmit a station identification announcement. All non-MBAN transmitters must be made available for inspection upon request by an authorized FCC representative.[24]

F. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

75. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[25]

76. The Commission adopted a license-by-rule approach for MBAN operations. This decision should decrease the cost of MBAN use for small entities as compared to a requirement that MBAN users apply for and obtain individual station licenses from the Commission because it will eliminate application expenses associated with the traditional licensing process.

77. The registration and coordination process for operation in the 2360–2390 MHz band, as well as the requirement that MBAN devices be capable of receiving and complying with a control message, will maximize the ability of MBAN devices to share spectrum with primary AMT users. Alternative approaches, such as the use of exclusion zones, would have categorically prohibited MBAN use in certain areas, even if it would be technically possible to operate MBAN devices without interference to AMT users. Other options would have made it more difficult to accommodate new or modified use by the primary AMT licensees that can affect the ability for MBAN users to operate without causing interference.

78. Permitting operation in the 2360–2400 MHz band will enable MBAN manufacturers to easily adapt the wide variety of equipment that is already produced for operation in the adjacent 2.4 GHz band, thus reducing MBAN equipment costs. Alternative higher spectrum bands would require increased power to provide adequate coverage, which would result in shorter battery life. This, along with the lack of readily available chipsets, indicates that adopting the other allocation options considered in the proceeding would likely have resulted in higher costs for MBAN users.

79. The Commission adopted various provisions regarding equipment certification, authorized locations, station identification, station inspection, disclosure policy, labeling requirements and marketing limitations that mirror the existing MedRadio rules. Taken as a whole, these requirements will ensure that (1) MBAN operations comply with our technical rules, (2) MBAN users are aware of pertinent interference requirements, and (3) equipment manufacturers market and sell MBAN devices only for the types of communications permitted under the Commission's rules. Utilizing our existing regulatory framework, which is familiar to both health care providers and medical device manufacturers, enables us to authorize MBAN devices without implementing new rule subparts or codifying a significantly more complex system management scheme into our existing rules. Thus, we are able to provide for MBAN deployment in a manner that protects incumbent users without passing any undue costs or regulatory burdens onto prospective MBAN users, many of whom may be small entities.

Report to Congress

80. The Commission will send a copy of the Report and Order, including this FRFA, in a report to Congress pursuant to the Congressional Review Act.[26] In addition, the Commission will send a copy of the Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Report and Order and the FRFA (or summaries thereof) will also be published in the **Federal Register**.

81. Pursuant to the authority contained in Sections 4(i), 301, 302, 303(e), 303(f), 303(r), and 307(e) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 301, 302, 303(e), 303(f), 303(r), and 307(e), this Report and Order IS ADOPTED and parts 2 and 95 of the Commission's rules are amended as set forth in Final rules will become October 11, 2012, except for §§ 95.1215(c), 95.1217(a)(3), 95.1223 and 95.1225, which contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13, that are not effective until approved by the Office of Management and Budget. The Federal Communications Commission will publish a document in the **Federal Register** announcing OMB approval and the effective date of these rules.

82. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Report and Order, including the Final Regulatory Flexibility Analysis in Appendix C, to the Chief Counsel for Advocacy of the Small Business Administration.

83. The Commission will send a copy of this Report & Order and Further Notice of Proposed Rulemaking to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects

47 CFR Part 2

Communications equipment, Reporting and recordkeeping.

47 CFR Part 95

Communications equipment, Incorporation by reference, Medical devices, Reporting and recordkeeping.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 2 and 95 as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 2. Section 2.106, the Table of Frequency Allocations, is amended as follows:

■ a. Pages 37 and 38 are revised.

■ b. In the list of United States (US) Footnotes, footnote US101 is added.

The revisions and addition read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

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[24] Para. 43, *supra.*

[25] *See* 5 U.S.C. 603(c).

[26] *See* 5 U.S.C. 801(a)(1)(A).

Table of Frequency Allocations			2200-2655 MHz (UHF)		Page 37
International Table			United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
2200-2290 SPACE OPERATION (space-to-Earth) (space-to-space) EARTH EXPLORATION-SATELLITE (space-to-Earth) (space-to-space) FIXED MOBILE 5.391 SPACE RESEARCH (space-to-Earth) (space-to-space) 5.392			2200-2290 SPACE OPERATION (space-to-Earth) (space-to-space) EARTH EXPLORATION-SATELLITE (space-to-Earth) (space-to-space) FIXED (line-of-sight only) MOBILE (line-of-sight only including aeronautical telemetry, but excluding flight testing of manned aircraft) 5.391 SPACE RESEARCH (space-to-Earth) (space-to-space) 5.392 US303	2200-2290 US303	
2290-2300 FIXED MOBILE except aeronautical mobile SPACE RESEARCH (deep space) (space-to-Earth)			2290-2300 FIXED MOBILE except aeronautical mobile SPACE RESEARCH (deep space) (space-to-Earth)	2290-2300 SPACE RESEARCH (deep space) (space-to-Earth)	
2300-2450 FIXED MOBILE 5.384A Amateur Radiolocation	2300-2450 FIXED MOBILE 5.384A RADIOLOCATION Amateur		2300-2305 G122	2300-2305 Amateur	Amateur Radio (97)
			2305-2310 US338 G122	2305-2310 FIXED MOBILE except aeronautical mobile RADIOLOCATION Amateur US338	Wireless Communications (27) Amateur Radio (97)
			2310-2320 Fixed Mobile US339 Radiolocation G2 US327	2310-2320 FIXED MOBILE US339 BROADCASTING-SATELLITE RADIOLOCATION 5.396 US327	Wireless Communications (27) Aviation (87)
			2320-2345 Fixed Radiolocation G2 US327	2320-2345 BROADCASTING-SATELLITE 5.396 US327	Satellite Communications (25)
			2345-2360 Fixed Mobile US339 Radiolocation G2 US327	2345-2360 FIXED MOBILE US339 BROADCASTING-SATELLITE RADIOLOCATION 5.396 US327	Wireless Communications (27) Aviation (87)
			2360-2390 MOBILE US276 RADIOLOCATION G2 G120 Fixed US101	2360-2390 MOBILE US276 US101	Aviation (87) Personal Radio (95)
			2390-2395 MOBILE US276	2390-2395 AMATEUR MOBILE US276	Aviation (87) Personal Radio (95)

			US101	US101	Amateur Radio (97)
			2395-2400 AMATEUR US101 G122	2395-2400 AMATEUR US101	Personal Radio (95) Amateur Radio (97)
			2400-2417 5.150 G122	2400-2417 AMATEUR 5.150 5.282	ISM Equipment (18) Amateur Radio (97)
			2417-2450 Radiolocation G2	2417-2450 Amateur	
.150 5.282 5.395	5.150 5.282 5.393 5.394 5.396		5.150	5.150 5.282	
2450-2483.5 FIXED MOBILE Radiolocation 5.150 5.397	2450-2483.5 FIXED MOBILE RADIOLOCATION 5.150		2450-2483.5 5.150 US41	2450-2483.5 FIXED MOBILE Radiolocation 5.150 US41	ISM Equipment (18) TV Auxiliary Broadcasting (74F) Private Land Mobile (90) Fixed Microwave (101)
2483.5-2500 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) 5.351A Radiolocation	2483.5-2500 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) 5.351A RADIODETERMINATION-SATELLITE (space-to-Earth) 5.398 RADIOLOCATION	2483.5-2500 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) 5.351A RADIOLOCATION Radiodetermination-satellite (space-to-Earth) 5.398	2483.5-2500 MOBILE-SATELLITE (space-to-Earth) US319 US380 US391 RADIODETERMINATION-SATELLITE (space-to-Earth) 5.398	2483.5-2495 MOBILE-SATELLITE (space-to-Earth) US380 RADIODETERMINATION-SATELLITE (space-to-Earth) 5.398 5.150 5.402 US41 US319 NG147	ISM Equipment (18) Satellite Communications (25)
				2495-2500 FIXED MOBILE except aeronautical mobile MOBILE-SATELLITE (space-to-Earth) US380 RADIODETERMINATION-SATELLITE (space-to-Earth) 5.398	ISM Equipment (18) Satellite Communications (25) Wireless Communications (27)
5.150 5.371 5.397 5.398 5.399 5.400 5.402	5.150 5.402	5.150 5.400 5.402	5.150 5.402 US41	5.150 5.402 US41 US319 US391 NG147	
2500-2520 FIXED 5.410 MOBILE except aeronautical mobile 5.384A 5.405 5.412	2500-2520 FIXED 5.410 FIXED-SATELLITE (space-to-Earth) 5.415 MOBILE except aeronautical mobile 5.384A 5.404	2500-2520 FIXED 5.410 FIXED-SATELLITE (space-to-Earth) 5.415 MOBILE except aeronautical mobile 5.384A MOBILE-SATELLITE (space-to-Earth) 5.351A 5.407 5.414 5.414A 5.404 5.415A	2500-2655	2500-2655 FIXED US205 MOBILE except aeronautical mobile	Wireless Communications (27)
2520-2655 FIXED 5.410 MOBILE except aeronautical mobile 5.384A BROADCASTING-SATELLITE 5.413 5.416	2520-2655 FIXED 5.410 FIXED-SATELLITE (space-to-Earth) 5.415 MOBILE except aeronautical mobile 5.384A BROADCASTING-SATELLITE 5.413 5.416	2520-2535 FIXED 5.410 FIXED-SATELLITE (space-to-Earth) 5.415 MOBILE except aeronautical mobile 5.384A BROADCASTING-SATELLITE 5.413 5.416 5.403 5.414A 5.415A			
		2535-2655 FIXED 5.410 MOBILE except aeronautical mobile 5.384A BROADCASTING-SATELLITE 5.413 5.416			
5.339 5.405 5.412 5.417C 5.417D 5.418B 5.418C	5.339 5.417C 5.417D 5.418B 5.418C	5.339 5.417A 5.417B 5.417C 5.417D 5.418 5.418A 5.418B 5.418C	5.339 US205	5.339	

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United States (US) Footnotes

* * * * *

US101 The band 2360–2400 MHz is also allocated on a secondary basis to the mobile, except aeronautical mobile, service. The use of this allocation is limited to MedRadio operations. MedRadio stations are authorized by rule and operate in accordance with 47 CFR part 95.

* * * * *

PART 95—PERSONAL RADIO SERVICES

■ 3. The authority citation for part 95 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat, 1066, 1082, as amended; 47 U.S.C. 154, 303.

Subpart E—Technical Regulations

■ 4. Section 95.628 is revised to read as follows:

§ 95.628 MedRadio transmitters in the 413–419 MHz, 426–432 MHz, 438–444 MHz, and 451–457 MHz and 2360–2400 MHz bands.

The following provisions apply to MedRadio transmitters operating in the 413–419 MHz, 426–432 MHz, 438–444 MHz, and 451–457 MHz bands as part of a Medical Micropower Network (MMN) and in the 2360–2400 MHz band as part of a Medical Body Area Network (MBAN).

(a) *Operating frequencies.* A MedRadio station authorized under this part must have out-of-band emissions that are attenuated in accordance with § 95.635.

(1) Only MedRadio stations that are part of an MMN may operate in the 413–419 MHz, 426–432 MHz, 438–444 MHz, and 451–457 MHz frequency bands. Each MedRadio station that is part of an MMN must be capable of operating in each of the following frequency bands: 413–419 MHz, 426–432 MHz, 438–444 MHz, and 451–457 MHz. All MedRadio stations that are part of a single MMN must operate in the same frequency band.

(2) Only MedRadio stations that are part of an MBAN may operate in the 2360–2400 MHz frequency band.

(b) *Requirements for a Medical Micropower Network.* (1) *Frequency monitoring.* MedRadio programmer/control transmitters must incorporate a mechanism for monitoring the authorized bandwidth of the frequency band that the MedRadio transmitters intend to occupy. The monitoring system antenna shall be the antenna used by the programmer/control transmitter for a communications session.

(i) The MedRadio programmer/control transmitter shall be capable of monitoring any occupied frequency band at least once every second and monitoring alternate frequency bands within two seconds prior to executing a change to an alternate frequency band.

(ii) The MedRadio programmer/control transmitter shall move to another frequency band within one second of detecting a persistent (*i.e.,* lasting more than 50 milliseconds in duration) signal level greater than −60 dBm as received by a 0 dBi gain antenna in any 12.5 kHz bandwidth within the authorized bandwidth.

(iii) The MedRadio programmer/control transmitter shall be capable of monitoring the authorized bandwidth of the occupied frequency band to determine whether either direction of the communications link is becoming degraded to the extent that communications is likely to be lost for more than 45 milliseconds. Upon making such a determination the MedRadio programmer/control transmitter shall move to another frequency band.

(2) *MedRadio transmitters.* MedRadio transmitters shall incorporate a programmable means to implement a system shutdown process in the event of communication failure, on command from the MedRadio programmer/control transmitter, or when no frequency band is available. The shutdown process shall commence within 45 milliseconds after loss of the communication link or receipt of the shutdown command from the MedRadio programmer/control transmitter.

(3) *MedRadio programmer/control transmitters.* MedRadio programmer/control transmitters shall have the ability to operate in the presence of other primary and secondary users in the 413–419 MHz, 426–432 MHz, 438–444 MHz, and 451–457 MHz bands.

(4) *Authorized bandwidth.* The 20 dB authorized bandwidth of the emission from a MedRadio station operating in the 413–419 MHz, 426–432 MHz, 438–444 MHz, and 451–457 MHz bands shall not exceed 6 MHz.

(c) *Requirements for Medical Body Area Networks.* A MedRadio programmer/control transmitter shall not commence operating and shall automatically cease operating in the 2360–2390 MHz band if it does not receive, in accordance with the protocols specified by the manufacturer, a control message permitting such operation Additionally, a MedRadio programmer/control transmitter operating in the 2360–2390 MHz band shall comply with a control message that notifies the device to limit its transmissions to segments of the 2360–2390 MHz band or to cease operation in the band.

(d) *Frequency stability.* Each transmitter in the MedRadio service must maintain a frequency stability of ±100 ppm of the operating frequency over the range:

(1) 25 °C to 45 °C in the case of medical implant transmitters; and

(2) 0 °C to 55 °C in the case of MedRadio programmer/control transmitters and Medical body-worn transmitters.

(e) *Shared access.* The provisions of this section shall not be used to extend the range of spectrum occupied over space or time for the purpose of denying fair access to spectrum for other MedRadio systems.

(f) *Measurement procedures.* (1) MedRadio transmitters shall be tested for frequency stability, radiated emissions and EIRP limit compliance in accordance with paragraphs (f)(2) and (3) of this section.

(2) Frequency stability testing shall be performed over the temperature range set forth in (d) of this section.

(3) Radiated emissions and EIRP limit measurements may be determined by measuring the radiated field from the equipment under test at 3 meters and calculating the EIRP. The equivalent radiated field strength at 3 meters for 1 milliwatt, 25 microwatts, 250 nanowatts, and 100 nanowatts EIRP is 115.1, 18.2, 1.8, or 1.2 mV/meter, respectively, when measured on an open area test site; or 57.55, 9.1, 0.9, or 0.6 mV/meter, respectively, when measured on a test site equivalent to free space such as a fully anechoic test chamber. Compliance with the maximum transmitter power requirements set forth in § 95.639(f) shall be based on measurements using a peak detector function and measured over an interval of time when transmission is continuous and at its maximum power level. In lieu of using a peak detector function, measurement procedures that have been found to be acceptable to the Commission in accordance with § 2.947 of this chapter may be used to demonstrate compliance. For a transmitter intended to be implanted in a human body, radiated emissions and EIRP measurements for transmissions by stations authorized under this section may be made in accordance with a Commission-approved human body simulator and test technique. A formula for a suitable tissue substitute material is defined in OET Bulletin 65 Supplement C (01–01).

■ 5. Section 95.633 is amended by revising paragraph (e)(1) to read as follows:

§ 95.633 Emission bandwidth.

* * * * *

(e) * * *

(1) For stations operating in 402–405 MHz, the maximum authorized emission bandwidth is 300 kHz. For stations operating in 401–401.85 MHz or 405–406 MHz, the maximum authorized emission bandwidth is 100 kHz. For stations operating in 401.85–402 MHz, the maximum authorized emission bandwidth is 150 kHz. For stations operating in 413–419 MHz, 426–432 MHz, 438–444 MHz, or 451–457 MHz, the maximum authorized emission bandwidth is 6 megahertz. For stations operating in 2360–2400 MHz, the maximum authorized emission bandwidth is 5 megahertz.

* * * * *

■ 6. Section 95.635 is amended by adding paragraph (d)(1)(v); redesignating paragraph (d)(7) as paragraph (d)(8) and adding a new paragraph (d)(7) to read as follows:

§ 95.635 Unwanted radiation.

* * * * *

(d) * * *

(1) * * *

(v) Are more than 2.5 MHz outside of the 2360–2400 MHz band (for devices designed to operate in the 2360–2400 MHz band).

* * * * *

(7) For devices designed to operate in the 2360–2400 MHz band: In the first 2.5 megahertz beyond any of the frequency bands authorized for MBAN operation, the EIRP level associated with any unwanted emission must be attenuated within a 1 megahertz bandwidth by at least 20 dB relative to the maximum EIRP level within any 1 megahertz of the fundamental emission.

* * * * *

■ 7. Section 95.639 is amended by redesignating (f)(3) as paragraph (f)(5) and adding new paragraphs (f)(3) and (4) to read as follows:

§ 95.639 Maximum transmitter power.

* * * * *

(f) * * *

(3) For transmitters operating in the 2360–2390 MHz band, the maximum EIRP over the frequency bands of operation shall not exceed the lesser of 1 mW or 10*log (B) dBm, where B is the 20 dB emission bandwidth in MHz.

(4) For transmitters operating in the 2390–2400 MHz band, the maximum EIRP over the frequency bands of operation shall not exceed the lesser of 20 mW or 16+10*log (B) dBm, where B is the 20 dB emission bandwidth in MHz.

* * * * *

■ 8. Appendix 1 is amended by adding a definition for ''Medical Body Area Network'' to the definitions list in alphabetical order:

Appendix 1 to Subpart E of Part 95—Glossary of Terms

* * * * *

Medical Body Area Network (MBAN). An MBAN is a low power network consisting of a MedRadio programmer/control transmitter and multiple medical body-worn devices all of which transmit or receive non-voice data or related device control commands for the purpose of measuring and recording physiological parameters and other patient information or performing diagnostic or therapeutic functions via radiated bi- or uni-directional electromagnetic signals.

* * * * *

Subpart I—Medical Device Radiocommunications Service (MedRadio)

■ 9. Section 95.1203 is revised to read as follows:

§ 95.1203 Authorized locations.

MedRadio operation is authorized anywhere CB station operation is authorized under § 95.405, except that use of Medical Body Area Network devices in the 2360–2390 MHz band is restricted to indoor operation within a health care facility registered with the MBAN coordinator under § 95.1225. A health care facility includes hospitals and other establishments that offer services, facilities and beds for use beyond a 24 hour period in rendering medical treatment, and institutions and organizations regularly engaged in providing medical services through clinics, public health facilities, and similar establishments, including government entities and agencies such as Veterans Administration hospitals.

■ 10. Section 95.1209 is amended by redesignating paragraph (g) as paragraph (h) and adding a new paragraph (g) to read as follows:

§ 95.1209 Permissible communications.

* * * * *

(g) Medical body-worn transmitters may only relay information in the 2360–2400 MHz band to a MedRadio programmer/control transmitter that is part of the same Medical Body Area Network (MBAN). A MedRadio programmer/control transmitter may not be used to relay information in the 2360–2400 MHz band to another MedRadio programmer/controller transmitter. Wireless retransmission of information to a receiver that is not part of the same MBAN shall be performed using other radio services that operate in spectrum outside of the 2360–2400 MHz band.

* * * * *

■ 11. Section 95.1211 is amended by revising paragraph (c) to read as follows:

§ 95.1211 Channel use policy.

* * * * *

(c) MedRadio operation is subject to the condition that no harmful interference is caused to stations operating in the 400.150–406.000 MHz band in the Meteorological Aids, Meteorological Satellite, or Earth Exploration Satellite Services, or to other authorized stations operating in the 413–419 MHz, 426–432 MHz, 438–444 MHz, 451–457, and 2360–2400 MHz bands. MedRadio stations must accept any interference from stations operating in the 400.150–406.000 MHz band in the Meteorological Aids, Meteorological Satellite, or Earth Exploration Satellite Services, and from other authorized stations operating in the 413–419 MHz, 426–432 MHz, 438–444 MHz, 451–457, and 2360–2400 MHz bands.

■ 12. Section 95.1213 is revised to read as follows:

§ 95.1213 Antennas.

Except for the 2390–2400 MHz band, no antenna for a MedRadio transmitter shall be configured for permanent outdoor use. In addition, any MedRadio antenna used outdoors shall not be affixed to any structure for which the height to the tip of the antenna will exceed three (3) meters (9.8 feet) above ground.

■ 13. Section 95.1215 is amended by adding paragraph (c) to read as follows:

§ 95.1215 Disclosure policies.

* * * * *

(c) Manufacturers of MedRadio transmitters operating in the 2360–2400 MHz band must include with each transmitting device the following statement:

''This transmitter is authorized by rule under the MedRadio Service (47 CFR part 95). This transmitter must not cause harmful interference to stations authorized to operate on a primary basis in the 2360–2400 MHz band, and must accept interference that may be caused by such stations, including interference that may cause undesired operation. This transmitter shall be used only in accordance with the FCC Rules governing the MedRadio Service. Analog and digital voice communications are prohibited. Although this transmitter has been approved by the Federal Communications Commission, there is no guarantee that it will not receive interference or that any particular

transmission from this transmitter will be free from interference.''

■ 14. Section 95.1217 is amended by adding paragraph (a)(3) and revising paragraph (c) to read as follows:

§ 95.1217 Labeling requirements.

* * * * *

(a) * * *

(3) MedRadio programmer/control transmitters operating in the 2360–2400 MHz band shall be labeled as provided in part 2 of this chapter and shall bear the following statement in a conspicuous location on the device:

''This device may not interfere with stations authorized to operate on a primary basis in the 2360–2400 MHz band, and must accept any interference received, including interference that may cause undesired operation.''

The statement may be placed in the instruction manual for the transmitter where it is not feasible to place the statement on the device.

* * * * *

(c) MedRadio transmitters shall be identified with a serial number, except that in the 2360–2400 MHz band only the MedRadio programmer/controller transmitter shall be identified with a serial number. The FCC ID number associated with a medical implant transmitter and the information required by § 2.925 of this chapter may be placed in the instruction manual for the transmitter and on the shipping container for the transmitter, in lieu of being placed directly on the transmitter.

■ 15. Section 95.1223 is added to read as follows:

§ 95.1223 Registration and frequency coordination in the 2360–2390 MHz Band.

(a) *Registration.* A health care facility must register all MBAN devices it proposes to operate in the 2360–2390 MHz band with a frequency coordinator designated under § 95.1225 of this chapter. Operation of these devices in the 2360–2390 MHz band is prohibited prior to the MBAN coordinator notifying the health care facility that registration and coordination (to the extent coordination is required under paragraph (c) of this section), is complete. The registration must include the following information:

(1) Specific frequencies or frequency range(s) within the 2360–2390 MHz band to be used, and the capabilities of the MBAN equipment to use the 2390–2400 MHz band;

(2) Effective isotropic radiated power;

(3) Number of control transmitters in use at the health care facility as of the date of registration including manufacturer name(s) and model numbers and FCC identification number;

(4) Legal name of the health care facility;

(5) Location of control transmitters (*e.g.,* geographic coordinates, street address, building);

(6) Point of contact for the health care facility (*e.g.,* name, title, office, phone number, fax number, email address); and

(7) In the event an MBAN has to cease operating in all or a portion of the 2360–2390 MHz band due to interference under § 95.1211 or changes in coordination under paragraph (c) of this section, a point of contact (including contractors) for the health care facility that is responsible for ensuring that this change is effected whenever it is required (*e.g.,* name, title, office, phone number, fax number, email address). The health care facility also must state whether, in such cases, its MBAN operation is capable of defaulting to the 2390–2400 MHz band and that it is responsible for ceasing MBAN operations in the 2360–2390 MHz band or defaulting traffic to other hospital systems.

(b) *Notification.* A health care facility shall notify the frequency coordinator whenever an MBAN control transmitter in the 2360–2390 MHz band is permanently taken out of service, unless it is replaced with transmitter(s) using the same technical characteristics as those reported on the health care facility's registration. A health care facility shall keep the information contained in each registration current, shall notify the frequency coordinator of any material change to the MBAN's location or operating parameters, and is prohibited from operating the MBAN in the 2360–2390 MHz band under changed operating parameters until the frequency coordinator determines whether such changes require coordination with the AMT coordinator designated under § 87.305 of this chapter and, if so, the coordination required under paragraph (c) of this section has been completed.

(c) *Coordination procedures.* The frequency coordinator will determine if an MBAN is within the line of sight of an AMT receive facility in the 2360–2390 MHz band and notify the health care facility when it may begin MBAN operations under the applicable procedures in (c)(1) or (2) of this section.

(1) If the MBAN is beyond the line of sight of an AMT receive facility, it may operate without prior coordination with the AMT coordinator, provided that the MBAN coordinator provides the AMT coordinator with the MBAN registration information and the AMT coordinator concurs that the MBAN is beyond the line of sight prior to the MBAN beginning operations in the band.

(2) If the MBAN is within line of sight of an AMT receive facility, the MBAN frequency coordinator shall achieve a mutually satisfactory coordination agreement with the AMT frequency coordinator prior to the MBAN beginning operations in the band. Such coordination agreement shall provide protection to AMT receive stations consistent with International Telecommunication Union (ITU) Recommendation ITU–R M.1459, ''Protection criteria for telemetry systems in the aeronautical mobile service and mitigation techniques to facilitate sharing with geostationary broadcasting-satellite and mobile-satellite services in the frequency bands 1 452–1 525 and 2 310–2 360 MHz,'' May 2000, as adjusted using generally accepted engineering practices and standards that are mutually agreeable to both coordinators to take into account the local conditions and operating characteristics of the applicable AMT and MBAN facilities, and shall specify when the device shall limit its transmissions to segments of the 2360–2390 MHz band or shall cease operation in the band. This ITU document is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 and approved by the Director of Federal Register. Copies of the recommendation may be obtained from ITU, Place des Nations, 1211 Geneva 20, Switzerland, or online at *http://www.itu.int/en/publications/Pages/default.aspx.* You may inspect a copy at the Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* ''Generally accepted engineering practices and standards'' include, but are not limited to, engineering analyses and measurement data as well as limiting MBAN operations in the band by time or frequency.

(3) If an AMT operator plans to operate a receive site not previously analyzed by the MBAN coordinator to determine line of sight to an MBAN facility, the AMT operator shall consider using locations that are beyond the line of sight of a registered health care facility. If the AMT operator determines that non-line of sight locations are not practical for its

purposes, the AMT coordinator shall notify the MBAN coordinator upon no less than 7 days' notice that the registered health care facility must cease MBAN operations in the 2360–2390 MHz band unless the parties can achieve a mutually satisfactory coordination agreement under paragraph (c)(2) of this section.

■ 16. Section 95.1225 is added to read as follows:

§ 95.1225 Frequency coordinator.

(a) The Commission will designate a frequency coordinator(s) to manage the operation of medical body area networks in the 2360 MHz -2390 MHz band.

(b) The frequency coordinator shall perform the following functions:

(1) Register health care facilities that operate an MBAN in the 2360–2390 MHz band, maintain a database of these MBAN transmitter locations and operational parameters, and provide the Commission with information contained in the database upon request;

(2) Determine if an MBAN is within line of sight of an AMT receive facility in the 2360–2390 MHz band and coordinate MBAN operations with the designated AMT coordinator as specified in § 87.305 of this chapter;

(3) Notify a registered health care facility when an MBAN has to change frequency within the 2360–2390 MHz band or to cease operating in the band consistent with a coordination agreement between the MBAN and the AMT coordinators;

(4) Develop procedures to ensure that registered health care facilities operate an MBAN consistent with the coordination requirements under § 95.1223; and

(5) Identify the MBAN that is the source of interference in response to a complaint from the AMT coordinator and notify the health care facility of alternative frequencies available for MBAN use or to cease operation consistent with the rules.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 111213751–2102–02]

RIN 0648–XC224

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; modification of a closure.

SUMMARY: NMFS is opening directed fishing for Pacific cod by catcher vessels less than 60 feet (18.3 meters) length overall (LOA) using hook-and-line or pot gear in the Bering Sea and Aleutian Islands Management Area (BSAI). This action is necessary to fully use the 2012 total allowable catch of Pacific cod allocated to catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 6, 2012, through 2400 hrs, A.l.t., December 31, 2012. Comments must be received at the following address no later than 4:30 p.m., A.l.t., September 21, 2012.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2012–0174, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal *www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter NOAA–NMFS–2012–0174 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on that line.
- *Mail:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.
- *Fax:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Fax comments to 907–586–7557.
- *Hand delivery to the Federal Building:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Deliver comments to 709 West 9th Street, Room 420A, Juneau, AK.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address) submitted voluntarily by the sender will be publicly accessible.

Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

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

NMFS closed directed fishing for Pacific cod by catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI under § 679.20(d)(1)(iii) on February 17, 2012 (77 FR 10400, February 22, 2012).

NMFS has determined that as of September 5, 2012, approximately 1,134 metric tons of Pacific cod remain in the 2012 Pacific cod apportionment for catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully use the 2012 total allowable catch (TAC) of Pacific cod in the BSAI, NMFS is terminating the previous closure and is opening directed fishing for Pacific cod by catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI. The Administrator, Alaska

Region, NMFS, (Regional Administrator) considered the following factors in reaching this decision: (1) the current catch of Pacific cod by catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI and, (2) the harvest capacity and stated intent on future harvesting patterns of vessels in participating in this fishery.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of directed fishing for Pacific cod by catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet and processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of September 5, 2012.

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

Without this inseason adjustment, NMFS could not allow the fishery for Pacific cod by catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until September 21, 2012.

This action is required by § 679.25 and is exempt from review under Executive Order 12866.

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

Dated: September 6, 2012.

Lindsay Fullenkamp,

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

[FR Doc. 2012–22329 Filed 9–6–12; 4:15 pm]

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Proposed Rules

Federal Register
Vol. 77, No. 176
Tuesday, September 11, 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.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AG45

Small Business Size Standards: Finance and Insurance and Management of Companies and Enterprises

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA) proposes to increase small business size standards for 37 industries in North American Industry Classification System (NAICS) Sector 52, Finance and Insurance, and for two industries in NAICS Sector 55, Management of Companies and Enterprises. In addition, SBA proposes to change the measure of size from average assets to average receipts for NAICS 522293, International Trade Financing. As part of its ongoing comprehensive size standards review, SBA evaluated all receipts based and assets based size standards in NAICS Sectors 52 and 55 to determine whether they should be retained or revised. This proposed rule is one of a series of proposed rules that will review size standards of industries grouped by NAICS Sector. SBA issued a White Paper entitled ''Size Standards Methodology'' and published a notice in the October 21, 2009 issue of the **Federal Register** to advise the public that the document is available on its Web site at *www.sba.gov/size* for public review and comments. The ''Size Standards Methodology'' White Paper explains how SBA establishes, reviews, and modifies its receipts based and employee based small business size standards. In this proposed rule, SBA has applied its methodology that pertains to establishing, reviewing, and modifying a receipts based size standard.

DATES: SBA must receive comments to this proposed rule on or before November 13, 2012.

ADDRESSES: Identify your comments by RIN 3245–AG45 and submit them by one of the following methods: (1) Federal eRulemaking Portal: *www.regulations.gov*, following the instructions for submitting comments; or (2) Mail/Hand Delivery/Courier: Khem R. Sharma, Ph.D., Chief, Size Standards Division, 409 Third Street SW., Mail Code 6530, Washington, DC 20416. SBA will not accept comments to this proposed rule submitted by email.

SBA will post all comments to this proposed rule on *www.regulations.gov.*. If you wish to submit confidential business information (CBI) as defined in the User Notice at *www.regulations.gov,* you must submit such information to U.S. Small Business Administration, Khem R. Sharma, Ph.D., Chief, Size Standards Division, 409 Third Street SW., Mail Code 6530, Washington, DC 20416, or send an email to *sizestandards@sba.gov.* Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review your information and determine whether it will make the information public.

FOR FURTHER INFORMATION CONTACT: Khem R. Sharma, Ph.D., Chief, Size Standards Division, (202) 205–6618 or *sizestandards@sba.gov.*

SUPPLEMENTARY INFORMATION: To determine eligibility for Federal small business assistance, SBA establishes small business size definitions (referred to as size standards) for private sector industries in the United States. SBA uses two primary measures of business size—average annual receipts and average number of employees. SBA uses financial assets, electric output, and refining capacity to measure the size of a few specialized industries. For example, currently six size standards in NAICS Sector 52 are based on total assets. In addition, SBA's Small Business Investment Company (SBIC), Certified Development Company (504), and 7(a) Loan Programs use either the industry based size standards or net worth and net income based alternative size standards to determine eligibility for those programs. At the beginning of the current comprehensive size standards review, there were 41 different size standards covering 1,141 NAICS industries and 18 sub-industry activities (''exceptions'' in SBA's table of size standards). Thirty-one of these size levels were based on average annual receipts, seven were based on average number of employees, and three were based on other measures.

Over the years, SBA has received comments that its size standards have not kept up with changes in the economy, in particular the changes in the Federal contracting marketplace and industry structure. The last time SBA conducted a comprehensive review of all size standards was during the late 1970s and early 1980s. Since then, most reviews of size standards were limited to a few specific industries in response to requests from the public and Federal agencies. SBA also adjusts its monetary based size standards for inflation at least once every five years. SBA's latest inflation adjustment to size standards was published in the **Federal Register** on July 18, 2008 (73 FR 41237).

Because of changes in the Federal marketplace and industry structure since the last comprehensive size standards review, SBA recognizes that current data may no longer support some of its existing size standards. Accordingly, in 2007, SBA began a comprehensive review of all size standards to determine if they are consistent with current data, and to adjust them when necessary. In addition, on September 27, 2010, the President of the United States signed the Small Business Jobs Act of 2010 (Jobs Act). The Jobs Act directs SBA to conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. Specifically, the Jobs Act requires SBA to conduct a detailed review of at least one-third of all size standards during every 18-month period from the date of its enactment. In addition, the Jobs Act requires that SBA conduct a review of all size standards at least once every five years thereafter. Reviewing existing small business size standards and making appropriate adjustments based on current data are also consistent with Executive Order 13563 on improving regulation and regulatory review.

Rather than review all size standards at one time, SBA is reviewing size standards on a Sector by Sector basis. A NAICS Sector generally includes 25 to 75 industries, except for NAICS Sector

31–33, Manufacturing, which has considerably more industries. Once SBA completes its review of size standards for industries in a given NAICS Sector, it issues a proposed rule to revise size standards for those industries for which it believes currently available data and other relevant factors support doing so.

Below is a discussion of SBA's size standards methodology for establishing receipts based size standards that SBA applied to this proposed rule, including analyses of industry structure, Federal procurement trends and other relevant factors for industries reviewed in this proposed rule, the impact of the proposed revisions to size standards on Federal small business assistance, and the evaluation of whether a revised size standard would exclude dominant firms from being considered small.

Size Standards Methodology

SBA has recently developed a ''Size Standards Methodology'' for developing, reviewing, and modifying size standards when necessary. SBA published the document on its Web site at *www.sba.gov/size* for public review and comments, and has included it as a supporting document in the electronic docket of this proposed rule at *www.regulations.gov,* SBA does not apply all features of its ''Size Standards Methodology'' to all industries because not all features are appropriate for every industry. For example, since 36 of the 42 industries in NAICS Sectors 52 and 55 reviewed in this rule have receipts based size standards, the methodology described in this proposed rule applies only to establishing receipts based size standards. For those interested in SBA's overall approach to establishing, evaluating, and modifying small business size standards, the methodology is available on SBA's Web site at *www.sba.gov/size.* SBA always explains its analysis in individual proposed and final rules relating to size standards for specific industries.

SBA welcomes comments from the public on a number of issues concerning its ''Size Standards Methodology,'' such as whether there are other approaches to establishing and modifying size standards; whether there are alternative or additional factors that SBA should consider; whether SBA's approach to small business size standards makes sense in the current economic environment; whether SBA's use of anchor size standards is appropriate; whether there are gaps in SBA's methodology because the data it uses are not current or sufficiently comprehensive; and whether there are other data, facts, and/or issues that SBA should consider. Comments on SBA's size standards methodology should be submitted via (1) the Federal eRulemaking Portal: *www.regulations.gov,* following the instructions for submitting comments; the docket number is SBA–2009–0008, or (2) Mail/Hand Delivery/Courier: Khem R. Sharma, Ph.D., Chief, Size Standards Division, 409 Third Street SW., Mail Code 6530, Washington, DC 20416. As it will do with comments to this and other proposed rules, SBA will post all comments on its methodology on *www.regulations.gov.* As of May 31, 2012, SBA has received 14 comments to its ''Size Standards Methodology.'' The comments are available to the public at *www.regulations.gov.* SBA continues to welcome comments on its methodology from interested parties. SBA will not accept comments to its ''Size Standards Methodology'' submitted by email.

Congress granted SBA's Administrator discretion to establish detailed small business size standards. 15 U.S.C. 632(a)(2). Specifically, Section 3(a)(3) of the Small Business Act (15 U.S.C. 632(a)(3)) requires that ''* * * the [SBA] Administrator shall ensure that the size standard varies from industry to industry to the extent necessary to reflect the differing characteristics of the various industries and consider other factors deemed to be relevant by the Administrator.'' Accordingly, the economic structure of an industry is the basis for developing and modifying small business size standards. SBA identifies the small business segment of an industry by examining data on the economic characteristics defining the industry structure (as described below). In addition, SBA considers current economic conditions, its mission and program objectives, the Administration's current policies, suggestions from industry groups and Federal agencies, and public comments on the proposed rule. SBA also examines whether a size standard based on industry and other relevant data successfully excludes businesses that are dominant in the industry.

This proposed rule includes information regarding the factors SBA evaluated and the criteria it used to propose adjustments to size standards in NAICS Sectors 52 and 55. This proposed rule affords the public an opportunity to review and to comment on SBA's proposals to revise size standards in NAICS Sectors 52 and 55, as well as on the data and methodology it used to evaluate and revise the size standards.

Industry Analysis

For the current comprehensive size standards review, SBA has established three ''base'' or ''anchor'' size standards—$7.0 million in average annual receipts for industries that have receipts based size standards, 500 employees for manufacturing and other industries that have employee based size standards (except for Wholesale Trade), and 100 employees for industries in the Wholesale Trade Sector. SBA established 500 employees as the anchor size standard for manufacturing industries at its inception in 1953. Shortly thereafter, SBA established $1 million in average annual receipts as the anchor size standard for nonmanufacturing industries. SBA has periodically increased the receipts based anchor size standard for inflation, and today it is $7 million. Since 1986, the size standard for all industries in the Wholesale Trade Sector for SBA financial assistance and for most Federal programs has been 100 employees. However, NAICS codes for the Wholesale Trade Sector and their 100 employee size standards do not apply to Federal procurement programs. Rather, for Federal procurement the size standard for all industries in Wholesale Trade (NAICS Sector 42) and for all industries in Retail Trade (NAICS Sector 44–45), is 500 employees under SBA's nonmanufacturer rule (13 CFR 121.406(b)).

These long-standing anchor size standards have stood the test of time and gained legitimacy through practice and general public acceptance. An anchor is neither a minimum nor a maximum size standard. It is a common size standard for a large number of industries that have similar economic characteristics and serves as a reference point in evaluating size standards for individual industries. SBA uses the anchor in lieu of trying to establish precise small business size standards for each industry. Otherwise, theoretically, the number of size standards might be as high as the number of industries for which SBA establishes size standards (1,141). Furthermore, the data SBA analyzes are static, while the U.S. economy is not. Hence, absolute precision is impossible. SBA presumes an anchor size standard is appropriate for a particular industry unless that industry displays economic characteristics that are considerably different from other industries with the same anchor size standard.

When evaluating a size standard, SBA compares the economic characteristics of the industry under review to the average characteristics of industries with one of the three anchor size standards (referred to as the ''anchor comparison group''). This allows SBA to assess the industry structure and to

determine whether the industry is appreciably different from the other industries in the anchor comparison group. If the characteristics of a specific industry under review are similar to the average characteristics of the anchor comparison group, the anchor size standard is generally appropriate for that industry. SBA may consider adopting a size standard below the anchor when (1) all or most of the industry characteristics are significantly smaller than the average characteristics of the anchor comparison group, or (2) other industry considerations strongly suggest that the anchor size standard would be an unreasonably high size standard for the industry.

If the specific industry's characteristics are significantly higher than those of the anchor comparison group, then a size standard higher than the anchor size standard may be appropriate. The larger the differences are between the characteristics of the industry under review and those in the anchor comparison group, the larger will be the difference between the appropriate industry size standard and the anchor size standard. To determine a size standard above the anchor size standard, SBA analyzes the characteristics of a second comparison group. For industries with receipts based size standards, including those in NAICS Sectors 52 and 55, SBA has developed a second comparison group consisting of industries that have the highest of receipts based size standards. To determine a size standard above the anchor size standard, SBA analyzes the characteristics of this second comparison group. The size standards for this group of industries range from $23 million to $35.5 million in average annual receipts; the weighted average size standard for the group is $29 million. SBA refers to this comparison group as the ''higher level receipts based size standard group.''

The primary factors that SBA evaluates to examine industry structure include average firm size, startup costs and entry barriers, industry competition, and distribution of firms by size. SBA evaluates, as an additional primary factor, the impact that revised size standards might have on Federal contracting assistance to small businesses. These are, generally, the five most important factors SBA examines when establishing or revising a size standard for an industry. However, SBA will also consider and evaluate other information that it believes is relevant to a particular industry (such as technological changes, growth trends, SBA financial assistance, other program factors, *etc.*). SBA also considers possible impacts of size standard revisions on eligibility for Federal small business assistance, current economic conditions, the Administration's policies, and suggestions from industry groups and Federal agencies. Public comments on a proposed rule also provide important additional information. SBA thoroughly reviews all public comments before making a final decision on its proposed size standards. Below are brief descriptions of each of the five primary factors that SBA has evaluated for each industry in NAICS Sectors 52 and 55 that has a receipts based size standard. A more detailed description of this analysis is provided in SBA's ''Size Standards Methodology,'' available at *http://www.sba.gov/size.*

1. *Average firm size.* SBA computes two measures of average firm size: Simple average and weighted average. For industries with receipts based size standards, the Simple average is the total receipts of the industry divided by the total number of firms in the industry. The weighted average firm size is the sum of weighted simple averages in different receipts based size classes, where weights are the shares of total industry receipts for respective size classes. The simple average weighs all firms within an industry equally regardless of their size. The weighted average overcomes that limitation by giving more weight to larger firms.

If the average firm size of an industry is significantly higher than the average firm size of industries in the anchor comparison industry group, this will generally support a size standard higher than the anchor size standard. Conversely, if the industry's average firm size is similar to or significantly lower than that of the anchor comparison industry group, it will be a basis to adopt the anchor size standard, or, in rare cases, a standard lower than the anchor.

2. *Startup costs and entry barriers.* Startup costs reflect a firm's initial size in an industry. New entrants to an industry must have sufficient capital and other assets to start and maintain a viable business. If new firms entering a particular industry have greater capital requirements than firms in industries in the anchor comparison group, this can be a basis for establishing a size standard higher than the anchor size standard. In lieu of actual startup cost data, SBA uses average assets as a proxy to measure the capital requirements for new entrants to an industry.

To calculate average assets, SBA begins with the sales to total assets ratio for an industry from the Risk Management Association's Annual Statement Studies. SBA then applies these ratios to the average receipts of firms in that industry. An industry with average assets that are significantly higher than those of the anchor comparison group is likely to have higher startup costs; this in turn will support a size standard higher than the anchor. Conversely, an industry with average assets that are similar to or lower than those of the anchor comparison group is likely to have lower startup costs; this will support the anchor standard or one lower than the anchor.

3. *Industry competition.* Industry competition is generally measured by the share of total industry receipts generated by the largest firms in an industry. SBA generally evaluates the share of industry receipts generated by the four largest firms in each industry. This is referred to as the ''four-firm concentration ratio,'' a commonly used economic measure of market competition. SBA compares the four-firm concentration ratio for an industry to the average four-firm concentration ratio for industries in the anchor comparison group. If a significant share of economic activity within the industry is concentrated among a few relatively large companies, all else being equal, SBA will establish a size standard higher than the anchor size standard. SBA does not consider the four-firm concentration ratio as an important factor in assessing a size standard if its share of economic activity within the industry is less than 40 percent. For an industry with a four-firm concentration ratio of 40 percent or more, SBA examines the average size of the four largest firms to determine a size standard.

4. *Distribution of firms by size.* SBA examines the shares of industry total receipts accounted for by firms of different receipts and employment size classes in an industry. This is an additional factor in assessing industry competition. If most of an industry's economic activity is attributable to smaller firms, this generally indicates that small businesses are competitive in that industry. This can support adopting the anchor size standard. If most of an industry's economic activity is attributable to larger firms, this indicates that small businesses are not competitive in that industry. This can support adopting a size standard above the anchor.

Concentration is a measure of inequality of distribution. To determine the degree of inequality of distribution in an industry, SBA computes the Gini coefficient, using the Lorenz curve. The Lorenz curve presents the cumulative

percentages of units (firms) along the horizontal axis and the cumulative percentages of receipts (or other measures of size) along the vertical axis. (For further detail, please refer to SBA's ''Size Standards Methodology'' on its Web site at *www.sba.gov/size.*) Gini coefficient values vary from zero to one. If receipts are distributed equally among all the firms in an industry, the value of the Gini coefficient will equal zero. If an industry's total receipts are attributed to a single firm, the Gini coefficient will equal one.

SBA compares the Gini coefficient value for an industry with that for industries in the anchor comparison group. If the Gini coefficient value for an industry is higher than it is for industries in the anchor comparison industry group this may, all else being equal, warrant a size standard higher than the anchor. Conversely, if an industry's Gini coefficient is similar to or lower than that for the anchor group, the anchor standard, or in some cases a standard lower than the anchor, may be adopted.

5. *Impact on Federal contracting and SBA loan programs.* SBA examines the possible impact a size standard change may have on Federal small business assistance. This most often focuses on the share of Federal contracting dollars awarded to small businesses in the industry in question. In general, if the small business share of Federal contracting in an industry with significant Federal contracting is appreciably less than the small business share of the industry's total receipts, this could justify considering a size standard higher than the existing size standard. The disparity between the small business Federal market share and industry-wide small business share may be due to various factors, such as extensive administrative and compliance requirements associated with Federal contracts, the different skill set required for Federal contracts as compared to typical commercial contracting work, and the size of Federal contracts. These, as well as other factors, are likely to influence the type of firms within an industry that compete for Federal contracts. By comparing the small business Federal contracting share with the industry-wide small business share, SBA includes in its size standards analysis the latest Federal contracting trends. This analysis may support a size standard larger than the current size standard.

SBA considers Federal contracting trends in the size standards analysis only if (1) the small business share of Federal contracting dollars is at least 10 percent lower than the small business share of total industry receipts, and (2) the amount of total Federal contracting averages $100 million or more during the latest three fiscal years. These thresholds reflect significant levels of contracting where a revision to a size standard may have an impact on contracting opportunities to small businesses.

Besides the impact on small business Federal contracting, SBA also evaluates the impact of a proposed size standard revision on SBA's loan programs. For this, SBA examines the data on volume and number of its guaranteed loans within an industry and the size of firms obtaining those loans. This allows SBA to assess whether the existing or the proposed size standard for a particular industry may restrict the level of financial assistance to small firms. If current size standards have impeded financial assistance to small businesses, higher size standards may be supportable. However, if small businesses under current size standards have been receiving significant amounts of financial assistance through SBA's loan programs, or if the financial assistance has been provided mainly to businesses that are much smaller than the existing size standards, SBA does not consider this factor when determining the size standard.

Sources of Industry and Program Data

The primary source of industry data that SBA used in evaluating industries in NAICS Sectors 52 and 55 that have receipts based size standards is a special tabulation of the 2007 Economic Census (*see www.census.gov/econ/census07/*) prepared by the U.S. Bureau of the Census (Census Bureau) for SBA. The 2007 Economic Census data are the latest available. The special tabulation provides SBA with data on the number of firms, number of establishments, number of employees, annual payroll, and annual receipts of companies by Industry (6-digit level), Industry Group (4-digit level), Subsector (3-digit level), and Sector (2-digit level). These data are arrayed by various classes of firms' size based on the overall number of employees and receipts of the entire enterprise (all establishments and affiliated firms) from all industries. The special tabulation enables SBA to evaluate average firm size, four-firm concentration ratio, and distribution of firms by various receipts and employment size classes.

In some cases, where data were not available due to disclosure prohibitions in the Census Bureau's tabulation, SBA either estimated missing values using available relevant data or examined data at a higher level of industry aggregation, such as at the NAICS 2-digit (Sector), 3-digit (Subsector), or 4-digit (Industry Group) level. In some instances, SBA's analysis was based only on those factors for which data were available or estimates of missing values were possible.

Five of the seven industries within NAICS Subsector 525 (Funds, Trusts and Other Financial Vehicles) are not covered by the 2007 Economic Census. All industries in that Subsector currently have a common size standard. To maintain the common size standard, in this proposed rule, SBA applies the results for the two industries (NAICS 525910, Open End Investment Funds, and NAICS 525990, Other Financial Vehicles) for which the Economic Census data are available to those five industries.

To evaluate industries in NAICS Sector 52 that have assets based size standards, as discussed below, SBA obtained the data from the Statistics on Depository institutions (SDI) database of the Federal Depository Insurance Corporation (FDIC) between 1984 and 2011 (*http://www2.fdic.gov/sdi/main.asp*). SDI does not include a field to classify the institutions by the NAICS definition. However, it has a field that identifies an institution's primary specialization in terms of asset concentration and another field that identifies each institution as a bank or thrift. Since the SDI database does not identify minority owned financial institutions from others, SBA identified them using data on financial institutions that participate in the Department of the Treasury's Minority Bank Deposit Program, compiled by the Federal Reserve Board (FRB) (*http://www.federalreserve.gov/releases/mob/*). To examine characteristics of minority owned financial institutions, SBA merged the FRB data with SDI database using the common identification number for each institution.

The SDI database does not include Credit Unions, NAICS 522130, while the FRB data is limited to minority-owned credit unions only. The data to evaluate the Credit Unions industry were based on call reports for the fourth quarters of 1994 and 2011 from the National Credit Union Administration (NCUA) Web site (*http://www.ncua.gov/DataApps/QCallRptData/Pages/CallRptData.aspx*). The earliest year for which these data were available on the NCUA Web site is 1994.

To calculate average assets, SBA used sales to total assets ratios from the Risk Management Association's Annual Statement Studies, 2008–2010.

To evaluate Federal contracting trends, SBA examined data on Federal contract awards for fiscal years 2008–2010. The data are available from the U.S. General Service Administration's Federal Procurement Data System—Next Generation (FPDS–NG).

To assess the impact on financial assistance to small businesses, SBA examined data on its own guaranteed loan programs for fiscal years 2008–2010.

Data sources and estimation procedures SBA uses in its size standards analysis are documented in detail in SBA's ''Size Standards Methodology'' White Paper, which is available at *www.sba.gov/size*.

Dominance in Field of Operation

Section 3(a) of the Small Business Act (15 U.S.C. 632(a)) defines a small business concern as one that is (1) independently owned and operated, (2) not dominant in its field of operation, and (3) within a specific small business definition or size standard established by SBA Administrator. SBA considers as part of its evaluation whether a business concern at a proposed size standard would be dominant in its field of operation. For this, SBA generally examines the industry's market share of firms at the proposed standard. Market share and other factors may indicate whether a firm can exercise a major controlling influence on a national basis in an industry where a significant number of business concerns are engaged. If a contemplated size standard includes a dominant firm, SBA will consider a lower size standard to exclude the dominant firm from being defined as small.

Selection of Size Standards

To simplify receipts based size standards, SBA has proposed to select size standards from a limited number of levels. For many years, SBA has been concerned about the complexity of determining small business status caused by a large number of varying receipts based size standards (*see* 69 FR 13130 (March 4, 2004) and 57 FR 62515 (December 31, 1992)). At the beginning of the current comprehensive size standards review, there were 31 different levels of receipts based size standards. They ranged from $0.75 million to $35.5 million, and many applied to one or only a few industries. SBA believes that such a large number of different small business size standards are unnecessary and difficult to justify analytically. To simplify managing and using size standards, SBA proposes that there be fewer size standard levels. This will produce more common size standards for businesses operating in related industries. This will also result in greater consistency among the size standards for industries that have similar economic characteristics.

The SBA proposes, therefore, to apply one of eight receipts based size standards to each industry in NAICS Sectors 52 and 55 that has a receipts based standard. The eight ''fixed'' receipts based size standard levels are $5 million, $7 million, $10 million, $14 million, $19 million, $25.5 million, $30 million, and $35.5 million. SBA established these eight receipts based size standard based on the current minimum, the current maximum, and the most commonly used current receipts based size standards. At the start of the current comprehensive review, the most commonly used receipts based size standards clustered around the following—$2.5 million to $4.5 million, $7 million, $9 million to $10 million, $12.5 million to $14.0 million, $25 million to $25.5 million, and $33.5 million to $35.5 million. SBA selected $7 million as one of eight fixed levels of receipts based size standards because it is an anchor standard. The lowest or minimum receipts based size level will be $5 million. Other than the size standards for agriculture that are statutorily set at $0.75 million and those based on commissions (such as real estate brokers and travel agents), $5 million includes those industries with the lowest receipts based standards, which ranged from $2 million to $4.5 million. Among the higher level size clusters, SBA has set four fixed levels: $10 million, $14 million, $25.5 million, and $35.5 million. Because of the large intervals between some of the fixed levels, SBA established two intermediate levels, namely $19 million between $14 million and $25.5 million, and $30 million between $25.5 million and $35.5 million. These two intermediate levels reflect roughly the same proportional differences as between the other two successive levels.

To simplify size standards further, SBA may propose a common size standard for closely related industries. Although the size standard analysis may support a separate size standard for each industry, SBA believes that establishing different size standards for closely related industries may not always be appropriate. For example, in cases where many of the same businesses operate in the same multiple industries, a common size standard for those industries might better reflect the Federal marketplace. This might also make size standards among related industries more consistent than separate size standards for each of those industries. This led SBA to establish a common size standard for the information technology (IT) services (NAICS 541511, NAICS 541112, NAICS 541513, NAICS 541519, and NAICS 811212), even though the industry data might support a distinct size standard for each industry (57 FR 27906 (June 23, 1992)). More recently SBA adopted common size standards for some of the industries in NAICS Sector 44–45, Retail Trade (75 FR 61597 (October 6, 2010)), NAICS Sector 54, Professional, Scientific and Technical Services (77 FR 7490 (February 10, 2012)), and NAICS Sector 48–49, Transportation and Warehousing (77 FR 10943 (February 24, 2012)).

In NAICS Sector 52, currently all industries in NAICS Industry Group 5221 and NAICS Industries 522210 and 522293 have a common size standard of $175 million in total assets. Similarly, all other industries in NAICS Sector 52, with an exception of NAICS Industry 524126 which has a size standard of 1,500 employees, have a common size standard of $7 million in average annual receipts. Based on the characteristics of those industries, SBA proposes to retain common size standards for all industries within NAICS Industry Group 5222 (with the exception of NAICS 522210, Credit Card Issuing). NAICS 522210 currently has an assets based size standard and based on the evaluation of business operations and characteristics of firms in this industry SBA proposes to maintain the assets based size standard for this industry. NAICS 522293, International Trade Financing, also has an assets based size standard currently, but based on the evaluation of business operations and characteristics of firms involved in this industry, SBA proposes to replace the assets based size standard with a receipts based size standard for this industry. In addition, SBA proposes to apply the same common receipts based size standard for NAICS 522293 as that for NAICS Industry Group 5222 (except for NAICS 522210). SBA also proposes common size standards for industries within NAICS Subsector 523, NAICS Industry Group 5241 (with exception of NAICS 524126), and NAICS Subsector 525. Whenever SBA proposes a common size standard for closely related industries it will provide its justification.

Evaluation of Industry Structure

SBA evaluated 29 industries in NAICS Sector 52, Finance and Insurance, and two industries in NAICS Sector 55, Management of Companies and Enterprises (for which industry data were available from the 2007 Economic Census), to assess the appropriateness of

the current receipts based size standards. For this, as described above, SBA compared data on the economic characteristics of each of those industries to the average characteristics of industries in two comparison groups. The first comparison group consists of all industries with $7 million size standards and is referred to as the ''receipts based anchor comparison group.'' Because the goal of SBA's review is to assess whether a specific industry's size standard should be the same as or different from the anchor size standard, this is the most logical group of industries to analyze. In addition, this group includes a sufficient number of firms to provide a meaningful assessment and comparison of industry characteristics.

If the characteristics of an industry are similar to the average characteristics of industries in the anchor comparison group, the anchor size standard is generally appropriate for that industry. If an industry's structure is significantly different from industries in the anchor group, a size standard lower or higher than the anchor size standard might be appropriate. The proposed new size standard is based on the difference between the characteristics of the anchor comparison group and a second industry comparison group. As described above, the second comparison group for receipts based standards consists of industries with the highest receipts based size standards, ranging from $23 million to $35.5 million. The average size standard for this group is $29 million. SBA refers to this group of industries as the ''higher level receipts based size standard comparison group.'' SBA determines differences in industry structure between an industry under review and the industries in the two comparison groups by comparing data on each of the industry factors, including average firm size, average assets size, the four-firm concentration ratio, and the Gini coefficient of distribution of firms by size. Table 1, Average Characteristics of Receipts Based Comparison Groups, shows the average firm size (both simple and weighted), average assets size, four-firm concentration ratio, average receipts of the four largest firms, and the Gini coefficient for both anchor level and higher level comparison groups for receipts based size standards.

TABLE 1—AVERAGE CHARACTERISTICS OF RECEIPTS BASED COMPARISON GROUPS

Receipts based comparison group	Average firm size ($ million)		Average assets size ($ million)	Four-firm concentration ratio (%)	Average receipts of four largest firms ($ million) *	Gini coefficient
	Simple average	Weighted average				
Anchor Level	1.32	19.63	0.84	16.6	196.4	0.693
Higher Level	5.07	116.84	3.20	32.1	1,376.0	0.830

* To be used for industries with a four-firm concentration ratio of 40% or greater.

Derivation of Size Standards Based on Industry Factors

For each industry factor in Table 1, SBA derives a separate size standard based on the differences between the values for an industry under review and the values for the two comparison groups. If the industry value for a particular factor is near the corresponding factor for the anchor comparison group, the $7 million anchor size standard is appropriate for that factor.

An industry factor significantly above or below the anchor comparison group will generally imply a size standard for that industry above or below the $7 million anchor. The new size standard in these cases is based on the proportional difference between the industry value and the values for the two comparison groups.

For example, if an industry's simple average receipts are $3.3 million, that can support a $19 million size standard. The $3.3 million level is 52.8 percent between $1.32 million for the anchor comparison group and $5.07 million for the higher level comparison group (($3.30 million − $1.32 million) ÷ ($5.07 million − $1.32 million) = 0.528 or 52.8%). This proportional difference is applied to the difference between the $7 million anchor size standard and average size standard of $29 million for the higher level size standard group and then added to $7.0 million to estimate a size standard of $18.61 million ([{$29.0 million − $7.0 million} * 0.528] + $7.0 million = $18.61 million). The final step is to round the estimated $18.61 million size standard to the nearest fixed size standard, which in this example is $19 million.

SBA applies the above calculation to derive a size standard for each industry factor. Detailed formulas involved in these calculations are presented in SBA's ''Size Standards Methodology'' which is available on its Web site at *www.sba.gov/size*. (However, it should be noted that figures in the ''Size Standards Methodology'' White Paper are based on 2002 Economic Census data and are different from those presented in this proposed rule. That is because when SBA prepared its ''Size Standards Methodology,'' the 2007 Economic Census data were not yet available). Table 2, Values of Industry Factors and Supported Size Standards, (below) shows ranges of values for each industry factor and the levels of size standards supported by those values.

TABLE 2—VALUES OF INDUSTRY FACTORS AND SUPPORTED SIZE STANDARDS

If simple avg. receipts size ($ million)	*Or if* weighted avg. receipts size ($ million)	*Or if* avg. assets size ($ million)	*Or if* avg. receipts of largest four firms ($ million)	*Or if* Gini coefficient	Then implied size standard is ($ million)
<1.15	<15.22	<0.73	<142.8	<0.686	5.0
1.15 to 1.57	15.22 to 26.26	0.73 to 1.00	142.8 to 276.9	0.686 to 0.702	7.0
1.58 to 2.17	26.27 to 41.73	1.01 to 1.37	277.0 to 464.5	0.703 to 0.724	10.0
2.18 to 2.94	41.74 to 61.61	1.38 to 1.86	464.6 to 705.8	0.725 to 0.752	14.0
2.95 to 3.92	61.62 to 87.02	1.87 to 2.48	705.9 to 1,014.1	0.753 to 0.788	19.0
3.93 to 4.86	87.03 to 111.32	2.49 to 3.07	1,014.2 to 1,309.0	0.789 to 0.822	25.5

TABLE 2—VALUES OF INDUSTRY FACTORS AND SUPPORTED SIZE STANDARDS—Continued

If simple avg. receipts size ($ million)	*Or if* weighted avg. receipts size ($ million)	*Or if* avg. assets size ($ million)	*Or if* avg. receipts of largest four firms ($ million)	*Or if* Gini coefficient	Then implied size standard is ($ million)
4.87 to 5.71	111.33 to 133.41	3.08 to 3.61	1,309.1 to 1,577.1	0.823 to 0.853	30.0
>5.71	>133.41	>3.61	>1,577.1	>0.853	35.5

Derivation of Size Standard Based on Federal Contracting Factor

Besides industry structure, SBA also evaluates Federal contracting data to assess the success of small businesses in getting Federal contracts under the existing size standards. For industries where the small business share of total Federal contracting dollars is 10 to 30 percent lower than the small business share of total industry receipts, SBA has designated a size standard one level higher than their current size standard. For industries where the small business share of total Federal contracting dollars is more than 30 percent lower than the small business share of total industry receipts, SBA has designated a size standard two levels higher than the current size standard.

Because of the complex relationships among several variables affecting small business participation in the Federal marketplace, SBA has chosen not to designate a size standard for the Federal contracting factor alone that is more than two levels above the current size standard. SBA believes that a larger adjustment to size standards based on Federal contracting activity should be based on a more detailed analysis of the impact of any subsequent revision to the current size standard. In limited situations, however, SBA may conduct a more extensive examination of Federal contracting experience. This may support a different size standard than indicated by this general rule and take into consideration significant and unique aspects of small business competitiveness in the Federal contract market. SBA welcomes comments on its methodology for incorporating the Federal contracting factor in its size standard analysis and suggestions for alternative methods and other relevant information on small business experience in the Federal contract market that SBA should consider.

Eight of the 29 industries in NAICS Sector 52 that have receipts based size standards averaged $100 million or more annually in Federal contracting during fiscal years 2008–2010. The Federal contracting factor was significant (*i.e.,* the difference between the small business share of total industry receipts and small business share of Federal contracting dollars was 10 percentage points or more) in three of those eight industries and a separate size standard was derived for that factor for each of them. Federal contracting averaged less than $100 million annually for both industries in NAICS Sector 55 and was not included in the calculations of new size standards for them.

New Size Standards Based on Industry and Federal Contracting Factors

Table 3, Size Standards Supported by Each Factor for Each Industry (millions of dollars), shows the results of analyses of industry and Federal contracting factors for each industry covered by this proposed rule. Many NAICS industries in columns 2, 3, 4, 6, 7, and 8 show two numbers. The upper number is the value for the industry or federal contracting factor shown on the top of the column and the lower number is the size standard supported by that factor. For the four-firm concentration ratio, SBA estimates a size standard only if its value is 40 percent or more. If the four-firm concentration ratio is 40 percent or more, SBA indicates in column 6 the average size of the industry's four largest firms together with a size standard based on that average. Column 9 shows a calculated new size standard for each industry. This is the average of the size standards supported by each factor, rounded to the nearest fixed size level. Analytical details involved in the averaging procedure are described in SBA's ''Size Standard Methodology.'' For comparison with the new standards, the current size standards are in column 10 of Table 3.

TABLE 3—SIZE STANDARDS SUPPORTED BY EACH FACTOR FOR EACH INDUSTRY

[Millions of dollars]

NAICS code/title	Simple average firm size	Weighted average firm size	Average assets size	Four-firm ratio (%)	Four-firm average size	Gini coefficient	Federal contract factor (%)	New size standard	Current size standard
522220	$48.8	$434.1	$162.7	42.1	$13,199.9	0.880			
Sales Financing	35.5	35.5	35.5		35.5	$35.5		35.5	$7.0
522291	11.8	364.4	35.4	61.2	6,874.4	0.940			
Consumer Lending	35.5	35.5	35.5		35.5	$35.5		35.5	7.0
522292	11.5	279.0	31.4	38.5	9,127.3	0.930			
Real Estate Credit	35.5	35.5	35.5			$35.5		35.5	7.0
522294	796.6	6,175.9	2,987.1	97.9	25,931.0	0.871			
Secondary Market Financing	35.5	35.5	35.5		35.5	$35.5		35.5	7.0
522298	16.6	750.8	62.4			0.959			
All Other Nondepository Credit Intermediation	35.5	35.5	35.5			$35.5		35.5	7.0
522310	0.6	6.2	1.2	5.2	186.3	0.583		7.0	
Mortgage and Nonmortgage Loan Brokers	5.0	5.0	10.0			$5.0			7.0
522320	18.9	387.6	12.9	33.1	3,624.7	0.934	1.9		
Financial Transactions, Reserve, and Clearinghouse Activities	35.5	35.5	35.5			$35.5		35.5	7.0
522390	1.9	47.2	1.9	19.6	602.8	0.834	−17.0		
Other Activities Related to Credit Intermediation	10.0	14.0	19.0			$30.0	10.0	19.0	7.0
523110	74.9	1,453.1	86.4	51.7	26,248.4	0.941	−1.1		
Investment Banking and Securities Dealing	35.5	35.5	35.5		35.5	$35.5		35.5	7.0
523120	17.4	581.4	9.7	36.9	14,369.4	0.952			
Securities Brokerage	35.5	35.5	35.5			$35.5		35.5	7.0

TABLE 3—SIZE STANDARDS SUPPORTED BY EACH FACTOR FOR EACH INDUSTRY—Continued
[Millions of dollars]

NAICS code/title	Simple average firm size	Weighted average firm size	Average assets size	Four-firm ratio (%)	Four-firm average size	Gini coefficient	Federal contract factor (%)	New size standard	Current size standard
523130	8.4	118.6	13.3	43.4	756.7	0.903			
Commodity Contracts Dealing	35.5	30.0	35.5		19.0	$35.5		30.0	7.0
523140	4.5	120.3	1.0	46.9	654.9	0.886			
Commodity Contracts Brokerage	25.5	30.0	7.0		14.0	$35.5		19.0	7.0
523210	467.4	852.8				0.454			
Securities and Commodity Exchanges	35.5	35.5				$5.0		19.0	7.0
523910	2.0	16.6	6.1	15.0	636.0	0.797	−27.7		
Miscellaneous Intermediation	10.0	7.0	35.5			$25.5	10.0	19.0	7.0
523920	10.2	212.6	6.5	12.0	5,350.2	0.914			
Portfolio Management	35.5	35.5	35.5			$35.5		35.5	7.0
523930	1.5	40.3	0.6	26.7	1,531.6	0.815			
Investment Advice	7.0	10.0	5.0			$25.5		14.0	7.0
523991	5.3	64.8	8.9	35.2	887.0	0.876			
Trust, Fiduciary and Custody Activities	30.0	19.0	35.5			$35.5		30.0	7.0
523999	6.7	124.9	28.8			0.909	7.0		
Miscellaneous Financial Investment Activities	35.5	30.0	35.5			$35.5		35.5	7.0
524113	635.4	2,977.0	1,003.3	26.8	35,953.1	0.787			
Direct Life Insurance Carriers	35.5	35.5	35.5			$19.0		30.0	7.0
524114	554.7	1,746.5	256.0	36.9	45,842.3	0.684	−0.1		
Direct Health and Medical Insurance Carriers	35.5	35.5	35.5			$5.0		25.5	7.0
524127	8.9	493.1	4.1	84.3	3,628.8	0.954			
Direct Title Insurance Carriers	35.5	35.5	35.5		35.5	$35.5		35.5	7.0
524128	13.7	152.5	19.6	50.9	755.9	0.890		30.0	7.0
Other Direct Insurance (except Life, Health and Medical) Carriers	35.5	35.5	35.5		19.0	$35.5		30.0	7.0
524130	214.5	771.1		50.9	5,405.7	0.724			
Reinsurance Carriers	35.5	35.5			35.5	$14.0		30.0	7.0
524210	0.8	26.0	0.5	10.3	2,729.8	0.667		5.0	
Insurance Agencies and Brokerages	5.0	7.0	5.0			$5.0			7.0
524291	2.0	73.7		46.7	841.7	0.840			
Claims Adjusting	10.0	19.0			19.0	$30.0		19.0	7.0
524292	8.7	76.2	4.1	21.7	1,622.9	0.847	−4.0		
Third Party Administration of Insurance and Pension Funds	35.5	19.0	35.5			$30.0		30.0	7.0
524298	1.9	25.5	0.8	30.6	278.7	0.817	−24.4		
All Other Insurance Related Activities	10.0	7.0	7.0			$25.5	$10.0	14.0	7.0
525910	10.0	90.3				0.865			
Open-End Investment Funds	35.5	25.5				$35.5		35.5	7.0
525990	2.1	21.4				0.811			
Other Financial Vehicles	10.0	7.0				$25.5		19.0	7.0
551111	9.6	30.1	32.2			0.644			
Offices of Bank Holding Companies	35.5	10.0	35.5			$5.0		19.0	7.0
551112	9.4	27.1	35.4			0.668			
Offices of Other Holding Companies	35.5	10.0	35.5			$5.0		19.0	7.0

Common Size Standards

When many of the same businesses operate in several closely related industries, SBA believes that a common size standard can be more appropriate for these industries even if the industry and relevant program data might suggest different size standards. For instance, in past rules, SBA established a common size standard for Computer Systems Design and Related Services (NAICS 541511, NAICS 541112, NAICS 541513, NAICS 541519 (excluding the ''exception'' for Information Technology Value Added Resellers), and NAICS 811212). Another example is the common size standard for certain Architectural, Engineering and Related Services. These include NAICS 541310, NAICS 541330 (excluding the ''exceptions''), Map Drafting (an ''exception'' under NAICS 541340), NAICS 541360, and NAICS 541370 (64 FR 28275 (May 25, 1999)). As stated previously, more recently SBA adopted common size standards for the industries in NAICS Sector 44–45, Retail Trade (75 FR 61597 (October 6, 2010)), NAICS Sector 54, Professional, Scientific and Technical Services (77 FR 7490 (February 10, 2012)), and NAICS Sector 48–49, Transportation and Warehousing (77 FR 10943 (February 24, 2012)). Similarly, SBA proposed common size standards for several other industries in NAICS Sector 56, Administrative and Support, Waste Management and Remediation Services (76 FR 63510 (October 12, 2011)), NAICS Sector 53, Real Estate and Rental and Leasing (76 FR 70680 (November 15, 2011)), and NAICS Sector 62, Health Care and Social Assistance (77 FR 11001 (February 24, 2012)).

For NAICS Sector 52, SBA proposes, as an alternative to a separate size standard for each industry, common size standards for industries in two NAICS Subsectors and two NAICS Industry Groups, as shown in Table 4, NAICS Subsectors and Industry Groups for Common Size Standards. SBA evaluated industry and Federal contracting factors and derived a common size standard for each NAICS Subsector and Industry Group using the same method as described above. The results are in Table 5, Size Standards Supported by Each Factor for Subsectors and Industry Groups, which immediately follows Table 4, below.

TABLE 4—NAICS SUBSECTORS AND INDUSTRY GROUPS FOR COMMON SIZE STANDARDS

Subsectors/industry groups: NAICS codes	Subsector/industry group title	Industries: 6-digit NAICS codes
5222 [a] (except NAICS 522210)	Nondepository Credit Intermediation	522220, 522291, 522292, 522293, 522294, 522298.
523	Securities, Commodity Contracts, and Other Financial Investments and Related Activities.	523110, 523120, 523130, 523140, 523210, 523910, 523920, 523930, 523991, 523999.
5241 [b] (except NAICS 524126)	Insurance Carriers	524113, 524114, 524127, 524128, 524130.
525 [c]	Funds, Trusts, and Other Financial Vehicles	525110, 525120, 525190, 525910, 525920, 525930, 525990.

[a] NAICS 522210 is excluded from this Industry Group as that industry currently has an asset based size standard. NAICS 522293 also has an assets based size standard currently, but SBA proposes to replace it with the same common size standard that SBA is proposing for NAICS Industry Group 5222 (except NAICS 522210).

[b] NAICS 524126 is excluded from this Industry Group as that industry currently has an employee based size standard. This will be reviewed at a later date along with other employee based size standards.

[c] The 2007 Economic Census special tabulation includes data only for two NAICS codes within NAICS Subsector 525, namely 525910 (Open-End Investment Funds) and 525990 (Other Financial Vehicles). Consequently, SBA proposes to apply the results from NAICS 525910 and 525990 to all remaining industries within this Subsector because they all share the same size standard currently.

TABLE 5—SIZE STANDARDS SUPPORTED BY EACH FACTOR FOR SUBSECTORS AND INDUSTRY GROUPS

NAICS code/Subsector or Industry Group title	Simple average firm size ($ million)	Weighted average firm size ($ million)	Average assets size ($ million)	Four-firm ratio (%)	Four-firm average size ($ million)	Gini coefficient	Federal contract factor (%)	Calculated size standard ($ million)	Current size standard ($million)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
5222 (except NAICS 522210)	$23.0	$550.3	$75.8	.....	.....	0.944	.....	.....	.....
Nondepository Credit Intermediation	35.5	35.5	35.5	.....	.....	35.5	.....	35.5	7.0
523	10.6	319.1	7.7	24.6	37,547.5	0. 938	4.5	.....	.....
Securities, Commodity Contracts, and Other Financial Investments and Related Activities	35.5	35.5	35.5	.....	.....	35.5	.....	35.5	7.0
5241 (except NAICS 524126)	256.0	1,907.7	185.6	.....	.....	0.866	−0.2	.....	.....
Insurance Carriers	35.5	35.5	35.5	.....	.....	35. 5	.....	35.5	7.0
525	3.6	43.8	14.7	.....	.....	0. 860	.....	.....	.....
Funds, Trusts, and Other Financial Vehicles	19.0	14.0	35.5	.....	.....	35.5	.....	30.0	7.0

Evaluation of the Assets Based Size Standard

In 1984, SBA published a notice of policy allowing financial services that prime contractors procure from small minority owned and controlled financial institutions to qualify as subcontracts for purposes of meeting subcontracting goals and credits (*see* 49 FR 13091–01 (April 2, 1984)). Concurrently, SBA also published a proposed rule that a financial institution with total assets of not more than $100 million would be considered small (*see* 49 FR 13052–01 (April 2, 1984)). SBA adopted the $100 million in total assets as the size standard for financial institutions (*see* 49 FR 49398–01 (October 16, 1984)). Over time, the definition of small depository institution was extended to other financial institutions, such as Credit Cards Issuing and International Trade Financing. Since then, along with other monetary based size standards, SBA has periodically adjusted the assets based size standard for inflation, with the latest adjustment increasing it to $175 million (*see* 73 FR 41237 (July 18, 2008)).

Currently, the $175 million assets based size standard applies to four industries within NAICS Industry Group 5221, Depository Credit Intermediation, and two industries within NAICS Industry Group 5222, Non-depository Credit Intermediation. These are NAICS 522110 (Commercial Banking), NAICS 522120 (Savings Institutions), NAICS 522130 (Credit Unions), NAICS 522190 (Other Depository Credit Intermediation), NAICS 522210 (Credit Card Issuing), and NAICS 522293 (International Trade Financing).

Because only a small number of industries have assets based size standards, no comparison groups could be developed to assess differing characteristics of individual industries based on total assets. Thus, most of the SBA's size standards methodology is not applicable to analyzing the assets based size standards for financial institutions. Consequently, in this proposed rule, SBA has examined trends on financial industry factors since 1984 to assess whether the current $175 million assets based size standard should be modified to reflect today's financial industry structure. Specifically, SBA evaluated changes in average firm size, industry concentration, and distribution of firms by size (*i.e.,* Gini coefficient) for financial institutions. Similarly in the 1984 proposed and final rules, SBA both evaluated depository institutions as a whole and the minority owned and controlled depository institutions separately.

SBA evaluated all depository institutions (except for Credit Unions, NAICS 522130 which were evaluated using the NCUA data) using SDI data. SDI does not provide the NAICS definition for every firm included in the database. However, it has a field called Asset Concentration Hierarchy, which can be used to identify each institution's primary specialization in terms of asset concentration, such as credit card services. Another field, Bank Charter Class, identifies the institutions as banks or thrifts. Because the data are not separated by NAICS code, and also the differences among services offered by different financial instructions (such as commercial banks, saving institutions, and credit card issuing companies) have greatly diminished over the recent decades, SBA has analyzed these financial institutions as one industry group.

Since the SDI database does not distinguish minority owned financial institutions from others, SBA identified them using the data on financial institutions that participate in the

Department of the Treasury's Minority Bank Deposit Program, compiled by the Federal Reserve Board (FRB) (*http://www.federalreserve.gov/releases/mob/*) for the 3rd quarter of 2011, and examined their characteristics using the assets data from the SDI database. The earliest period the FRB data are available is the 2nd quarter of 2003. Thus, to fully capture the changes in industry structure of minority owned financial institutions since 1984, SBA has compared the results based on the FRB and SDI data with those based on the data for minority owned banks from the 1984 proposed and final rules.

SBA evaluated the changes in the industry structure of Credit Unions (NAICS 522130) between 1994 and 2011, using the data from the 5300 Call Reports available on the NCUA Web site (*http://www.ncua.gov/DataApps/QCallRptData/Pages/default.aspx*).

The number of all depository institutions (excluding Credit Unions), total assets and calculated industry factors for 1984 and 2011 are shown in Table 6, Industry Factors for All Depository Institutions (excluding Credit Unions). Similar calculations for the minority owned depository institutions (excluding Credit Unions) are shown in Table 7, Industry Factors for Minority Owned Depository Institutions (excluding Credit Unions). The number of Credit Unions, total assets and calculated industry factors for 1995 and 2011 are shown in Table 8, Industry Factors for Credit Unions. For comparability, all monetary values are expressed in 2011 dollars.

TABLE 6—INDUSTRY FACTORS FOR ALL DEPOSITORY INSTITUTIONS (EXCLUDING CREDIT UNIONS)

[All monetary values are in millions of 2011 dollars]

Year	Number of institutions	Total assets	Simple average firm size	Weighted average firm size	Four-firm ratio (%)	Four-firm average size	Gini coefficient
1984*	17,901	$6,702,968	$374	$12,319	10.1	$168,843	0.798
2011	7,445	13,843,140	1,859	81,690	41.4	1,433,933	0.907

Source: SDI/FDIC (*http://www2.fdic.gov/sdi/main.asp*).
*1984 dataset is not available online, but is available from FDIC on request.

TABLE 7—INDUSTRY FACTORS FOR MINORITY OWNED DEPOSITORY INSTITUTIONS (EXCLUDING CREDIT UNIONS).

[All monetary values are in millions of 2011 dollars]

Year	Number of institutions	Total assets	Simple average firm size	Weighted average firm size	Four-firm ratio (%)	Four-firm average size	Gini coefficient
1984[a]	96	$7,556	$79	$274	N/A	N/A	0.491
2011[b]	108	39,138	362	1,662	40.0	$3,917	0.626

Source: a. 1984 proposed (49 FR 13052–01 (April 2, 1984)) and final (49 FR 49398–01 (October 16, 1984)) rules.
b. FRB (*http://www.federalreserve.gov/releases/mob/*) and FDIC.

TABLE 8—INDUSTRY FACTORS FOR CREDIT UNIONS

[All monetary values are in millions of 2011 dollars]

Year	Number of institutions	Total assets	Simple average firm size	Weighted average firm size	Four-firm ratio (%)	Four-firm average size	Gini coefficient
1994	12,201	$420,606	$34	$733	5.5	$5,742	0.793
2011	7,240	974,187	135	3,543	9.8	3,907	0.829

Source: NCUA, *http://www.ncua.gov/DataApps/QCallRptData/Pages/CallRptData.aspx*.

During the 1984 to 2011 span, as shown in Table 6, Industry Factors for All Depository Institutions (excluding Credit Unions), above, the financial industry saw a large drop in the total number of financial institutions, but at the same time it saw a significant increase in asset concentration among fewer of them. The total number of all financial institutions decreased more than half from 17,901 in 1984 to 7,445 in 2011, while their total assets (measured in 2011 dollars) more than doubled during the same period. The average firm size (measured in total assets) also showed significant increase from 1984 to 2011, with their simple average firm size increasing by a factor of 5 and the weighted average firm size increasing by a factor of nearly 7. The four largest institutions' share of total assets (also referred to as four-firm concentration ratio) more than quadrupled (from 10.1% to 41.4%) and their average size increased more than 8 times. The Gini coefficient value also increased from 0.798 in 1984 to 0.907 in 2011, thereby further confirming the trend of increased concentration in the financial industry. The average firm size and Gini coefficient value for the minority owned banks in Table 7, Industry Factors for Minority Owned Depository Institutions (excluding Credit Unions), also strongly confirmed the trend of increased concentration in the financial industry. As shown in Table 8, Industry Factors for Credit Unions, above, the number of Credit Unions decreased by 40 percent and their total assets more than doubled between 1995 and 2011. The average firm size, four-firm statistics, and Gini coefficient for Credit Unions also indicated increased concentration.

For all the six industries in NAICS Subsector 522 that have the $175 million assets based size standard, Federal contracting dollars averaged only about $22 million per year during fiscal years 2008–2010. Thus, under SBA's methodology, Federal contracting was not a significant factor for

establishing a size standard for these industries.

Besides the industry structure, SBA also reviewed the relevant literature and information to determine if total assets are a suitable measure of bank size given the current structure of the banking industry. SBA has found that total assets are still the commonly accepted measure of bank size. For example, the Federal Reserve Board, Federal Deposit Insurance Corporation, and U.S. Treasury Department all use total assets to measure bank size for their regulatory and program purposes. Accordingly, SBA proposes to retain total assets to measure the size of financial institutions.

The current structure of the financial industry relative to that for the 1980s and 1990s, as discussed above, strongly supports increasing the current $175 million assets based size standard. The changes in industry factors for all financial institutions in Table 6 as well as the results for the minority owned institutions in Table 7 and Credit Unions in Table 8 support a size standard in the range of $500 million to $1 billion in total assets. SBA is proposing $500 million as it would include about 82 percent of the financial institutions and 7 percent of total assets of all financial institutions as compared to 54 percent of institutions and only about 3 percent of total assets under the current $175 million. It would include about 82 percent of institutions and one-third of the total assets of all minority owned institutions, as compared to 58 percent of institutions and 14 percent of total assets under the current $175 million. Similarly, the $500 million size standard would include nearly 95 percent of all Credit Unions and 36 percent of their total assets, compared to 87 percent of all Credit Unions and 19 percent of their total assets under the current $175 million size standard. SBA considered proposing $1 billion in total assets, but that would include all but the five largest minority owned banks, some of which may not be in need of Federal assistance.

The proposed $500 million assets based size standard would apply to the following five industries within NAICS Subsector 522, Credit Intermediation and Related Activities: NAICS 522110 (Commercial Banking), NAICS 522120 (Savings Institutions), NAICS 522130 (Credit Unions), NAICS 522190 (Other depository Credit Intermediation), and NAICS 522210 (Credit Card Issuing).

Special Considerations

NAICS 522293, International Trade Financing

NAICS 522293, International Trade Financing, currently has the $175 million assets based size standard. However, there are no assets data available to evaluate this industry. Furthermore, most of the receipts and employment data for this industry are suppressed in the 2007 Economic Census special tabulation due to the disclosure limitation. In terms of average size and distribution of firms by receipts and employment size based on SBA's estimated values for missing data, firms primarily engaged in NAICS 522293 are much more similar to those primarily engaged in other industries within NAICS Industry Group 5222 (except for NAICS 522210) that have receipts based size standards than firms primarily engaged in industries in NAICS Industry Group 5221 and NAICS 522210 that have assets based sized standards. Accordingly, for NAICS 522293 SBA is proposing the same $35.5 million receipts based size standard that it has proposed for all industries in NAICS Industry Group 5222 (except for NAICS 522210). SBA welcomes feedback on this proposal.

NAICS Subsector 525, Funds, Trusts, and Other Financial Vehicles

As noted earlier, the 2007 Economic Census special tabulation includes data only for two NAICS codes within NAICS Subsector 525: (1) NAICS 525910, Open-End Investment Funds: and (2) NAICS 525990, Other Financial Vehicles. Because all industries in that Subsector currently share the same $7 million receipts based size standard, SBA applies the results based on data for NAICS 525910 and 525990 to all remaining industries within this Subsector and proposes the same common size standard of $30 million in average annual receipts for all industries in the Subsector. SBA seeks comments on this proposal as well as suggestions on alternative data sources, if any, to evaluate those industries.

NAICS 524126, Direct Property and Causality Insurance Carriers

The current size standard for NAICS 524126, Direct Property and Causality Insurance, is 1,500 employees, which SBA has not reviewed in this proposed rule. SBA will review this size standard together with other employee based size standards at a later date. Until then, SBA proposes to retain the current 1,500-employee size standard for NAICS 524126.

Evaluation of SBA Loan Data

Before deciding on an industry's size standard, SBA also considers the impact of new or revised size standards on SBA's loan programs. Accordingly, SBA examined its 7(a) and 504 Loan Program data for fiscal years 2008–2010 to assess whether the proposed size standards need further adjustments to ensure credit opportunities for small businesses through those programs. For the industries reviewed in this rule, the data show that it is mostly businesses much smaller than the current size standards that use SBA's 7(a) and 504 loans.

Furthermore, the Jobs Act established an alternative size standard for SBA's 7(a) and 504 Loan Programs. Specifically, an applicant exceeding an NAICS industry size standard may still be eligible if its maximum tangible net worth does not exceed $15 million and its average net income after Federal income taxes (excluding any carry-over losses) for the 2 full fiscal years before the date of the application is not more than $5 million.

Therefore, no size standard in NAICS Sectors 52 and 55 needs an adjustment based on this factor.

Proposed Changes to Size Standards

Table 9, Summary of Size Standards Analysis, below, summarizes the results of SBA's analyses of industry specific size standards from Table 3, the results of common size standards analysis from Table 5, and the results of the analysis of the assets based size standard. With the proposed change of an assets based size standard to a receipts based size standard for NAICS 522293, International Trade Financing, the results show increases in size standards for 37 industries, a decrease for one, and no change for one industry in NAICS Sector 52. The results also show increases in size standards for both industries in NAICS Sector 55.

TABLE 9—SUMMARY OF SIZE STANDARDS ANALYSIS

NAICS code	NAICS title	Current size standard ($ million)	Calculated industry-specific size standard ($ million)	Calculated common size standard ($ million)
522110	Commercial Banking	175 million in assets		$500 million in assets.
522120	Savings Institutions	175 million in assets		500 million in assets.
522130	Credit Unions	175 million in assets		500 million in assets.
522190	Other Depository Credit intermediation	175 million in assets		500 million in assets.
522210	Credit Card Issuing	175 million in assets		500 million in assets.
522220	Sales Financing	7.0	$35.5	35.5.
522291	Consumer Lending	7.0	35.5	35.5.
522292	Real Estate Credit	7.0	35.5	35.5.
522293	International Trade Financing	175 million in assets		35.5.
522294	Secondary Market Financing	7.0	35.5	35.5.
522298	All Other Nondepository Credit Intermediation	7.0	35.5	35.5.
522310	Mortgage and Nonmortgage Loan Brokers	7.0	7.0	
522320	Financial Transactions, Reserve, and Clearinghouse Activities.	7.0	35.5	
522390	Other Activities Related to Credit Intermediation	7.0	19.0	
523110	Investment Banking and Securities Dealing	7.0	35.5	35.5.
523120	Securities Brokerage	7.0	35.5	35.5.
523130	Commodity Contracts Dealing	7.0	30.0	35.5.
523140	Commodity Contracts Brokerage	7.0	19.0	35.5.
523210	Securities and Commodity Exchanges	7.0	19.0	35.5.
523910	Miscellaneous Intermediation	7.0	19.0	35.5.
523920	Portfolio Management	7.0	35.5	35.5.
523930	Investment Advice	7.0	14.0	35.5.
523991	Trust, Fiduciary and Custody Activities	7.0	30.0	35.5.
523999	Miscellaneous Financial Investment Activities	7.0	35.5	35.5.
524113	Direct Life Insurance Carriers	7.0	30.0	35.5.
524114	Direct Health and Medical Insurance Carriers	7.0	25.5	35.5.
524127	Direct Title Insurance Carriers	7.0	35.5	35.5.
524128	Other Direct Insurance (except Life, Health and Medical) Carriers.	7.0	30.0	35.5.
524130	Reinsurance Carriers	7.0	30.0	35.5.
524210	Insurance Agencies and Brokerages	7.0	5.0	
524291	Claims Adjusting	7.0	19.0	
524292	Third Party Administration of Insurance and Pension Funds.	7.0	30.0	
524298	All Other Insurance Related Activities	7.0	14.0	
525110	Pension Funds	7.0		30.0.
525120	Health and Welfare Funds	7.0		30.0.
525190	Other insurance Funds	7.0		30.0.
525910	Open-End Investment Funds	7.0	35.5	30.0.
525920	Trusts, Estates and Agency Accounts	7.0		30.0.
525930	Real Estate Investment Trusts	7.0		30.0.
525990	Other Financial Vehicles	7.0	19.0	30.0.
551111	Offices of Bank Holding Companies	7.0	19.0	
551112	Offices of Other Holding Companies	7.0	19.0	

Although the results in Table 9, Summary of Size Standards Analysis, seem to support lowering the size industry for one industry (NAICS 524210, Insurance Agencies and Brokerages), SBA believes that lowering small business size standards is not in the best interest of small businesses in the current economic environment. The U.S. economy was in recession from December 2007 to June 2009, the longest and deepest of any recessions since World War II. The economy lost more than eight million non-farm jobs during 2008–2009. In response, Congress passed and the President signed into law the American Recovery and Reinvestment Act of 2009 (Recovery Act) to promote economic recovery and to preserve and create jobs. Although the recession officially ended in June 2009, the unemployment rate is still high at 8.2 percent in June 2012 and is forecast to remain around this level at least through the end of 2012. Recently, Congress passed and the President signed the Jobs Act to promote small business job creation. The Jobs Act puts more capital into the hands of entrepreneurs and small business owners; strengthens small businesses' ability to compete for contracts; includes recommendations from the President's Task Force on Federal Contracting Opportunities for Small Business; creates a better playing field for small businesses; promotes small business exporting, building on the President's National Export Initiative; expands training and counseling; and provides $12 billion in tax relief to help small businesses invest in their firms and create jobs. A proposal to reduce size standards will have an immediate impact on jobs, and it would be contrary to the expressed will of the President and the Congress.

Lowering size standards would decrease the number of firms that participate in Federal financial and procurement assistance programs for small businesses. It would also affect small businesses that are now exempt from or receive some form of relief from myriad other Federal regulations that use SBA's size standards. That impact could take the form of increased fees,

paperwork, or other compliance requirements for small businesses. Furthermore, size standards based solely on analytical results without any other considerations can cut off currently eligible small firms from those programs and benefits. That would run counter to what SBA and the Federal government are doing to help small businesses. Reducing size eligibility for Federal procurement opportunities, especially under current economic conditions, would not preserve or create more jobs; rather, it would have the opposite effect. Therefore, in this proposed rule, SBA does not intend to reduce size standards for any industries. For one industry where analysis might seem to support lowering the size standard, SBA proposes to retain the current size standard.

Furthermore, as stated previously, the Small Business Act requires the Administrator to ''* * * consider other factors deemed to be relevant * * *'' to establishing small business size standards. The current economic conditions and the impact on job creation are quite relevant factors when establishing small business size standards. SBA nevertheless invites comments and suggestions on whether it should lower the size standard for NAICS 524210, Insurance Agencies and Brokerages, to $5 million, or retain the current $7 million, which is the anchor standard for receipts based standards.

Comparing industry specific size standards and common size standards within each Industry Group or Subsector, SBA finds that for several industries, as shown in Tables 4 and 5 above, common size standards are more appropriate for several reasons. First, analyzing industries at the more aggregated Industry Group or Subsector levels simplifies size standards analysis, and the results will be more consistent among related industries. Second, in NAICS Sector 52 most industries within each Industry Group or Subsector currently have the same size standards and SBA believes it is better to keep the revised size standards also same unless industries are significantly different. Third, within each Industry Group or Subsector many of the same businesses tend to operate in the same multiple industries. Thus, SBA believes that common size standards would reflect the Federal marketplace in those industries better than different size standards for each industry.

For industries where both industry specific size standards and common size standards have been calculated, for the above reasons, SBA proposes to apply common size standards. For industries for which SBA has not estimated common size standards it proposes to apply industry specific size standards. As discussed above, lowering small business size standards is inconsistent with what the Federal government is doing to stimulate the economy and would discourage job growth for which Congress established the Recovery Act and Jobs Act. In addition, it would be inconsistent with the Small Business Act requiring the Administrator to establish size standards based on industry analysis and other relevant factors such as current economic conditions.

In addition, retaining current standards when the analytical results can suggest lowering them is consistent with SBA's prior actions for NAICS Sector 44–45 (Retail Trade), NAICS Sector 72 (Accommodation and Food Services), and NAICS Sector 81 (Other Services) that the Agency proposed (74 FR 53924, 74 FR 53913, and 74 FR 53941, October 21, 2009) and adopted in its final rules (75 FR 61597, 75 FR 61604, and 75 FR 61591, October 6, 2010). It is also consistent with the Agency's proposed rule (76 FR 14323 (March 16, 2011)) and final rule (77 FR 7490 (February 10, 2012)) for NAICS Sector 54, Professional, Technical, and Scientific Services, the proposed rule (76 FR 27935 (May 13, 2011)) and final rule ((77 FR 10943 (February 24, 2012)) for NAICS Sector 48–49, Transportation and Warehousing, and proposed rules for NAICS Sector 51, Information (76 FR 63216 (October 12, 2011)), NAICS Sector 56, Administrative and Support, Waste Management and Remediation Services (76 FR 63510 (October 12, 2011)), NAICS Sector 61, Educational Services (76 FR 70667 (November 15, 2011)), NAICS Sector 53, Real Estate and Rental and Leasing (76 FR 70680 (November 15, 2011)), NAICS Sector 62, Health Care and Social Assistance (forthcoming), NAICS Sector 71, Arts, Entertainment and Recreation (forthcoming), and NAICS Sector 23, Construction (forthcoming). In each of those final and proposed rules, SBA opted not to reduce small business size standards, for the same reasons it has provided above in this proposed rule.

Thus, SBA proposes to increase size standards for 37 industries, and retain the current size standards for two industries in NAICS Sector 52. In addition, SBA proposes to change the measure of size for NAICS 522293, International Trade Financing, from total assets to annual receipts. SBA also proposes to increase size standards for two industries in NAICS Sector 55. The SBA's proposed changes are summarized in Table 10, Summary of Proposed Size Standards Revisions, below.

TABLE 10—SUMMARY OF PROPOSED SIZE STANDARDS REVISIONS

NAICS code	NAICS title	Current size standard ($ million)	Proposed size standard ($ million)
522110	Commercial Banking	175 million in assets	500 million in assets.
522120	Savings Institutions	175 million in assets	500 million in assets.
522130	Credit Unions	175 million in assets	500 million in assets.
522190	Other Depository Credit intermediation	175 million in assets	500 million in assets.
522210	Credit Card Issuing	175 million in assets	500 million in assets.
522220	Sales Financing	7.0	35.5.
522291	Consumer Lending	7.0	35.5.
522292	Real Estate Credit	7.0	35.5.
522293	International Trade Financing	175 million in assets	35.5.
522294	Secondary Market Financing	7.0	35.5.
522298	All Other Nondepository Credit Intermediation	7.0	35.5.
522320	Financial Transactions, Reserve, and Clearinghouse Activities	7.0	35.5.
522390	Other Activities Related to Credit Intermediation	7.0	19.0.
523110	Investment Banking and Securities Dealing	7.0	35.5.
523120	Securities Brokerage	7.0	35.5.
523130	Commodity Contracts Dealing	7.0	35.5.
523140	Commodity Contracts Brokerage	7.0	35.5.
523210	Securities and Commodity Exchanges	7.0	35.5.

TABLE 10—SUMMARY OF PROPOSED SIZE STANDARDS REVISIONS—Continued

NAICS code	NAICS title	Current size standard ($ million)	Proposed size standard ($ million)
523910	Miscellaneous Intermediation	7.0	35.5.
523920	Portfolio Management	7.0	35.5.
523930	Investment Advice	7.0	35.5.
523991	Trust, Fiduciary and Custody Activities	7.0	35.5.
523999	Miscellaneous Financial Investment Activities	7.0	35.5.
524113	Direct Life Insurance Carriers	7.0	35.5.
524114	Direct Health and Medical Insurance Carriers	7.0	35.5.
524127	Direct Title Insurance Carriers	7.0	35.5.
524128	Other Direct Insurance (except Life, Health and Medical) Carriers	7.0	35.5.
524130	Reinsurance Carriers	7.0	35.5.
524291	Claims Adjusting	7.0	19.0.
524292	Third Party Administration of Insurance and Pension Funds	7.0	30.0.
524298	All Other Insurance Related Activities	7.0	14.0.
525110	Pension Funds	7.0	30.0.
525120	Health and Welfare Funds	7.0	30.0.
525190	Other Insurance Funds	7.0	30.0.
525910	Open-End Investment Funds	7.0	30.0.
525920	Trusts, Estates, and Agency Funds	7.0	30.0.
525930	Real Estate Investments Funds	7.0	30.0.
525990	Other Financial Vehicles	7.0	30.0.
551111	Offices of Bank Holding Companies	7.0	19.0.
551112	Offices of Other Holding Companies	7.0	19.0.

Evaluation of Dominance in Field of Operation

SBA has determined that for the industries in NAICS Sectors 52 and 55 for which it has proposed to increase size standards, no individual firm at or below the proposed size standard will be large enough to dominate its field of operation. At the proposed size standards for individual industries, if adopted, the small business share of total industry receipts among those industries with receipts based size standards is, in average, 0.3 percent, varying from .01 percent to 1.3 percent and the small business share among the industries with assets based size standards is .004 percent. These levels of market shares effectively preclude a firm at or below the proposed size standards from exerting control on any of the industries.

Request for Comments

SBA invites public comments on this proposed rule, especially on the following issues:

1. Whether SBA's proposal to simplify size standards by using eight fixed levels for receipts based size standards—$5 million, $7 million, $10 million, $14 million, $19 million, $25.5 million, $30 million, and $35.5 million—is necessary and whether the proposed fixed size levels are appropriate. SBA welcomes suggestions on alternative approaches to simplifying small business size standards.

2. Whether SBA's proposal to increase 32 receipts based and five assets based size standards and to retain two receipts based size standards in NAICS Sector 52, is appropriate given the economic characteristics of each industry.

3. Whether SBA's proposal to increase the two size standards in NAICS Sector 55 is appropriate given the economic characteristics of each industry.

4. Whether SBA should change the measure of size for NAICS 522293, International Trade Financing, from total assets to annual receipts.

5. SBA also seeks feedback and suggestions on alternative size standards, if they would be more appropriate, including whether the number of employees is a more suitable measure of size for certain industries and what that employee level should be.

6. SBA proposes common receipts based size standards for industries within NAICS Subsectors 523 and 525 as well as NAICS Industry Groups 5222 (except for NAICS 522210) and 5241 (except for NAICS 524126). Similarly, SBA proposes a common assets based size standard for three industries within NAICS Industry Group 5221 (except for NAICS 522130) and for NAICS 522210. SBA invites comments or suggestions along with supporting information with respect to the following:

a. Whether SBA should adopt common size standards for those industries or establish a separate size standard for each industry, and

b. Whether the proposed common size standards for those industries are at the correct levels or what would be more appropriate if what SBA has proposed are not appropriate.

7. For several industries in NAICS Sectors 52 and 55, based on industry and program data, SBA proposes large increases, while for others the proposed increases are modest. The SBA seeks feedback on whether, as a policy, it should limit the increase to a size standard or establish minimum or maximum values for its size standards. The SBA seeks suggestions on appropriate levels of changes to size standards and on their minimum or maximum levels.

8. SBA's proposed size standards are based on five primary factors—average firm size, average assets size (as a proxy of startup costs and entry barriers), four-firm concentration ratio, distribution of firms by size and, the total share and small business share of Federal contracting dollars of the evaluated industries. SBA welcomes comments on these factors and/or suggestions of other factors that it should consider when evaluating or revising size standards. SBA also seeks information on relevant data sources, other than what it uses, if available.

9. SBA gives equal weight to each of the five primary factors in all industries. SBA seeks feedback on whether it should continue giving equal weight to each factor or whether it should give more weight to one or more factors for certain industries. Recommendations to weigh some factors more than others should include suggested weights for each factor along with supporting information.

10. For analytical simplicity and efficiency, in this proposed rule, SBA has refined its size standard methodology to obtain a single value as a proposed size standard instead of a

range of values, as in its past size regulations. SBA welcomes any comments on this procedure and suggestions on alternative methods.

Public comments on the above issues are very valuable to SBA for validating its size standard methodology and its proposed size standards revisions in this proposed rule. This will help SBA to move forward with its review of size standards for other NAICS Sectors. Commenters addressing size standards for a specific industry or a group of industries should include relevant data and/or other information supporting their comments. If comments relate to using size standards for Federal procurement programs, SBA suggests that commenters provide information on the size of contracts in their industries, the size of businesses that can undertake the contracts, start-up costs, equipment and other asset requirements, the amount of subcontracting, other direct and indirect costs associated with the contracts, the use of mandatory sources of supply for products and services, and the degree to which contractors can mark up those costs.

Compliance With Executive Orders 12866, 13563, 12988 and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35) and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this proposed rule is not a ''significant regulatory action'' for purposes of Executive Order 12866. In order to help explain the need of this rule and the rule's potential benefits and costs, SBA is providing a Cost Benefit Analysis in this section of the rule. This is also not a ''major rule'' under the Congressional Review Act, 5 U.S.C. 800.

Cost Benefit Analysis

1. Is there a need for the regulatory action?

SBA believes that proposed size standards revisions in NAICS Sector 52, Finance and Insurance, and NAICS Sector 55, Management of Companies and Enterprises, will better reflect the economic characteristics of small businesses in this Sector and the Federal government marketplace. SBA's mission is to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To determine the intended beneficiaries of these programs, SBA establishes distinct definitions of which businesses are deemed small businesses. The Small Business Act (15 U.S.C. 632(a)) delegates to SBA's Administrator the responsibility for establishing small business definitions. The Act also requires that small business definitions vary to reflect industry differences. The recently enacted Jobs Act also requires SBA to review all size standards and make necessary adjustments to reflect market conditions. The supplementary information section of this proposed rule explains SBA's methodology for analyzing a size standard for a particular industry.

2. What are the potential benefits and costs of this regulatory action?

The most significant benefit to businesses obtaining small business status because of this rule is gaining eligibility for Federal small business assistance programs. These include SBA's financial assistance programs, economic injury disaster loans, and Federal procurement programs intended for small businesses. Federal procurement programs provide targeted opportunities for small businesses under SBA's business development programs, such as 8(a), Small Disadvantaged Businesses (SDB), small businesses located in Historically Underutilized Business Zones (HUBZone), women-owned small businesses (WOSB), and service-disabled veteran-owned small businesses (SDVOSB). Federal agencies may also use SBA's size standards for a variety of other regulatory and program purposes. These programs help small businesses become more knowledgeable, stable, and competitive. SBA estimates that in the 34 industries for which it proposes to increase receipts based size standards in NAICS Sectors 52 and 55, more than 5,400 firms, not small under the existing size standards, will become small under the proposed size standards and therefore eligible for these programs. That is about 2.2 percent of all firms classified as small under the current receipts based size standards in NAICS Sector 52 and 55. If adopted as proposed, this will increase the small business share of total receipts of all industries with receipts based size standards within NAICS Sectors 52 and 55 from 5.1 percent to 7.5 percent. Additionally, due to the proposed increase to the assets based size standard from $175 million to $500 million for four industries in NAICS Sector 52 (*i.e.,* NAICS 522110, 522120, 522190 and 522210), approximately 2,000 additional depository institutions, including about 25 minority owned financial institutions, will qualify as small. This will increase the small business share of total assets in those industries from 2.5 percent under the current assets based size standard to 7 percent for all financial institutions and from 14.4 percent to 33 percent for minority owned institutions. This would also include about 550 additional Credit Unions, but they would not qualify as small business concerns for Federal programs intended for small businesses because they are not-for profit entities. However, they may qualify as small entities for other Federal programs and regulatory purposes.

The following groups will benefit from the proposed size standards revisions in this rule, if adopted as proposed: (1) Some businesses that are above the current size standards may gain small business status under the higher size standards, thereby enabling them to participate in Federal small business assistance programs; (2) growing small businesses that are close to exceeding the current size standards will be able to retain their small business status under the higher size standards, thereby enabling them to continue their participation in the programs; (3) Federal agencies will have a larger pool of small businesses from which to draw for their small business procurement programs; (4) prime contractors that could benefit from agreements with the minority owned depository institutions in meeting their subcontracting goals and credits; and (5) potentially small business communities could benefit from increased banking activities in the area.

SBA estimates that firms gaining small business status under the proposed receipts based size standards could receive Federal contracts totaling $8 million to $10 million annually under SBA's small business, 8(a), SDB, HUBZone, WOSB, and SDVOSB Programs, and other unrestricted procurements. The added competition for many of these procurements can also result in lower prices to the Government for procurements reserved for small businesses, but SBA cannot quantify this benefit.

Under SBA's 7(a) and 504 Loan Programs, based on the fiscal years 2008–2010 data, SBA estimates up to 30 additional loans totaling about $4 million to $5 million in Federal loan guarantees could be made to these newly defined small businesses under the proposed size standards. Increasing the size standards will likely result in more small business guaranteed loans to businesses in these industries, but it is be impractical to try to estimate exactly the number and total amount of loans. There are two reasons for this: (1) Under the Jobs Act, SBA can now guarantee substantially larger loans than in the

past; and, (2) as described above, the Jobs Act established an alternative size standard ($15 million in tangible net worth and $5 million in net income after income taxes) for business concerns that do not meet the size standards for their industry. Therefore, SBA finds it difficult to quantify the actual impact of these proposed size standards on its 7(a) and 504 Loan Programs.

Newly defined small businesses will also benefit from SBA's Economic Injury Disaster Loan (EIDL) Program. Since this program is contingent on the occurrence and severity of a disaster, SBA cannot make a meaningful estimate of this impact.

To the extent that those 7,400 newly defined firms (including 5,400 firms under the receipts based size standards in 34 industries and 2,000 firms under the assets based size standards in four industries) could become active in Federal procurement programs, the proposed changes, if adopted, may entail some additional administrative costs to the government associated with there being more bidders on small business procurement opportunities. In addition, there will be more firms seeking SBA's guaranteed loans, more firms eligible for enrollment in the Central Contractor Registration (CCR)'s Dynamic Small Business Search database, and more firms seeking certification as 8(a) or HUBZone firms or qualifying for small business, WOSB, SDVOSB, and SDB status. Among those newly defined small businesses seeking SBA assistance, there could be some additional costs associated with compliance and verification of small business status and protests of small business status. SBA believes that these added administrative costs will be minimal because mechanisms are already in place to handle these requirements.

Additionally, Federal government contracts may have higher costs. With a greater number of businesses defined as small, Federal agencies may choose to set aside more contracts for competition among small businesses rather than using full and open competition. The movement from unrestricted to small business set-aside contracting might result in competition among fewer total bidders, although there will be more small businesses eligible to submit offers. However, the additional costs associated with fewer bidders are expected to be minor since, by law, procurements may be set aside for small businesses or reserved for the 8(a), HUBZone, WOSB, or SDVOSB Programs only if awards are expected to be made at fair and reasonable prices. In addition, there may be higher costs when more full and open contracts are awarded to HUBZone businesses that receive price evaluation preferences.

The proposed size standards revisions, if adopted, may have some distributional effects among large and small businesses. Although SBA cannot estimate with certainty the actual outcome of the gains and losses among small and large businesses, it can identify several probable impacts. There may be a transfer of some Federal contracts to small businesses from large businesses. Large businesses may have fewer Federal contract opportunities as Federal agencies decide to set aside more Federal contracts for small businesses. In addition, some Federal contracts may be awarded to HUBZone concerns instead of large businesses since these firms may be eligible for a price evaluation preference for contracts when they compete on a full and open basis.

Similarly, currently defined small businesses may obtain fewer Federal contracts due to the increased competition from more businesses defined as small. This transfer may be offset by a greater number of Federal procurements set aside for all small businesses. The number of newly defined and expanding small businesses that are willing and able to sell to the Federal Government will limit the potential transfer of contracts from large and currently defined small businesses. SBA cannot estimate the potential distributional impacts of these transfers with any degree of precision. The proposed revisions to the existing size standards in NAICS Sectors 52 and 55 are consistent with SBA's statutory mandate to assist small business. This regulatory action promotes the Administration's objectives. One of SBA's goals in support of the Administration's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit, Government contracts, and management and technical assistance. Reviewing and modifying size standards, when appropriate, ensures that intended beneficiaries have access to small business programs designed to assist them.

Executive Order 13563

A description of the need for this regulatory action and benefits and costs associated with this action including possible distributional impacts that relate to Executive Order 13563 is included above in the Cost Benefit Analysis under Executive Order 12866.

In an effort to engage interested parties in this action, SBA has presented its size standards methodology (discussed above under **SUPPLEMENTARY INFORMATION**) to various industry associations and trade groups. SBA also met with a number of industry groups to get their feedback on its methodology and other size standards issues. In addition, SBA presented its size standards methodology to businesses in 13 cities in the U.S. and sought their input as part of Jobs Act tours. The presentation also included information on the latest status of the comprehensive size standards review and on how interested parties can provide SBA with input and feedback on size standards review.

Additionally, SBA sent letters to the Directors of the Offices of Small and Disadvantaged Business Utilization (OSDBU) at several Federal agencies with considerable procurement responsibilities requesting their feedback on how the agencies use SBA's size standards and whether current size standards meet their programmatic needs (both procurement and non-procurement). SBA gave appropriate consideration to all input, suggestions, recommendations, and relevant information obtained from industry groups, individual businesses, and Federal agencies in preparing this proposed rule.

The review of size standards in NAICS Sectors 52 and 55 is consistent with EO 13563, Section 6, calling for retrospective analyses of existing rules. The last comprehensive review of size standards occurred during the late 1970s and early 1980s. Since then, except for periodic adjustments for monetary based size standards, most reviews of size standards were limited to a few specific industries in response to requests from the public and Federal agencies. SBA recognizes that changes in industry structure and the Federal marketplace over time have rendered existing size standards for some industries no longer supportable by current data. Accordingly, in 2007, SBA began a comprehensive review of its size standards to ensure that existing size standards have supportable bases and to revise them when necessary. In addition, the Jobs Act requires SBA to conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. Specifically, the Jobs Act requires SBA to conduct a detailed review of at least one-third of all size standards during every18-month period from the date of its enactment and do a complete review of all size standards

not less frequently than once every 5 years thereafter.

Executive Order 12988

This action meets applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

Executive Order 13132

For purposes of Executive Order 13132, SBA has determined that this proposed 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. Therefore, SBA has determined that this proposed rule has no federalism implications warranting preparation of a federalism assessment.

Paperwork Reduction Act

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this proposed rule will not impose any new reporting or recordkeeping requirements.

Initial Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this proposed rule, if adopted, may have a significant impact on a substantial number of small businesses in NAICS Sector 52, Finance and Insurance, and NAICS Sector 55, Management of Companies and Enterprises. As described above, this rule may affect small businesses seeking Federal contracts, loans under SBA's 7(a), 504 and Economic Injury Disaster Loan Programs, and assistance under other Federal small business programs, as well as subcontracting programs.

Immediately below, SBA sets forth an initial regulatory flexibility analysis (IRFA) of this proposed rule addressing the following questions: (1) What are the need for and objective of the rule? (2) What are SBA's description and estimate of the number of small businesses to which the rule will apply? (3) What are the projected reporting, recordkeeping, and other compliance requirements of the rule? (4) What are the relevant Federal rules that may duplicate, overlap, or conflict with the rule? and (5) What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small businesses?

1. What are the need for and objective of the rule?

Changes in industry structure, technological changes, productivity growth, mergers and acquisitions, and updated industry definitions have changed the structure of many industries in NAICS Sectors 52 and 55. Such changes can be sufficient to support revisions to current size standards for some industries. Based on the analysis of the latest data available, SBA believes that the revised standards in this proposed rule more appropriately reflect the size of businesses that need Federal assistance. The recently enacted Jobs Act also requires SBA to review all size standards and make necessary adjustments to reflect market conditions.

2. What are SBA's description and estimate of the number of small businesses to which the rule will apply?

If the proposed rule is adopted in its present form, SBA estimates that more than 5,400 additional firms will become small because of proposed increases to receipts based size standards for 36 industries in NAICS Sectors 52 and 55. That represents 2.2 percent of total firms that are small under current receipts based size standards in all industries within these Sectors. This will result in an increase in the small business share of total receipts in those industries from 5.1 percent under the current size standards to 7.5 percent under the proposed size standards. Additionally, due to the proposed increase in the asset-based size standard for four industries within NAICS Sector 52 about 2,000 additional financial institutions will qualify as small, including about 25 minority owned financial institutions that could be eligible to participate in agreements with prime contractors for subcontracting goals and credits. In addition, about 550 additional Credit Unions would qualify as small under the higher assets based size standard, but they would not qualify for Federal programs intended for small businesses because they are not-for profit entities. However, they may qualify as small entities for other Federal programs and regulatory purposes. The proposed size standards, if adopted, will enable more small businesses to retain their small business status for a longer period. Many firms may have lost their eligibility and find it difficult to compete at current size standards with companies that are significantly larger than they are. SBA believes the competitive impact will be positive for existing small businesses and for those that exceed the size standards but are on the very low end of those that are not small. They might otherwise be called or referred to as mid-sized businesses, although SBA only defines what is small; other entities are other than small.

3. What are the projected reporting, record keeping and other compliance requirements of the rule?

The proposed size standard changes impose no additional reporting or record keeping requirements on small businesses. However, qualifying for Federal procurement and a number of other programs requires that businesses register in the CCR database and certify in the Online Representations and Certifications Application (ORCA) that they are small at least once annually. Therefore, businesses opting to participate in those programs must comply with CCR and ORCA requirements. There are no costs associated with either CCR registration or ORCA certification. Changing size standards alters the access to SBA's programs that assist small businesses, but does not impose a regulatory burden because they neither regulate nor control business behavior.

4. What are the relevant Federal rules, which may duplicate, overlap or conflict with the rule?

Under § 3(a)(2)(C) of the Small Business Act, 15 U.S.C. 632(a)(2)(c), Federal agencies must use SBA's size standards to define a small business, unless specifically authorized by statute to do otherwise. In 1995, SBA published in the **Federal Register** a list of statutory and regulatory size standards that identified the application of SBA's size standards as well as other size standards used by Federal agencies (60 FR 57988 (November 24, 1995)). SBA is not aware of any Federal rule that would duplicate or conflict with establishing size standards.

However, the Small Business Act and SBA's regulations allow Federal agencies to develop different size standards if they believe that SBA's size standards are not appropriate for their programs, with the approval of SBA's Administrator (13 CFR 121.903). The Regulatory Flexibility Act authorizes an Agency to establish an alternative small business definition, after consultation with the Office of Advocacy of the U.S. Small Business Administration (5 U.S.C. 601(3)).

5. What alternatives will allow the agency to accomplish its regulatory objectives while minimizing the impact on small entities?

By law, SBA is required to develop numerical size standards for establishing eligibility for Federal small business assistance programs. Other than varying size standards by industry and changing the size measures, no practical alternative exists to the systems of numerical size standards.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, SBA proposes to amend part 13 CFR Part 121 as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 662, and 694a(9).

2. In § 121.201, amend the table ''Small Business Size Standards by NAICS Industry'' as follows:

a. In § 121.201, in the table, revise the entries for ''522110'', ''522120'', ''522130'', ''522190'', ''522210'', ''522220'', ''522291'', ''522292'', ''522293'', ''522294'', ''522298'', ''522320'', ''522390'', ''523110'', ''523120'', ''523130'', ''523140'', ''523210'', ''523910'', ''523920'', ''523930'', ''523991'', ''523999'', ''524113'', ''524114'', ''524127'', ''524128'', ''524130'', ''524291'', ''524292'', ''524298'', ''525110'', ''525120'', ''525190'', ''525910'', ''525920'', ''525930'', ''525990'', ''551111'', and ''551112''

b. Revise footnote 8 as shown below after the table.

The revisions read as follows:

§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?

* * * * *

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
522110	Commercial Banking [8]	500 million in assets [8]	
522120	Savings Institutions [8]	500 million in assets [8]	
522130	Credit Unions	500 million in assets [8]	
522190	Other Depository Credit Intermediation [8]	500 million in assets [8]	
522210	Credit Card Issuing [8]	500 million in assets [8]	
522220	Sales Financing	35.5	
522291	Consumer Lending	35.5	
522292	Real Estate Credit	35.5	
522293	International Trade Financing	35.5	
522294	Secondary Market Financing	35.5	
522298	All Other Nondepository Credit Intermediation	35.5	
*	* * *	* *	*
522320	Financial Transactions, Reserve, and Clearing House Activities	35.5	
522390	Other Activities Related to Credit Intermediation	19.0	
*	* * *	* *	*
523110	Investment Banking and Securities Dealing	35.5	
523120	Securities Brokerage	35.5	
523130	Commodity Contracts Dealing	35.5	
523140	Commodity Contracts Brokerage	35.5	
523210	Securities and Commodity Exchanges	35.5	
523910	Miscellaneous Intermediation	35.5	
523920	Portfolio Management	35.5	
523930	Investment Advice	35.5	
523991	Trust, Fiduciary and Custody Activities	35.5	
523999	Miscellaneous Financial Investment Activities	35.5	
*	* * *	* *	*
524113	Direct Life Insurance Carriers	35.5	
524114	Direct Health and Medical Insurance Carriers	35.5	
*	* * *	* *	*
524127	Direct Title Insurance Carriers	35.5	
524128	Other Direct Insurance (except Life, Health and Medical) Carriers	35.5	
524130	Reinsurance Carriers	35.5	
*	* * *	* *	*
524291	Claims Adjusting	19.0	
524292	Third Party Administration of Insurance and Pension Funds	30.0	
524298	All Other Insurance Related Activities	14.0	
*	* * *	* *	*
525110	Pension Funds	30.0	
525120	Health and Welfare Funds	30.0	
525190	Other Insurance Funds	30.0	
525910	Open-End Investment Funds	30.0	
525920	Trusts, Estates, and Agency Funds	30.0	
525930	Real Estate Investments Trusts	30.0	

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
525990	Other Financial Vehicles	30.0	
*	* * * *	* *	*
551111	Offices of Bank Holding Companies	19.0	
551112	Offices of Other Holding Companies	19.0	
*	* * * *	* *	*

Footnotes

8. *NAICS Codes 522110, 522120, 522130, 522190, and 522210*—A financial Institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year. ''Assets'' for the purposes of this size standard means the assets defined according to the Federal Financial Institutions Examination Council 041 call report form for NAICS codes 522110, 522120, 522190, and 522210 and the National Credit Union Administration 5300 call report form for NAICS code 522130.

* * * * * * *

Dated, June 22, 2012.

Karen G. Mills,

Administrator.

[FR Doc. 2012–22258 Filed 9–10–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AG43

Small Business Size Standards: Agriculture, Forestry, Fishing, and Hunting

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA) proposes to increase small business size standards for 11 industries in North American Industry Classification System (NAICS) Sector 11, Agriculture, Forestry, Fishing and Hunting. As part of its ongoing comprehensive size standards review, SBA evaluated receipts based size standards for 16 industries and two sub-industries in NAICS Sector 11 to determine whether they should be retained or revised. SBA did not review size standards for 46 industries in NAICS Sector 11 that are currently set by statute at $750,000 in average annual receipts. SBA also did not review the 500-employee based size standard for NAICS 113310, Logging, but will review it in the near future with other employee based size standards. This proposed rule is one of a series of proposed rules that will review size standards of industries grouped by NAICS Sector. SBA issued a White Paper entitled ''Size Standards Methodology'' and published a notice in the October 21, 2009 issue of the **Federal Register** to advise the public that the document is available on its Web site at *www.sba.gov/size* for public review and comments. The ''Size Standards Methodology'' White Paper explains how SBA establishes, reviews, and modifies its receipts based and employee based small business size standards. In this proposed rule, SBA has applied its methodology that pertains to establishing, reviewing, and modifying a receipts based size standard.

DATES: SBA must receive comments to this proposed rule on or before November 13, 2012.

ADDRESSES: Identify your comments by RIN 3245–AG43 and submit them by one of the following methods: (1) Federal eRulemaking Portal: *www.regulations.gov*, following the instructions for submitting comments; or (2) Mail/Hand Delivery/Courier: Khem R. Sharma, Ph.D., Chief, Size Standards Division, 409 Third Street SW., Mail Code 6530, Washington, DC 20416. SBA will not accept comments to this proposed rule submitted by email.

SBA will post all comments to this proposed rule on *www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *www.regulations.gov,* you must submit such information to U.S. Small Business Administration, Khem R. Sharma, Ph.D., Chief, Size Standards Division, 409 Third Street SW., Mail Code 6530, Washington, DC 20416, or send an email to *sizestandards@sba.gov.* Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review your information and determine whether it will make the information public.

FOR FURTHER INFORMATION CONTACT: Jorge Laboy-Bruno, Ph.D., Economist, Size Standards Division, (202) 205–6618 or *sizestandards@sba.gov.*

SUPPLEMENTARY INFORMATION: To determine eligibility for Federal small business assistance, SBA establishes small business size definitions (referred to as size standards) for private sector industries in the United States. SBA uses two primary measures of business size—average annual receipts and average number of employees. SBA uses financial assets, electric output, and refining capacity to measure the size of a few specialized industries. In addition, SBA's Small Business Investment Company (SBIC), Certified Development Company (504), and 7(a) Loan Programs use either the industry based size standards, or net worth and net income based alternative size standards to determine eligibility for those programs. At the beginning of the current comprehensive size standards review, there were 41 different size standards covering 1,141 NAICS industries and 18 sub-industry activities (''exceptions'' in SBA's table of size standards). Thirty-one of these size levels were based on average annual receipts, seven were based on average number of employees, and three were based on other measures.

Over the years, SBA has received comments that its size standards have not kept up with changes in the economy, in particular the changes in the Federal contracting marketplace and industry structure. The last time SBA conducted a comprehensive review of all size standards was during the late 1970s and early 1980s. Since then, most reviews of size standards were limited to a few specific industries in response to requests from the public and Federal agencies. SBA also adjusts all monetary based size standards (except for statutorily set size standards in NAICS Sector 11) for inflation at least once every five years. SBA's latest inflation adjustment to size standards was published in the **Federal Register** on July 18, 2008 (73 FR 41237).

NAICS 11, Agriculture, Forestry, Fishing and Hunting, includes 46 industries within NAICS Subsector 111 (Agricultural Crop Production) and NAICS Subsector 112 (Animal

Production) for which size standards are set by statute, currently at $750,000 in average annual receipts. Within NAICS Subsector 112, SBA may revise the size standards for only two industries: NAICS 112112 (Cattle Feedlots) and NAICS 112310 (Chicken Egg Production).

Because of changes in the Federal marketplace and industry structure since the last comprehensive size standards review, SBA recognizes that current data may no longer support some of its existing size standards. Accordingly, in 2007, SBA began a comprehensive review of all size standards to determine if they are consistent with current data, and to adjust them when necessary. In addition, on September 27, 2010, the President of the United States signed the Small Business Jobs Act of 2010 (Jobs Act). The Jobs Act directs SBA to conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. Specifically, the Jobs Act requires SBA to conduct a detailed review of at least one-third of all size standards during every 18-month period from the date of its enactment. In addition, the Jobs Act requires that SBA review all size standards not less frequently than once every five years thereafter. Reviewing existing small business size standards and making appropriate adjustments based on current data are also consistent with Executive Order 13563 on improving regulation and regulatory review.

Rather than review all size standards at one time, SBA is reviewing size standards on a Sector by Sector basis. A NAICS Sector generally includes 25 to 75 industries, except for NAICS Sector 31–33, Manufacturing, which has considerably more industries. Once SBA completes its review of size standards for industries in a NAICS Sector, it issues a proposed rule to revise size standards for those industries for which it believes currently available data and other relevant factors support doing so.

Below is a discussion of SBA's size standards methodology for establishing receipts based size standards that SBA applied to this proposed rule, including analyses of industry structure, Federal procurement trends, the impact of the proposed revisions to size standards on Federal small business assistance, and the evaluation of whether a revised size standard would exclude dominant firms from being considered small.

Size Standards Methodology

SBA has recently developed a ''Size Standards Methodology'' for developing, reviewing, and modifying size standards when necessary. SBA published the document on its Web site at *www.sba.gov/size* for public review and comments, and has included it as a supporting document in the electronic docket of this proposed rule at *www.regulations.gov.* SBA does not apply all features of its ''Size Standards Methodology'' to all industries because not all features are appropriate for every industry. For example, since all industries in NAICS Sector 11 that are being reviewed in this proposed rule have receipts based size standards, the methodology described in this proposed rule applies only to establishing receipts based size standards. However, the methodology is available in its entirety for parties who have an interest in SBA's overall approach to establishing, evaluating, and modifying small business size standards. SBA always explains its analysis in individual proposed and final rules relating to size standards for specific industries.

SBA welcomes comments from the public on a number of issues concerning its ''Size Standards Methodology,'' such as whether there are other approaches to establishing and modifying size standards; whether there are alternative or additional factors that SBA should consider; whether SBA's approach to small business size standards makes sense in the current economic environment; whether SBA's use of anchor size standards is appropriate; whether there are gaps in SBA's methodology because the data it uses are not current or sufficiently comprehensive; and whether there are other data, facts, and/or issues that SBA should consider. Comments on SBA's size standards methodology should be submitted via: (1) The Federal eRulemaking Portal: *www.regulations.gov,* following the instructions for submitting comments; the docket number is SBA–2009–0008, or (2) Mail/Hand Delivery/Courier: Khem R. Sharma, Ph.D., Chief, Size Standards Division, 409 Third Street SW., Mail Code 6530, Washington, DC 20416. As it will do with comments to this and other proposed rules, SBA will post all comments on its methodology on *www.regulations.gov.* As of May 31, 2012, SBA has received 14 comments to its ''Size Standards Methodology.'' The comments are available to the public at *www.regulations.gov.* SBA continues to welcome comments on its methodology from interested parties. SBA will not accept comments to its ''Size Standards Methodology'' submitted by email.

Congress granted the SBA's Administrator discretion to establish detailed small business size standards. 15 U.S.C. 632(a)(2). Specifically, Section 3(a)(3) of the Small Business Act (15 U.S.C. 632(a)(3)) requires that ''* * * the [SBA] Administrator shall ensure that the size standard varies from industry to industry to the extent necessary to reflect the differing characteristics of the various industries and consider other factors deemed to be relevant by the Administrator.'' Accordingly, the economic structure of an industry is the basis for developing and modifying small business size standards. SBA identifies the small business segment of an industry by examining data on the economic characteristics defining the industry structure (as described below). In addition, SBA considers current economic conditions, its mission and program objectives, the Administration's current policies, suggestions from industry groups and Federal agencies, and public comments on the proposed rule. SBA also examines whether a size standard based on industry and other relevant data successfully excludes businesses that are dominant in the industry.

This proposed rule includes information regarding the factors SBA evaluated and the criteria it used to propose adjustments to receipts based size standards for 16 industries and two sub-industries (''exceptions'') in NAICS Sector 11. This proposed rule affords the public an opportunity to review and to comment on SBA's proposal to revise size standards in NAICS Sector 11, as well as on the data and methodology it used to evaluate and revise the size standards.

Industry Analysis

For the current comprehensive size standards review, SBA has established three ''base'' or ''anchor'' size standards—$7.0 million in average annual receipts for industries that have receipts based size standards, 500 employees for manufacturing and other industries that have employee based size standards (except for Wholesale Trade), and 100 employees for industries in the Wholesale Trade Sector. SBA established 500 employees as the anchor size standard for manufacturing industries at its inception in 1953. Shortly thereafter, SBA established $1 million in average annual receipts as the anchor size standard for nonmanufacturing industries. SBA has periodically increased the receipts based anchor size standard for inflation, and today it is $7 million. Since 1986, the size standard for all industries in the Wholesale Trade Sector for SBA's financial assistance and for most Federal programs has been 100 employees. However, NAICS codes

for the Wholesale Trade Sector and their 100 employee size standards do not apply to Federal procurement programs. Rather, for Federal procurement the size standard for all industries in Wholesale Trade (NAICS Sector 42) and for all industries in Retail Trade (NAICS Sector 44–45) is 500 employees under SBA's nonmanufacturer rule (13 CFR 121.406(b)).

These long-standing anchor size standards have stood the test of time and gained legitimacy through practice and general public acceptance. An anchor is neither a minimum nor a maximum size standard. It is a common size standard for a large number of industries that have similar economic characteristics and serves as a reference point in evaluating size standards for individual industries. SBA uses the anchor in lieu of trying to establish precise small business size standards for each industry. Otherwise, theoretically, the number of size standards might be as high as the number of industries for which SBA establishes size standards (1,141). Furthermore, the data SBA analyzes are static, while the U.S. economy is not. Hence, absolute precision is impossible. SBA presumes an anchor size standard is appropriate for a particular industry unless that industry displays economic characteristics that are considerably different from other industries with the same anchor size standard.

When evaluating a size standard, SBA compares the economic characteristics of the industry under review to the average characteristics of industries with one of the three anchor size standards (referred to as the ''anchor comparison group''). This allows SBA to assess the industry structure and to determine whether the industry is appreciably different from the other industries in the anchor comparison group. If the characteristics of a specific industry under review are similar to the average characteristics of the anchor comparison group, the anchor size standard is generally appropriate for that industry. SBA may consider adopting a size standard below the anchor when: (1) all or most of the industry characteristics are significantly smaller than the average characteristics of the anchor comparison group; or (2) other industry considerations strongly suggest that the anchor size standard would be an unreasonably high size standard for the industry.

If the specific industry's characteristics are significantly higher than those of the anchor comparison group, then a size standard higher than the anchor size standard may be appropriate. The larger the differences are between the characteristics of the industry under review and those in the anchor comparison group, the larger will be the difference between the appropriate industry size standard and the anchor size standard. To determine a size standard above the anchor size standard, SBA analyzes the characteristics of a second comparison group. For industries with receipts based size standards, including those in NAICS Sector 11 reviewed in this proposed rule, SBA has developed a second comparison group consisting of industries that have the highest of receipts based size standards. To determine a size standard above the anchor size standard, SBA analyzes the characteristics of this second comparison group. The size standards for this group of industries range from $23 million to $35.5 million in average annual receipts; the weighted average size standard for the group is $29 million. SBA refers to this comparison group as the ''higher level receipts based size standard group.''

The primary factors that SBA evaluates to examine industry structure include average firm size, startup costs and entry barriers, industry competition, and distribution of firms by size. SBA evaluates, as an additional primary factor, the impact that revised size standards might have on Federal contracting assistance to small businesses. These are, generally, the five most important factors SBA examines when establishing or revising a size standard for an industry. However, SBA will also consider and evaluate other information that it believes is relevant to a particular industry (such as technological changes, growth trends, SBA financial assistance, other program factors, *etc.*). SBA also considers possible impacts of size standard revisions on eligibility for Federal small business assistance, current economic conditions, the Administration's policies, and suggestions from industry groups and Federal agencies. Public comments on a proposed rule also provide important additional information. SBA thoroughly reviews all public comments before making a final decision on its proposed size standards. Below are brief descriptions of each of the five primary factors that SBA has evaluated for each industry in NAICS Sector 11. A more detailed description of this analysis is provided in SBA's ''Size Standards Methodology,'' available at *http://www.sba.gov/size.*

1. *Average firm size.* SBA computes two measures of average firm size: simple average and weighted average. For industries with receipts based size standards, the simple average is the total receipts of the industry divided by the total number of firms in the industry. The weighted average firm size is the sum of weighted simple averages in different receipts size classes, where weights are the shares of total industry receipts for respective size classes. The simple average weighs all firms within an industry equally regardless of their size. The weighted average overcomes that limitation by giving more weight to larger firms.

If the average firm size of an industry is significantly higher than the average firm size of industries in the anchor comparison industry group, this will generally support a size standard higher than the anchor size standard. Conversely, if the industry's average firm size is similar to or significantly lower than that of the anchor comparison industry group, it will be a basis to adopt the anchor size standard, or, in rare cases, a standard lower than the anchor.

2. *Startup costs and entry barriers.* Startup costs reflect a firm's initial size in an industry. New entrants to an industry must have sufficient capital and other assets to start and maintain a viable business. If new firms entering a particular industry have greater capital requirements than firms in industries in the anchor comparison group, this can be a basis for establishing a size standard higher than the anchor size standard. In lieu of actual startup cost data, SBA uses average assets as a proxy to measure the capital requirements for new entrants to an industry.

To calculate average assets, SBA begins with the sales to total assets ratio for an industry from the Risk Management Association's Annual eStatement Studies. SBA then applies these ratios to the average receipts of firms in that industry. An industry with average assets that are significantly higher than those of the anchor comparison group is likely to have higher startup costs; this in turn will support a size standard higher than the anchor. Conversely, an industry with average assets that are similar to or lower than those of the anchor comparison group is likely to have lower startup costs; this will support the anchor standard or one lower than the anchor.

3. *Industry competition.* Industry competition is generally measured by the share of total industry receipts generated by the largest firms in an industry. SBA generally evaluates the share of industry receipts generated by the four largest firms in each industry. This is referred to as the ''four-firm concentration ratio,'' a commonly used economic measure of market

competition. SBA compares the four-firm concentration ratio for an industry to the average four-firm concentration ratio for industries in the anchor comparison group. If a significant share of economic activity within the industry is concentrated among a few relatively large companies, all else being equal, SBA will establish a size standard higher than the anchor size standard. SBA does not consider the four-firm concentration ratio as an important factor in assessing a size standard if its share of economic activity of the largest four firms within the industry is less than 40 percent. For an industry with a four-firm concentration ratio of 40 percent or more, SBA examines the average size of the four largest firms to determine a size standard.

4. *Distribution of firms by size.* SBA examines the shares of industry total receipts accounted for by firms of different receipts and employment size classes in an industry. This is an additional factor in assessing industry competition. If most of an industry's economic activity is attributable to smaller firms, this generally indicates that small businesses are competitive in that industry. This can support adopting the anchor size standard. If most of an industry's economic activity is attributable to larger firms, this indicates that small businesses are not competitive in that industry. This can support adopting a size standard above the anchor.

Concentration is a measure of inequality of distribution. To determine the degree of inequality of distribution in an industry, SBA computes the Gini coefficient, using the Lorenz curve. The Lorenz curve presents the cumulative percentages of units (firms) along the horizontal axis and the cumulative percentages of receipts (or other measures of size) along the vertical axis. (For further detail, please refer to SBA's ''Size Standards Methodology'' on its Web site at *www.sba.gov/size*.) Gini coefficient values vary from zero to one. If receipts are distributed equally among all the firms in an industry, the value of the Gini coefficient will equal zero. If an industry's total receipts are attributed to a single firm, the Gini coefficient will equal one.

SBA compares the Gini coefficient value for an industry with that for industries in the anchor comparison group. If the Gini coefficient value for an industry is higher than it is for industries in the anchor comparison industry group this may, all else being equal, warrant a size standard higher than the anchor. Conversely, if an industry's Gini coefficient is similar to or lower than that for the anchor group, the anchor standard, or in some cases a standard lower than the anchor, may be adopted.

5. *Impact on Federal contracting and SBA loan programs.* SBA examines the possible impact a size standard change may have on Federal small business assistance. This most often focuses on the share of Federal contracting dollars awarded to small businesses in the industry in question. In general, if the small business share of Federal contracting in an industry with significant Federal contracting is appreciably less than the small business share of the industry's total receipts, this could justify considering a size standard higher than the existing size standard. The disparity between the small business Federal market share and industry-wide small business share may be due to various factors, such as extensive administrative and compliance requirements associated with Federal contracts, the different skill set required for Federal contracts as compared to typical commercial contracting work, and the size of Federal contracts. These, as well as other factors, are likely to influence the type of firms within an industry that compete for Federal contracts. By comparing the small business Federal contracting share with the industry-wide small business share, SBA includes in its size standards analysis the latest Federal contracting trends. This analysis may support a size standard larger than the current size standard.

SBA considers Federal contracting trends in the size standards analysis only if: (1) the small business share of Federal contracting dollars is at least 10 percent lower than the small business share of total industry receipts; and (2) the amount of total Federal contracting averages $100 million or more during the latest three fiscal years. These thresholds reflect significant levels of contracting where a revision to a size standard may have an impact on contracting opportunities to small businesses.

Besides the impact on small business Federal contracting, SBA also evaluates the impact of a proposed size standard revision on SBA's loan programs. For this, SBA examines the data on volume and number of its guaranteed loans within an industry and the size of firms obtaining those loans. This allows SBA to assess whether the existing or the proposed size standard for a particular industry may restrict the level of financial assistance to small firms. If current size standards have impeded financial assistance to small businesses, higher size standards may be supportable. However, if small businesses under current size standards have been receiving significant amounts of financial assistance through SBA's loan programs, or if the financial assistance has been provided mainly to businesses that are much smaller than the existing size standards, SBA does not consider this factor when determining the size standard.

Sources of Industry and Program Data

SBA's primary source of industry data used in this proposed rule are special tabulations of the 2007 County Business Patterns (see *www.census.gov/econ/cbp/*) from the U.S. Bureau of Census (Census Bureau) and the 2007 Census of Agriculture (*http://www.nass.usda.gov*) from the National Agricultural Statistics Service (NASS). NAICS Sector 11 is not covered by the Census Bureau's Economic Census. The special tabulations provides SBA with data on the number of firms, number of establishments, number of employees, annual payroll, and annual receipts of companies by Industry (6-digit level), Industry Group (4-digit level), Subsector (3-digit level), and Sector (2-digit level). These data are arrayed by various classes of firms' size based on the overall number of employees and receipts of the entire enterprise (all establishments and affiliated firms) from all industries. The special tabulation enables SBA to evaluate average firm size, the four-firm concentration ratio, and distribution of firms by various receipts, and employment size classes.

In some cases, where data were not available due to disclosure prohibitions in the Census Bureau's and NASS' tabulations, SBA either estimated missing values using available relevant data or examined data at a higher level of industry aggregation, such as at the NAICS 2-digit (Sector), 3-digit (Subsector), or 4-digit (Industry Group) level. In some instances, SBA's analysis was based only on those factors for which data were available or estimates of missing values were possible.

To calculate average assets, SBA used sales to total assets ratios from the Risk Management Association's Annual eStatement Studies, 2008–2010.

To evaluate Federal contracting trends, SBA examined data on Federal contract awards for fiscal years 2008–2010. The data are available from the U.S. General Service Administration's Federal Procurement Data System—Next Generation (FPDS–NG).

To assess the impact on financial assistance to small businesses, SBA examined data on its own guaranteed

loan programs for fiscal years 2008–2010.

Data sources and estimation procedures SBA uses in its size standards analysis are documented in detail in SBA's ''Size Standards Methodology'' White Paper, which is available at *www.sba.gov/size*.

Dominance in Field of Operation

Section 3(a) of the Small Business Act (15 U.S.C. 632(a)) defines a small business concern as one that is: (1) Independently owned and operated; (2) not dominant in its field of operation; and (3) within a specific small business definition or size standard established by SBA Administrator. SBA considers as part of its evaluation whether a business concern at a proposed size standard would be dominant in its field of operation. For this, SBA generally examines the industry's market share of firms at the proposed standard. Market share and other factors may indicate whether a firm can exercise a major controlling influence on a national basis in an industry where a significant number of business concerns are engaged. If a contemplated size standard includes a dominant firm, SBA will consider a lower size standard to exclude the dominant firm from being defined as small.

Selection of Size Standards

To simplify receipts based size standards, SBA has proposed to select size standards from a limited number of levels. For many years, SBA has been concerned about the complexity of determining small business status caused by a large number of varying receipts based size standards (*see* 69 FR 13130 (March 4, 2004) and 57 FR 62515 (December 31, 1992)). At the beginning of the current comprehensive size standards review, there were 31 different levels of receipts based size standards. They ranged from $0.75 million to $35.5 million, and many of them applied to one or only a few industries. SBA believes that such a large number of different small business size standards are unnecessary and difficult to justify analytically. To simplify managing and using size standards, SBA proposes that there be fewer size standard levels. This will produce more common size standards for businesses operating in related industries. This will also result in greater consistency among the size standards for industries that have similar economic characteristics.

SBA proposes, therefore, to apply one of eight receipts based size standards to the analysis of receipts based size standards for 16 industries and two sub-industries within NAICS Sector 11 that are reviewed in this proposed rule. The eight ''fixed'' receipts based size standard levels are $5 million, $7 million, $10 million, $14 million, $19 million, $25.5 million, $30 million, and $35.5 million. SBA established these eight receipts based size standard based on the current minimum, the current maximum, and the most commonly used current receipts based size standards. At the start of the current comprehensive review, the most commonly used receipts based size standards clustered around the following—$2.5 million to $4.5 million, $7 million, $9 million to $10 million, $12.5 million to $14 million, $25 million to $25.5 million, and $33.5 million to $35.5 million. SBA selected $7 million as one of eight fixed levels of receipts based size standards because it is an anchor standard. The lowest or minimum receipts based size level will be $5 million. Other than the size standards for NAICS Sector 11 that are set by statute and those based on commissions (such as real estate brokers and travel agents), $5 million includes those industries with the lowest receipts based standards, which ranged from $2 million to $4.5 million. Among the higher level size clusters, SBA has set four fixed levels: $10 million, $14 million, $25.5 million, and $35.5 million. Because of the large intervals between some of the fixed levels, SBA established two intermediate levels, namely $19 million between $14 million and $25.5 million, and $30 million between $25.5 million and $35.5 million. These two intermediate levels reflect roughly the same proportional differences as between the other two successive levels.

To simplify size standards further, SBA may propose a common size standard for closely related industries. Although the size standard analysis may support a separate size standard for each industry, SBA believes that establishing different size standards for closely related industries may not always be appropriate. For example, in cases where many of the same businesses operate in the same multiple industries, a common size standard for those industries might better reflect the Federal marketplace. This might also make size standards among related industries more consistent than separate size standards for each of those industries. This led SBA to establish a common size standard for the information technology (IT) services (NAICS 541511, NAICS 541112, NAICS 541513, NAICS 541519, and NAICS 811212), even though the industry data might support a distinct size standard for each industry (57 FR 27906 (June 23, 1992)). More recently SBA adopted common size standards for some of the industries in NAICS Sector 54, Professional, Scientific and Technical services (77 FR 7490 (February 10, 2012)) and NAICS Sector 48–49, Transportation and Warehousing (77 FR 10943 (February 24, 2012)).

In NAICS Sector 11, currently all industries in NAICS Subsector 114 (Fishing, Hunting, and Trapping) and all industries (except for two sub-industries under NAICS 115310) within NAICS Industry Subsector 115 (Support Activities for Agriculture and Forestry) have common size standards. However, in this proposed rule, based on characteristics of individual industries, SBA proposes different size standards for some of the industries in those Subsectors. Whenever SBA proposes a common size standard for closely related industries it will provide its justification.

Evaluation of Industry Structure

SBA evaluated all industries and two sub-industries in NAICS Sector 11, Agriculture, Forestry, Fishing and Hunting, with the exceptions of NAICS 113310 (Logging) and those industries for which their size standards were determined by statute, to assess the appropriateness of the current receipts based size standards. As described above, SBA compared data on the economic characteristics of each industry to the average characteristics of industries in two comparison groups. The first comparison group consists of all industries with $7 million size standards and is referred to as the ''receipts based anchor comparison group.'' Because the goal of SBA's review is to assess whether a specific industry's size standard should be the same as or different from the anchor size standard, this is the most logical group of industries to analyze. In addition, this group includes a sufficient number of firms to provide a meaningful assessment and comparison of industry characteristics.

If the characteristics of an industry are similar to the average characteristics of industries in the anchor comparison group, the anchor size standard is generally appropriate for that industry. If an industry's structure is significantly different from industries in the anchor group, a size standard lower or higher than the anchor size standard might be appropriate. The proposed new size standard is based on the difference between the characteristics of the anchor comparison group and a second industry comparison group. As

described above, the second comparison group for receipts based standards consists of industries with the highest receipts based size standards, ranging from $23 million to $35.5 million. The average size standard for this group is $29 million. SBA refers to this group of industries as the ''higher level receipts based size standard comparison group.''

SBA determines differences in industry structure between an industry under review and the industries in the two comparison groups by comparing data on each of the industry factors, including average firm size, average assets size, the four-firm concentration ratio, and the Gini coefficient of distribution of firms by size. Table 1, Average Characteristics of Receipts Based Comparison Groups, shows the average firm size (both simple and weighted), average assets size, four-firm concentration ratio, average receipts of the four largest firms, and the Gini coefficient for both anchor level and higher level comparison groups for receipts based size standards.

TABLE 1—AVERAGE CHARACTERISTICS OF RECEIPTS BASED COMPARISON GROUPS

Receipts based comparison group	Average firm size ($ million)		Average assets size ($ million)	Four-firm concentration ratio (%)	Average receipts of four largest firms ($ million) *	Gini coefficient
	Simple average	Weighted average				
Anchor Level	1.32	19.63	0.84	16.6	196.4	0.693
Higher Level	5.07	116.84	3.20	32.1	1,376.0	0.830

* To be used for industries with a four-firm concentration ratio of 40% or greater.

Derivation of Size Standards Based on Industry Factors

For each industry factor in Table 1, Average Characteristics of Receipts Based Comparison Groups, SBA derives a separate size standard based on the differences between the values for an industry under review and the values for the two comparison groups. If the industry value for a particular factor is near the corresponding factor for the anchor comparison group, the $7 million anchor size standard is appropriate for that factor.

An industry factor significantly above or below the anchor comparison group will generally imply a size standard for that industry above or below the $7 million anchor. The new size standard in these cases is based on the proportional difference between the industry value and the values for the two comparison groups.

For example, if an industry's simple average receipts are $3.3 million, that can support a $19 million size standard. The $3.3 million level is 52.8 percent between $1.32 million for the anchor comparison group and $5.07 million for the higher level comparison group (($3.30 million − $1.32 million) ÷ ($5.07 million − $1.32 million) = 0.528 or 52.8%). This proportional difference is applied to the difference between the $7 million anchor size standard and average size standard of $29 million for the higher level size standard group and then added to $7.0 million to estimate a size standard of $18.61 million ([{$29.0 million − $7.0 million} * 0.528] + $7.0 million = $18.61 million). The final step is to round the estimated $18.61 million size standard to the nearest fixed size standard, which in this example is $19 million.

SBA applies the above calculation to derive a size standard for each industry factor. Detailed formulas involved in these calculations are presented in SBA's ''Size Standards Methodology'' which is available on its Web site at *www.sba.gov/size.* (However, it should be noted that figures in the ''Size Standards Methodology'' White Paper are based on 2002 Economic Census data and are different from those presented in this proposed rule. That is because when SBA prepared its ''Size Standards Methodology,'' the 2007 Economic Census data were not yet available). Table 2, Values of Industry Factors and Supported Size Standards below, shows ranges of values for each industry factor and the levels of size standards supported by those values.

TABLE 2—VALUES OF INDUSTRY FACTORS AND SUPPORTED SIZE STANDARDS

If simple average receipts size ($ million)	*Or if* weighted average receipts size ($ million)	*Or if* average assets size ($ million)	*Or if* average receipts of largest four firms ($ million)	*Or if* Gini coefficient	Then implied size standard is ($ million)
<1.15	<15.22	<0.73	<142.8	<0.686	5.0
1.15 to 1.57	15.22 to 26.26	0.73 to 1.00	142.8 to 276.9	0.686 to 0.702	7.0
1.58 to 2.17	26.27 to 41.73	1.01 to 1.37	277.0 to 464.5	0.703 to 0.724	10.0
2.18 to 2.94	41.74 to 61.61	1.38 to 1.86	464.6 to 705.8	0.725 to 0.752	14.0
2.95 to 3.92	61.62 to 87.02	1.87 to 2.48	705.9 to 1,014.1	0.753 to 0.788	19.0
3.93 to 4.86	87.03 to 111.32	2.49 to 3.07	1,014.2 to 1,309.0	0.789 to 0.822	25.5
4.87 to 5.71	111.33 to 133.41	3.08 to 3.61	1,309.1 to 1,577.1	0.823 to 0.853	30.0
>5.71	>133.41	>3.61	>1,577.1	>0.853	35.5

Derivation of Size Standard Based on Federal Contracting Factor

Besides industry structure, SBA also evaluates Federal contracting data to assess the success of small businesses in getting Federal contracts under the existing size standards. For industries where the small business share of total Federal contracting dollars is 10 to 30 percent lower than the small business share of total industry receipts, SBA has designated a size standard one level higher than their current size standard. For industries where the small business share of total Federal contracting dollars is more than 30 percent lower than the small business share of total industry receipts, SBA has designated a size standard two levels higher than the current size standard.

Because of the complex relationships among several variables affecting small business participation in the Federal

marketplace, SBA has chosen not to designate a size standard for the Federal contracting factor alone that is more than two levels above the current size standard. SBA believes that a larger adjustment to size standards based on Federal contracting activity should be based on a more detailed analysis of the impact of any subsequent revision to the current size standard. In limited situations, however, SBA may conduct a more extensive examination of Federal contracting experience. This may support a different size standard than indicated by this general rule and take into consideration significant and unique aspects of small business competitiveness in the Federal contract market. SBA welcomes comments on its methodology for incorporating the Federal contracting factor in its size standard analysis and suggestions for alternative methods and other relevant information on small business experience in the Federal contract market that SBA should consider.

Only one industry in NAICS Sector 11, NAICS 115310 (Support Activities for Agriculture and Forestry), averaged $100 million or more annually in Federal contracting during the period of fiscal years 2008–2010. However, since the Federal contracting factor was not significant (*i.e.,* the difference between the small business share of total industry receipts and small business share of Federal contracting dollars was 10 percentage points or more), no size standard was computed for that industry (including two sub-industries under it) based on Federal contracting factor.

New Size Standards Based on Industry and Federal Contracting Factors

Table 3, Size Standards Supported by Each Factor for Each Industry (millions of dollars), below, shows the results of analyses of industry and Federal contracting factors for each industry covered by this proposed rule. Many NAICS industries in columns 2, 3, 4, 6, and 7 show two numbers. The upper number is the value for the industry factor shown on the top of the column and the lower number is the size standard supported by that factor. For the four-firm concentration ratio, SBA estimates a size standard only if its value is 40 percent or more. If the four-firm concentration ratio for an industry is less than 40 percent, SBA does not estimate a size standard for that factor. If the four-firm concentration ratio is more than 40 percent, SBA indicates in column 6 the average size of the industry's four largest firms together with a size standard based on that average. As stated earlier, since Federal contracting factor was not significant for any of industries and sub-industries in NAICS Sector 11 that are reviewed in this proposed rule, no size standard was estimated for that factor in column 8. Column 9 shows a calculated new size standard for each industry. This is the average of the size standards supported by each factor, rounded to the nearest fixed size level. Analytical details involved in the averaging procedure are described in SBA's ''Size Standard Methodology.'' For comparison with the new standards, the current size standards are in column 10 of Table 3.

TABLE 3—SIZE STANDARDS SUPPORTED BY EACH FACTOR FOR EACH INDUSTRY

[Millions of dollars]

NAICS code/NAICS industry title	Simple average firm size ($ million)	Weighted average firm size ($ million)	Average assets size ($ million)	Four-firm ratio (%)	Four-firm average size ($million)	Gini coefficient	Federal contract factor (%)	Calculated size standard ($ million)	Current size standard ($ million)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
112112	$1.0	$3.6	$0.6	3.7	$276.4	$0.732			
Cattle Feedlots	5.0	5.0	5.0			14.0		7.0	2.0
112310	0.2	1.4	0.1	4.0	74.8	0.848			
Chicken Egg Production	5.0	5.0	5.0			30.0		14.0	12.5
113110	1.8	9.1	1.7	24.0	45.6	0.726			
Timber Tract Operations	10.0	5.0	14.0			14.0		10.0	7.0
113210	2.0	21.7		54.0	47.4	0.755			
Forest Nurseries and Gathering of Forest Products	10.0	7.0			5.0	19.0		10.0	7.0
114111	1.6	44.8	1.4	29.0	130.7	0.802			
Finfish Fishing	10.0	14.0	14.0			25.5		19.0	4.0
114112	0.6	13.2	0.4	24.0	32.6	0.618			
Shellfish Fishing	5.0	5.0	5.0			5.0		5.0	4.0
114119	2.9	9.3		88.0	9.0	0.573			
Other Marine Fishing	19.0	5.0			5.0	5.0		7.0	4.0
114210	0.7	17.2		48.0	27.1	0.661			
Hunting and Trapping	5.0	7.0			5.0	5.0		5.0	4.0
115111	2.2	5.1	1.9	12.0	17.1	0.498			
Cotton Ginning	14.0	5.0	19.0			5.0		10.0	7.0
115112	1.2	8.6	0.7	14.0	84.9	0.641			
Soil Preparation, Planting, and Cultivating	7.0	5.0	5.0			5.0		5.0	7.0
115113	1.5	8.4	0.7	19.0	21.2	0.689			
Crop Harvesting, Primarily by Machine	7.0	5.0	7.0			7.0		7.0	7.0
115114	6.5	29.6	3.9	21.0	286.1	0.745			
Postharvest Crop Activities (Except Cotton Ginning)	35.5	10.0	35.5			14.0		25.5	7.0
115115	2.0	35.9		29.0	60.8	0.735			
Farm Labor Contractors and Crew Leaders	10.0	10.0				14.0		14.0	7.0
115116	1.0	7.7				0.682			
Farm Management Services	5.0	5.0				5.0		5.0	7.0
115210	0.6	11.3	0.3	15.0	90.2	0.611			
Support Activities for Animal Production	5.0	5.0	5.0			5.0		5.0	7.0
115310	0.9	8.4		18.0	66.2	0.672			
Support Activities for Forestry	5.0	5.0				5.0		5.0	7.0
Except,	0.6	4.7	0.3	16.0	13.5	0.657			

TABLE 3—SIZE STANDARDS SUPPORTED BY EACH FACTOR FOR EACH INDUSTRY—Continued
[Millions of dollars]

NAICS code/NAICS industry title	Simple average firm size ($ million)	Weighted average firm size ($ million)	Average assets size ($ million)	Four-firm ratio (%)	Four-firm average size ($million)	Gini coefficient	Federal contract factor (%)	Calculated size standard ($ million)	Current size standard ($ million)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
Forest Fire Suppression and Fuels Management Services	5.0	5.0	5.0	.....	.....	5.0	.....	5.0	17.5

Special Considerations: Forest Fire Suppression and Fuels Management Services

The Forest Fire Suppression and Fuels Management Services are sub-industry categories (or ''exceptions'') under NAICS 115310 (Support Activities for Forestry) with a size standard of $17.5 million in average annual receipts. In 2003, SBA established a different size standard for these activities (*see* 68 FR 33348 (June 4, 2003)). Data from the Census Bureau's and NASS' special tabulation are limited to the 6-digit NAICS industry level, and hence, do not provide separate data at the sub-industry level. As such, SBA relied upon data from other sources to evaluate the current $17.5 million size standard for both sub-industries.

Firms engaged in the Forest Fire Suppression and Fuels Management Services sub-industries were identified from contracting activity reported in FPDS–NG during fiscal years 2008–2010. The contracts for Forest Fire Suppression and Fuels Management Services can be identified as those classified within NAICS 115310 and by the Product Service Code (PSCs) F003 (Natural Resources/Conservation-Forest-Range Fire Suppression/Presuppression). SBA also looked at contract data from the USDA Forest Service National Interagency Fire Center (*http://www.fs.fed.us/fire/contracting/ and http://www.fs.fed.us/business/incident/vipr.php*). Finally, SBA evaluated the description of the requirements of the contracts for the Forest Fire Suppression and Fuels Management Services in FPDS–NG, which allowed the Agency to identify principal activities related to forest fire suppression and fuel management services and to differentiate them from other supporting activities. SBA identified activities associated with specialized crews, equipment and engines with trained personnel that are critical to perform the tasks of suppressing or managing fires as principal activities and other activities, such as leases of equipment, machinery and transportation vehicles, or provision of services that do not require specialize personnel or special training as supporting activities. Since most firms involved in Fire Suppression Services were also found to be involved in Fuel Management Services and vice versa, SBA analyzed them together as one group.

Finally, SBA obtained receipts and employment data for the fiscal years 2008–2010 from the Central Contractor Registration (CCR) for the firms that it identified from the FPDS–NG to develop the size standards evaluation factors. Table 3, Size Standards Supported by Each Factor for Each Industry (millions of dollars), above, shows the results from the analysis of these sub-industries, which supported a $5.0 million size standard as compared to the current $17.5 million. SBA believes that the results reflect decreases in numbers of forest fires and consequent reductions in payments (revenues) to contractors during fiscal years 2008–2010 as compared to prior years. Given the inherent uncertainty of occurrences of forest fires, SBA believes that contracting officers need flexibility to hire small businesses, especially in the worst case scenario. In a very active fire season, size of payments can easily support the $17.5 million size standard for Fire Suppression Services. With this reality in mind, SBA proposes to retain the current $17.5 size standard and seeks comments on this proposal.

Evaluation of SBA's Loan Data

Before deciding on an industry's size standard, SBA also considers the impact of new or revised size standards on its loan programs. Accordingly, SBA examined its 7(a) and 504 Loan Programs data for fiscal years 2008–2010 to assess whether the proposed size standards need further adjustments to ensure credit opportunities for small businesses through those programs. For the industries reviewed in this rule, the data showed that it is mostly businesses much smaller than the current size standards that use SBA's 7(a) and 504 loans.

Furthermore, the Jobs Act established an alternative size standard for SBA's 7(a) and 504 Loan Programs. Specifically, an applicant exceeding an NAICS industry size standard may still be eligible if its maximum tangible net worth does not exceed $15 million and its average net income after Federal income taxes (excluding any carry-over losses) for the 2 full fiscal years before the date of the application is not more than $5 million.

Therefore, no size standard in NAICS Sector 11, Agriculture, Forestry, Fishing and Hunting reviewed in this proposed rule, needs an adjustment based on this factor.

Proposed Changes to Size Standards

Table 4, Summary of Size Standards Analysis, below, summarizes the results of SBA's analyses from Table 3, Size Standards Supported by Each Factor for Each Industry (millions of dollars). The results might support increases in size standards for 11 industries, decreases for four industries and two sub-industries and no change for one industry.

TABLE 4—SUMMARY OF SIZE STANDARDS ANALYSIS

NAICS Code	NAICS Industry title	Current size standard ($ million)	Calculated size standard ($ million)
112112	Cattle Feedlots	$2.0	$7.0
1123106	Chicken Egg Production	12.5	14.0
113110s	Timber Tract Operations	7.0	10.0

TABLE 4—SUMMARY OF SIZE STANDARDS ANALYSIS—Continued

NAICS Code	NAICS Industry title	Current size standard ($ million)	Calculated size standard ($ million)
113210	Forest Nurseries and Gathering of Forest Products	7.0	10.0
114111	Finfish Fishing	4.0	19.0
114112	Shellfish Fishing	4.0	5.0
114119	Other Marine Fishing	4.0	7.0
114210	Hunting and Trapping	4.0	5.0
115111	Cotton Ginning	7.0	10.0
115112	Soil Preparation, Planting, and Cultivating	7.0	5.0
115113	Crop Harvesting, Primarily by Machine	7.0	7.0
115114	Postharvest Crop Activities (Except Cotton Ginning)	7.0	25.5
115115	Farm Labor Contractors and Crew Leaders	7.0	14.0
115116	Farm Management Services	7.0	5.0
115210	Support Activities for Animal Production	7.0	5.0
115310	Support Activities for Forestry	7.0	5.0
Except,	Forest Fire Suppression	17.5	5.0
Except,	Fuels Management Services	17.5	5.0

However, SBA believes that lowering small business size standards is not in the best interest of small businesses in the current economic environment. The U.S. economy was in recession from December 2007 to June 2009, the longest and deepest of any recessions since before World War II. The economy lost more than eight million non-farm jobs during 2008–2009. In response, Congress passed and the President signed into law the American Recovery and Reinvestment Act of 2009 (Recovery Act) to promote economic recovery and to preserve and create jobs. Although the recession officially ended in June 2009, the unemployment rate is still high at 8.2 percent in June 2012 and is forecast to remain around this level at least through the end of 2012. In addition, the unemployment rate by industry and class of worker in June 2012 showed the agricultural workers facing one of the worst unemployment rates (8.4%) in the Nation.

Recently, Congress passed and the President signed the Jobs Act to promote small business job creation. The Jobs Act puts more capital into the hands of entrepreneurs and small business owners; strengthens small businesses' ability to compete for contracts; includes recommendations from the President's Task Force on Federal Contracting Opportunities for Small Business; creates a better playing field for small businesses; promotes small business exporting, building on the President's National Export Initiative; expands training and counseling; and provides $12 billion in tax relief to help small businesses invest in their firms and create jobs. A proposal to reduce size standards will have an immediate impact on jobs, and it would be contrary to the expressed will of the President and the Congress.

Lowering size standards would decrease the number of firms that participate in Federal financial and procurement assistance programs for small businesses. It would also affect small businesses that are now exempt or receive some form of relief from other Federal regulations that use SBA's size standards. That impact could take the form of increased fees, paperwork, or other compliance requirements for small businesses. Furthermore, size standards based solely on analytical results without any other considerations can cut off currently eligible small firms from those programs and benefits. In industries and sub-industries reviewed in this proposed rule, about 70 businesses would lose their small business eligibility if size standards were lowered based solely on analytical results. That would run counter to what SBA and the Federal government are doing to help small businesses and create jobs. Reducing size eligibility for Federal procurement opportunities, especially under current economic conditions, would not preserve or create more jobs; rather, it would have the opposite effect. Therefore, in this proposed rule, SBA does not intend to reduce size standards for any industries. Accordingly, for industries where analyses might seem to support lowering size standards, SBA proposes to retain the current size standards.

Furthermore, as stated previously, the Small Business Act requires the SBA's Administrator to ''* * * consider other factors deemed to be relevant * * *'' to establishing small business size standards. The current economic conditions and the impact on job creation are quite relevant factors when establishing small business size standards. SBA nevertheless invites comments and suggestions on whether it should lower size standards as suggested by analyses of industry and program data or retain the current standards for those industries in view of current economic conditions.

As discussed above, lowering small business size standards is inconsistent with what the Federal government is doing to stimulate the economy and would discourage job growth for which Congress established the Recovery Act and Jobs Act. In addition, it would be inconsistent with the Small Business Act requiring the Administrator to establish size standards based on industry analysis and other relevant factors such as current economic conditions. Thus, SBA proposes to increase size standards for 10 industries and retain the current size standards for six industries and two sub-industries in NAICS Sector 11 that are reviewed in this rule. The SBA's proposed increases are in Table 5, Summary of Proposed Size Standards Revisions, below.

In addition, retaining current standards when the analytical results suggested lowering them is consistent with SBA's prior actions for NAICS Sector 44–45 (Retail Trade), NAICS Sector 72 (Accommodation and Food Services), and NAICS Sector 81 (Other Services) that the Agency proposed (74 FR 53924, 74 FR 53913, and 74 FR 53941, October 21, 2009) and adopted in its final rules (75 FR 61597, 75 FR 61604, and 75 FR 61591, October 6, 2010). It is also consistent with the Agency' recently published proposed rule (76 FR 14323 (March 16, 2011)) and final rule (77 FR 7490 (February 10, 2012)) for NAICS Sector 54, Professional, Technical, and Scientific Services, propose rule (76 FR 27935 (May 13, 2011)) and final rule (77 FR 10943 (February 24, 2012)) for NAICS Sector 48–49, Transportation and

Warehousing, and proposed rules for NAICS Sector 51, Information (76 FR 63216 (October 12, 2011)), NAICS Sector 56, Administrative and Support, Waste Management and Remediation Services (76 FR 63510 (October 12, 2011)), NAICS Sector 61, Educational Services (76 FR 70667 (November 15, 2011)), NAICS Sector 53, Real Estate and Rental and Leasing (76 FR 70680 (November 15, 2011)), NAICS Sector 62, Health Care and Social Assistance (77 FR 11001 (February 24, 2012)), NAICS Sector 71, Arts, Entertainment and Recreation (forthcoming), and NAICS Sector 23, Construction (forthcoming). In each of those final and proposed rules, SBA opted not to reduce small business size standards, for the same reasons it has provided above in this proposed rule.

TABLE 5—SUMMARY OF PROPOSED SIZE STANDARDS REVISIONS

NAICS Code	NAICS Industry title	Current size standard ($ million)	Proposed size standard $ million)
112112	Cattle Feedlots	$2.0	$7.0
112310	Chicken Egg Production	12.5	14.0
113110	Timber tract Operations	7.0	10.0
113210	Forest Nurseries and Gathering of Forest products	7.0	10.0
114111	Finfish Fishing	4.0	19.0
114112	Shellfish Fishing	4.0	5.0
114119	Other Marine Fishing	4.0	7.0
114210	Hunting and trapping	4.0	5.0
115111	Cotton Ginning	7.0	10.0
115114	Postharvest Crop Activities (Except Cotton Ginning)	7.0	25.5
115115	Farm Labor Contractors and Crew Leaders	7.0	14.0

Evaluation of Dominance in Field of Operation

SBA has determined that for the industries in NAICS Sector 11, Agriculture, Forestry, Fishing and Hunting, for which it has proposed to increase size standards in this proposed rule, no individual firm at or below the proposed size standard will be large enough to dominate its field of operation. At the proposed size standards, if adopted, the small business share of total industry receipts among those industries is, in average, 2.9 percent, with an interval showing a minimum of 0.02 percent to a maximum of 17.0 percent. These market shares effectively preclude a firm at or below the proposed size standards from exerting control on any of the industries.

Request for Comments

SBA invites public comments on this proposed rule, especially on the following issues:

1. To simplify size standards, SBA proposes eight fixed levels for receipts based size standards: $5 million, $7 million, $10 million, $14 million, $19 million, $25.5 million, $30 million, and $35.5 million. SBA invites comments on whether this is necessary and whether the proposed fixed size levels are appropriate. SBA welcomes suggestions on alternative approaches to simplifying small business size standards.

2. SBA seeks feedback on whether SBA's proposal to increase size standards for 11 industries and retain current size standards for five industries and two sub-industries (within NAICS 115310, Support Activities for Forestry) within NAICS Sector 11 is appropriate, given the economic characteristics of each industry reviewed in this proposed rule. SBA also seeks feedback and suggestions on alternative standards, if they would be more appropriate, including whether the number of employees is a more suitable measure of size for certain industries and what that employee level should be.

3. SBA has proposed to retain the current size standards for four industries and two sub-industries for which its analysis would support lowering them. SBA seeks comments on whether SBA should lower them solely based on its analysis or retain them at their current levels in view of current economic conditions.

4. SBA's proposed size standards are based on five primary factors—average firm size, average assets size (as a proxy of startup costs and entry barriers), four-firm concentration ratio, distribution of firms by size and, the level and small business share of Federal contracting dollars of the evaluated industries. SBA welcomes comments on these factors and/or suggestions on other factors that it should consider when evaluating or revising size standards. SBA also seeks information on relevant data sources, other than what it uses, if available.

5. SBA gives equal weight to each of the five primary factors in all industries. SBA seeks feedback on whether it should continue giving equal weight to each factor or whether it should give more weight to one or more factors for certain industries. Recommendations to weigh some factors more than others should include suggested weights for each factor along with supporting information.

6. For analyzing the Forest Fire Suppression and Fuel Management Services size standard, two sub-industries (''exception'') within NAICS 115310, SBA used PSC F003 within NAICS 115310 to identify contracting activity reported in FPDS–NG, and firms in the Forest Fire Suppression and Fuel Management Services sub-industry during fiscal years 2008–2010. Using the receipts and employment data for those identified firms from CCR, SBA analyzed the industry factors for these sub-industries. SBA seeks suggestions or comments on the use of the data sources and its proposal to retain the current $17.5 million size standard for them even if the analysis supported lowering it to $5 million. SBA is also interested in comments on the elimination of the Forest Fire Suppression and Fuel Management Services as ''exceptions'' to NAICS 115310, and the application of the same size standard for them as for the rest of NAICS 115310. Comments on applying the same NAICS 115310 size standard for Forest Fire Suppression and Fuel Management Services should address why the same size standard is more suitable than separate size standards for Forest Fire Suppression and Fuel management Services sub-industry size standard or why Forest Fire Suppression and Fuel management Services firms should continue to be treated as separate activities from the rest of NAICS 115310 for SBA's size standards purposes.

7. For analytical simplicity and efficiency, in this proposed rule, SBA has refined its size standard

methodology to obtain a single value as a proposed size standard instead of a range of values, as in its past size regulations. SBA welcomes any comments on this procedure and suggestions on alternative methods.

Public comments on the above issues are very valuable to SBA for validating its size standard methodology and its proposed size standards revisions in this proposed rule. This will help SBA to move forward with its review of size standards for other NAICS Sectors. Commenters addressing size standards for a specific industry or a group of industries should include relevant data and/or other information supporting their comments. If comments relate to using size standards for Federal procurement programs, SBA suggests that commenters provide information on the size of contracts in their industries, the size of businesses that can undertake the contracts, start-up costs, equipment and other asset requirements, the amount of subcontracting, other direct and indirect costs associated with the contracts, the use of mandatory sources of supply for products and services, and the degree to which contractors can mark up those costs.

Compliance With Executive Orders 12866, 13563, 12988 and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35) and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this proposed rule is not a ''significant regulatory action'' for purposes of Executive Order 12866. In order to help explain the need of this rule and the rule's potential benefits and costs, SBA is providing a Cost Benefit Analysis in this section of the rule. This is also not a ''major rule'' under the Congressional Review Act, 5 U.S.C. 800.

Cost Benefit Analysis

1. Is there a need for the regulatory action?

SBA believes that proposed size standards revisions in NAICS Sector 11, Agriculture, Forestry, Fishing and Hunting, will better reflect the economic characteristics of small businesses in this Sector and the Federal government marketplace. SBA's mission is to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To determine the intended beneficiaries of these programs, SBA establishes distinct definitions of which businesses are deemed small businesses. The Small Business Act (15 U.S.C. 632(a)) delegates to SBA's Administrator the responsibility for establishing small business definitions. The Act also requires that small business definitions vary to reflect industry differences. The recently enacted Jobs Act also requires SBA to review all size standards and make necessary adjustments to reflect market conditions. The supplementary information section of this proposed rule explains SBA's methodology for analyzing a size standard for a particular industry.

2. What are the potential benefits and costs of this regulatory action?

The most significant benefit to businesses obtaining small business status because of this proposed rule is gaining or retaining eligibility for Federal small business assistance programs. These include SBA's financial assistance programs, economic injury disaster loans, and Federal procurement programs intended for small businesses. Federal procurement programs provide targeted opportunities for small businesses under SBA's business development programs, such as 8(a), Small Disadvantaged Businesses (SDB), small businesses located in Historically Underutilized Business Zones (HUBZone), women-owned small businesses (WOSB), and service-disabled veteran-owned small businesses (SDVOSB). Federal agencies may also use SBA's size standards for a variety of other regulatory and program purposes. These programs assist small businesses to become more knowledgeable, stable, and competitive. SBA estimates that in 11 industries in NAICS Sector 11 for which it has proposed to increase size standards more than 7,500 firms, not small under the existing size standards, will become small under the proposed size standards and therefore become eligible for these programs. That is about 17 percent of all firms classified as small under the current size standards in all industries reviewed in this proposed rule. If adopted as proposed, this will increase the small business share of total receipts in those industries from 78.4 percent to 79.1 percent.

Three groups will benefit from the proposed size standards revisions in this rule, if they are adopted as proposed: (1) Some businesses that are above the current size standards may gain small business status under the higher size standards, thereby enabling them to participate in Federal small business assistance programs; (2) growing small businesses that are close to exceeding the current size standards will be able to retain their small business status under the higher size standards, thereby enabling them to continue their participation in the programs; and (3) Federal agencies will have a larger pool of small businesses from which to draw for their small business procurement programs.

SBA estimates that firms gaining small business status under the proposed size standards could receive Federal contracts totaling $7 million to $12 million annually under SBA's small business, 8(a), SDB, HUBZone, WOSB, and SDVOSB Programs, and other unrestricted procurements. The added competition for many of these procurements can also result in lower prices to the Government for procurements reserved for small businesses, but SBA cannot quantify this benefit.

Under SBA's 7(a) and 504 Loan Programs, based on the fiscal years 2008–2010 data, SBA estimates up to about 32 SBA's 7(a) and 504 loans totaling about $7.0 million could be made to these newly defined small businesses under the proposed size standards. Increasing the size standards will likely result in more small business guaranteed loans to businesses in these industries, but it is be impractical to try to estimate exactly the number and total amount of loans. There are two reasons for this: (1) under the Jobs Act, SBA can now guarantee substantially larger loans than in the past; and (2) as described above, the Jobs Act established a higher alternative size standard ($15 million in tangible net worth and $5 million in net income after income taxes) for business concerns that do not meet the size standards for their industry. Therefore, SBA finds it difficult to quantify the actual impact of these proposed size standards on its 7(a) and 504 Loan Programs.

Newly defined small businesses will also benefit from SBA's Economic Injury Disaster Loan (EIDL) Program. Since this program is contingent on the occurrence and severity of a disaster in the future, SBA cannot make a meaningful estimate of this impact.

In addition, newly defined small businesses will also benefit through reduced fees, less paperwork, and fewer compliance requirements that are available to small businesses through Federal government.

To the extent that those 7,500 newly defined additional small firms could become active in Federal procurement programs, the proposed changes to size standards, if adopted, may entail some additional administrative costs to the government as a result of more businesses being eligible for Federal small business programs. For example, there will be more firms seeking SBA's

guaranteed loans, more firms eligible for enrollment in the Central Contractor Registration (CCR)'s Dynamic Small Business Search database, and more firms seeking certification as 8(a) or HUBZone firms or qualifying for small business, WOSB, SDVOSB, and SDB status. Among those newly defined small businesses seeking SBA's assistance, there could be some additional costs associated with compliance and verification of small business status and protests of small business status. However, SBA believes that these added administrative costs will be minimal because mechanisms are already in place to handle these requirements.

Additionally, Federal government contracts may have higher costs. With a greater number of businesses defined as small, Federal agencies may choose to set aside more contracts for competition among small businesses only rather than using full and open competition. The movement from unrestricted to small business set-aside contracting might result in competition among fewer total bidders, although there will be more small businesses eligible to submit offers. However, the additional costs associated with fewer bidders are expected to be minor since, by law, procurements may be set aside for small businesses or reserved for the 8(a), HUBZone, WOSB, or SDVOSB Programs only if awards are expected to be made at fair and reasonable prices. In addition, there may be higher costs when more full and open contracts are awarded to HUBZone businesses that receive price evaluation preferences.

The proposed size standards revisions, if adopted, may have some distributional effects among large and small businesses. Although SBA cannot estimate with certainty the actual outcome of the gains and losses among small and large businesses, it can identify several probable impacts. There may be a transfer of some Federal contracts to small businesses from large businesses. Large businesses may have fewer Federal contract opportunities as Federal agencies decide to set aside more contracts for small businesses. In addition, some Federal contracts may be awarded to HUBZone concerns instead of large businesses since these firms may be eligible for a price evaluation preference for contracts when they compete on a full and open basis.

Similarly, some businesses defined small under the current size standards may obtain fewer Federal contracts due to the increased competition from more businesses defined as small under the proposed size standards. This transfer may be offset by a greater number of Federal procurements set aside for all small businesses. The number of newly defined and expanding small businesses that are willing and able to sell to the Federal Government will limit the potential transfer of contracts from large and currently defined small businesses. SBA cannot estimate the potential distributional impacts of these transfers with any degree of precision.

The proposed revisions to the existing size standards for 11 industries in NAICS Sector 11, Agriculture, Forestry, Fishing and Hunting, are consistent with SBA's statutory mandate to assist small business. This regulatory action promotes the Administration's objectives. One of SBA's goals in support of the Administration's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit, Government contracts, and management and technical assistance. Reviewing and modifying size standards, when appropriate, ensures that intended beneficiaries have access to small business programs designed to assist them.

Executive Order 13563

Descriptions of the need for this regulatory action and benefits and costs associated with this action including possible distributional impacts that relate to Executive Order 13563 are included above in the Cost Benefit Analysis under Executive Order 12866.

In an effort to engage interested parties in this action, SBA has presented its size standards methodology (discussed above under **SUPPLEMENTARY INFORMATION**) to various industry associations and trade groups. SBA also met with a number of industry groups and individual businesses to get their feedback on its methodology and other size standards issues. In addition, SBA presented its size standards methodology to businesses in 13 cities in the U.S. and sought their input as part of Jobs Act tours. The presentation also included information on the latest status of the comprehensive size standards review and on how interested parties can provide SBA with input and feedback on size standards review.

Additionally, SBA sent letters to the Directors of the Offices of Small and Disadvantaged Business Utilization (OSDBU) at several Federal agencies with considerable procurement responsibilities requesting their feedback on how the agencies use SBA's size standards and whether current size standards meet their programmatic needs (both procurement and non-procurement). SBA gave appropriate consideration to all input, suggestions, recommendations, and relevant information obtained from industry groups, individual businesses, and Federal agencies in preparing this proposed rule.

The review of size standards in NAICS Sector 11, Agriculture, Forestry, Fishing and Hunting, is consistent with Executive Order 13563, Section 6, calling for retrospective analyses of existing rules. The last comprehensive review of size standards occurred during the late 1970s and early 1980s. Since then, except for periodic adjustments for monetary based size standards, most reviews of size standards were limited to a few specific industries in response to requests from the public and Federal agencies. SBA recognizes that changes in industry structure and the Federal marketplace over time have rendered existing size standards for some industries no longer supportable by current data. Accordingly, in 2007, SBA began a comprehensive review of its size standards to ensure that existing size standards have supportable bases and to revise them when necessary. In addition, the Jobs Act requires SBA to conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. Specifically, the Jobs Act requires SBA to conduct a detailed review of at least one-third of all size standards during every 18-month period from the date of its enactment and do a complete review of all size standards not less frequently than once every 5 years thereafter.

Executive Order 12988

This action meets applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

Executive Order 13132

For purposes of Executive Order 13132, SBA has determined that this proposed 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. Therefore, SBA has determined that this proposed rule has no federalism implications warranting preparation of a federalism assessment.

Paperwork Reduction Act

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA

has determined that this proposed rule will not impose any new reporting or record keeping requirements.

Initial Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this proposed rule, if adopted, may have a significant impact on a substantial number of small businesses in NAICS Sector 11, Agriculture, Forestry, Fishing and Hunting. As described above, this rule may affect small businesses seeking Federal contracts, loans under SBA's 7(a), 504 and Economic Injury Disaster Loan Programs, and assistance under other Federal small business programs.

Immediately below, SBA sets forth an initial regulatory flexibility analysis (IRFA) of this proposed rule addressing the following questions: (1) What are the need for and objective of the rule? (2) What are SBA's description and estimate of the number of small businesses to which the rule will apply? (3) What are the projected reporting, record keeping, and other compliance requirements of the rule? (4) What are the relevant Federal rules that may duplicate, overlap, or conflict with the rule? and (5) What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small businesses?

1. What are the need for and objective of the rule?

Changes in industry structure, technological changes, productivity growth, mergers and acquisitions, and updated industry definitions have changed the structure of many industries in NAICS Sector 11. Such changes can be sufficient to support revisions to current size standards for some industries. Based on the analysis of the latest data available, SBA believes that the revised standards in this proposed rule more appropriately reflect the size of businesses that need Federal assistance. The recently enacted Jobs Act also requires SBA to review all size standards and make necessary adjustments to reflect market conditions.

2. What are SBA's description and estimate of the number of small businesses to which the rule will apply?

If the proposed rule is adopted in its present form, SBA estimates that more than 7,500 additional firms will become small because of increased size standards seven industries in NAICS Sector 11. That represents 17 percent of total firms that are small under current size standards in all industries reviewed by SBA within that Sector. This will result in an increase in the small business share of total industry receipts for the Sector from 78.4 percent under the current size standards to 79.1 percent under the proposed size standards. The proposed size standards, if adopted, will enable more small businesses to retain their small business status for a longer period. Many firms may have lost their eligibility and find it difficult to compete at current size standards with companies that are significantly larger than they are. SBA believes the competitive impact will be positive for existing small businesses and for those that exceed the size standards but are on the very low end of those that are not small. They might otherwise be called or referred to as mid-sized businesses, although SBA only defines what is small; other entities are other than small.

3. What are the projected reporting, record keeping and other compliance requirements of the rule?

The proposed size standard changes impose no additional reporting or record keeping requirements on small businesses. However, qualifying for Federal procurement and a number of other programs requires that businesses register in the CCR database and certify in the Online Representations and Certifications Application (ORCA) that they are small at least once annually. Therefore, businesses opting to participate in those programs must comply with CCR and ORCA requirements. However, there are no costs associated with either CCR registration or ORCA certification. Changing size standards alters the access to SBA's programs that assist small businesses, but does not impose a regulatory burden because they neither regulate nor control business behavior.

4. What are the relevant Federal rules, which may duplicate, overlap or conflict with the rule?

Under § 3(a)(2)(C) of the Small Business Act, 15 U.S.C. 632(a)(2)(c), Federal agencies must use SBA's size standards to define a small business, unless specifically authorized by statute to do otherwise. In 1995, SBA published in the **Federal Register** a list of statutory and regulatory size standards that identified the application of SBA's size standards as well as other size standards used by Federal agencies (60 FR 57988 (November 24, 1995)). SBA is not aware of any Federal rule that would duplicate or conflict with establishing size standards.

However, the Small Business Act and SBA's regulations allow Federal agencies to develop different size standards if they believe that SBA's size standards are not appropriate for their programs, with the approval of SBA's Administrator (13 CFR 121.903). The Regulatory Flexibility Act authorizes an Agency to establish an alternative small business definition, after consultation with the Office of Advocacy of the U.S. Small Business Administration (5 U.S.C. 601(3)).

5. What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

By law, SBA is required to develop numerical size standards for establishing eligibility for Federal small business assistance programs. Other than varying size standards by industry and changing the size measures, no practical alternative exists to the systems of numerical size standards.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, SBA proposes to amend part 13 CFR part 121 as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation for Part 121 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 636(b), 662, and 694a(9).

2. In § 121.201, in the table, revise the entries for ''112112'', ''112310'', ''113110'', ''113210'', ''114111'', ''114112'', ''114119'', ''114210'', ''115111'', ''115114'', and ''115115'' to read as follows:

§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?

* * * * *

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS Codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
*	* * * * * *	*	
112112	Cattle Feedlots	$7.0	
*	* * * * * *	*	
112310	Chicken Egg Production	14.0	
*	* * * * * *	*	
113110	Timber Tract Operations	10.0	
113210	Forest Nurseries and Gathering of Forest Products	10.0	
*	* * * * * *	*	
114111	Finfish Fishing	19.0	
114112	Shellfish Fishing	5.0	
114119	Other Marine Fishing	7.0	
114210	Hunting and Trapping	5.0	
115111	Cotton Ginning	10.0	
*	* * * * * *	*	
115114	Postharvest Crop Activities (except Cotton Ginning)	25.5	
115115	Farm Labor Contractors and Crew Leaders	14.0	
*	* * * * * *	*	

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Dated: June 22, 2012.

Karen G. Mills,

Administrator.

[FR Doc. 2012–22259 Filed 9–10–12; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0932; Directorate Identifier 2012–NM–014–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain The. This proposed AD was prompted by a report that during a test of the oxygen system, an operator found that the passenger oxygen masks did not properly flow oxygen, and that a loud noise occurred in the overhead area, which was caused by the flex line separating from the hard line due to a missing clamshell coupler. This proposed AD would require, for certain airplanes, performing a detailed inspection of certain areas of the airplane oxygen system to ensure clamshell couplers are installed and fully latched, and corrective actions if necessary. For all airplanes, this proposed AD would require performing and meeting the requirements of the low pressure leak test. We are proposing this AD to prevent the oxygen system flex line from separating from the hard line, which could cause an oxygen leak and a drop in the oxygen system pressure, resulting in improper flow of oxygen through the passenger masks and injury to passengers if emergency oxygen is needed.

DATES: We must receive comments on this proposed AD by October 26, 2012.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

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

Examining the AD Docket

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

available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Susan Monroe, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6457; fax: 425–917–6590; email: *susan.l.monroe@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0932; Directorate Identifier 2012–NM–014–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We have received a report that during a test of the oxygen system, an operator found that the passenger oxygen masks did not properly flow oxygen and that a loud noise occurred in the overhead area, which was caused by the flex line separating from the hard line due to a missing clamshell coupler. This condition, if not corrected, could result in the oxygen system flex line from separating from the hard line, which could cause an oxygen leak and a drop in the oxygen system pressure, resulting in improper flow of oxygen through the passenger masks and injury to passengers if emergency oxygen is needed.

Relevant Service Information

We reviewed Boeing Special Attention Service Bulletin 777–35–0024, dated September 1, 2011. The service information describes, for certain airplanes, procedures for a detailed inspection of certain areas of the airplane oxygen system to ensure clamshell couplers are installed and fully latched, corrective actions if necessary; and, for all airplanes, performing and meeting the requirements of the low pressure leak test. The corrective action is installing or correctly latching the clamshell coupler.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between the Proposed AD and the Service Information.''

Differences Between the Proposed AD and the Service Information

Boeing Special Attention Service Bulletin 777–35–0024, dated September 1, 2011, describes procedures for inspecting to determine if a clamshell coupler is installed, but it does not provide a corrective action if a clamshell coupler is not installed. This proposed AD would require installing a clamshell coupler if any clamshell coupler is not installed.

Costs of Compliance

We estimate that this proposed AD affects 6 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Detailed inspection and leak test	26 work-hours × $85 per hour = $2,210	$0	$2,210	$13,260

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this proposed AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2012–0932; Directorate Identifier 2012–NM–014–AD.

(a) Comments Due Date

We must receive comments by October 26, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 777–200, –200LR, –300, –300ER, and 777F series airplanes; certificated in any category; as identified in Boeing Special Attention Service Bulletin 777–35–0024, dated September 1, 2011.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a report that during a test of the oxygen system, an operator found that the passenger oxygen masks did not properly flow oxygen and that a loud noise occurred in the overhead area, which was caused by the flex line separating from the hard line due to a missing clamshell coupler. We are issuing this AD to prevent the oxygen system flex line from separating from the hard line, which could cause an oxygen leak and a drop in the oxygen system pressure, resulting in improper flow of oxygen through the passenger masks and injury to passengers if emergency oxygen is needed.

(f) Compliance

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

(g) Inspection

Within 36 months after the effective date of this AD, do the applicable actions in paragraph (g)(1) or (g)(2) of this AD.

(1) For Groups 1–6, 8 and 9 airplanes, as identified in Boeing Special Attention Service Bulletin 777–35–0024, dated September 1, 2011: Do a detailed inspection of certain areas of the airplane oxygen system to ensure clamshell couplers are installed and fully latched, and perform and meet the requirements of the low pressure leak test, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–35–0024, dated September 1, 2011.

(2) For Group 7 airplanes, as identified in Boeing Special Attention Service Bulletin 777–35–0024, dated September 1, 2011: Perform and meet the low pressure leak test, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–35–0024, dated September 1, 2011.

(h) Corrective Action if Clamshell Coupler Is Not Fully Latched

If, during any inspection required by paragraph (g) of this AD, any clamshell coupler is not fully latched: Before further flight, latch the clamshell coupler, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–35–0024, dated September 1, 2011.

(i) Corrective Action if Clamshell Coupler Is Not Installed

If, during any inspection required by paragraph (g) of this AD, any clamshell coupler is not installed: Before further flight, install a clamshell coupler.

Note 1 to paragraph (i) of this AD: Guidance on installation of the clamshell coupler may be found in Subject 35–00–00, Oxygen, of Chapter 35, Oxygen, of Part II, Practices and Procedures, of the Boeing 777 Aircraft Maintenance Manual, Revision 65, May 5, 2012.

(j) Alternative Methods of Compliance (AMOCs)

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

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

(k) Related Information

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

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

Issued in Renton, Washington, on September 4, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–22341 Filed 9–10–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0962; Directorate Identifier 2012–CE–033–AD]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Cessna Aircraft Company Models 172RG, R182, TR182, FR182, 210N, T210N, 210R, T210R, P210N, P210R, and T303 airplanes. This proposed AD was prompted by a report of a cockpit fire that appeared to originate from the area of the landing gear's hydraulic power pack system. This proposed AD would require you inspect the aircraft's hydraulic power pack wiring for incorrect installation, and if needed, correct the installation. We are proposing this AD to correct the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by October 26, 2012.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

For service information identified in this proposed AD, contact Cessna Aircraft Company, Customer Service, P.O. Box 7706, Wichita, KS 67277; telephone: (316) 517–5800; fax: (316) 517–7271; Internet: *http://www.cessna.com/customer-service/*

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Richard Rejniak, Aerospace Engineer, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; phone: (316) 946–4128; fax: (316) 946–4107; email: *richard.rejniak@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0962; Directorate Identifier 2012–CE–033–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We received a report of an accident of a Cessna Aircraft Company Model 172RG airplane where a fire started in-flight on the cabin side of the firewall and rapidly accelerated. The fire originated from the area of the landing gear's hydraulic power pack system and resulted in a complete hull loss with reported injuries.

The investigation concluded that an in-flight fire may result from improper installation of the terminal lugs, improper installation of (or missing) terminal covers and associated wiring to the landing gear hydraulic power pack motor wiring, which was not properly protected or adequately secured. The cause for the rapid acceleration of the fire was indicative of the presence of flammable materials or a flammable material source near or in contact with the hydraulic power pack system within the aircraft's cockpit/cabin.

This style of hydraulic power pack is also used on Cessna Aircraft Company Models R182, TR182, FR182, 210N, T210N, 210R, T210R, P210N, P210R, and T303 airplanes.

This condition, if not corrected, could result in a fire in the aircraft's cockpit, damage and or loss of aircraft, and injuries and or fatalities.

Relevant Service Information

We reviewed Cessna Aircraft Company Service Letter MEL–29–01, dated July 14, 2012; and Service Letter SEL–29–01, dated July 16, 2012. The service information describes procedures for inspection of the aircraft's hydraulic power pack system for proper wire routing, protective cover, and hydraulic leaks, and if needed, installation of a protective cover and rerouting of wiring.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of these same type designs.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

We estimate that this proposed AD affects 2,961 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Hydraulic power pack system wiring inspection.	1 work-hour × $85 per hour = $85	Not applicable	$85	$251,685

We estimate the following costs to do any necessary hydraulic power pack terminal lug protective cap installation that would be required based on the results of the proposed inspection. We have no way of determining the number of aircraft that might need this installation:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Hydraulic power pack system wiring installation	1 work-hour × $85 per hour = $85	$29	$114

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for

safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Cessna Aircraft Company: Docket No. FAA–2012–0962+; Directorate Identifier 2012–CE–033–AD.

(a) Comments Due Date

We must receive comments by October 26, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the following Cessna Aircraft Company airplanes, certificated in any category, as identified in table 1, paragraph (c), of this AD:

TABLE 1 TO PARAGRAPH (c) OF THIS AD—APPLICABILITY

Model	Serial Nos.
(1) 172RG	172RG000l through 172RG1191.
(2) R182 and TR182	R18200584 through Rl8202039.
(3) FR182	FR18200021 through FR18200070.
(4) 210N, T210N, 210R, and T210R	21062955 through 21065009.
(5) P210N	P21000151 through P21000834.
(6) P210R	P21000835 through P21000874.
(7) T303	T30300001 through T30300315.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 32, Landing Gear.

(e) Unsafe Condition

This AD was prompted by a report of a cockpit fire that appeared to originate from the area of the landing gear's hydraulic power pack system. We are issuing this AD to correct the unsafe condition on these products.

(f) Compliance

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

(g) Inspect the Hydraulic Power Pack Wiring for Correct Installation

(1) *Single engine aircraft:* Within the next 100 hours time-in-service (TIS) after the effective date of this AD or within the next 12 calendar months after the effective date of this AD, whichever occurs first, inspect the hydraulic power pack wiring for correct installation. Follow Cessna Aircraft Company Service Letter SEL–29–01, dated July 16, 2012.

(2) *Multi-engine aircraft:* Within the next 100 hours TIS after the effective date of this AD or within the next 12 calendar months after the effective date of this AD, whichever occurs first, inspect the hydraulic power pack wiring for correct installation. Follow Cessna Aircraft Company Service Letter MEL–29–01, dated July 14, 2012.

(h) Correct the Installation of the Hydraulic Power Pack Wiring

(1) *Single engine aircraft:* If you find evidence of incorrect installation of the hydraulic power pack wiring as a result of the inspection required by paragraph (g)(1) of this AD, before further flight, correct the installation. Follow Cessna Aircraft Company Service Letter SEL–29–01, dated July 16, 2012.

(2) *Multi-engine aircraft:* If you find evidence of incorrect installation of the hydraulic power pack wiring as a result of the inspection required by paragraph (g)(2) of this AD, before further flight, correct the installation. Follow Cessna Aircraft Company Service Letter MEL–29–01, dated July 14, 2012.

(i) Special Flight Permit

Special flight permits are permitted with the following limitation: visual flight rules (VFR) day conditions.

(j) Alternative Methods of Compliance (AMOCs)

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

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

(k) Related Information

(1) For more information about this AD, contact Richard Rejniak, Aerospace Engineer, Wichita ACO, 1801 Airport Road, Room 100, Wichita, Kansas 67209; phone: (316) 946–4128; fax: (316) 946–4107; email: richard.rejniak@faa.gov.

(2) For service information identified in this AD, contact Cessna Aircraft Company, Customer service, P.O. Box 7706, Wichita, KS 67277; telephone: (316) 517–5800; fax: (316) 517–7271; Internet: *http://www.cessnasupport.com/customer-service/technical-publications.html.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri, on September 5, 2012.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–22332 Filed 9–10–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0909; Directorate Identifier 2011–NM–027–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: We are revising an earlier proposed airworthiness directive (AD) for all The Boeing Company Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes. That NPRM proposed repetitive high frequency eddy current (HFEC) inspections for cracking of the left and right rib hinge bearing lugs of the aft face of the center section of the horizontal stabilizer; measuring crack length and blending out cracks; and replacing the horizontal stabilizer center section rib, if necessary. That NPRM was prompted by reports of cracks of the hinge bearing lugs of the center section ribs of the horizontal stabilizer. This action revises that NPRM by adding the requirement for rib replacement if cracking is found during certain inspections of this proposed AD. We are proposing this supplemental NPRM to detect and correct cracking in the hinge bearing lugs of the horizontal stabilizer center section ribs, which could result in failure of the lugs, resulting in the inability of the horizontal stabilizer to sustain the required limit loads and consequent loss of control of the airplane. Since these actions impose an additional burden over that proposed in the NPRM, we are reopening the comment period to allow the public the chance to comment on these proposed changes.

DATES: We must receive comments on this supplemental NPRM by October 26, 2012.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, CA 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Roger Durbin, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: (562) 627–5233; fax: (562) 627–5210; email: *roger.durbin@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2011–0909; Directorate Identifier 2011–NM–027–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We issued an NPRM to amend 14 CFR part 39 to include an AD that would apply to The Boeing Company Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes. That NPRM published in the **Federal Register** on August 26, 2011 (76 FR 53346). That NPRM proposed to require repetitive HFEC inspections for cracking of the left and right rib hinge bearing lugs of the aft face of the center section of the horizontal stabilizer; measuring crack length and blending out cracks; and replacing the horizontal stabilizer center section rib, if necessary.

Actions Since NPRM (76 FR 53346, August 26, 2011) Was Issued

Since we issued the previous NPRM (76 FR 53346, August 26, 2011), we determined a required corrective action was not specified by Boeing Alert Service Bulletin MD80–55A069, dated January 19, 2011. Therefore, we propose to add a requirement for rib replacement if cracking is found during certain inspections required by this supplemental NPRM.

Comments

We gave the public the opportunity to comment on the previous NPRM (76 FR 53346, August 26, 2011). The following presents the comments received on the NPRM and the FAA's response to each comment.

Support for the NPRM (76 FR 53346, August 26, 2011)

Boeing stated it supports the NPRM (76 FR 53346, August 26, 2011).

Recognition That Reporting of Findings Is Not Required

American Airlines stated it recognizes that reporting of findings requested by Boeing Alert Service Bulletin MD80–55A069, dated January 19, 2011, is not required by the NPRM (76 FR 53346, August 26, 2011).

We acknowledge American Airlines's comment. Reporting is not required by the supplemental NPRM. We have not

changed the supplemental NPRM in this regard.

FAA's Determination

We are proposing this supplemental NPRM because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of these same type designs. Certain changes described above expand the scope of the previous NPRM (76 FR 53346, August 26, 2011). As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this supplemental NPRM.

Proposed Requirements of the Supplemental NPRM

This supplemental NPRM would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between the Supplemental NPRM and the Service Information.''

Differences Between the Supplemental NPRM and the Service Information

Although Boeing Alert Service Bulletin MD80–55A069, dated January 19, 2011, specifies to send the inspection results to the manufacturer, this proposed supplemental NPRM would not require any report.

Boeing Alert Service Bulletin MD80–55A069, dated January 19, 2011, does not specify instructions for replacing a horizontal stabilizer center section rib. If crack length exceeds a certain specified length or if cracking is found during any inspection of a blend-out repair, paragraphs (h)(2) and (j)(2) of this supplemental NPRM would require repairing those conditions in one of the following ways:

- In accordance with a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) whom we have authorized to make those findings.

Interim Action

We consider this supplemental NPRM interim action since investigation is ongoing and no terminating action has been developed yet. The manufacturer is currently developing a modification that will address the unsafe condition identified in this supplemental NPRM. Once this modification is developed, approved, and available, we may consider additional rulemaking.

Costs of Compliance

We estimate that this proposed AD affects 668 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	6 work-hours × $85 per hour = $510 per inspection cycle.	$0	$510	$340,680 per inspection cycle.

We have received no definitive data that would enable us to provide labor cost estimates for the on-condition actions (blend-out repair(s) or replacement of center section rib(s)) specified in this proposed AD. However, we have been advised that replacement parts would be $14,500 per repair kit for each horizontal stabilizer rib.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2011–0909; Directorate Identifier 2011–NM–027–AD.

(a) Comments Due Date

We must receive comments by October 26, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin MD80–55A069, dated January 19, 2011.

(d) Subject

Air Transport Association (ATA) of America Code 55, Stabilizers.

(e) Unsafe Condition

This AD was prompted by reports of cracks of the hinge bearing lugs of the center section ribs of the horizontal stabilizer. We are issuing this AD to detect and correct cracking in the hinge bearing lugs of the horizontal stabilizer center section ribs, which could result in failure of the lugs, resulting in the inability of the horizontal stabilizer to sustain the required limit loads and consequent loss of control of the airplane.

(f) Compliance

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

(g) Inspection of Horizontal Stabilizer Ribs Made From 7075–T7351 Material

For Group 1 airplanes, as identified in Boeing Alert Service Bulletin MD80–55A069, dated January 19, 2011: Before the accumulation of 23,000 total flight cycles, or within 4,383 flight cycles after the effective date of this AD, whichever occurs later, do a high frequency eddy current (HFEC) inspection for cracking of the left and right rib hinge bearing lugs of the aft face of the center section of the horizontal stabilizer, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD80–55A069, dated January 19, 2011. For any crack-free lug, repeat the inspection thereafter at intervals not to exceed 8,200 flight cycles.

(h) Repair and Replacement for Cracking of 7075–T7351 Material

If, during any inspection required by paragraph (g) of this AD, any crack is found: Before further flight, measure the length of the crack between the points specified in Boeing Alert Service Bulletin MD80–55A069, dated January 19, 2011. Do the action in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD80–55A069, dated January 19, 2011.

(1) If the crack length between points 'A' and 'B' is less than or equal to 0.15 inch and the crack length between points 'C' and 'D' is less than or equal to 0.05 inch: Before further flight, blend out the crack, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD80–55A069, dated January 19, 2011. Within 15,600 flight cycles after doing the blend-out, do an HFEC inspection of the blendout on the center section rib hinge bearing lug for cracking, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD80–55A069, dated January 19, 2011.

(i) If no cracking is found, repeat the inspection thereafter at intervals not to exceed 3,900 flight cycles.

(ii) If cracking is found during any inspection of the blend out, before further flight, do the replacement required by paragraph (h)(2) of this AD, and do the inspections required by paragraph (h)(2) of this AD at the times specified in paragraph (h)(2) of this AD.

(2) If the crack length between points 'A' and 'B' is greater than 0.15 inch or the crack length between points 'C' and 'D' is greater than 0.05 inch: Before further flight, replace the horizontal stabilizer center section rib with a new horizontal stabilizer center section rib, using a method approved in accordance with the procedures specified in paragraph (l) of this AD. Repeat the inspection required by paragraph (g) of this AD one time before the accumulation of 23,000 total flight cycles on the new horizontal stabilizer center section rib, and thereafter at intervals not to exceed 11,300 flight cycles.

(i) Inspection of Horizontal Stabilizer Ribs Made From 7050–T7451 Material

For Group 2 airplanes, as identified in Boeing Alert Service Bulletin MD80–55A069, dated January 19, 2011: Before the accumulation of 23,000 total flight cycles, or within 4,383 flight cycles after the effective date of this AD, whichever occurs later, do an HFEC inspection for cracking of the left and right rib hinge bearing lugs of the aft face of the center section of the horizontal stabilizer, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD80–55A069, dated January 19, 2011. For any crack-free lug, repeat the inspection thereafter at intervals not to exceed 11,300 flight cycles.

(j) Repair and Replacement for Cracking of 7050–T7451 Material

If, during any inspection required by paragraph (i) of this AD, any crack is found: Before further flight, measure the length of the crack between the points specified in and in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD80–55A069, dated January 19, 2011.

(1) If the crack length between points 'A' and 'B' is less than or equal to 0.15 inch and the crack length between points 'C' and 'D' is less than or equal to 0.05 inch: Before further flight, blend out the crack, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD80–55A069, dated January 19, 2011. Within 15,600 flight cycles after doing the blend out, do an HFEC inspection of the blend out on the center section rib hinge bearing lug for cracking, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD80–55A069, dated January 19, 2011.

(i) If no cracking is found, repeat the inspection thereafter at intervals not to exceed 5,800 flight cycles.

(ii) If cracking is found during any inspection of the blend out, before further flight, do the replacement required by paragraph (j)(2) of this AD, and do the inspections required by paragraph (j)(2) of this AD at the times specified in paragraph (j)(2) of this AD.

(2) If the crack length between points 'A' and 'B' is greater than 0.15 inch or the crack length between points 'C' and 'D' is greater than 0.05 inch: Before further flight, replace the horizontal stabilizer center section rib with a new horizontal stabilizer center section rib, using a method approved in accordance with the procedures specified in paragraph (l) of this AD. Repeat the inspection required by paragraph (i) of this AD one time before the accumulation of 23,000 total flight cycles on the new horizontal stabilizer center section rib, and thereafter at intervals not to exceed 11,300 flight cycles.

(k) No Reporting Requirement

Although Boeing Alert Service Bulletin MD80–55A069, dated January 19, 2011, specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(l) Alternative Methods of Compliance (AMOCs)

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

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane and 14 CFR 25.571, Amendment 45, and the approval must specifically refer to this AD.

(m) Related Information

(1) For more information about this AD, contact Roger Durbin, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: (562) 627–5233; fax: (562) 627–5210; email: *roger.durbin@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, CA 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on September 4, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–22314 Filed 9–10–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

Docket No. FAA–2012–0660; Airspace Docket No. 12–ANM–20

Proposed Establishment of Class E Airspace; Walsenburg, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Spanish Peaks Airfield, Walsenburg, CO. Controlled airspace is necessary to accommodate aircraft using a new Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures at the airport, and to enhance the safety and management of aircraft operations.

DATES: Comments must be received on or before October 26, 2012.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2012–0660; Airspace Docket No. 12–ANM–20, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Communications should identify both docket numbers (FAA Docket No. FAA 2012–0660 and Airspace Docket No. 12–ANM–20) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2012–0660 and Airspace Docket No. 12–ANM–20''. The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

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

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

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

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E airspace at Spanish Peaks Airfield, Walsenburg, CO. Controlled airspace is necessary to accommodate aircraft using the new RNAV (GPS) standard instrument approach procedures at Spanish Peaks Airfield. This action would enhance the safety and management of aircraft operations at the airport.

Class E airspace designations are published in paragraph 6005, of FAA Order 7400.9V, dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

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

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

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal

Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011 is amended as follows:

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

* * * * *

ANM CO E5 Walsenburg, CO

Walsenburg, Spanish Peaks Airfield, CO
(Lat. 37°41′48″ N., long. 104°47′05″ W.)

That airspace extending upward from 700 feet above the surface within a 9.7-mile radius of the Spanish Peaks Airfield; that airspace extending upward from 1,200 feet above the surface within an area bounded by lat. 37°58′00″ N., long. 105°00′00″ W.; to lat. 37°52′00″ N., long. 104°13′00″ W.; to lat. 37°17′00″ N., long. 104°10′00″ W.; to lat. 37°22′00″ N., long. 105°22′00″ W., thence to the point of beginning.

Issued in Seattle, Washington, on August 31, 2012.

John Warner,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2012–22241 Filed 9–10–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 226

Osage Negotiated Rulemaking Committee

AGENCY: Department of the Interior.

ACTION: Notice of meetings.

SUMMARY: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. Appendix 2, the U.S. Department of the Interior, Bureau of Indian Affairs, Osage Negotiated Rulemaking Committee will meet as indicated below.

DATES: *Meetings:* The meetings will be held as follows: Thursday, September 27, 2012, and Friday, September 28, 2012, from 9 a.m. to 6 p.m.; and Monday, October 22, 2012, and Tuesday, October 23, 2012, from 9 a.m. to 6 p.m.

ADDRESSES: *September Meeting:* Hilton Hotel Tulsa, Warren Place, 6110 S. Yale Avenue, Tulsa, Oklahoma 74135; *October Meeting:* Osage Casino, 951 W. 36th Street, North, Tulsa, Oklahoma 74136.

FOR FURTHER INFORMATION CONTACT: Mr. Eddie Streater, Designated Federal Officer, Bureau of Indian Affairs, Wewoka Agency, P.O. Box 1540, Seminole, OK 74818; telephone (405) 257–6250; fax (405) 257–3875; or email *osageregneg@bia.gov.* Additional Committee information can be found at: *http://www.bia.gov/osageregneg.*

SUPPLEMENTARY INFORMATION: On October 14, 2011, the United States and the Osage Nation (formerly known as the Osage Tribe) signed a Settlement Agreement to resolve litigation regarding alleged mismanagement of the Osage Nation's oil and gas mineral estate, among other claims. As part of the Settlement Agreement, the parties agreed that it would be mutually beneficial ''to address means of improving the trust management of the Osage Mineral Estate, the Osage Tribal Trust Account, and Other Osage Accounts.'' Settlement Agreement, Paragraph 1.i. The parties agreed that a review and revision of the existing regulations is warranted to better assist the Bureau of Indian Affairs (BIA) in managing the Osage Mineral Estate. The parties agreed to engage in a negotiated rulemaking for this purpose. Settlement Agreement, Paragraph 9.b. After the Committee submits its report, BIA will develop a proposed rule to be published in the **Federal Register**.

Meeting Agenda: The meeting agenda will include (1) Welcome and Introduction; (2) Overview of prior meeting and action tracking; (3) Members' round robin to share information and identify key issues to be addressed; (4) Committee Members' review and discussion of subcommittee activities; (5) Future Committee activities; (6) Public comments which will be scheduled for 45 minutes in the morning and again in the afternoon; (7) and closing remarks. The final agenda will be posted on *www.bia.gov/osagenegreg* prior to each meeting.

Public Input: All Committee meetings are open to the public. Interested members of the public may present, either orally or through written comments, information for the Committee to consider during the public meeting. Written comments should be submitted, prior to, during or after the meeting, to Mr. Eddie Streater, Designated Federal Officer, preferably via email, at *osagenegneg@bia.gov*, or by U.S. mail to: Mr. Eddie Streater, Designated Federal Officer, Bureau of Indian Affairs, Wewoka Agency, P.O. Box 1540, Seminole, OK 74818. Due to time constraints during the meeting, the Committee is not able to read written public comments submitted into the record.

Individuals or groups requesting to make oral comments at the public Committee meeting will be limited to 5 minutes per speaker. Speakers who wish to expand their oral statements, or those who had wished to speak, but could not be accommodated during the public comment period, are encouraged to submit their comments in written form to the Committee after the meeting at the address provided above. There will be a sign-up sheet at the meeting for those wishing to speak during the public comment period.

The meeting location is open to the public. Space is limited, however, so we strongly encourage all interested in attending to preregister by submitting your name and contact information via email to Mr. Eddie Streater at *osageregneg@bia.gov.* Persons with disabilities requiring special services, such as an interpreter for the hearing impaired, should contact Mr. Streater at (405) 257–6250 at least seven calendar days prior to the meeting. We will do our best to accommodate those who are unable to meet this deadline.

Dated: September 5, 2012.

Michael S. Black,

Director, Bureau of Indian Affairs.

[FR Doc. 2012–22373 Filed 9–10–12; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2012–0202]

RIN 1625–AA87

Security Zones; Dignitary Arrival/Departure and United Nations Meetings, New York, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a permanent security zone on the waters of the East River and Bronx Kill, in the vicinity of Randalls and

Wards Islands, New York; revise the description of the Wall Street Heliport security zone on the East River, New York; and clarify the enforcement times and locations of the security zones that are located near the United Nations Headquarters in Manhattan, New York, as set forth in 33 CFR 165.164(a)(4) and (a)(5). This action is necessary to protect visiting dignitaries and the Port of New York/New Jersey against terrorism, sabotage or other subversive acts and incidents of a similar nature during the dignitaries' visit to New York City. The zones are intended to restrict vessels from a portion of the East River and Bronx Kill when public officials are scheduled to arrive and depart the area. Persons or vessels would not be allowed to enter these security zones without permission from the Captain of the Port New York (COTP) or the COTP's designated on-scene representative.

DATES: Comments and related material must be received by the Coast Guard on or before November 13, 2012. Requests for public meetings must be received by the Coast Guard on or before October 2, 2012.

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

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

(2) *Fax:* 202–493–2251.

(3) *Mail or Delivery:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202–366–9329. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Jeff Yunker, Waterways Management Division, U.S. Coast Guard; telephone (718) 354–4195, email *Jeff.M.Yunker@uscg.mil* or Lieutenant Isaac Slavitt, Coast Guard First District Waterways Management Branch; telephone (617) 223–8385, email *Isaac.M.Slavitt@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. Public Participation and Request for Comments

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

1. Submitting Comments

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

To submit your comment online, go to *http://www.regulations.gov,* type the docket number (USCG–2012–0202) in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

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

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number (USCG–2012–0202) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

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

4. Public meeting

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

B. Regulatory History and Information

On five previous occasions, the Coast Guard established a similar temporary security zone to the one being proposed by this NPRM on the waters of the East River and Bronx Kill in the vicinity of Randalls Island. These five temporary security zones were effective on the following dates: March 29, 2011, November 30, 2011, January 19, 2012, March 1, 2012, and May 14, 2012. In four of those instances, the Coast Guard was unable to publish the temporary security zone in the **Federal Register** due to receiving late notifications regarding the arrival dates of the visiting dignitaries. For the March 1, 2012, temporary security zone, we published a temporary final rule in the **Federal Register** (77 FR 10960) entitled ''Security Zone, East River and Bronx Kill; Randalls and Wards Islands, NY.''

On June 8, 2000, the Coast Guard proposed to establish two permanent security zones near the United Nations Headquarters located on the East River at East 43rd Street, Manhattan, New York (65 FR 36393). We received no letters commenting on the proposed rule and no public hearing was requested and none was held. On August 2, 2000, we published a final rule (FR) in the **Federal Register** (65 FR 47318)

establishing the two permanent security zones near the United Nations Headquarters located on the East River at East 43rd Street, Manhattan, New York. These permanent security zones are set forth in 33 CFR 165.164(a)(4) and (a)(5).

C. Basis and Purpose

The legal basis for the proposed rule is 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, 160.5; Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish security zones.

On five occasions since March 2011, the United States Secret Service has requested that the Coast Guard establish a temporary security zone on the waters of the East River and Bronx Kill during the arrival and departure of the President of the United States to and from Randalls and Wards Islands, New York.

The purpose of the proposed security zone is to facilitate the security and safety of the President and Vice President of the United States, and visiting heads of foreign states and other dignitaries during their visit to New York City.

The purpose of the revision to the Wall Street Heliport security zone is to identify the northern boundary of the security zone on the Manhattan shoreline at Wall Street. This is necessary due to the removal of Pier 13 that is currently referenced in 33 CFR 165.164(a)(1).

The purpose of the revisions to the United Nations security zone is to clarify enforcement times for the security zone, provide a more detailed description of the security zones, and provide a better understanding of the transit restrictions that would be enacted.

D. Discussion of Proposed Rule

The COTP New York proposes to establish a security zone on the waters of the East River and Bronx Kill in the vicinity of Randalls and Wards Islands, New York. The security zone is approximately 2,150 yards long and 860 yards wide. The security zone encompasses approximately 0.21 square nautical miles.

This proposed security zone would be activated 30 minutes before the dignitaries' arrival into the zone and would remain in effect until 15 minutes after the dignitaries' departure from the zone.

The proposed security zone on the East River in the vicinity of Randalls Island is necessary to facilitate the security and safety of the President of the United States and other dignitaries when they are in the vicinity of Randalls Island.

The proposed revision to the Wall Street Heliport security zone, paragraph (a)(1) of § 165.164, is necessary due to the removal of Pier 13 in Manhattan. This pier is currently used as a reference point to describe the northern boundary of the current security zone. This proposed revision would not change the size of the security zone. It would simply identify the position on the Manhattan shoreline of the current security zone boundary.

The proposed addition of paragraph (c)(2) of § 165.164 is necessary to clarify that the security zone in paragraph (a)(4), restricting access to the western half of the west channel at the United Nations, is in effect at all times.

The proposed addition of the United Nations West Channel Closure, proposed 33 CFR 165.164(a)(5), is necessary to provide a more detailed description of the security zones that would be enacted during the annual United Nations General Assembly meetings. This would provide mariners a better understanding of the vessel transit restrictions that would be enacted and whether they would have the option of transiting the shallower waters of the eastern channel of the East River at Roosevelt Island during some portions of the United Nations General Assembly.

We are also proposing paragraph headings for each of the security zone locations in the regulation. This will provide an improved description of the location of each security zone allowing mariners to quickly determine if they would be impacted by the activation of that security zone.

We are proposing to move the activation times in paragraph (a)(6) of § 165.164 to proposed 33 CFR 165.164(c)(2), and amend the regulation to make the United Nations security zone effective at all times. We are also proposing to amend the means of notification in paragraph (a)(7) of § 165.164 and are proposing to insert a paragraph heading entitled ''Notification of Enforcement'' in proposed 33 CFR 165.164(d).

We are proposing a ''Definitions'' paragraph to help reduce confusion in our use of the words ''dignitary'' and ''designated representative.''

We are proposing a ''Contact Information'' paragraph to provide more detailed instructions on requesting authorization for mariners to enter or operate within the security zones.

Additionally, we are proposing a paragraph entitled ''Vessel Operator and Persons Authorized within a Security Zone'' to explain how the U.S. Coast Guard expects these individuals to respond after they have requested permission to enter the activated security zones.

E. Regulatory Analyses

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

1. Regulatory Planning and Review

This proposed 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 limited time that vessels would be restricted from the Randalls and Wards Islands zone. The security zone would be activated for approximately 60 minutes approximately six times per year or when necessary. The Coast Guard expects minimal adverse impact to mariners from the zone's activation based on the limited duration of the enforcement period, the limited geographic area affected and because affected mariners may request authorization from the COTP or the designated on-scene representative to transit the zone.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which may be small entities: The owners and operators of vessels intending to transit or anchor in a portion of the East River or Bronx Kill, in the vicinity of Randalls or Wards Islands, NY during the effective period.

This security zone would not have a significant economic impact on a substantial number of small entities for the following reasons: The security zone is of limited size and duration. Persons or vessels may request permission to

transit the security zone from the COTP or the designated on-scene representative.

Additionally, before and during the effective period, the Coast Guard would issue maritime advisories widely available to users of the waterway, including marine information broadcasts, and distribute a written notice online at *http://homeport.uscg.mil/newyork.*

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

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 proposed 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. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

This proposed 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 proposed rule under that Order and have 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 proposed rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

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

10. Protection of Children from Environmental Health Risks

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

11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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 proposed rule is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

13. Technical Standards

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

14. Environment

We have analyzed this proposed 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 made a preliminary determination 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 proposed rule involves the establishment of one security zone and two revisions of another security 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 will be 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 proposed 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 proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREA

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

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

2. Revise § 165.164 to read as follows:

§ 165.164 Security Zones; Dignitary Arrival/Departure and United Nations Meetings, New York, NY.

(a) *Location.* The following areas are security zones:

(1) *Wall Street heliport.* All waters of the East River within the following boundaries: East of a line drawn

between approximate position 40°42′01″ N, 074°00′39″ W (east of The Battery) to 40°41′36″ N, 074°00′52″ W (point north of Governors Island) and north of a line drawn from the point north of Governors Island to the southwest corner of Pier 7 North, Brooklyn; and south of a line drawn between 40°42′14.8″ N, 074°00′20.3″ W (Wall Street, Manhattan), and the northwest corner of Pier 2 North, Brooklyn (NAD 1983).

(2) *Randalls and Wards Islands:* All waters of the East River between the Hell Gate Rail Road Bridge (mile 8.2), and a line drawn from a point at approximate position 40° 47′27.12″ N, 073° 54′35.14″ W (Lawrence Point, Queens) to a point at approximate position 40° 47′52.55″ N, 073° 54′35.25″ W (Port Morris Stacks), and all waters of the Bronx Kill southeast of the Bronx Kill Rail Road Bridge (mile 0.6) (NAD 1983).

(3) *Marine Air Terminal, La Guardia Airport:* All waters of Bowery Bay, Queens, New York, south of a line drawn from the western end of La Guardia Airport at approximate position 40°46′47″ N 073°53′05″ W to the Rikers Island Bridge at approximate position 40°46′51″ N 073°53′21″ W and east of a line drawn between the point at the Rikers Island Bridge to a point on the shore in Queens, New York, at approximate position 40°46′36″ N 073°53′31″ W (NAD 1983).

(4) *United Nations.* All waters of the East River bound by the following points: 40°44′37″ N, 073°58′16.5″ W (the base of East 35th Street, Manhattan), then east to 40°44′34.5″ N, 073°58′10.5″ W (about 175 yards offshore of Manhattan), then northeasterly to 40°45′29″ N, 073°57′26.5″ W (about 125 yards offshore of Manhattan at the Queensboro Bridge), then northwesterly to 40°45′31″ N, 073°57′30.5″ W (Manhattan shoreline at the Queensboro Bridge), then southerly to the starting point at 40°44′37″ N, 073°58′16.5″ W (NAD 1983).

(5) *United Nations West Channel Closure.* All waters of the East River north of a line drawn from approximate position 40°44′37″ N, 073°58′16.5″ W (the base of East 35th Street, Manhattan), to approximate position 40°44′31.04″ N, 073°58′03.10″ W (approximately 400 yards east of the Manhattan shoreline), all waters west of a line drawn from approximate position 40°44′31.04″ N, 073°58′ 03.10″ W (approximately 400 yards east of the Manhattan shoreline), to the southern tip of Roosevelt Island at approximate position 40°44′57.96″ N, 073°57′41.57″ W, then along the western shoreline of Roosevelt Island to the Queensboro Bridge, and all waters south of the Queensboro Bridge (NAD 1983).

(6) *United Nations Full River Closure.* All waters of the East River north of a line drawn from approximate position 40°44′37″ N, 073°58′16.5″ W (the base of East 35th Street, Manhattan), to approximate position 40°44′23″ N, 073°57′44.5″ W (Hunters Point, Long Island City), and south of the Queensboro Bridge (NAD 1983).

(b) *Definitions.*

As used in this section—

Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been designated by the COTP to act on the COTP's behalf. The designated representative may be on a Coast Guard vessel, or onboard a federal, state, or local agency vessel that is authorized to act in support of the Coast Guard.

Dignitary means the President or Vice President of the United States, or visiting heads of foreign states or governments.

(c) *Regulations.*

(1) In accordance with the general regulations in 33 CFR part 165, no person or vessel may enter or move within a security zone created by this section while it is activated unless granted permission to do so by the COTP New York or the designated representative.

(2) The security zone described in paragraph (a)(4) of this section is in effect at all times.

(d) *Notification of Enforcement.* Coast Guard Sector New York will provide actual notice to mariners for the purpose of enforcement. The COTP will also provide notice to the maritime public regarding the activation of these security zones by appropriate means, which may include but are not limited to a Local Notice to Mariners or marine information broadcasts, and at *http://homeport.uscg.mil/newyork.*

(e) *Contact Information.* Vessel operators desiring to enter or operate within the security zone shall telephone the COTP at 718–354–4356 or the designated representative via VHF channel 16 to request permission to do so.

(f) *Vessel Operators and Persons Authorized within a Security Zone.* Vessel operators and persons given permission to enter or operate in the security zone must comply with all directions given to them by the COTP or the designated representative. Upon being hailed by a U.S. Coast Guard or New York City police vessel by siren, radio, flashing lights, or other means, the operator of a vessel shall proceed as directed. Those vessels may be required to anchor or moor up to a waterfront facility.

* * * * *

Dated: July 23, 2012.

G. Loebl,

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

[FR Doc. 2012–22293 Filed 9–10–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 167

[USCG–2011–0351]

Port Access Route Study: The Atlantic Coast from Maine to Florida

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability; interim report.

SUMMARY: The U. S. Coast Guard is making available an interim report issued by the Atlantic Coast Port Access Route Study (ACPARS) workgroup. The interim report provides status of the workgroup efforts and the remaining requirements to complete the study. The Coast Guard welcomes comments on the interim report or submission of additional information for consideration by the workgroup.

DATES: Comments and related material must reach the Docket Management Facility on or before October 11, 2012.

ADDRESSES: You may submit comments identified by docket number USCG–2011–0351 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329. To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice of study contact Emile Benard, ACPARS Project Manager, telephone 757–398–

6221, email *Emile.R.Benard@uscg.mil* or submit questions to *ACPARS@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Ms. Renee K. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

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

A. Submitting Comments

If you submit comments, please include the docket number for this rulemaking (USCG–2011–0351), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Notice'' and enter ''USCG–2011–0351'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column and type your comments. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

B. Viewing the Comments and Documents

To view the comments and documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box enter ''USCG–2011–0351'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. If you do not have access to the internet, you may view the docket online by visiting 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. We have an agreement with the Department of Transportation to use the Docket Management Facility.

C. Privacy Act

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

II. Background and Purpose

The Coast Guard announced in the **Federal Register** (76 FR 27288, May 11, 2011) that it was conducting a Port Access Route Study (PARS) to evaluate the continued applicability of, and the need for modifications to, current vessel routing measures or the creation of new routing measures off the Atlantic Coast from Maine to Florida. The impetus for the study was the Department of Interior's launch of the ''Smart from the Start'' renewable energy initiative that began with planning for wind development off the Atlantic Coast. The original comment period closed on August 9, 2011. A second comment period was announced to gather additional information and closed January 31, 2012. The initial announcement contains definitions and useful background information concerning the PARS. The public is encouraged to review the initial announcement.

The data gathered during the Atlantic Coast Port Access Route Study (ACPARS) may result in establishment of one or more new vessel routing measures, modification of existing routing measures, or disestablishment of existing routing measures off the Atlantic Coast from Maine to Florida. The goal of the ACPARS is to maintain or enhance navigational safety by examining existing shipping routes and waterway uses, and, to the extent practicable, reconcile the paramount right of navigation within designated port access routes with other reasonable waterway uses such as the leasing of outer continental shelf blocks for the construction and operation of offshore renewable energy facilities. The recommendations of the study may lead to future rulemaking action or appropriate international agreements.

The Coast Guard established the Atlantic Coast Port Access Route Study Workgroup to carry out the study and also coordinate efforts to support Coast Guard participation as a Cooperating Agency in the Bureau of Ocean Energy Management's efforts to identify priority areas for wind development.

The progress of the WG to date, as well as what remains to be accomplished have been compiled in an interim report dated July 13, 2012. The ACPARS Interim Report is being made available to the public through this **Federal Register** notice. The report will be available on the **Federal Register** docket and also on the ACPARS Web site at *www.uscg.mil/lantarea/acpars.*

III. ACPARS Interim Report—Executive Summary

The Atlantic Coast Port Access Route Study Workgroup (WG) was chartered on 11 May 2011, and was given three objectives to complete within the limits of available resources: (1) Determine whether the Coast Guard should initiate actions to modify or create safety fairways, Traffic Separation Schemes (TSSs) or other routing measures; (2) Provide data, tools and/or methodology to assist in future determinations of waterways suitability for proposed projects; and (3) Develop, in the near term, Automated Identification System (AIS) products and provide other support as necessary to assist Districts with all emerging coastal and offshore energy projects. The WG has conducted public and stakeholder outreach including two public comment periods advertised in the **Federal Register**. The WG has faced challenges in the lack of Coast Guard (CG) capability to fully analyze AIS data and in identifying funding to perform modeling and analysis. This resulted in an inability to predict changes in traffic patterns or determine the resultant change in navigational safety risk given different siting scenarios of offshore renewable energy installations. However, the WG has developed a methodology for initially classifying lease blocks as: not suitable (Red), may be suitable with more study (Yellow) or suitable (Green), based on proximity to shipping routes. This methodology has been used by the CG to provide input to the Bureau of Ocean Energy Management (BOEM) regarding the potential impact to navigation of areas being proposed for wind energy development. The WG has determined, given the lack of complete AIS data and rudimentary analysis to

date, that recommending even preliminary routing measures is not appropriate at this time. The WG has concluded that modeling and analysis, as described in the Phase 3 of the ACPARS interim report, is critical to determine if routing measures are appropriate and to evaluate the change in navigational safety risk resulting from different siting and routing scenarios. The CG is working with BOEM to develop a project to perform the Phase 3 modeling and analysis. This project is scheduled to begin in late summer 2012. The Coast Guard is also contracting the services of a Geographic Information System (GIS) analyst to support efforts to better characterize vessel traffic and further explore creating initial proposals for routing measures independent of the Phase 3 modeling and analysis.

This notice is issued under authority of 33 U.S.C. 1223(c) and 5 U.S.C. 552.

Dated: August 31, 2012.

Robert C. Parker,

Vice Admiral, U.S. Coast Guard, Commander, Atlantic Area.

[FR Doc. 2012–22295 Filed 9–10–12; 8:45 am]

BILLING CODE 9110–04–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. 2012–5]

Verification of Statements of Account Submitted by Cable Operators and Satellite Carriers

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking: Extension of reply comment period.

SUMMARY: The Copyright Office is extending the deadline for filing reply comments in response to its Notice of Proposed Rulemaking concerning the verification of Statements of Account and royalty payments that are deposited with the Office by cable operators and satellite carriers. Initial comments are available for review on the Copyright Office Web site.

DATES: Reply comments on the proposed regulation must be received in the Office of the General Counsel of the Copyright Office no later than 5 p.m. Eastern Daylight Time (EDT) on October 3, 2012.

ADDRESSES: The Copyright Office strongly prefers that comments be submitted electronically. A comment submission page is posted on the Copyright Office Web site at *http://www.copyright.gov/docs/soaaudit.* The Web site interface requires submitters to complete a form specifying name and other required information, and to upload comments as an attachment. To meet accessibility standards, all comments must be uploaded in a single file in either the Adobe Portable Document File (PDF) format that contains searchable, accessible text (not an image); Microsoft Word; WordPerfect; Rich Text Format (RTF); or ASCII text file format (not a scanned document). The maximum file size is 6 megabytes (MB). The name of the submitter and organization should appear on both the form and the face of the comments. All comments will be posted publicly on the Copyright Office Web site exactly as they are received, along with names and organizations if provided. If electronic submission of comments is not feasible, please contact the Copyright Office at (202) 707–8380 for special instructions.

FOR FURTHER INFORMATION CONTACT: Tanya Sandros, Deputy General Counsel, or Erik Bertin, Attorney Advisor, Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: On June 14, 2012, the Copyright Office published a notice of proposed rulemaking and request for comments concerning a new regulation that will allow copyright owners to audit the Statements of Account and royalty fees that cable operators and satellite carriers deposit with the Copyright Office under Sections 111 and 119 of the Copyright Act. The Office received comments on the proposed regulation from groups representing copyright owners, cable operators, and satellite carriers, which have been posted on the Copyright Office Web site at *http://www.copyright.gov/docs/soaaudit/comments/index.html.* The notice of proposed rulemaking stated that reply comments would be due on September 12, 2012.

On August 24, 2012, the Office received a joint motion to extend the reply comment period by three weeks [*http://www.copyright.gov/docs/soaaudit/soa_audit.html*]. The motion was filed by the National Cable & Telecommunications Association (''NCTA''),[1] the Joint Sports Claimants, and the Program Suppliers.[2] Specifically, the moving parties asked the Office to extend the deadline for reply comments until October 3, 2012 in order to determine whether there is any common ground among the NCTA, the Joint Sports Claimants, and the Program Suppliers concerning certain aspects of the proposed regulation. If so, the moving parties stated that they may be able to narrow the issues that they discuss in their reply comments, which in turn, may narrow the issues that need to be resolved in this rulemaking. The NCTA, the Joint Sports Claimants, and the Program Suppliers stated that they have been in contact with each other, but due to prior commitments, they will not be able to engage in meaningful negotiations until shortly before the current deadline.

In the interest of giving the NCTA, the Joint Sports Claimants, the Program Suppliers, and any other interested parties an opportunity to discuss the proposed regulation amongst themselves and to determine if the parties are able to narrow the issues that the Office needs to consider, the Office has decided to extend the deadline for filing reply comments by a period of three weeks, making reply comments due by October 3, 2012.

Dated: September 6, 2012.

Tanya Sandros,

Deputy General Counsel.

[FR Doc. 2012–22320 Filed 9–10–12; 8:45 am]

BILLING CODE 1410–30–P

[1] The NCTA is a trade association that represents cable operators. Many of the NCTA's members file Statements of Account with and pay royalties to the Copyright Office under the statutory license set forth in Section 111 of the Copyright Act, which allows them to retransmit television and radio programs that are embodied in local and distant broadcast transmissions.

[2] Both the Joint Sports Claimants and the Program Suppliers represent copyright owners who are the beneficiaries of the royalties that are paid under the Section 111 and 119 statutory licenses. Generally speaking, the Joint Sports Claimants represent copyright owners that produce professional and college sports programming, while the Program Suppliers represent copyright owners that produce and/or syndicate movies, programs, and specials that are broadcast by television stations.

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201 and 210

[Docket No. 2012–7]

Mechanical and Digital Phonorecord Delivery Compulsory License

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking: Extension of comment and reply comment periods.

SUMMARY: The Copyright Office is extending the deadline for filing comments and reply comments

regarding its Notice of Proposed Rulemaking concerning regulations for reporting Monthly and Annual Statements of Account for the making and distribution of phonorecords under compulsory licenses obtained pursuant to 17 U.S.C. 115.

DATES: Comments on the proposed regulation must be received in the Office of the General Counsel of the Copyright Office no later than 5 p.m. Eastern Daylight Time (EDT) on October 25, 2012. Reply comments are due November 26, 2012.

ADDRESSES: The Copyright Office strongly prefers that comments be submitted electronically. A comment submission page is posted on the Copyright Office Web site at *http://www.copyright.gov/docs/section115/soa/comments/.* The Web site interface requires submitters to complete a form specifying name and other required information, and to upload comments as an attachment. To meet accessibility standards, all comments must be uploaded in a single file in either the Adobe Portable Document File (PDF) format that contains searchable, accessible text (not an image); Microsoft Word; WordPerfect; Rich Text Format (RTF); or ASCII text file format (not a scanned document). The maximum file size is 6 megabytes (MB). The name of the submitter and organization should appear on both the form and the face of the comments. All comments will be posted publicly on the Copyright Office Web site exactly as they are received, along with names and organizations if provided. If electronic submission of comments is not feasible, please contact the Copyright Office at (202) 707–8380 for special instructions.

FOR FURTHER INFORMATION CONTACT: Tanya Sandros, Deputy General Counsel, or Stephen Ruwe, Attorney Advisor, Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: On July 27, 2012, the Copyright Office published a notice of proposed rulemaking and request for comments concerning a new regulation that would amend the regulations for reporting Monthly and Annual Statements of Account for the making and distribution of phonorecords under the compulsory license, 17 U.S.C. 115, to bring the regulations up to date to reflect recent and pending rate determinations by the Copyright Royalty Judges, which among other things provide new rates for limited downloads, interactive streaming and incidental digital phonorecord deliveries, and to harmonize these reporting requirements with the existing regulations for reporting the making and distribution of physical phonorecords, permanent downloads and ringtones. The notice of proposed rulemaking stated that comments would be due no later than September 25, 2012 and that reply comments would be due October 25, 2012.

On September 5, 2012, the Office received a joint motion to extend the comment and reply comment period by thirty days each (i.e. until October 25, 2012 and November 26, 2012). The motion was filed by the Recording Industry Association of America, Inc., National Music Publishers Association, Songwriters Guild of America, Digital Media Association, and Music Reports, Inc., (''Joint Requestors''). The Joint Requestors stated that they represent the most active institutional participants in the mechanical compulsory license system. They stated that it was their view that it would be beneficial to the Copyright Office and to the outcome of the proceeding for the Joint Requestors to formulate and submit consensus positions on as many of the issues raised in the Notice of Proposed Rulemaking as possible. They added that a process for formulating such positions is currently underway. However, they offered that additional time would likely be necessary to allow the Joint Requestors to adequately think through the issues, consult further with their respective members, discuss consensus positions, and prepare a written submission setting forth whatever consensus positions the group is able to reach. They stated that without an extension of time, the Joint Requestors will be less likely to reach consensus and provide the Office unified comments concerning the various issues raised in the NPRM.

In the interest of giving the Joint Requestors the necessary time to conclude the ongoing process of formulating consensus positions, the Office has decided to grant the request for an extension to file comments and reply comments by thirty days in each case, making the comments due on October 25, 2012 and reply comments due on November 26, 2012).

Dated: September 6, 2012.

Tanya Sandros,

Deputy General Counsel.

[FR Doc. 2012–22317 Filed 9–10–12; 8:45 am]

BILLING CODE 1410–30–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2010–0003; Internal Agency Docket No. FEMA–B–1110]

Proposed Flood Elevation Determinations; Correction

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule; correction.

SUMMARY: On April 14, 2010, FEMA published in the Federal Register a proposed rule that included an erroneous name for one of the flooding sources for Franklin County, North Carolina and Incorporated Areas. The flooding source name should have read Taylors Creek instead of Taylors Branch.

DATES: Comments pertaining to Taylors Creek for the location beginning at the confluence with the Tar River to approximately 250 feet upstream of West Green Street are to be submitted on or before October 11, 2012.

ADDRESSES: You may submit comments, identified by Docket No. FEMA–B–1110, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064 or (email*) luis.rodriguez3@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064 or (email) *luis.rodriguez3@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) publishes proposed determinations of Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs for communities participating in the National Flood Insurance Program (NFIP), in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are minimum requirements. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain

management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings.

Correction

In the proposed rule published at 75 FR 19320, in the April 14, 2010, issue of the **Federal Register**, FEMA published a table under the authority of 44 CFR 67.4. The table, entitled ''Franklin County, North Carolina, and Incorporated Areas'' addressed several flooding sources, including Taylors Creek. The proposed rule incorrectly listed the flooding source name as Taylors Branch instead of Taylors Creek. This proposed rule correction is reopening the comment period for Taylors Creek, from the confluence with the Tar River to approximately 250 feet upstream of West Green Street, due to the error in the flooding source name previously published proposed rule at 75 FR 19320.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: September 3, 2012.

Sandra K. Knight,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2012–22299 Filed 9–10–12; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2010–0003: Internal Agency Docket No. FEMA–B–1145]

Proposed Flood Elevation Determinations; Correction

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule; correction.

SUMMARY: On October 7, 2010, FEMA published in the **Federal Register** a proposed rule that contained an erroneous table. This notice provides corrections to that table, to be used in lieu of the information published at 75 FR 62061. The table provided here represents the flooding sources, location of referenced elevations, effective and modified elevations, and communities affected for Schuylkill County, Pennsylvania (All Jurisdictions). Specifically, it addresses the following flooding sources: Good Spring Creek, Little Schuylkill River, Mahanoy Creek, Schuylkill River, and West Branch Schuylkill River.

DATES: Comments are to be submitted on or before December 10, 2012.

ADDRESSES: You may submit comments, identified by Docket No. FEMA–B–1145, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064 or (email) *Luis.Rodriguez3@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064 or (email) *Luis.Rodriguez3@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) publishes proposed determinations of Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs for communities participating in the National Flood Insurance Program (NFIP), in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are minimum requirements. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings.

Corrections

In the proposed rule published at 75 FR 62061, in the October 7, 2010, issue of the **Federal Register**, FEMA published a table under the authority of 44 CFR 67.4. The table, entitled ''Schuylkill County, Pennsylvania (All Jurisdictions)'' addressed the following flooding sources: Little Schuylkill River, Mahanoy Creek, Schuylkill River, and West Branch Schuylkill River. That table contained inaccurate information as to the location of referenced elevation, effective and modified elevation in feet, or communities affected for the flooding sources Schuylkill River, Little Schuylkill River and West Branch Schuylkill River. In addition, it did not include the flooding source Good Spring Creek. In this notice, FEMA is publishing a table containing the accurate information, to address these prior errors. The information provided below should be used in lieu of that previously published.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Schuylkill County, Pennsylvania (All Jurisdictions)				
Good Spring Creek	Approximately 1,580 feet upstream of Locust Street ...	None	+810	Township of Frailey.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Little Schuylkill River	Approximately 977 feet upstream of Spruce Street	None	+815	Township of East Brunswick.
	Approximately 1,750 feet downstream of the State Route 895 bridge.	None	+548	
	At the upstream side of the railroad bridge	None	+560	
Mahanoy Creek	Approximately 0.71 mile upstream of Rice Road	None	+781	Township of Butler.
	Approximately 560 feet upstream of the railroad bridge.	None	+811	
Schuylkill River	Approximately 1,349 feet upstream of Mount Carbon Arch Road.	None	+594	Borough of Mechanicsville, Borough of Palo Alto.
	Approximately 100 feet upstream of Coal Street	None	+631	
Schuylkill River	An area bounded approximately 31 feet south of State Route 209; approximately 618 feet south of State Route 209; and approximately 639 feet southwest of State Route 209.	None	+722	City of Middleport.
Schuylkill River	An area bounded approximately 475 feet northwest of State Route 209; approximately 472 feet northeast of State Highway 209; and approximately 367 feet south of State Route 209.	None	+733	City of Middleport.
Schuylkill River	Approximately 0.5 mile downstream of Franklin Street	None	+747	Township of Schuylkill.
	Approximately 0.4 mile downstream of Franklin Street	None	+748	
West Branch Schuylkill River	Approximately 1,582 feet upstream of East Sunbury Street.	None	+702	Township of Branch, Township of New Castle, Township of Norwegian.
	Approximately 169 feet upstream of the intersection of Greenbury Road and State Route 4002.	None	+848	

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

ADDRESSES

Borough of Mechanicsville
Maps are available for inspection at the Borough Hall, 1342 Pottsville Street, Mechanicsville, PA 17901.

Borough of Palo Alto
Maps are available for inspection at the Borough Hall, 142 East Bacon Street, Palo Alto, PA 17901.

Township of Branch
Maps are available for inspection at the Branch Township Municipal Building, 25 Carnish Street, Pottsville, PA 17901

Township of Butler
Maps are available for inspection at the Butler Township Municipal Building, 211 Broad Street, Ashland, PA 17921.

Township of East Brunswick
Maps are available for inspection at the East Brunswick Township Municipal Building, 55 West Catawissa Street, New Ringgold, PA 17960.

Township of Frailey
Maps are available for inspection at the Frailey Township Municipal Building, 23 Maryland Street, Donaldson, PA 17960.

Township of New Castle
Maps are available for inspection at the New Castle Township Municipal Building, 248–250 Broad Street, Saint Clair, PA 17970.

Township of Norwegian
Maps are available for inspection at the Norwegian Township Municipal Building, 506 Maple Avenue, Marlin, PA 17951.

Township of Schuylkill
Maps are available for inspection at the Schuylkill Township Municipal Building, 15 West Washington Street, Shenandoah, PA 17976.

City of Middleport
Maps are available for inspection at the City Hall, 81 Washington Street, Middleport, PA 17953.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: September 3, 2012.

Sandra K. Knight,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2012–22302 Filed 9–10–12; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2008–0020; Internal Agency Docket No. FEMA–B–1066]

Proposed Flood Elevation Determinations for Hampden County, MA, and Incorporated Areas

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Federal Emergency Management Agency (FEMA) is withdrawing its proposed rule concerning proposed flood elevation determinations for Hampden County, Massachusetts, and Incorporated Areas.

DATES: This withdrawal is effective on September 11, 2012.

ADDRESSES: You may submit comments, identified by Docket No. FEMA–B–1066, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: On September 8, 2009, FEMA published a proposed rulemaking at 74 FR 46047, proposing flood elevation determinations along one or more flooding sources in Hampden County, Massachuhsetts. FEMA is withdrawing the proposed rulemaking and intends to publish a Notice of Proposed Flood Hazard Determinations in the **Federal Register** and a notice in the affected community's local newspaper following issuance of a revised preliminary Flood Insurance Rate Map and Flood Insurance Study report.

Authority: 42 U.S.C. 4104; 44 CFR 67.4.

Dated: September 3, 2012.

Sandra K. Knight,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2012–22298 Filed 9–10–12; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2011–0002; Internal Agency Docket No. FEMA–B–1233]

Proposed Flood Elevation Determinations for the City of Carson City, NV

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Federal Emergency Management Agency (FEMA) is withdrawing its proposed rule concerning proposed flood elevation determinations for the City of Carson City, Nevada.

DATES: This withdrawal is effective on September 11, 2012.

ADDRESSES: You may submit comments, identified by Docket No. FEMA–B–1233, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: On November 29, 2011, FEMA published a proposed rulemaking at 76 FR 73537, proposing flood elevation determinations along one or more flooding sources in the City of Carson City, Nevada. FEMA is withdrawing the proposed rulemaking and intends to publish a Notice of Proposed Flood Hazard Determinations in the **Federal Register** and a notice in the affected community's local newspaper following issuance of a revised preliminary Flood Insurance Rate Map and Flood Insurance Study report.

Authority: 42 U.S.C. 4104; 44 CFR 67.4.

Dated: September 3, 2012.

Sandra K. Knight,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2012–22300 Filed 9–10–12; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2011–0002; Internal Agency Docket No. FEMA–B–1222]

Proposed Flood Elevation Determinations for Clay County, FL, and Incorporated Areas

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Federal Emergency Management Agency (FEMA) is withdrawing its proposed rule concerning proposed flood elevation determinations for Clay County, Florida, and Incorporated Areas.

DATES: This withdrawal is effective September 11, 2012.

ADDRESSES: You may submit comments, identified by Docket No. FEMA–B–1222, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: On October 6, 2011, FEMA published a proposed rulemaking at 76 FR 62006, proposing flood elevation determinations along one or more flooding sources in Clay County, Florida. FEMA is withdrawing the proposed rulemaking and intends to

publish a Notice of Proposed Flood Hazard Determinations in the **Federal Register** and a notice in the affected community's local newspaper following issuance of a revised preliminary Flood Insurance Rate Map and Flood Insurance Study report.

Authority: 42 U.S.C. 4104; 44 CFR 67.4.

Dated: September 3, 2012.

Sandra K. Knight,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2012–22301 Filed 9–10–12; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2012–0008; 45000030114]

RIN 1018–AX42

Endangered and Threatened Wildlife and Plants; Designation of Revised Critical Habitat for the *Allium munzii* (Munz's onion) and *Atriplex coronata var. notatior* (San Jacinto Valley Crownscale)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; correction and reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on the April 17, 2012, proposed revised designations of critical habitat for *Allium munzii* (Munz's onion) and *Atriplex coronata* var. *notatior* (San Jacinto Valley crownscale) under the Endangered Species Act of 1973, as amended (Act). We also announce the availability of a draft economic analysis (DEA) of the proposed designations of critical habitat for *A. munzii* and *A. c.* var. *notatior* and an amended required determinations section of the proposal. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the proposed revised designations, the associated DEA, and the amended required determinations section. Finally, we correct some errors regarding the elevations of habitat necessary for conservation of *A. munzii.* Comments previously submitted need not be resubmitted, as they will be fully considered in preparation of the final rule.

DATES: We will consider all comments received or postmarked on or before October 11, 2012. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date.

ADDRESSES: *Document availability:* You may obtain copies of the proposed rule and the draft economic analysis at the Federal eRulemaking Portal: *http://www.regulations.gov* at Docket No. FWS–R8–ES–2012–0008 or by mail from the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section).

Comment submission: You may submit written comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* Search for FWS–R8–ES–2012–0008, which is the docket number for this rulemaking.

(2) *By Hard Copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R8–ES–2012–0008; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

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

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Suite 101, Carlsbad, CA 92011, by telephone 760–431–9440, or by facsimile 760–431–9624. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We will accept written comments and information during this reopened comment period on our proposed revised designations of critical habitat for *Allium munzii* and *Atriplex coronata* var. *notatior* that was published in the **Federal Register** on April 17, 2012 (77 FR 23008), our changes to the primary constituent elements section of the proposed rule, our DEA of the proposed designations, and the amended required determinations provided in this document. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat is not prudent.

(2) Specific information on:

(a) The distribution of *Allium munzii* and *Atriplex coronata* var. *notatior;*

(b) The amount and distribution of *Allium munzii* and *Atriplex coronata* var. *notatior* habitat; and

(c) What areas within the geographical area occupied by the taxa at the time of listing that contain physical or biological features essential to the conservation of the taxa we should include in the designation and why; and

(d) What areas outside the geographical area occupied by the taxa at the time of listing are essential for the conservation of the taxa and why.

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(4) Information on the projected and reasonably likely impacts of climate change on *Allium munzii* and *Atriplex coronata* var. *notatior* and proposed critical habitat.

(5) Any foreseeable economic, national security, or other relevant impacts that may result from including any particular area in the final designations. We are particularly interested in any impacts on small entities, and the benefits of including or excluding areas from the proposed designations that are subject to these impacts.

(6) Which specific lands covered by the Western Riverside County Multiple Species Habitat Conservation Plan (Western Riverside County MSHCP) or other permitted HCPs and proposed for designation as critical habitat should be considered for exclusion under section 4(b)(2) of the Act, and, for those specific areas, how benefits of exclusion from the critical habitat designations would outweigh the benefits of inclusion in the designations. We are currently considering excluding, under section 4(b)(2) of the Act, all lands covered by the Western Riverside County MSHCP or other permitted HCPs and Cooperative Agreements as described in the proposed rule (see *Exclusions Based on Other Relevant Impacts* in the proposed designations of critical habitat

published in the **Federal Register** on April 17, 2012 (77 FR 23008)).

(7) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

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

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

If you submitted comments or information on the proposed rule (77 FR 23008) during the initial comment period from April 17, 2012, to June 18, 2012, please do not resubmit them. We have incorporated them into the public record, and we will fully consider them in the preparation of our final determination. Our final determination concerning revised critical habitat will take into consideration all written comments and any additional information we receive during both comment periods. On the basis of public comments, we may, during the development of our final determination, find that areas proposed do not meet the definition of critical habitat, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion.

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

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

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule and DEA, will be available for public inspection on *http://www.regulations.gov* at Docket No. FWS–R8–ES–2012–0008, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

This is a notice of availability announcing the reopening of the public comment period on the April 17, 2012, proposed revised designations of critical habitat for *Allium munzii* and *Atriplex coronata* var. *notatior* and the availability of a DEA of the proposed designations of critical habitat for *A. munzii* and *A. c.* var. *notatior.*

Allium munzii

It is our intent to discuss only those topics directly relevant to the designation of critical habitat for *Allium munzii* in this document. For more information on previous Federal actions concerning *A. munzii,* refer to the following documents that published in the **Federal Register**:

- Proposed designation of critical habitat (77 FR 23008; April 17, 2012);
- Proposed listing rule (59 FR 64812; December 15, 1994);
- Final listing rule (63 FR 54975; October 13, 1998);
- The first proposed designation of critical habitat (69 FR 31569; June 4, 2004); and
- The subsequent final critical habitat rule (70 FR 33015; June 7, 2005).

These documents and the 5-year review for *A. munzii,* signed on June 17, 2009, are available on our Web site at *http://www.fws.gov/carlsbad/,* on the ECOS Web site for Munz's onion at *http://ecos.fws.gov/speciesProfile/profile/speciesProfile.action?spcode=Q2X0,* or from the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Previous Federal Actions—Allium munzii

Please see the final listing rule for *Allium munzii* for a description of previous Federal actions through October 13, 1998 (63 FR 54975). At the time of listing, we concluded that designation of critical habitat for *A. munzii* was not prudent because such designation would not benefit the species. On June 4, 2004, we published a proposed rule to designate 227 ac (92 ha) of critical habitat for *A. munzii* on Federal land (Cleveland National Forest) in western Riverside County, California (69 FR 31569). On June 7, 2005, we published a final rule designating 176 ac (71 ha) of land as critical habitat for *A. munzii* (70 FR 33015).

On March 22, 2006, we announced the initiation of the 5-year review for *Allium munzii* and requested information from the public (71 FR 14538). The *A. munzii* 5-year review was completed on June 17, 2009, and recommended no change to the endangered status of *A. munzii.*

On October 2, 2008, a complaint was filed against the Department of the Interior (DOI) and the Service by the Center for Biological Diversity (*CBD* v. *Kempthorne,* No. 08–CV–01348 (S.D. Cal.)) challenging our final critical habitat designation for *Allium munzii.* In an order dated March 24, 2009, the U.S. District Court for the Central District of California, Eastern Division, adopted a Stipulated Settlement Agreement that was entered into by all parties. The agreement stipulates that the Service will reconsider critical habitat designations for both *A. munzii* and *Atriplex coronata* var. *notatior* and shall submit to the **Federal Register** proposed revised critical habitat determinations for both plants by October 7, 2011. An extension for the completion of the new proposed determinations was granted on September 14, 2011; the new submission date to the **Federal Register** was April 6, 2012. Until the effective date of the final determinations (to be submitted to the **Federal Register** on or before April 6, 2013), the existing final critical habitat designations for *A. munzii* and *A. c.* var. *notatior* remain in place.

On April 17, 2012, we published a proposed rule to designate critical habitat for the *Allium munzii* (77 FR 23008). We proposed to designate approximately 889 acres (ac) (360 hectares (ha)) in 5 units containing 13 subunits located in Riverside County, California, as critical habitat. A legal notice announcing the publication of the proposed rule in the **Federal Register** and opening of the 60-day public comment period was prepared by the Service and published in the *The Press-Enterprise* on April 27, 2012. We will submit for publication in the **Federal Register** a combined final critical habitat rule for *Allium munzii* and *Atriplex coronata* var. *notatior* on or before April 6, 2013.

Atriplex coronata var. *notatior*

It is our intent to discuss only those topics directly relevant to the designation of critical habitat for *Atriplex coronata* var. *notatior* in this document. For more information on previous Federal actions concerning *A. c.* var. *notatior,* refer to the following documents that published in the **Federal Register**:

- Proposed designation of critical habitat (77 FR 23008; April 17, 2012);
- Proposed listing rule (59 FR 64812; December 15, 1994);

• Final listing rule (63 FR 54975; October 13, 1998);

• The first proposed designation of critical habitat (69 FR 59844; October 6, 2004); and

• The subsequent final critical habitat rule (70 FR 59952; October 13, 2005). These documents and the 5-year review for *A. coronata* var. *notatior,* completed on March 31, 2008, are available on our Web site at *http://www.fws.gov/carlsbad/,* on our ECOS Web page for San Jacinto Valley crownscale at *http://ecos.fws.gov/speciesProfile/profile/speciesProfile.action?spcode=Q2ZR,* or from the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Previous Federal Actions—Atriplex coronata var. notatior

Please see the final listing rule for *Atriplex coronata* var. *notatior* for a description of previous Federal actions through October 13, 1998 (63 FR 54975), including proposed critical habitat in 1994 (59 FR 64812; December 15, 1994). At the time of the final listing rule in 1998, the Service withdrew the proposed critical habitat designation based on the taxon's continued decline and determined that designation of critical habitat was not prudent, indicating that no benefit over that provided by listing would result from such designation (63 FR 54991; October 13, 1998).

On October 6, 2004, we published a proposed rule to designate critical habitat for *Atriplex coronata* var. *notatior* and identified 15,232 ac (6,164 ha) of habitat that met the definition of critical habitat (69 FR 59844). However, we concluded in the 2004 proposed rule under section 4(b)(2) of the Act that the benefits of excluding lands covered by the Western Riverside County MSHCP outweighed the benefits of including them as critical habitat, and, consequently, no lands were proposed for designation as critical habitat in the proposed rule. On October 13, 2005, we published a final critical habitat determination for *A. c.* var. *notatior* (70 FR 59952); there was no change from the proposed rule. We concluded that all 15,232 ac (6,136 ha) of habitat meeting the definition of critical habitat were located either within our estimate of the areas to be conserved and managed by the approved Western Riverside County MSHCP on existing Public/Quasi-Public Lands, or within areas where the MSHCP would ensure that future projects would not adversely alter essential hydrological processes, and all areas were excluded from critical habitat under section 4(b)(2) of the Act.

On March 22, 2006, we announced the initiation of the 5-year review for *Atriplex coronata* var. *notatior* and requested information from the public (71 FR 14538). The 5-year review was completed on March 31, 2008, and recommended no change to the endangered status of *A. c.* var. *notatior.*

On October 2, 2008, a complaint was filed against the DOI and the Service by the Center for Biological Diversity (*CBD* v. *Kempthorne,* No. 08–CV–01348 (S.D. Cal.)) challenging our final critical habitat determinations for *Allium munzii* and *Atriplex coronata* var. *notatior* (see *Previous Federal Actions*—Allium Munzii section above for a detailed account of this lawsuit and settlement agreement).

On April 17, 2012, we published a proposed rule to designate critical habitat for the *Atriplex coronata* var. *notatior* (77 FR 23008). We proposed to designate approximately 8,020 ac (3,246 ha) in 3 units located in Riverside County, California, as critical habitat. A legal notice announcing the publication of the proposed rule in the **Federal Register** and opening of the 60-day public comment period was prepared by the Service and published in *The Press-Enterprise* on April 27, 2012. We will submit for publication in the **Federal Register** a combined final critical habitat rule for *Atriplex coronata* var. *notatior* and *Allium munzii* on or before April 6, 2013.

Critical Habitat

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

We are revising the proposed designation of revised critical habitat for *Allium munzii* to clarify primary constituent elements (PCEs) (2)(i)(b) and (2)(ii) regarding elevations necessary for conservation of *A. munzii.* We stated in the proposed rule that *A. munzii* is found in Riverside County generally between the elevations of 1,200 to 2,700 ft (366 to 823 m) above mean sea level. *Allium munzii* is also found in Riverside County (Unit 3: Elsinore Peak) at an elevation ranging from 3,200 to 3,500 feet (ft) (975 to 1,067 meters (m)). Therefore, PCE (2)(i)(b) should read, ''Generally between the elevations of 1,200 ft to 3,500 ft (366 to 1,067 m), above mean sea level,'' and PCE (2)(ii) should read, ''Outcrops of igneous rocks (pyroxenite) on rocky-sandy loam or clay soils within Riversidean sage scrub, generally between the elevations of 1,200 to 3,500 ft (366 to 1,067 m), above mean sea level.''

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

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

When considering the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification as a result of actions with a Federal nexus (activities conducted, funded, permitted, or authorized by Federal agencies), the educational benefits of mapping areas containing essential features that aid in the recovery of the listed species, and any benefits that may result from designation due to State or Federal laws that may apply to critical habitat. In the case of *Allium munzii* and *Atriplex coronata* var. *notatior,* the benefits of critical habitat include public awareness of the presence of these taxa and the importance of habitat protection, and, where a Federal nexus exists, increased habitat protection for these taxa due to protection from adverse modification of critical habitat. In practice, situations with a Federal nexus exist primarily on Federal lands or for projects undertaken by Federal agencies.

When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan.

The final decision on whether to exclude any areas will be based on the best scientific data available at the time of the final designations, including information obtained during the comment period and information about the economic impact of designation. Accordingly, we have prepared a draft economic analysis (DEA) concerning the proposed critical habitat designations, which is available for review and comment (see **ADDRESSES** section).

Draft Economic Analysis

The purpose of the DEA is to identify and analyze the potential economic impacts associated with the proposed critical habitat designations for *Allium munzii* and *Atriplex coronata* var. *notatior.* The DEA separates conservation measures into two distinct categories according to ''without critical habitat'' and ''with critical habitat'' scenarios. The ''without critical habitat'' scenario represents the baseline for the analysis, considering protections afforded to *A. munzii* and *A. c.* var. *notatior* (e.g., under the Federal listing and other Federal, State, and local regulations). The ''with critical habitat'' scenario describes the incremental impacts specifically due to designation of critical habitat for the two taxa. In other words, these incremental conservation measures and associated economic impacts would not occur but for the designation. Conservation measures implemented under the baseline (without critical habitat) scenario are described qualitatively within the DEA, but economic impacts associated with these measures are not quantified. Economic impacts are only quantified for conservation measures implemented specifically due to the designation of critical habitat (i.e., incremental impacts). For a further description of the methodology of the analysis, see Chapter 2, Framework for the Analysis, of the DEA.

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

The DEA considers quantification of economic impacts of *Allium munzii* conservation efforts associated with the following categories of activity: (1) Development; (2) agricultural operations; (3) transportation; (4) fire management; (5) mining (clay); and (6) recreational activities (Industrial Economics, Incorporated [IEC] 2012, p. 1–6).

The DEA considers quantification of economic impacts of *Atriplex coronata* var. *notatior* conservation efforts associated with the following categories of activity: (1) Development; (2) agricultural operations; (3) transportation; (4) fire management; (5) flood control; and (6) utilities (IEC 2012, p. 1–6).

Because of the substantial baseline protections already afforded *Allium munzii* and *Atriplex coronata* var. *notatior* under the Act, and the conservation plans, partnerships, or agreements developed and being implemented as a result of the listing of the taxa, the incremental effects analysis in the DEA focuses on quantifying the following categories: (1) Activities that the Service considers threats to *Allium munzii* or its habitat that are not addressed by existing conservation plans (i.e., clay mining), (2) activities occurring within *A. munzii* proposed critical habitat Unit 3 (Elsinore Peak), an area not managed under an existing conservation plan, and (3) administrative costs associated with future section 7 consultations for both taxa (IEC 2012, p. 4–1).

The DEA indicates that the total cost that may result from the proposed designation of critical habitat for both plants is $166,000 in present-value terms, assuming a seven percent discount rate. The total cost that may result from the proposed designation for *Allium munzii* is $92,000 over the 20-year period of the analysis in present-value terms, assuming a seven percent discount rate. In areas not currently being considered for exclusion from *A. munzii* critical habitat (Unit 3), incremental costs are estimated at $25,000 in present-value terms, assuming a seven percent discount rate. In areas currently being considered for exclusion from *A. munzii* critical habitat, incremental costs are estimated at $67,000 (IEC 2012, p. 4–2).

The total cost that may result from the proposed designation for *Atriplex coronata* var. *notatior* is $74,000 over the 20-year period of the analysis, in present-value terms assuming a seven percent discount rate. The entire proposed critical habitat for *A. c.* var. *notatior* is presently being considered for exclusion from the final designation. All of these incremental impacts consist entirely of administrative costs, including reinitiations of programmatic consultations and additional effort of addressing adverse modification as part of future section 7 consultations for activities that may affect the two taxa or their habitat (IEC 2012, p. 4–2).

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

Required Determinations—Amended

In our April 17, 2012, proposed rule (77 FR 23008), we indicated that we would defer our determination of compliance with several statutes and executive orders until the information concerning potential economic impacts of the designations and potential effects on landowners and stakeholders became available in the DEA. We have now made use of the DEA data to make these determinations. In this document, we affirm the information in our proposed rule concerning Executive Order (E.O.) 12630 (Takings), E.O. 13132 (Federalism), E.O. 12988 (Civil Justice Reform), E.O. 13211 (Energy, Supply, Distribution, and Use), the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951). We also clarify below the information concerning E.O. 12866 and E.O. 13563. However, based on the DEA data, we are amending our required determination concerning the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. The OIRA has determined that this rule is not significant. E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative,

and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. Based on our DEA of the proposed designations, we provide our analysis for determining whether the proposed rule would result in a significant economic impact on a substantial number of small entities. Based on comments we receive, we may revise this determination as part of our final rulemaking.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under these designations as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

To determine if the proposed revised designations of critical habitat for *Allium munzii* and *Atriplex coronata* var. *notatior* would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities, such as (1) Development, (2) agricultural operations, (3) transportation, (4) fire management, (5) mining (clay), (6) recreational activities, (7) flood control, and (8) utilities. In order to determine whether it is appropriate for our agency to certify that this proposed rule would not have a significant economic impact on a substantial number of small entities, we considered each industry or category individually. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. In areas where the *A. munzii* and *A. c.* var. *notatior* are present, Federal agencies already are required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect the taxa. If we finalize these proposed revised critical habitat designations, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In the DEA, we evaluated the potential economic effects on small entities resulting from implementation of conservation actions related to the proposed revised designations of critical habitat for *Allium munzii* and *Atriplex coronata* var. *notatior.* The Western Riverside County MSHCP and the Lake Mathews MSHCP were evaluated for this analysis. For the Western Riverside MSHCP, seven small jurisdictions were identified (IEC 2012, p. A–7). However, applying a conservative assumption that all of the third-party costs would be borne by a single small entity, the one-time impact of reinitiation of the Western Riverside County MSHCP was 0.2 percent of reported annual revenues (IEC 2012, p. A–8). For the Lake Mathews MSHCP with only one small entity identified, a similar assumption indicated that a single small entity would bear a one-time impact of 0.06 percent of reported annual revenues for reinitiation of this conservation plan (IEC 2012, p. A–8). Please refer to the DEA for a more detailed discussion of our evaluation of potential economic impacts.

In summary, we have considered whether the proposed revised designations would result in a significant economic impact on a substantial number of small entities. Information for this analysis was gathered from the Small Business Administration, stakeholders, and our files. We have identified eight small entities that may be impacted by the proposed critical habitat designation. For the above reasons and based on currently available information, we certify that, if promulgated, the proposed revised critical habitat designations would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Authors

The primary authors of this notice are the staff members of the Carlsbad Fish and Wildlife Office, Pacific Southwest Region, U.S. Fish and Wildlife Service.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, we propose to further amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as proposed to be amended at 77 FR 23008, April 17, 2012, as follows:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.96(a) by revising the proposed entry for ''Allium munzii

(Munz's onion)'' in paragraphs (2)(i)(B) and (ii) to read as follows:

§ 17.96 Critical habitat—plants.

(a) *Flowering plants.*

* * * * *

Family Alliaceae: Allium munzii (Munz's onion)

* * * * *

(2) * * *

(i) * * *

(B) Generally between the elevations of 1,200 to 3,500 ft (366 to 1,067 m) above mean sea level;

* * * * *

(ii) Outcrops of igneous rocks (pyroxenite) on rocky-sandy loam or clay soils within Riversidean sage scrub, generally between the elevations of 1,200 to 3,500 ft (366 to 1,067 m) above mean sea level.

* * * * *

Dated: August 28, 2012.

Michael J. Bean,

Acting Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2012–22033 Filed 9–10–12; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 77, No. 176

Tuesday, September 11, 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

September 5, 2012.

The Department of Agriculture will submit 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 f 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.

Rural Utilities Service

Title: Request for Approval to Sell Capital Assets.

OMB Control Number: 0572–0020.

Summary of Collection: The Rural Utilities Service (RUS) is a credit agency of the U.S. Department of Agriculture (USDA). It makes mortgage loans and loan guarantees to finance electric, telecommunications, and water and waste facilities in rural areas. In addition to providing loans and loan guarantees, one of RUS' main objectives is to safeguard loan security until the loan is repaid. Accordingly, RUS manages loan programs in accordance with the Rural Electrification Act of 1936, 7 U.S.C. 901 *et seq.,* as amended, (RE Act) and as prescribed by Office of Management and Budget (OMB) Circular A–129, Policies for Federal Credit Programs and Non-Tax Receivables, which states that agencies must, based on a review of a loan application, determine that an applicant complies with statutory, regulatory, and administrative eligibility requirements for loan assistance.

Need and Use of the Information: RUS borrower will use form 369, *Request for Approval To Sell Capital Assets,* to seek agency permission to sell some of its assets. The form is used to collect detailed information regarding the proposed sale of a portion of the borrowers systems. RUS will collect information to determine whether or not the agency should approve a sale and also to keep track of what property exists to secure the loan. If the information in Form 369 is not collected when capital assets are sold, the capital assets securing the Government's loans could be liquidated and the Government's security either eliminated entirely or diluted to an undesirable level.

Description of Respondents: Not-for-profit institutions; Business or other for-profit.

Number of Respondents: 5.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 15.

Rural Utilities Service

Title: 7 CFR 1728, Electric Standards and Specifications for Materials and Construction.

OMB Control Number: 0572–0131.

Summary of Collection: The Rural Electrification Act of 1936, 7 U.S.C. 901 *et seq.,* as amended, (RE Act) in Sec. 4 (7 U.S.C. 904) authorizes and empowers the Administrator of the Rural Utilities Service (RUS) to make loans in the several States and Territories of the United States for rural electrification and the furnishing and improving of electric energy to persons in rural areas. RUS' Administrator is authorized to provide financial assistance to borrowers for purposes provided in the RE Act by guaranteeing loans made by the National Rural Utilities Cooperative Finance Corporation, the Federal Financing Bank, and other lending agencies. These loans are for a term of up to 35 years and are secured by a first mortgage on the borrower's electric system. Manufacturers, wishing to sell their products to RUS electric borrowers, request RUS consideration for acceptance of their products and submit letters of request with certifications as to the origin of manufacture of the products and include certified data demonstrating their products' compliance with RUS specifications.

Need and Use of the Information: RUS will collect information to evaluate the data to determine that the quality of the products is acceptable and that their use will not jeopardize loan security. The information is closely reviewed to be certain that test data; product dimensions and product material compositions fully comply with RUS technical standards and specifications that have been established for the particular product. Without this information, RUS has no means of determining the acceptability of products for use in the rural environment.

Description of Respondents: Business or other for-profit.

Number of Respondents: 38.

Frequency of Responses: Reporting: on occasion.

Total Burden Hours: 2,000.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2012–22254 Filed 9–10–12; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

September 5, 2012 .

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: Importation of Tomatoes from Certain Central American Countries.

OMB Control Number: 0579–0286.

Summary of Collection: Under the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the Secretary of Agriculture is authorized to carry out operations or measures to detect, eradicate, suppress, control, prevent, or retard the spread of plant pests new to the United States or not known to be widely distributed throughout the United States. The Animal and Plant Health Inspection Service (APHIS) allows certain types of tomatoes grown in approved registered production sites in Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama to be imported into the United States with treatment. The conditions are designed to prevent the introduction of quarantine pests into the United States, including trapping, pre-harvest inspection, and shipping procedures.

Need and Use of the Information: APHIS requires that each shipment of tomatoes must be accompanied by a phytosanitary certificate issued by the National Plant Protection Organization and bearing the declaration, ''These tomatoes were grown in an area recognized to be free of Medfly and the shipment has been inspected and found free of the pest listed in the requirements.'' In addition to the phytosanitary certificate, production site and packinghouse records, monitoring/auditing trapping program, trapping records, and labeling of boxes information must be collected as well. Failure to collect this information would cripple APHIS' ability to ensure that peppers and tomatoes from Central America are not carrying fruit flies.

Description of Respondents: Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 40.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 344.

Title: Citrus from Peru.

OMB Control Number: 0579–0289.

Summary of Collection: The Plant Protection Act (7 U.S.C. 7701 et seq.) the Secretary of Agriculture is authorized to carry out operations or measures to detect, eradicate, suppress, control, prevent, or retard the spread of plant pests new to the United States or not known to be widely distributed throughout the United States. The Animal and Plant Health Inspection Service (APHIS) fruits and vegetables regulations allow the importation, under certain conditions of fresh commercial citrus fruit (grapefruit, limes, mandarin oranges, or tangerines, sweet oranges, and tangelos) from approved areas of Peru into the United States.

Need and Use of the Information: APHIS will collect information that includes inspections by national plant protection organization officials from Peru, grower registration and agreement, fruit fly trapping, monitoring, recordkeeping, and phytosanitary certificate. Without the information APHIS could not verify that fruit was treated, verify that citrus canker, fruit flies, and other pests were destroyed by treatment, or that the treatment was adequate to prevent the risk of plant pests from entering the United States.

Description of Respondents: Business or other for-profit; Federal Government.

Number of Respondents: 444.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 31,857.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2012–22257 Filed 9–10–12; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Request for Information: Research on the Causes, Characteristics, and Consequences of Childhood Hunger and Food Insecurity

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: Section 141 of the Healthy, Hunger-Free Kids Act of 2010 provides $10 million to the U.S. Department of Agriculture for research on the causes, characteristics and consequences of childhood hunger and food insecurity. This notice announces a request for public comments to assist the Food and Nutrition Service in determining how best to focus these funds on areas and methods with the greatest research potential to maximize the return on this investment.

DATES: To be assured of consideration, written comments must be submitted on or before October 11, 2012.

ADDRESSES: Comments may be submitted through the Federal eRulemaking Portal at *www.regulations.gov*. Follow the online instructions for submitting comments electronically. Comments not submitted electronically can be mailed or delivered to: Office of Research and Analysis, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 1014, Alexandria, Virginia 22302.

All comments submitted in response to this notice will be included in the record and will be made available to the public at *www.regulations.gov.* Please be advised that the substance of the comments and the identity of the individuals or entities commenting will be subject to public disclosure.

FOR FURTHER INFORMATION CONTACT: Steven Carlson, Office of Policy

Support, Food and Nutrition Service, (703) 305–2017.

SUPPLEMENTARY INFORMATION: Most U.S. households have consistent, dependable access to enough food for active, healthy living. But some American households experience food insecurity at times during the year, meaning that their access to adequate food is limited by a lack of money and other resources. In 2011, 85.1 percent of U.S. households were food secure throughout the year; the remaining 14.9 percent were food insecure (see ''Household Food Security in the United States in 2011'' Economic Research Report No. ERR–141). Children were food insecure at times during the year in 10.0 percent of households with children. While children are usually shielded from the disrupted eating patterns and reduced food intake that characterize very low food security, in 2011 children experienced instances of very low food security in 1.0 percent of the households with children (374,000 households).

The domestic food and nutrition assistance programs of the U.S. Department of Agriculture increase food security by providing low-income households access to food, a healthful diet, and nutrition education. Reliable monitoring of food security and systematic research into the underlying causes and consequences of hunger contributes to the effective operation of these programs as well as private food assistance programs and other initiatives aimed at reducing food insecurity.

In recognition of the need to sustain and expand a solid evidence base, Section 141 of the Healthy, Hunger-Free Kids Act of 2010 (Pub. L. 111–296) amended the Richard B. Russell National School Lunch Act, adding a new Section 23, 42 U.S.C. 1769c. The provision includes $10 million for research on the causes, characteristics, and consequences of childhood hunger and food insecurity. The funding becomes available on October 1, 2012, and remains available until expended. The purpose of the childhood hunger research program, as defined in the statute, is to advance knowledge and understanding in the following areas:

1. Economic, health, social, cultural, demographic, and other factors that contribute to childhood hunger or food insecurity;

2. The geographic distribution of childhood hunger and food insecurity;

3. The extent to which existing Federal assistance programs reduce childhood hunger and food insecurity;

4. The extent to which childhood hunger and food insecurity persist due to gaps in program coverage, the inability of potential participants to access programs, or the insufficiency of program benefits or services;

5. The public health and medical costs of childhood hunger and food insecurity;

6. An estimate of the degree to which the measure of food insecurity underestimates childhood hunger and food insecurity because the exclusion of certain households, such as homeless, or other factors;

7. The effects of childhood hunger on child development, well-being, and educational attainment; and

8. Other critical outcomes as determined by the Secretary of Agriculture.

Interested parties are asked to address any or all of the research topics listed above by considering and responding to the following questions:

1. How adequate is the current state of knowledge in each topical area?

2. Do substantial knowledge gaps remain? If so, what are the most important unanswered questions?

3. Can research using existing data adequately fill critical remaining gaps, or are new data collections needed? If new data are needed, what kinds of additional data would be most useful and how could they be gathered?

4. Would additional research have a major scientific and programmatic impact and contribute substantially to an improved understanding of the causes and consequences of child hunger and food insecurity?

In addition, commenters are invited to identify other areas of research not addressed in the research topics listed that could offer important opportunities to advance the research and knowledge base. Commenters are also invited to provide an assessment of relative research priorities across topical areas.

Dated: September 5, 2012.

Robin D. Bailey, Jr.,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 2012–22290 Filed 9–10–12; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Sand Lick Fork Watershed Restoration Project; Daniel Boone National Forest, KY

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Sand Lick Fork Watershed Restoration Project involves activities to improve water quality and reduce soil loss by plugging abandoned oil wells, removing abandoned flow lines, restoration of stream channels and associated floodplains, and managing/maintaining the many open roads in the Sand Lick Fork area. The project is located on National Forest System Lands in Powell County, Kentucky bounded on the east by Natural Bridge State Resort Park. Includes lands in Sand Lick Fork, Barker Branch, Pot Hollow, and Sand Cave Branch. Project Activities include: Plugging of up to 165 abandoned oil wells, removal of approximately 50 miles of abandoned flow lines used to service the oil wells, restoration of 2.5 miles of stream channel and associated floodplain, decommissioning of 1.1 mile of NFSR 212, conversion of 0.6 miles of Powell County Road 212 to Forest Service maintenance, conversion of 3.1 miles of system roads open to highway legal vehicles to administrative use only (includes sections of NFSRs 212, 212A, 2045, 2120 and the section of county road to be transferred to Forest Service maintenance), conversion of 0.9 miles of system road from administrative use only to closed (includes NFSR 2120B and 2120C), and obliteration of up to 22 miles of unauthorized roads when no longer needed for well-plugging or other proposed activities.

DATES: Comments concerning the scope of the analysis must be received by October 11, 2012. The draft environmental impact statement is expected December 2012 and the final environmental impact statement is expected February 2013.

ADDRESSES: Send written comments to USDA—Forest Service, 2375 KY 801 South, Morehead, KY 40351. Comments may also be sent via email to *comments-southern-danielboone-cumberland@fs.fed.us,* or via facsimile to (606) 784–6435.

FOR FURTHER INFORMATION CONTACT: Tom Biebighauser at 606–784–6428 extension 102 or via email at *tombiebighauser@fs.fed.us.*

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

Well Plugging: The primary purpose of the well plugging activity is to reduce or eliminate current and future groundwater contamination with oil and brine leaching from the well casings or the rock strata containing oil deposits.

Open wells can contaminate groundwater with chlorides and affect drinking water. It is important to plug the wells since the iron well casings rust over time, allowing oil and brine to contaminate clean groundwater. The polluted groundwater can eventually appear in streams, rivers, and drinking wells far from the area, and can potentially affect humans, fish and wildlife, and Federally Endangered Species. The open wells will not heal themselves over time. The longer they are allowed to stay open, the greater the pollution they will cause. Homes are located less than one mile downstream from the oil wells, and the water these residents are using may be affected by these open oil wells. Goal 3 of the 2004 Forest Plan provides, in part, to manage and/or restore watersheds to ensure water quality supports designated beneficial uses. Residential and community drinking water is one such use for this area. Objective 3.0.0 of the Forest Plan concentrates restoration efforts in watersheds with impairments, such as the TMDL limit for chlorides in Sand Lick Fork. Additionally, for riparian areas the Forest Plan seeks to maintain and restore the water quality (biological and chemical) necessary to support riparian ecosystems (1.E-Goal 3). The Commonwealth of Kentucky provides clear direction to plug oil wells that are no longer being used: ''Unless written permission shall be obtained from the department, no operator or owner shall permit any well drilled for oil, gas, salt water disposal or any other purpose in connection with the production of oil and gas, to remain unplugged after such well is no longer used for the purpose for which it was drilled or converted. However, nothing herein shall prevent the department, upon application and for good cause shown, from issuing a temporary permit, for a period not exceeding two (2) years, to an operator to leave a well unplugged, and nothing herein shall alter the provisions of KRS 353.170 relative to utilizing a well for the purpose of introducing air, gas, water or other liquid pressure into or upon the producing strata for the purpose of recovering oil and gas. The permission for temporary abandonment may be renewed at the end of the two (2) year period by reapplication. All wells on which a temporary abandonment permit has been issued shall be cased and capped in such a manner so as to protect all potential oil and/or gas zones and fresh water.''

Flowline and other infrastrucure removal: The primary purpose of the pipe removal activity is to reduce or eliminate current and future surface water contamination caused by oil and brine leaching from the flow-lines. The polluted water can eventually appear in streams, rivers, and drinking wells far from the area. The flow-lines will not heal themselves over time. The longer they are allowed to stay open, the greater the pollution they will cause. Goal 3 of the 2004 Forest Plan provides, in part, to manage and/or restore watersheds to ensure water quality supports designated beneficial uses. Objective 3.0.0 of the Forest Plan concentrates restoration efforts in watersheds with impairments, such as the TMDL limit for chlorides in Sand Lick Fork. Additionally, for riparian areas the Forest Plan seeks to maintain and restore the water quality (biological and chemical) necessary to support riparian ecosystems (1.E-Goal 3).

Stream Restoration: Sand Lick Fork and its tributaries were historically impacted by activities that involved channeling and straightening prior to acquisition by the Forest Service. In addition, portions of Sand Lick Fork are currently used by motor vehicles for travel. Stream bank erosion is evident along the altered streams, and the bottom of these streams is dominated by bedrock or sediment, which provides poor habitat for fish and the aquatic organisms they depend on for food. Goal 3.1 of the Forest Plan provides for the management of in-stream flows and water levels to protect stream processes and aquatic communities. The proposed restoration would move the area towards this goal. Additionally the Forest Plan provides for the maintenance of the physical integrity of aquatic ecosystems, including stream banks, substrate, coarse woody debris, riffles, and other habitat components in 1.E-Goal 4.

Management of system and unauthorized roads: Field examination of existing roads (system and unauthorized) reveals that the lack of maintenance is impacting other resources in the watershed (Figure 18). The absence of grading, brushing, access control, and ditch cleaning, combined with uncontrolled use of the roads, has created areas of exposed soil and rutting, resulting in sedimentation of the streams and wetlands on NFS land. Additionally, the use of streams by motorized vehicles has impacted habitat and water quality in the streams. The Forest Plan provides direction related to the transportation system on the DBNF. Objective 12.0.A provides for the closure or obliteration of National Forest System roads and trails that do not meet their current management objectives. The Forest Service has completed a Travel Analysis for the watershed containing the Sand Lick Fork area, which identified the roads and trails that do not meet these objectives. Goal 12.1 in the Forest Plan provides for the minimization of sediment from roads or trails that reach streams. The objectives within this goal identify six specific ways to address sediment from roads. One is to reduce the number of road/stream crossings and the actual amount of road within 100 feet of streams. The decommissioning of portions of NFSR 212 responds to this goal. Erosion from roads may also be controlled by closing the roads.

Proposed Action

Plugging of up to 165 abandoned oil wells: Plugging oil wells would involve cleaning the well of debris, using a pump truck to remove oil and brine, and then filling portions of the well with concrete. Priority would be given to wells that are most likely to have either a groundwater and/or a surface water connection. State approved well plugging techniques would be used and may be similar to the method described below. The DBNF would work closely with the Kentucky Division of Oil and Gas to implement the plugging of the oil wells. An inspector from the Kentucky Division of Oil and Gas would normally be onsite during the plugging operation.

None of the wells in the project area would be used as a domestic water source. Each well would need to be accessed by large trucks to accomplish the well plugging operation.

Because it would be necessary to drive both National Forest System and abandoned roads with large trucks to plug the wells, these roads would need to be improved (clearing and grading with heavy equipment such as a dozer), drained, and hardened with gravel. Small diameter trees and shrubs growing on the roads would be removed. These improved roads would not be maintained for public motor vehicle use after the wells are plugged.

The use of the abandoned roads to access the wells would be temporary, and these roads would be closed following use. Road closure can include the removal of culverts, installation of berms, re-contouring, loosening of compacted soils, placement of woody debris from surrounding woodland, and planting with native trees, shrubs, grasses, and wildflowers. Where culverts are removed, large rocks or logs would be buried in the ground to provide vertical grade control, preventing erosional head-cuts, or waterfalls from forming and advancing upstream.

Removal of approximately 50-miles of oil pipe and other oil-related infrastructure: A large network of small diameter iron and plastic flow-lines were buried or laid on top of the ground to move oil from the wells to storage or processing facilities. Many of these flow-lines are exposed and are rusting. Because these flow-lines can contain oil, they have the potential to negatively affect water, soil, and fish and wildlife. The flow-lines that have the highest potential to affect the surface water would be drained and the oil and brine would be transported to an approved disposal facility. Flow-lines, residual oil, and brine would be removed and disposed of in an environmentally sound and state-approved manner. Priority would be given to flow-lines that are closest to streams and those that are showing the greatest level of deterioration. The flow-lines and storage tanks, along with their contents, would be disposed of according to existing laws and regulations.

Restoration of approximately 2.5 miles of creek and floodplain: Restoration of sections of Sand Lick Fork and its tributaries would involve the use of heavy equipment, such as excavators and dozers, to relocate and reshape the floodplain and stream channel to a more natural condition. Native wildflowers, trees, and shrubs would be planted by hand. Erosion from head-cuts advancing up tributaries would be stopped. Where roads cross streams, the crossings would be designed to accommodate the passage of aquatic organisms.

An electric transmission line managed by East Kentucky Power Cooperative, Inc. follows Sand Lick Fork where the stream restoration is proposed. Trees would not be planted in the sections of right-of-way for the transmission line that overlap the floodplain for Sand Lick Fork to reduce the potential for outages. The utility company would continue to maintain the right-of-way and structures needed for the electric transmission line, as outlined in their special use authorization issued by the Forest Service for such activities.

A mixture of different types of wetlands would be established by using heavy equipment, such as an excavator. This mixture would provide for a variety of hydrologic conditions, which would increase the types of habitat for plants and animals.

Management of National Forest System roads and unauthorized roads: Proposed activities include decommissioning of 1.1 mile of NFSR 212, conversion of 0.6 miles of Powell County Road 212 to Forest Service maintenance, conversion of 3.1 miles of system roads open to highway legal vehicles to administrative use only (includes sections of NFSRs 212, 212A, 2045, 2120 and the section of county road to be transferred to Forest Service maintenance), conversion of 0.9 miles of system road from administrative use only to closed (includes NFSR 2120B and 2120C). Some of these system roads are severely eroded and in poor condition from intense use. The proposed status changes would occur following the completion of other restoration activities that are part of this proposed project.

For those roads where the proposed status is ''Administrative Use,'' the change would be accomplished by the installation of gates that would close the system road to public use. System roads to be managed for administrative use would be subject to periodic grading, addition of gravel, ditching, culvert cleaning, and replacement. For the system roads where the proposed status is ''Closed'', the change would be accomplished by the installation of earthen berms and other barriers, such as guard rails. Erosion occurring on these roads would be controlled by installing culverts, dips, and spreading of gravel.

For system roads where the proposed status is ''Decommissioned'', the change would be accomplished during stream and wetland restoration activities. Decommissioning may include culvert removal, addition of buried vertical grade control to stop head-cutting, loosening compacted soil, contouring, adding dips and large woody debris, restoring small wetlands, restoring ephemeral and intermittent stream sections affected by the road, and planting native trees, shrubs, grasses, and wildflowers. Heavy equipment, such as dozers and excavators, would be used to complete this work.

The unauthorized roads would be closed to public vehicle use during the implementation of this project with physical barriers such as gates, rocks, and berms, and by law enforcement action. These roads are temporarily needed for plugging oil wells, and they would be improved with grading and the addition of gravel prior to work commencing.

Unauthorized roads would be obliterated following the accomplishment of the other actions in this proposal. Obliteration may include culvert removal, addition of buried vertical grade control to stop head-cutting, loosening compacted soil, contouring, adding dips and large woody debris, restoring small wetlands, restoring ephemeral and intermittent stream sections affected by the road, and planting native trees, shrubs, grasses, and wildflowers. Heavy equipment, such as dozers and excavators, would be used to complete this work. Rock, soil, and trees from onsite and off-site may be used for these purposes.

Responsible Official

James D. Manner, Cumberland District Ranger

Nature of Decision To Be Made

The Responsible Official will be deciding to implement or not implement the proposed action or some modification of it that best meets the purpose and need for the project.

Permits or Licenses Required

To implement the project the Forest Service will have to acquire a Section 401 Permit and a Floodplain Permit from the Kentucky Division of Water. Floodplain permit.

Scoping Process

This notice of intent initiates the scoping process, which guides thedevelopment of the environmental impact statement. In addition, members of the public who have in the past requested to be notified of projects of this type or who participated in the Natural Bridge Integrated Resource Management Strategy (IRMS) will be mailed (hardcopy or electronic depending upon their expressed preference) a project description of this proposed action. Also, documents related to this proposed action, including this NOT, will be published on the Forest Web page.

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.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however.

Dated: August 29, 2012.

James D. Manner,

District Ranger.

[FR Doc. 2012–22234 Filed 9–10–12; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Eleven Point Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Eleven Point Resource Advisory Committee will meet in Winona, Missouri. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 112–141) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with title II of the Act. The meeting is open to the public. The purpose of the meeting is to review and recommend projects authorized under title II of the Act.

DATES: The meeting will be held Thursday, September 27, 2012 at 6:30 p.m.

ADDRESSES: The meeting will be held at Twin Pines Conservation Education Center located on U.S. Highway 60, RT 1, Box 1998, Winona, MO. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Mark Twain National Forest Supervisor's Office, 401 Fairgrounds Road, Rolla, MO. Please call ahead to 573–341–7404 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Richard Hall, Eleven Point Resource Advisory Committee Coordinator, Mark Twain National Forest, 573–341–7404, *rrhall@fs.fed.us*.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The following business will be conducted: the meeting will focus on reviewing potential projects that the RAC may recommend for funding. The full agenda may be viewed at *http://www/fs.usda.gov/main/pts/specialprojects/racweb*. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by September 23, 2012 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to Richard Hall, 401 Fairgrounds Road, Rolla, MO, or by email to *rrhall@fs.fed.us*, or via facsimile to 573–364–6844. A summary of the meeting will be posted at *http://www.fs.usda.gov/main/pts/specialprojects/racweb* within 21 days of the meeting.

Meeting Accommodations: If you require sign language interpreting, assistive listening devices or other reasonable accommodation please request this in advance of the meeting by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: September 4, 2012.

Teresa Chase,

Acting Forest Supervisor.

[FR Doc. 2012–22276 Filed 9–10–12; 8:45 am]

BILLING CODE 3410–11–P

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: Thursday, September 13, 2012, 4:45 p.m. EDT.

PLACE: Cohen Building, Room 3321, 330 Independence Ave. SW., Washington, DC 20237.

SUBJECT: Notice of Meeting of the Broadcasting Board of Governors.

SUMMARY: The Broadcasting Board of Governors (BBG) will be meeting at the time and location listed above. At the meeting, the BBG will receive and consider a report from the Governance Committee with recommendations regarding grantee administrative streamlining, receive and consider a progress report from the Strategy and Budget Committee, and consider two resolutions honoring employees for their service. The BBG will recognize the anniversaries of Agency language services, receive a distribution/technology initiatives update, receive a budget update, and receive reports from the International Broadcasting Bureau Director, the Communications and External Affairs Director, the Strategy and Development Director, the VOA Director, the Office of Cuba Broadcasting Director, and the Presidents of Radio Free Europe/Radio Liberty, Radio Free Asia, and the Middle East Broadcasting Networks.

The public may attend this meeting in person at BBG headquarters in DC as seating capacity allows. Members of the public seeking to attend the meeting in person must register at *http://bbgboardmeetingsept2012.eventbrite.com* by 10 a.m. (EDT) on September 12. For more information, please contact BBG Public Affairs at (202) 203–4400 or by email at *pubaff@bbg.gov*. This meeting will also be available for public observation via streamed webcast, both live and on-demand, on the BBG's public Web site at *http://www.bbg.gov*. The public is advised to check the Web site for updated information on the starting time of the meeting.

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact Paul Kollmer-Dorsey at (202) 203–4545.

Paul Kollmer-Dorsey,

Deputy General Counsel.

[FR Doc. 2012–22483 Filed 9–7–12; 4:15 pm]

BILLING CODE 8610–01–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of business meeting.

DATE AND TIME: Friday, September 21, 2012; 9:30 a.m. EDT.

PLACE: 1331 Pennsylvania Ave. NW., Suite 1150, Washington, DC 20425.

MEETING AGENDA

This meeting is open to the public.

I. Approval of Agenda

II. Program Planning Update and discussion of projects:

- Discussion and Vote on 2013 Statutory Report Topic
- Approval and Scheduling of 2013 Briefings
- Adoption and Vote on 2013 USCCR Business Meeting Calendar
- Update on the Sex-Trafficking Briefing

III. Management and Operations

- Chief of Regional Programs'' report
- Report from Regional Directors
- Discussion on 2013 Budget
- Training on the Stock Act conducted by OGC

IV. Approval of State Advisory Committee Slates

- Colorado
- Florida
- Massachusetts

- New Jersey
- South Carolina
- West Virginia

V. Adjourn Meeting

CONTACT PERSON FOR FURTHER INFORMATION: Lenore Ostrowsky, Acting Chief, Public Affairs Unit (202) 376–8591.

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact Pamela Dunston at (202) 376–8105 or at *signlanguage@usccr.gov* at least seven business days before the scheduled date of the meeting.

Dated: September 7, 2012.

Kimberly Tolhurst,

Senior Attorney-Advisor.

[FR Doc. 2012–22436 Filed 9–7–12; 4:15 pm]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–68–2012]

Foreign-Trade Zone 242—Boundary County, ID; Application for Subzone AREVA Enrichment Services, LLC; Bonneville County, ID

An application has been submitted to the Foreign-Trade Zones Board (the Board) by Boundary County, Idaho, grantee of FTZ 242, requesting special-purpose subzone status for the facility of AREVA Enrichment Services, LLC (AES), located in Bonneville County, Idaho. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on September 4, 2012.

The proposed subzone is located along Highway 20, approximately 20 miles east-southeast of Idaho Falls, Idaho. A notification of proposed production activity has been submitted and is being published separately for public comment.

In accordance with the Board's regulations, Christopher Kemp of the FTZ Staff is designated examiner to review the application and make recommendations to the Board.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 22, 2012. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to November 5, 2012.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Christopher Kemp at *Christopher.Kemp@trade.gov* or (202) 482–0862.

Dated: September 4, 2012.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012–22368 Filed 9–10–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–802]

Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On March 7, 2012, the Department of Commerce (''Department'') published in the **Federal Register** the *Preliminary Results* of the 6th administrative review of the antidumping duty order on certain frozen warmwater shrimp (''shrimp'') from the Socialist Republic of Vietnam (''Vietnam'').[1] Based upon our analysis of the comments, we made changes to the margin calculations for the final results.

DATES: *Effective Date:* September 11, 2012.

FOR FURTHER INFORMATION CONTACT: Toni Dach or Seth Isenberg, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1655 or (202) 482–0588, respectively.

SUPPLEMENTARY INFORMATION: On March 7, 2012, the Department of Commerce (''Department'') published the *Preliminary Results.* On June 6, 2012, the Department extended the time limit for these final results by 60 days.

From March 16 through March 30, 2012, the Department placed certain surrogate value information on the record. On March 26, mandatory respondents Nha Trang Seaproduct Group [2] and Minh Phu Group,[3] commented on this surrogate value information.

On April 5, 2012, the American Shrimp Processors Association (''ASPA'') and Nha Trang Seaproduct Group and Minh Phu Group submitted additional surrogate value information. On April 13, 2012, Domestic Producers [4] submitted rebuttal surrogate value comments.

In the *Preliminary Results,* we gave interested parties an opportunity to comment. On June 13, 2012, Domestic Producers, Nha Trang Seaproduct Group and Minh Phu Group, the ASPA, and Gallant Ocean (Vietnam) Co., Ltd. submitted case briefs. On June 28, 2012, Domestic Producers, Nha Trang Seaproduct Group and Minh Phu Group, and the ASPA submitted rebuttal briefs.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this review are addressed in the memorandum entitled, ''Issues and Decision Memorandum for the Final Results in the 6th Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam,'' which is dated concurrently with and adopted by this notice (''Decision Memorandum''). A list of the issues which parties raised, and to which we respond in the Decision Memorandum is attached to this notice as Appendix I. The Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the Central Records Unit (''CRU''), room 7046 of the main Department of Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the internet at *http://www.trade.gov/ia/.* The signed

[1] *See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Preliminary Results of Administrative Review,* 77 FR 13547 (March 7, 2012).

[2] Nha Trang Seaproduct Company (''Nha Trang Seafoods''), NT Seafoods Corporation (''Factory 440''),Nhatrang Seafoods—F89 Joint Stock Company (''Factory 89''), and NTSF Seafoods Joint Stock Company (''Factory 461'').

[3] Minh Phu Seafood Corporation (''Minh Phu''), Minh Qui Seafood Co., Ltd. (''Minh Qui'') and Minh Phat Seafood Co., Ltd. (''Minh Phat'').

[4] The Domestic Producers are the Ad Hoc Shrimp Trade Action Committee members: Nancy Edens; Papa Rod, Inc.; Carolina Seafoods; Bosarge Boats, Inc.; Knight's Seafood Inc.; Big Grapes, Inc.; Versaggi Shrimp Co.; and Craig Wallis.

Decision Memorandum and the electronic versions of the Decision Memorandum are identical in content.

Period of Review

The Period of Review (''POR'') is February 1, 2010, through January 31, 2011.

Changes Since the Preliminary Results

The Department has made changes to the preliminary margin calculation. Specifically, we:

- Applied the corrected shrimp price data from the Network of Aquaculture Centres in Asia-Pacific 2011 Shrimp Price Study to value raw shrimp; [5]
- Corrected calculation errors in the *Preliminary Results* for the Minh Phu Group and Nha Trang Seaproducts Group; [6]
- Incorporated the corrections for errors in Nha Trang Seaproducts Group's U.S. Sales and Factors of Production databases discovered or reported at verification; [7]
- Made corrections to the names and ''also-known-as'' names for certain companies [8] and revised our draft customs instructions [9] to reflect these corrections to the respondents' names;
- Applied the correct surrogate value for the input Proxitane;[10]
- Used data from Dhaka Electric Supply Company to value electricity; [11]
- Used data from *Doing Business 2012: Indonesia* to value document preparation fees, and used a container weight of ten metric tons to calculate a per-kilogram value for document preparation expenses.[12]

Scope of the Order

The scope of the order includes certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,[13] deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of the order, regardless of definitions in the Harmonized Tariff Schedule of the United States (''HTSUS''), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the *Penaeidae* family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannemei*), banana prawn (*Penaeus merguiensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of the order. In addition, food preparations, which are not ''prepared meals,'' that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of the order.

Excluded from the scope are: (1) Breaded shrimp and prawns (HTS subheading 1605.20.10.20); (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (HTS subheadings 0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (HTS subheading 1605.20.05.10); (5) dried shrimp and prawns; (6) canned warmwater shrimp and prawns (HTS subheading 1605.20.10.40); (7) certain dusted shrimp; [14] and 8) certain battered shrimp. Dusted shrimp is a shrimp-based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a ''dusting'' layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and 10 percent of the product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to IQF freezing immediately after application of the dusting layer. Battered shrimp is a shrimp-based product that, when dusted in accordance with the definition of dusting above, is coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by the order are currently classified under the following HTSUS subheadings: 0306.13.00.03, 0306.13.00.06, 0306.13.00.09, 0306.13.00.12, 0306.13.00.15, 0306.13.00.18, 0306.13.00.21, 0306.13.00.24, 0306.13.00.27, 0306.13.00.40, 1605.20.10.10 and 1605.20.10.30. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of the order is dispositive.

Rescission of Review, in Part

In the *Preliminary Results,* the Department preliminarily rescinded this review with respect to Quoc Viet Seaproducts Processing Trading Import and Export Co., Ltd. (''Quoc Viet''), Nam Hai Foodstuff and Export Company Ltd. (''Nam Hai'') and Vinh Loi Import Export Company (''Vinh Loi'') because these companies reported that they made no shipments of subject merchandise during the POR. We have not received any information to contradict these statements. Therefore, the Department is rescinding this review with respect to Quoc Viet, Nam Hai, and Vinh Loi.

In addition, in the *Preliminary Results,* the Department preliminarily rescinded this review with respect to Thong Thuan Company Limited (''Thong Thuan''), as all of Thong Thuan's shipments of subject merchandise during the POR were under review in the 2010–2011 new shipper review of certain frozen warmwater shrimp from Vietnam. As the 2010–2011 new shipper review of

[5] *See* Decision Memorandum at Comment 2–A.

[6] *See* Decision Memorandum at Comments 6.

[7] *See* Decision Memorandum at Comment 7.

[8] *See* Decision Memorandum at Comment 9.

[9] *See* Memorandum from Toni Dach, to The File, dated April 20, 2012, Regarding Sixth Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Draft of U.S. Customs and Border Protection (''CBP'') Instructions.

[10] *See* Decision Memorandum at Comment 2–F.

[11] *See* Decision Memorandum at Comment 2–B.

[12] See Decision Memorandum at Comment 2–D.

[13] ''Tails'' in this context means the tail fan, which includes the telson and the uropods.

[14] On April 26, 2011, the Department amended the antidumping duty order to include dusted shrimp, pursuant to the U.S. Court of International Trade (''CIT'') decision in *Ad Hoc Shrimp Trade Action Committee* v. *United States,* 703 F. Supp. 2d 1330 (CIT 2010) and the U.S. International Trade Commission (''ITC'') determination, which found the domestic like product to include dusted shrimp. Because the amendment of the antidumping duty order occurred after this POR, dusted shrimp continue to be excluded in this review. *See Certain Frozen Warmwater Shrimp From Brazil, India, the People's Republic of China, Thailand, and the Socialist Republic of Vietnam: Amended Antidumping Duty Orders in Accordance with Final Court Decision,* 76 FR 23277 (April 26, 2011); *see also, Ad Hoc Shrimp Trade Action Committee* v. *United States,* 703 F. Supp. 2d 1330 (CIT 2010) and *Frozen Warmwater Shrimp from Brazil, China, India, Thailand, and Vietnam (Investigation Nos. 731–TA–1063, 1064, 1066–1068 (Review),* USITC Publication 4221, March 2011.

certain frozen warmwater shrimp from Vietnam covering Thong Thuan has concluded,[15] the Department is rescinding this review with respect to Thong Thuan because all of its entries during the POR have been reviewed.

Separate Rates Determination

In our *Preliminary Results,* we determined that 31 companies [16] (''Separate Rate Respondents'') met the criteria for separate rate status. We have not received any information since the issuance of the *Preliminary Results* that provides a basis for reconsidering this preliminary determination. Therefore, the Department continues to find that these 31 companies meet the criteria for a separate rate.

Rate for Non-Selected Companies

We selected The Minh Phu Group and Nha Trang Seaproducts Group as mandatory respondents in this review.[17] The statute and the Department's regulations do not directly address the establishment of a rate to be applied to companies not selected for individual examination where the Department limited its examination in an administrative review pursuant to section 777A(c)(2) of the Act. The Department's practice in cases involving limited selection based on exporters accounting for the largest volumes of trade has been to look to section 735(c)(5) of the Act for guidance, which provides instructions for calculating the all-others rate in an investigation. Section 735(c)(5)(A) of the Act instructs that we are not to calculate an all-others rate using any zero or *de minimis* margins or any margins based entirely on facts available. Section 735(c)(5)(B) of the Act also provides that, where all margins are zero rates, *de minimis* rates, or rates based entirely on facts available, we may use ''any reasonable method'' for assigning the rate to non-selected respondents. In this instance, we have calculated rates above *de minimis* for The Minh Phu Group and Nha Trang Seaproducts Group.

Consistent with the Department's practice, we have assigned the average rate calculated for The Minh Phu Group and Nha Trang Seaproducts Group to the Separate Rate Respondents. Because the rates calculated for The Minh Phu Group and Nha Trang Seaproducts Group have changed since the Preliminary Results, the margin assigned to the Separate Rate Respondents has also changed accordingly.

Vietnam-Wide Entity

In the *Preliminary Results,* we determined that 30 companies failed to demonstrate their eligibility for a separate rate. In NME proceedings, '''rates' may consist of a single dumping margin applicable to all exporters and producers.'' [18] Therefore, we assigned the entity a rate of 25.76%, the only rate ever determined for the Vietnam-wide entity in this proceeding. We have not received any information since issuance of the *Preliminary Results* that provides a basis for reconsidering this determination, and will therefore continue to apply the entity rate of 25.76% to these 30 companies.

Final Results of Review

The dumping margins for the POR are as follows:

Exporter	Simple average margin (percent)
Minh Phu Group:	1.27
Minh Phat Seafood Co., Ltd. aka	
Minh Phat Seafood aka	
Minh Phu Seafood Export Import Corporation (and affiliates Minh Qui Seafood Co., Ltd. and Minh Phat Seafood Co., Ltd.) aka	
Minh Phu Seafood Corp. aka	
Minh Phu Seafood Corporation aka	
Minh Qui Seafood aka	
Minh Qui Seafood Co., Ltd.	
Minh Phu Seafood Pte aka	
Minh Phat aka	
Minh Qui	
Minh Phu Hau Giang Seafood Co., Ltd.	
Nha Trang Seafoods Group:	1.23
Nha Trang Seaproduct Company (''Nha Trang Seafoods'') aka	
Nha Trang Seafoods aka	
Nha Trang Seafood Product Company aka	
Nha Trang Seaproduct Company Nha Trang Seafoods aka	
NT Seafoods Corporation (''NT Seafoods'') aka	
Nha Trang Seafoods—F.89 Joint Stock Company (''Nha Trang Seafoods—F.89'') aka	
NTSF Seafoods Joint Stock Company (''NTSF Seafoods'')	
Amanda Foods (Vietnam) Limited (''Amanda Foods'')	1.25
Bac Lieu Fisheries Company Limited aka	1.25
Bac Lieu Fisheries Company Limited (''Bac Lieu'') aka	
Bac Lieu Fisheries Joint Stock Company aka	
Bac Lieu Fisheries Limited Company aka	
Bac Lieu Fisheries Company Limited aka	
Bac Lieu Fis	
Camau Frozen Seafood Processing Import Export Corporation (''CAMIMEX'') aka	1.25
Camimex aka	
Camau Seafood Factory No. 4 aka	
Camau Seafood Factory No. 5 aka	
Camau Frozen Seafood Processing Import & Export aka	
Camau Frozen Seafood Processing Import Export Corp. (CAMIMEX–FAC 25) aka	
Frozen Factory No. 4 aka	

[15] *See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of Antidumping Duty New Shipper Review,* 77 FR 20358 (April 4, 2012).

[16] *See* Appendix II.

[17] *See Preliminary Results.*

[18] *See* 19 CFR 351.107(d).

Exporter	Simple average margin (percent)
Camau Frozen Seafood Processing Import Export Corporation (“CAMIMEX”) aka Camimex aka Camau Frozen Seafood Processing Import Export Corporation C.P. Vietnam Livestock Company Limited aka C.P. Vietnam Livestock Corporation (“C.P. Vietnam”) aka C.P. Vietnam Livestock Corporation aka C.P. Vietnam Livestock Co. Ltd.	1.25
Cadovimex Seafood Import-Export and Processing Joint Stock Company (“CADOVIMEX–VIETNAM”) aka Cadovimex Seafood Import- Export and Processing Joint Stock Company aka Cadovimex-Vietnam aka Cadovimex aka Cai Doi Vam Seafood Import-Export Company aka Cai Doi Vam Seafood Import-Export Company (“Cadovimex”) aka Cai Doi Vam Seafood Import-Export Company (Cadovimex) aka Cai Doi Vam Seafood aka Cai Doi Vam Seafood Im-Ex Company (Cadovimex) aka Cai Doi Vam Seafood Processing Factory aka Caidoivam Seafood Company (Cadovimex) aka Caidoivam Seafood Im-Ex Co.	1.25
Cafatex Fishery Joint Stock Corporation (“Cafatex Corp.”) aka Cafatex Fishery Joint Stock Corporation (“CAFATEX CORP.”) aka Cantho Animal Fisheries Product Processing Export Enterprise (Cafatex) aka Cafatex aka Cafatex Vietnam aka Xi Nghiep Che Bien Thuy Suc San Xuat Kau Cantho aka Cas aka Cas Branch aka Cafatex Saigon aka Cafatex Fishery Joint Stock Corporation aka Cafatex Corporation aka Taydo Seafood Enterprise aka Cafatex Corp. aka Cafatex Corporation	1.25
Cam Ranh Seafoods Processing Enterprise Company (“Camranh Seafoods”) aka Camranh Seafoods	1.25
Can Tho Agricultural and Animal Products Import Export Company (“CATACO”) aka CATACO Sole Member Limited Liability Company aka Can Tho Agricultural and Animal Product Import Export Company (“CATACO”) aka Can Tho Agricultural Products aka CATACO aka Can Tho Agricultural and Animal Products Imex Company	1.25
Can Tho Import Export Fishery Limited Company (“CAFISH”)	1.25
Coastal Fishery Development aka	1.25
Coastal Fisheries Development Corporation (“Cofidec”) aka Coastal Fisheries Development Corporation (Cofidec) aka COFIDEC aka Coastal Fisheries Development Corporation aka Coastal Fisheries Development Co. aka Coastal Fisheries Development Corp.	
Cuulong Seaproducts Company (“Cuu Long Seapro”) aka Cuu Long Seaproducts Limited (“Cuulong Seapro”) aka Cuulong Seapro aka Cuulong Seaproducts Company aka Cuulong Seaproducts Company (“Cuulong Seapro”) aka Cuu Long Seaproducts Company (“Cuu Long Seapro”) aka Cuu Long Seaproducts Company aka Cuu Long Seapro aka Cuulong Seaproducts Company (“Cuu Long Seapro”) aka Cuu Long Seaproducts Limited (Cuulong Seapro) aka Cuulong Seapro aka Cuulong Seaproduct Company	1.25
Danang Seaproducts Import Export Corporation (“Seaprodex Danang”) aka Danang Seaproducts Import Export Corporation aka Danang Seaproduct Import-Export Corporation aka Danang Seaproducts Import Export aka Danang Sea Products Import Export Corporation aka Tho Quang Seafood Processing & Export Company aka Seaprodex Danang aka Tho Quang Seafood Processing and Export Company aka Tho Quang aka Tho Quang Co.	1.25

Exporter	Simple average margin (percent)
Gallant Ocean (Vietnam) Co., Ltd. aka	1.25
Gallant Ocean (Quang Ngai) Co. Ltd.	
Viet I-Mei Frozen Foods Co., Ltd. aka	1.25
Viet I-Mei Frozen Foods Co. Ltd. aka	
Viet I-Mei aka	
Grobest & I-Mei Industrial (Vietnam) Co., Ltd. aka	
Grobest & I-Mei Industry (Vietnam) Co., Ltd. aka	
Grobest	
Investment Commerce Fisheries Corporation (''Incomfish'') aka	1.25
Incomfish aka	
Investment Commerce Fisheries Corp. aka	
Incomfish Corp. aka	
Incomfish Corporation aka	
Investment Commerce Fisheries aka	
Investment Commerce Fisheries Corporation aka	
Incomfish Corporation	
Kim Anh Company Limited (''Kim Anh'')	1.25
Minh Hai Export Frozen Seafood Processing Joint Stock Company aka	1.25
Minh Hai Jostoco aka	
Minh Hai Export Frozen Seafood Processing Joint-Stock Company (''Minh Hai Jostoco'') aka	
Minh Hai Export Frozen Seafood Processing Joint Stock Company (''Minh Hai Jostoco'') aka	
Minh Hai Export Frozen Seafood Processing Joint-Stock Company aka	
Minh Hai Joint Stock Seafood Processing Joint-Stock Company aka	
Minh Hai Export Frozen Seafood Processing Joint-Stock Co. aka	
Minh-Hai Export Frozen Seafood Processing Joint-Stock Company	
Minh Hai Joint-Stock Seafoods Processing Company (''Seaprodex Minh Hai'') aka	1.25
Sea Minh Hai aka	
Minh Hai Joint-Stock Seafoods Processing Company aka	
Seaprodex Minh Hai aka	
Seaprodex Min Hai aka	
Seaprodex Minh Hai (Minh Hai Joint Stock Seafoods Processing Co.) aka	
Seaprodex Minh Hai Factory aka	
Seaprodex Minh Hai Factory No. 69 aka	
Seaprodex Minh Hai Workshop 1 aka	
Seaprodex Minh Hai-Factory No. 78 aka	
Workshop I Seaprodex Minh Hai	
Minh Hai Sea Products Import Export Company (''Seaprimex Co'') aka	1.25
Ca Mau Seafood Joint Stock Company (''SEAPRIMEXCO'') aka	
Seaprimexco Vietnam aka	
Seaprimexco aka	
Seaprimex Co aka	
Ca Mau Seafood Joint Stock Company (''Seaprimexco'') aka	
Minh Hai Seaproducts Import Export Corporation aka	
Seaprimexco aka	
Minh Hai Seaproducts Co Ltd. (Seaprimexco) aka	
Ca Mau Seafood Joint Stock Company (''Seaprimexco Vietnam'')	
Ngoc Sinh Private Enterprise aka	1.25
Ngoc Sinh Seafoods aka	
Ngoc Sinh Seafoods Processing and Trading Enterprise aka	
Ngoc Sinh Fisheries aka	
Ngoc Sinh Private Enterprises aka	
Ngoc Sinh Seafoods Processing and Trading Enterprises aka	
Ngoc Sinh aka	
Ngoc Sinh Seafood Processing Company aka	
Ngoc Sinh Seafoods (Private Enterprise)	
Ngoc Tri Seafood Joint Stock Company	1.25
Nhat Duc Co., Ltd. aka	1.25
Nhat Duc Co., Ltd. (''Nhat Duc'')	
Nha Trang Fisheries Joint Stock Company (''Nha Trang Fisco'') aka	1.25
Nha Trang Fisheries Joint Stock Company aka	
Nhatrang Fisheries Joint Stock Company aka	
Nha Trang Fisco aka	
Nhatrang Fisco aka	
Nha Trang Fisheries Joint Stock Company (''Nha Trang Fisco'') aka	
Nha Trang Fisheries, Joint Stock aka	
Nha Trang Fishereies Joint Stock Company (Nha Trang Fisco)	
Phu Cuong Seafood Processing and Import-Export Co., Ltd. aka	1.25
Phu Cuong Seafood Processing and Import Export Company Limited aka	
Phu Cuong Jostoco Corp. aka	
Phu Cuong Jostco Seafood Corporation	
Phuong Nam Co., Ltd. (''Phuong Nam'') aka	1.25
Western Seafood Processing and Exporting Factory (''Western Seafood'') aka	

Exporter	Simple average margin (percent)
Phuong Nam Foodstuff Corp. aka Phuong Nam Co. Ltd. Sao Ta Foods Joint Stock Company (''Fimex VN'') aka Sao Ta Foods Joint Stock Company aka Fimex VN aka Sao Ta Seafood Factory aka Saota Seafood Factory	1.25
Soc Trang Aquatic Products and General Import Export Company (''Stapimex'') aka Soc Trang Seafood Joint Stock Company (''Stapimex'') aka Soc Trang Seafood Joint Stock Company aka Soc Trang Aquatic Products and General Import Export Company aka Stapimex aka Soc Trang Aquatic Products and General Import Export Company—(Stapimex) aka Stapimex Soc Trans Aquatic Products and General Import Export Company aka Stapmex	1.25
Thuan Phuoc Seafoods and Trading Corporation aka Thuan Phoc Corp. aka Frozen Seafoods Factory No. 32 aka Seafoods and Foodstuff Factory aka My Son Seafoods Factory aka Seafoods and Foodstuff Factory Vietnam	1.25
UTXI Aquatic Products Processing Company aka UT XI Aquatic Products Processing Company aka UT–XI Aquatic Products Processing Company aka UTXI aka UTXI Co. Ltd. aka Khanh Loi Seafood Factory aka Hoang Phuong Seafood Factory aka UTXI Aquatic Products Processing Corporation (''UTXICO'') aka UTXI Aquatic Products Processing Corporation aka UTXICO	1.25
Viet Foods Co., Ltd. aka Nam Hai Foodstuff and Export Company Ltd.	1.25
Viet Hai Seafood Co., Ltd. aka Vietnam Fish One Co., Ltd. (''Fish One'') aka Viet Hai Seafoods Company Ltd. (''Vietnam Fish One Co. Ltd.'')	1.25
Vietnam Clean Seafood Corporation aka VINA Cleanfood	1.25
Vietnam-wide Entity	25.76

Assessment

Upon issuance of the final results, the Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer-specific (or customer) *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. In accordance with 19 CFR 351.106(c)(2), we will instruct CBP to liquidate, without regard to antidumping duties, all entries of subject merchandise during the POR for which the importer-specific assessment rate is zero or *de minimis.*

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be the rate established in the final results of review (except, if the rate is zero or *de minimis, i.e.,* less than 0.5 percent, a zero cash deposit rate will be required for that company); (2) for previously investigated or reviewed Vietnamese and non-Vietnamese exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all Vietnamese exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the Vietnam-wide rate of 25.76 percent; and (4) for all non-Vietnamese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Vietnamese exporters that supplied that non-Vietnamese exporter. The deposit requirements, when imposed, shall remain in effect until further notice.

Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information

disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this administrative review and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: September 4, 2012.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

Appendix I

Comment 1: Surrogate Country
Comment 2: Surrogate Values
- A. Shrimp
- B. Electricity
- C. Labor
- D. Document Preparation Fees
- E. Surrogate Financial Ratios
- F. Proxitane

Comment 3: Zeroing
Comment 4: Calculation of the Separate Rate
Comment 5: Minh Phu Group's Reporting Methodologies
- A. Farmed Shrimp
- B. Block Frozen Shrimp
- C. Merchandise Produced Outside the POR
- D. Raw Shrimp FOP
- E. Direct Selling Expenses and Returns

Comment 6: Errors in the Preliminary Results
Comment 7: Nha Trang Verification Corrections
Comment 8: Nha Trang's Domestic Sales
Comment 9: Corrections to Company Names

Appendix II

- Amanda Foods (Vietnam) Limited
- Bac Lieu Fisheries Joint Stock Company
- C.P. Vietnam Livestock Corporation
- Cafatex Fishery Joint Stock Corporation, aka Cafatex Corp.
- Cadovimex Seafood Import-Export and Processing Joint Stock Company, aka CADOVIMEX–VIETNAM
- Ca Mau Seafood Joint Stock Company, aka Seaprimexco Vietnam
- Camau Frozen Seafood Processing Import Export Corp.
- Camranh Seafoods and Branch of Cam Ranh; Can Tho Import Export Fishery Limited Company, aka CAFISH
- CATACO Sole Member Limited Liability Company, aka CATACO
- Coastal Fisheries Development Corporation, aka COFIDEX
- Cuulong Seaproducts Company, aka Cuulong Seapro
- Danang Seaproducts Import Export Corporation, aka Seaprodex Danang and its branch Tho Quang Seafood Processing and Export Company
- Viet I-Mei Frozen Foods Co., Ltd.
- Gallant Ocean (Vietnam) Co. Ltd.
- Investment Commerce Fisheries Corporation, aka INCOMFISH
- Kim Anh Company, Limited
- Minh Hai Export Frozen Seafood Processing Joint Stock Company, aka Minh Hai Jostoco
- Minh Hai Joint-Stock Seafoods Processing Company, aka Seaprodex Minh Hai
- Ngoc Sinh Private Enterprise and its branch, Ngoc Sinh Seafoods Processing and Trading Enterprise, aka Ngoc Sinh Seafoods
- Ngoc Tri Seafood Joint Stock Company
- Nhat Dhuc Co., Ltd.
- Nha Trang Fisheries Joint Stock Company, aka Nha Trang Fisco
- Phu Cuong Jostoco Seafood Corporation
- Phuong Nam Foodstuff Corp., aka Phuong Nam Co., Ltd.
- Sao Ta Foods Joint Stock Company, aka FIMEX VN
- Soc Trang Seafood Joint Stock Company, aka STAPIMEX
- Thuan Phuoc Seafoods and Trading Corporation
- UTXI Aquatic Products Corporation, aka UTXICO
- Vietnam Clean Seafood Corporation, aka VINA Cleanfood
- Viet Hai Seafood Co., Ltd., a/k/a Vietnam Fish One Co., Ltd.

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BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–888]

Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On May 10, 2012, the U.S. Department of Commerce (the Department) published the preliminary results of the 2010—2011 administrative review of the antidumping duty order on floor-standing, metal-top ironing tables and certain parts thereof from the People's Republic of China (PRC).[1] This review covers one exporter, Foshan Shunde Yongjian Housewares & Hardwares Co., Ltd. (Foshan Shunde) which we have determined to be part of the PRC-wide entity because it failed to respond to the Department's questionnaire. The period of review (POR) is August 1, 2010, through July 31, 2011. We invited interested parties to comment on the *Preliminary Results.* We received no comments. The Final Results are unchanged from the *Preliminary Results.*

DATES: *Effective Date:* September 11, 2012.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or Robert James, 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) 482–4475 or (202) 482–0649, respectively.

Scope of the Order

For purposes of the order, the product covered consists of floor-standing, metal-top ironing tables, assembled or unassembled, complete or incomplete, and certain parts thereof. The subject tables are designed and used principally for the hand ironing or pressing of garments or other articles of fabric. The subject tables have full-height leg assemblies that support the ironing surface at an appropriate (often adjustable) height above the floor. The subject tables are produced in a variety of leg finishes, such as painted, plated, or matte, and they are available with various features, including iron rests, linen racks, and others. The subject ironing tables may be sold with or without a pad and/or cover. All types and configurations of floor-standing, metal-top ironing tables are covered by this review.

Furthermore, the order specifically covers imports of ironing tables, assembled or unassembled, complete or incomplete, and certain parts thereof. For purposes of the order, the term ''unassembled'' ironing table means a product requiring the attachment of the leg assembly to the top or the attachment of an included feature such as an iron rest or linen rack. The term ''complete'' ironing table means product sold as a ready-to-use ensemble consisting of the metal-top table and a pad and cover, with or without additional features, *e.g.,* iron rest or linen rack. The term ''incomplete'' ironing table means product shipped or sold as a ''bare board''—*i.e.,* a metal-top table only, without the pad and cover—with or without additional features, *e.g.* iron rest or linen rack. The major parts or components of ironing tables that are intended to be covered by the order under the term ''certain parts thereof'' consist of the metal top component (with or without assembled supports and slides) and/or the leg components, whether or not attached together as a leg assembly. The order covers separately shipped metal top components and leg components, without regard to whether

[1] *See Floor Standing, Metal-top Ironing Tables and Certain Parts Thereof From the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review,* 77 FR 27425 (May 10, 2012) (*Preliminary Results*).

the respective quantities would yield an exact quantity of assembled ironing tables.

Ironing tables without legs (such as models that mount on walls or over doors) are not floor-standing and are specifically excluded. Additionally, tabletop or countertop models with short legs that do not exceed 12 inches in length (and which may or may not collapse or retract) are specifically excluded.

The subject ironing tables were previously classified under Harmonized Tariff Schedule of the United States (HTSUS) subheading 9403.20.0010. Effective July 1, 2003, the subject ironing tables are classified under new HTSUS subheading 9403.20.0011. The subject metal top and leg components are classified under HTSUS subheading 9403.90.8040. Although the HTSUS subheadings are provided for convenience and for Customs and Border Protection (CBP) purposes, the Department's written description of the scope remains dispositive.

PRC-Wide Rate

In the *Preliminary Results,* we assigned to the PRC-wide entity, which included Foshan Shunde, a rate of 157.68 percent [2] based upon total adverse facts available (AFA).[3] We have not received any information since the *Preliminary Results* that would warrant reconsideration of our determination. Therefore, the final results are unchanged from the *Preliminary Results,* and we have continued to assign an adverse AFA rate of 157.68 percent to the PRC-wide entity, which includes Foshan Shunde.

Final Results of Review

We determine that the following antidumping duty margin exists in these final results:

Exporter	Margin (percent)
PRC-wide entity (which includes Foshan Shunde)	157.68

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.212(b), the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of these final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the PRC entity, which includes Foshan Shunde, the cash deposit rate will be 157.68 percent; (2) for previously-investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 157.68 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Interested Parties

This notice also serves as the final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and in the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and this notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 4, 2012 .

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

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[2] *See Preliminary Results,* 77 FR at 27426.

[3] *See id.* at 27426–27427.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–008]

Circular Welded Carbon Steel Pipes and Tubes From Taiwan: Notice of Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On July 10, 2012, the Department of Commerce (the Department) published a notice of initiation of an administrative review of the antidumping duty order on circular welded carbon steel pipes and tubes from Taiwan. The review covers four respondents. Based on a withdrawal of the requests for review of certain companies from United States Steel Corporation (Petitioner), we are now rescinding this administrative review with respect to three of those respondents.

DATES: *Effective Date:* September 11, 2012.

FOR FURTHER INFORMATION CONTACT: Steve Bezirganian or Robert James, 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) 482–1131 or (202) 482–0649, respectively.

Background

On July 10, 2012, the Department published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on circular welded carbon steel pipes and tubes from Taiwan covering the period May 1, 2011, through April 30, 2012.[1] The review covers four companies: Chung Hung Steel Corp., Kao Hsing Chang Iron & Steel Corp. (also known as Kao Hsiung Chang Iron & Steel Corp.), Shin Yang Steel Co., Ltd., and Tension Steel Industries Co. Ltd. The Petitioner requested a review of all

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 77 FR 40565 (July 10, 2012).

four companies. Shin Yang Steel Co., Ltd. requested a review of itself.

On August 15, 2012, the Petitioner withdrew its request for an administrative review for the following three companies: (1) Chung Hung Steel Corp.; (2) Kao Hsing Chang Iron & Steel Corp. (also known as Kao Hsiung Chang Iron & Steel Corp.); and (3) Tension Steel Industries Co. Ltd.

Partial Rescission

The applicable regulation, 19 CFR 351.213(d)(1), states that if a party that requested an administrative review withdraws the request within 90 days of the publication of the notice of initiation of the requested review, the Secretary will rescind the review. The Petitioner withdrew its review request with respect to three companies within the 90-day deadline, in accordance with 19 CFR 351.213(d)(1).

Therefore, in accordance with section 351.213(d)(1) of the Department's regulations, we are rescinding this review with respect to the following three companies: (1) Chung Hung Steel Corp.; (2) Kao Hsing Chang Iron & Steel Corp.; and (3) Tension Steel Industries Co. Ltd. This review will continue with respect to Shin Yang Steel Co., Ltd.

Assessment Instructions

The Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. For the companies for which this review is rescinded, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice.

Notification to Importers

This notice serves as a final reminder to importers for whom this review is being rescinded of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: September 4, 2012.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–22365 Filed 9–10–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–851]

Certain Preserved Mushrooms From the People's Republic of China: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* September 11, 2012.

SUMMARY: On March 6, 2012, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of administrative review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China (PRC).[1] Based upon our analysis of comments received from interested parties, we made changes to the margin calculations for the final results. Therefore, the final results differ from the preliminary results. The final dumping margin for this review is listed in the ''Final Results of Review'' section below.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney, or Robert James, 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) 482–2475 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 6, 2012, the Department published the *Preliminary Results* of administrative review of the antidumping duty order on certain preserved mushrooms from the PRC.[2] The period of review (POR) is February 1, 2010, through January 31, 2011.[3] The review covers five manufacturers/exporters of subject merchandise.[4] We analyzed (1) Blue Field (Sichuan) Food Industrial Co., Ltd. (Blue Field) and (2) Dujiangyan Xingda Foodstuffs Co., Ltd. (Xingda) as mandatory respondents.[5] Three other companies filed separate rate certifications and qualified for separate-rate status.[6]

In the *Preliminary Results,* we invited parties to comment.[7] On April 19, 2012, the Department received timely case briefs from Blue Field and from the Petitioner in this proceeding, Monterey Mushrooms, Inc. (Monterrey Mushrooms).[8] On April 24, 2012, Blue Field and Monterrey Mushrooms submitted rebuttal briefs.[9] On June 19, 2012, we extended the final results of this administrative review by 60 days.[10]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this review are addressed in the memorandum entitled, ''Issues and Decision Memorandum for the Final Results in the Administrative Review of Certain Preserved Mushrooms from the People's

[1] *See Certain Preserved Mushrooms From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, and Rescission in Part,* 77 FR 13264 (March 6, 2012) (*Preliminary Results*).

[2] *Id.*

[3] *See id.* at 77 FR 13,264.

[4] *See id.* at 77 FR 13,265–67.

[5] *See id.* at 77 FR 13,265.

[6] *See id.* at 77 FR 13,266–67.

[7] *See id.* at 77 FR 13,269.

[8] *See* April 19, 2012, letter from Shanghai Yuet Fai Commercial Consulting Co., Ltd. to Secretary of Commerce Re: Certain Preserved Mushrooms from the People's Republic of China, Blue Field Case Brief (Blue Field Case Brief); *see also* April 19, 2012, Petitioner Case Brief from Kelley Drye & Warren LLP (Petitioner Case Brief).

[9] *See* April 24, 2012, Rebuttal Brief from Shanghai Yuet Fai Commercial Consulting Co., Ltd. to Secretary of Commerce Re: Certain Preserved Mushrooms from the People's Republic of China, Blue Field Case Brief (Blue Field Rebuttal Brief); *see also* April 24, 2012, Petitioner Rebuttal Brief from Kelley Drye & Warren LLP (Petitioner Rebuttal Brief).

[10] *See* Memorandum from Richard Weible to Christian Marsh Re: Certain Preserved Mushrooms from the People's Republic of China: Extension of Deadlines for Final Results of Antidumping Duty Administrative Review, dated June 19, 2012.

Republic of China,'' which is dated concurrently with and adopted by this notice (Issues and Decision Memorandum). A list of the issues raised, and to which we respond in the Issues and Decision Memorandum, is attached to this notice as an appendix. The Issues and Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the Central Records Unit (CRU), room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at *http://www.trade.gov/ia/*. The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

Scope of the Order

The products covered by this order are certain preserved mushrooms, whether imported whole, sliced, diced, or as stems and pieces. The certain preserved mushrooms covered under this order are the species *Agaricus bisporus* and *Agaricus bitorquis*. ''Certain Preserved Mushrooms'' refers to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including, but not limited to, cans or glass jars in a suitable liquid medium, including, but not limited to, water, brine, butter or butter sauce. Certain preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this order are ''brined'' mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.[11]

Excluded from the scope of this order are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including ''refrigerated'' or ''quick blanched mushrooms;'' (3) dried mushrooms; (4) frozen mushrooms; and (5) ''marinated,'' ''acidified,'' or ''pickled'' mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.

The merchandise subject to this order is classifiable under subheadings: 2003.10.0127, 2003.10.0131, 2003.10.0137, 2003.10.0143, 2003.10.0147, 2003.10.0153, and 0711.51.0000 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 this order is dispositive.

Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties regarding our *Preliminary Results,* we have made the following revisions to certain surrogate values (SVs) and the margin calculation for Blue Field and Xingda.

(1) We revised our calculation of Blue Field's land rent.[12]

(2) For Blue Field, we revised our calculation of the surrogate value for coal to include bituminous coal and corrected a conversion error in the calculation of that surrogate value.[13]

(3) We corrected two calculation errors associated with the surrogate value of water for both Blue Field and Xingda.[14]

(4) For Blue Field, we corrected the jar weight for one model.[15]

Separate Rates Determination

In the *Preliminary Results,* we found that (1) Ayecue (Liaocheng) Foodstuff Co., Ltd. (Ayecue), (2) Fujian Golden Banyan Foodstuffs Industrial Co., Ltd. (Golden Banyan), and (3) Shandong Jiufa demonstrated their eligibility for separate rates.[16] We received no comments from interested parties on this finding. Therefore, in these final results, we continue to find that Ayecue, Golden Banyan, and Shandong Jiufa demonstrated an absence of government of control, both in law and in fact, with respect to these companies' exports of the subject merchandise. Thus, we have determined that Ayecue, Golden Banyan, and Shandong Jiufa are eligible to receive a separate rate. Consistent with our own practice and section 735(c)(5)(A) of the Tariff Act of 1930, as amended (the Act), respondents other than mandatory respondents have received the weighted-average of the margins calculated for those companies selected for individual review (*i.e.,* mandatory respondents), excluding zero or de minimis margins or margins based entirely on facts available.

Final Results of the Review

The Department has determined that the following dumping margins exist for the period February 1, 2010, through January 31, 2011:

Exporter	Weighted-average margin (percent)
Blue Field	308.33
Xingda	223.74
Ayecue	304.89
Golden Banyan	304.89
Shandong Jiufa	304.89
PRC-wide rate*	198.63

* Includes Zhangzhou Golden Banyan Foodstuffs Industrial Co., Ltd.

Assessment Rates

The Department has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries.[17] The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

In accordance with 19 CFR 351.212(b)(1), we calculated exporter/importer-specific (or customer-specific) assessment rates for merchandise subject to this review. Blue Field and Xingda did not report entered values for their U.S. sales. Accordingly, we calculated a per-unit assessment rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the estimated entered value that we calculated for those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting per-unit rate against the calculated estimate of entered value of the subject merchandise.

For all shipments of subject merchandise by the PRC-wide entity entered, or withdrawn from warehouse, for consumption during the POR, we will instruct CBP to assess antidumping

[11] On June 19, 2000, the Department affirmed that ''marinated,'' ''acidified,'' or ''pickled'' mushrooms containing less than 0.5 percent acetic acid are within the scope of the antidumping duty order. *See* Recommendation Memorandum-Final Ruling of Request by Tak Fat, *et al.* for Exclusion of Certain Marinated, Acidified Mushrooms from the Scope of the Antidumping Duty Order on Certain Preserved Mushrooms from the People's Republic of China,'' dated June 19, 2000. On February 9, 2005, the United States Court of Appeals for the Federal Circuit upheld this decision. *See Tak Fat* v. *United States,* 396 F.3d 1378 (Fed. Cir. 2005).

[12] *See* Memorandum From Michael J. Heaney to the File, Re Final Analysis for Blue Filed (Sichuan) Food Industrial Co., Ltd. (Blue Field) Certain Preserved Mushrooms from the People's Republic of China dated September 4, 2012, (Blue Field Final Analysis Memorandum) at 1.

[13] *See Id.* at 2.

[14] *See Id; see also* Memorandum From Michael J. Heaney to the File, Re Final Analysis for Dujiangyan Xingda (Sichuan) Food Industrial Co., Ltd (Xingda) Certain Preserved Mushrooms from the People's Republic of China dated September 4, 2012 (Xingda Final Analysis Memorandum) at 2.

[15] *See* Blue Field Final Analysis Memorandum at 3.

[16] *See Preliminary Results,* 77 FR at 13266–13267.

[17] *See* section 751(a)(2)(B) of the Act; 19 CFR 351.212(b)(1).

duties at the *ad valorem* PRC-wide entity rate of 198.63 percent.

Cash Deposit Requirements

The following cash deposit requirements, when imposed, will be effective upon publication of the final results of this review for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Tariff Act of 1930, as amended (the Act): (1) The cash-deposit rate for each of the reviewed companies that received a separate rate in this review will be the rate listed in the final results of this review (except that if the rate for a particular company is *de minimis, i.e.,* less than 0.50 percent, no cash deposit will be required for that company); (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period of review; (3) if the exporter is a firm not covered in this review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be the PRC-wide rate of 198.63 percent. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this administrative review and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: September 4, 2012.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

Appendix

Comment 1: FOP Database Used to Calculate Bluefield's Normal Value
Comment 2: Calculation of Land Rent
Comment 3: Valuation of Rice Straw
Comment 4: Valuation of Manure
Comment 5: Use of Indian Surrogate Values to Value Manure and Straw
Comment 6: Valuation of Coal
Comment 7: Valuation of Water

[FR Doc. 2012–22353 Filed 9–10–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Meeting of the Manufacturing Council

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The Manufacturing Council will hold a meeting to hear updates from the Department of Commerce in addition to the Council's ex-officio members, the Secretaries of Energy, Labor, and the Treasury (or their designees) on the Government response to past Council recommendations. At the meeting, the Board will hear and deliberate on proposed recommendations to be presented by the Workforce Development subcommittee. The Board members also will summarize all recommendations adopted throughout their 2010–2012 appointment term in a final presentation to the Secretary of Commerce.

DATES: September 28, 2012 9:30 a.m.–11:30 a.m. Eastern Daylight Time (EDT). As specified below, registration and any requests for auxiliary aids should be submitted no later than September 21, 2012.

ADDRESSES: U.S. Department of Commerce, 1401 Constitution Avenue NW., Room 4830, Washington, DC. Registration and any requests for auxiliary aids should be submitted to Jennifer Pilat, the Manufacturing Council, Room 4043, 1401 Constitution Avenue NW., Washington, DC 20230, telephone 202–482–4501, *OACIE@trade.gov*. Last minute requests will be accepted, but may be impossible to fill.

FOR FURTHER INFORMATION CONTACT: Jennifer Pilat, the Manufacturing Council, Room 4043, 1401 Constitution Avenue NW., Washington, DC, 20230, telephone: 202–482–4501, email: *OACIE@trade.gov*

SUPPLEMENTARY INFORMATION: *Background:* The Council was re-chartered on April 5, 2012 to advise the Secretary of Commerce on matters relating to the U.S. manufacturing industry. This will be the final meeting of the current members and will review past recommendations, the Government responses to those recommendations, and deliberate on proposed new recommendations to be presented by the Workforce Development subcommittee. The Department will publish in the near future a separate notice soliciting nominations for new appointments.

All guests are required to register in advance. This program will be physically accessible to people with disabilities. Seating is limited and will be on a first come, first served basis. As noted above, registration and any requests for auxiliary aids should be submitted no later than September 21, 2012, to Jennifer Pilat, the Manufacturing Council, Room 4043, 1401 Constitution Avenue NW., Washington, DC, 20230, telephone 202–482–4501, *OACIE@trade.gov*. Last minute requests will be accepted, but may be impossible to fill.

While members of the public are welcome to attend the meeting, there will not be sufficient time available for oral comments from members of the public. Any member of the public may submit pertinent written comments at any time before or after the meeting. Comments may be submitted to Jennifer Pilat at the contact information indicated above. To be considered during the meeting, comments must be received no later than 5 p.m. Eastern Time on September 21, 2012, to ensure transmission to the Council prior to the meeting. Comments received after that date will be distributed to the members but may not be considered at the meeting.

Copies of Council meeting minutes will be available within 90 days of the meeting.

Dated: September 5, 2012.

Jennifer Pilat,

Executive Secretary, The Manufacturing Council.

[FR Doc. 2012–22227 Filed 9–10–12; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Manufacturing Extension Partnership Advisory Board On-line Open Meeting

AGENCY: National Institute of Standards and Technology (NIST), Commerce

ACTION: Notice of open meeting.

SUMMARY: The National Institute of Standards and Technology (NIST) announces that the Manufacturing Extension Partnership (MEP) Advisory Board will hold an open, on-line meeting via webcast on Wednesday, September 26, 2012, from 2:00 p.m. to 3:00 p.m. Eastern Time. The on-line meeting will focus on 1) any follow-up from the MEP Advisory Board preparatory meeting held on August 29, 2012, 2) an update on the NIST MEP FY 2013 budget, and 3) updates on changes to NIST MEP's evaluation system and metrics. Interested members of the public will be able to participate in the meeting from remote locations by calling into a central phone number.

DATES: The on-line meeting will convene September 26, 2012, at 2 p.m. and will adjourn at 3 p.m. Eastern Time that day.

ADDRESSES: The meeting will be held on-line via webcast and will be open to the public. Interested parties may participate in the meeting from their remote location. Questions regarding the on-line meeting should be sent to the Manufacturing Extension Partnership, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 4800, Gaithersburg, Maryland 20899–4800. For instructions on how to participate in the meeting, please see the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Karen Lellock, Manufacturing Extension Partnership, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 4800, Gaithersburg, Maryland 20899–4800, telephone number (301) 975–4269, email: *Karen.Lellock@nist.gov.*

SUPPLEMENTARY INFORMATION: The MEP Advisory Board (Board) is authorized under Section 3003(d) of the America COMPETES Act (P.L. 110–69) in accordance with the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. The Board is composed of 10 members, appointed by the Director of NIST. MEP is a unique program consisting of centers across the United States and Puerto Rico with partnerships at the state, federal, and local levels. The Board provides a forum for input and guidance from the MEP program stakeholders in the formulation and implementation of tools and services focused on supporting and growing the U.S. manufacturing industry and provides advice on MEP programs, plans, and policies, assesses the soundness of MEP plans and strategies, and assesses current performance against MEP program plans.

Background information on the Board is available at *http://www.nist.gov/mep/advisory-board.cfm*

Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. App., notice is hereby given that the Manufacturing Extension Partnership Advisory Board will hold a meeting via webcast on Wednesday, September 26, 2012, from 2:00 p.m. until 3:00 p.m. Eastern Time. There will be no central meeting location. The public is invited to participate in the meeting by calling in from remote locations.

This on-line meeting will focus on (1) any follow-up from the MEP Advisory Board preparatory meeting held on August 29, 2012, (2) an update on the NIST MEP FY 2013 budget, and (3) updates on changes to NIST MEP's evaluation system and metrics. The agenda may change to accommodate other Board business.

All persons wishing to participate in the on-line meeting are required to pre-register. Please submit your name, email address and phone number to Karen Lellock by 5:00 p.m. Eastern Time, Monday, September 24, 2012. At the time of registration, participants will be provided with detailed instructions on how to dial in from their remote location in order to participate. Ms. Lellock's email address is *Karen.Lellock@nist.gov* and her phone number is (301) 975–4269.

Individuals and representatives of organizations who would like to offer comments and suggestions related to the MEP Advisory Board's business are invited to request a place on the agenda at the time they pre-register. Approximately 15 minutes will be reserved for public comments at the beginning of the meeting. Speaking times will be assigned on a first-come, first-served basis. The amount of time per speaker will be determined by the number of requests received but is likely to be no more than three to five minutes each. Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated on the agenda, and those who were unable to participate in the webcast are invited to submit written statements to the MEP Advisory Board, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 4800, Gaithersburg, Maryland 20899–4800, or via fax at (301) 963–6556, or electronically by email to *Karen.Lellock@nist.gov.*

Dated: August 31, 2012.

Phillip Singerman,

Associate Director for Innovation and Industry Services.

[FR Doc. 2012–22356 Filed 9–10–12; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC226

Fisheries of the South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Assessment Process Webinars for Caribbean Blue Tang and Queen Triggerfish

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

ACTION: Notice of SEDAR 30 pre-assessment webinar for Caribbean blue tang and queen triggerfish.

SUMMARY: The SEDAR 30 assessments of the Caribbean blue tang and queen triggerfish will consist of a series of workshops and webinars: This notice is for a webinar associated with the Assessment portion of the SEDAR process. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 30 pre-assessment webinar will be held October 4, 2012 from 1 p.m. to approximately 3 p.m. Eastern time. The established times may be adjusted as necessary to accommodate the timely completion of discussion relevant to the assessment process. Such adjustments may result in the meeting being extended from, or completed prior to, the time established by this notice.

ADDRESSES: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie A. Neer at SEDAR (See **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator, 4055 Faber Place, Suite 201, North Charleston, SC 29405; telephone: (843) 571–4366; email: *Julie.neer@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars and workshops; and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment as well as the input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, Highly Migratory Species (HMS) Management Division, and Southeast Fisheries Science Center (SEFSC). Participants include: Data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and representatives of non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

SEDAR 30 Pre-Assessment Webinar

Participants of the webinar will have an opportunity to review the preliminary data and assessment analyses conducted to date in order to provide early modeling advice prior to the Assessment Workshop.

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 Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 10 business days prior to the meeting.

Dated: September 6, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012–22346 Filed 9–10–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC225

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Spiny Dogfish Monitoring Committee of the Mid-Atlantic Fishery Management Council (Council) will hold a meeting.

DATES: The Monitoring Committee will meet Wednesday, October 3, 2012 beginning at 10 a.m. and concluding by 3 p.m.

ADDRESSES: The meeting will be held at the Hilton Garden Inn, 1 Thurber Street, Warwick, RI 02886; telephone: (401) 734–9600.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The Spiny Dogfish Monitoring Committee will develop annual catch target (ACT) and other management measure recommendations for the 2013–17 fishing years based on consideration of allowable biological catch (ABC) and sources of management uncertainty.

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 Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Saunders at the Mid-Atlantic Council Office, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: September 6, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012–22345 Filed 9–10–12; 8:45 am]

BILLING CODE 3510–22–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2012–0038]

Proposed Extension of Approval of Information Collection; Comment Request—Baby Bouncers and Walker-Jumpers

AGENCY: Consumer Product Safety Commission.

ACTION: Notice; correction.

SUMMARY: As required by the Paperwork Reduction Act of 1995, the Consumer Product Safety Commission (CPSC) requested comments on a proposed extension of approval, for a period of 3 years from the date of approval by the Office of Management and Budget (OMB), of information collection requirements for manufacturers and importers of children's articles known as baby-bouncers and walker-jumpers. This document was published in the **Federal Register** of September 5, 2012, and contains an incorrect docket number and omits the date by which comments must be submitted.

FOR FURTHER INFORMATION CONTACT: Mary James, Office of Information Technology and Technology Services, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504–7213 or by email to: *mjames@cpsc.gov.*

Correction

In the **Federal Register** of September 5, 2012, in FR Doc. 2012–21730, beginning on page 54568 in the third

column, and continuing on page 54569 in the first column, correct the second and third sentences of the **ADDRESSES** section to read:

To ensure that comments on the information collection are received, the OMB recommends that written comments be submitted by October 5, 2012, by fax to the Office of Information and Regulatory Affairs, OMB, Attn: CPSC Desk Officer, FAX: 202–395–6974, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified by Docket No. CPSC–2012–0038. In addition, written comments also should be submitted at *http://www.regulations.gov,* under Docket No. CPSC–2012–0038, or by mail/hand delivery/courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to: Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Dated: September 6, 2012.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2012–22312 Filed 9–10–12; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Board of Visitors of Marine Corps University

AGENCY: Department of the Navy, DoD.

ACTION: Notice of open meeting.

SUMMARY: The Board of Visitors of the Marine Corps University will meet to review, develop and provide recommendations on all aspects of the academic and administrative policies of the University; examine all aspects of professional military education operations; and provide such oversight and advice, as is necessary, to facilitate high educational standards and cost effective operations. The Board will be focusing primarily on the internal procedures of Marine Corps University. All sessions of the meeting will be open to the public.

DATES: The meeting will be held on Friday, October 5, 2012 from 8 a.m. to 3:30 p.m.

ADDRESSES: The meeting will be held at the General Alfred M. Gray Marine Corps Research Center in room 164. The address is: 2040 Broadway Street, Quantico, Virginia 22134.

FOR FURTHER INFORMATION CONTACT: Joel Westa, Director of Academic Support, Marine Corps University Board of Visitors, 2076 South Street, Quantico, Virginia 22134, telephone number 703–784–4037.

Dated: August 31, 2012.

C.K. Chiappetta,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2012–22369 Filed 9–10–12; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board Chairs

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB) Chairs. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES:

Tuesday, October 2, 2012: 8 a.m.–5 p.m.

Wednesday, October 3, 2012: 8:30 a.m.–12:15 p.m.

ADDRESSES: U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Catherine Alexander, Designated Federal Officer, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585; Phone: (202) 586–7711.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda Topics

Tuesday, October 2, 2012

- EM Program Update
- EM SSAB Chairs' Round Robin: Topics, Achievements, and Accomplishments
- EM Headquarters Budget Update
- EM Headquarters Waste Disposition Strategies
- EM SSAB Chairs' Round Robin: Cross-Complex Issues

Wednesday October 3, 2012

- DOE Headquarters News and Views
- EM SSAB Best Practices Roundtable: How to Chair a Local Board

Public Participation: The EM SSAB Chairs welcome the attendance of the public at their 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 Catherine Alexander at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed either before or after the meeting with the Designated Federal Officer, Catherine Alexander, at the address or telephone listed above. Individuals who wish to make oral statements pertaining to agenda items should also contact Catherine Alexander. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Catherine Alexander at the address or phone number listed above. Minutes will also be available at the following Web site: *http://www.em.doe.gov/stakepages/ssabchairs.aspx.*

Issued at Washington, DC on September 5, 2012.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2012–22311 Filed 9–10–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Transition of DOE–ID Public Reading Room

AGENCY: Idaho Operations Office, Department of Energy.

ACTION: Notice.

SUMMARY: Pursuant to 5 U.S.C. 552(a) of the Freedom of Information Act and in accordance with Title 10 of the Code of Federal Regulations, Section 1004.3(a)–(c), notice is hereby given that the Department of Energy Idaho Operations Office Public Reading Room has been relocated to the INL Research Library at 1776 Science Center Drive, Idaho Falls, ID 83401, beginning September 1, 2012. Access to documents will also be electronically accessible through the World Wide Web.

For direction in accessing documents electronically through the World Wide Web, please refer to the Idaho Operations FOIA Web site: *http://www.id.doe.gov/foia/FrequentlyReqDoc.htm.* Many current and legacy documents are also commercially available through the U.S. Department of Commerce National

Technical Information Service *www.ntis.gov*.

DATES: Effective September 1, 2012.

ADDRESSES: INL Research Library, 1776 Science Center Drive, Idaho Falls, ID 83401.

FOR FURTHER INFORMATION CONTACT: Clayton Ogilvie at (208) 526–5190.

Clayton Ogilvie,

Freedom of Information Act Officer, Idaho Operations Office.

[FR Doc. 2012–22318 Filed 9–10–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 405–105]

Exelon Generation Company, LLC; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Temporary variance of minimum flow requirement of license.

b. *Project No:* 400–105.

c. *Date Filed:* July 25, 2012.

d. *Applicant:* Exelon Generation Company, LLC.

e. *Name of Project:* Conowingo Hydroelectric Project.

f. *Location:* The Conowingo Project is located on the Susquehanna River in Harford and Cecil counties in Maryland, and York and Lancaster counties in Pennsylvania.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Ms. Kathleen Barrón, Senior Vice President-Federal Regulatory Affairs and Wholesale Market Policy, Exelon, 101 Constitution Avenue NW., Suite 400 East, Washington, DC 20001, (202) 347–7500, *kathleen.barron@exeloncorp.com*.

i. *FERC Contact:* Ms. Kelly Houff at 202–502–6393, *kelly.houff@ferc.gov*.

j. *Deadline for filing comments, motions to intervene, and protests:* September 20, 2012.

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: 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–405–105) on any comments, motions, or recommendations filed.

k. *Description of Request:* Exelon Generation Company, LLC requests Commission approval for a variance of the minimum flow requirement of the project license. Due to drought conditions and low river flows in the Susquehanna River, Exelon requests that they be allowed immediately to include plant leakage of about 530 cubic feet per second (cfs) in the required minimum flow discharge until September 14, 2012, or until flow conditions improve where the Conowingo Project no longer requires leakage be included as part of the minimum flow requirement. According to the license, for the period June 1 through September 14, annually, Exelon must provide a minimum flow release (not including leakage) below the dam of 5,000 cfs, or inflow (as measured at the USGS gage 0156000 at Marietta, PA), whichever is less. During the fall period, September 15 through November 30, Exelon is required to release a minimum flow of 3,500 cfs not including leakage, or inflow to the project whichever is less, as measured at the Marietta gage.

Exelon is concerned about the ability of the Conowingo Project to maintain an adequate pond level and storage capacity during the current low flow period. Maintaining storage is necessary for generation and to ensure an adequate water supply for recreational and consumptive uses of the Conowingo Reservoir to include operation of Peach Bottom Atomic Power Station and Muddy Run Pumped Storage Project. Including plant leakage in the minimum flow discharge will contribute to the maintenance of these project water uses during this low flow period. During the period of the minimum flow variance, Exelon will conduct daily monitoring of the Susquehanna River below the dam for potential environmental effects. If any abnormal or adverse conditions are observed, Exelon will promptly notify the Maryland Department of Natural Resources. In addition, Exelon agrees that during the period of the variance, it will not operate more than two units, each rated at 54,000 horsepower, unless PJM Interconnection LLC directs Exelon to operate in peaking mode: (1) As a result of a system emergency; or (2) to manage Conowingo pond levels.

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* using the ''eLibrary'' link. 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. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene 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 comments, protests, or motions to intervene 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 ''COMMENTS''; ''PROTESTS'', or ''MOTION TO INTERVENE'' 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 protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests 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. A copy of any protest or motion to intervene 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: September 5, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–22327 Filed 9–10–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14371–000]

City of Hillsboro, Oregon; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, Protests, Recommendations, and Terms and Conditions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Conduit Exemption.

b. *Project No.:* 14371–000.

c. *Date filed:* August 6, 2012.

d. *Applicant:* City of Hillsboro, Oregon.

e. *Name of Project:* Will Crandall Reservoir and Pump Station Hydroelectric Project.

f. *Location:* The proposed project would be located within a pump station at the Will Crandall Reservoir and Pump Station near the city of Hillsboro, Washington County, Oregon. The land on which all the project facilities will be located is owned by the applicant.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791a—825r.

h. *Applicant Contact:* Erika Murphy, P.E., 150 East Main Street, Hillsboro, OR 97123, phone (503) 615–6720.

i. *FERC Contact:* Christopher Chaney, (202) 502–6778, *christopher.chaney@ferc.gov.*

j. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

k. *Deadline for filing responsive documents:* Due to the small size of the proposed project, as well as the resource agency consultation letters filed with the application, the 60-day timeframe specified in 18 CFR 4.34(b) for filing all comments, motions to intervene, protests, recommendations, terms and conditions, and prescriptions is shortened to 30 days from the issuance date of this notice. All reply comments filed in response to comments submitted by any resource agency, Indian tribe, or person, must be filed with the Commission within 45 days from the issuance date of this notice.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under *http://www.ferc.gov/docs-filing/efiling.asp.* The Commission strongly encourages electronic filings.

The Commission's Rules of Practice and Procedure 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, it must also serve a copy of the document on that resource agency.

l. *Description of Project:* The Will Crandall Reservoir and Pump Station Hydroelectric Project would consist of: (1) A powerhouse containing one proposed Francis type generating unit with an installed capacity of 94 kilowatts and (2) appurtenant facilities. The applicant estimates the project would have an average annual generation of 60,000 kilowatt-hours.

m. This filing is available for review and reproduction at the Commission in the Public Reference Room, Room 2A, 888 First Street NE., Washington, DC 20426. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number, P–14371, in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for review and reproduction at the address in item h above.

n. *Development Application*—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit a competing development application. A notice of intent must be served on the applicant(s) named in this public notice.

p. *Protests or Motions to Intervene*—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests 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 protests or motions to intervene must be received on or before the specified deadline date for the particular application.

q. All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''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 protesting or intervening; 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. Any of these documents must be filed by providing the original and seven copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Office of Energy Projects, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified

in the particular application. 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: September 5, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–22321 Filed 9–10–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–504–000]

WBI Energy Transmission, Inc.; Notice of Application

Take notice that on August 23, 2012, WBI EnergyTransmission, Inc. (WBI) filed in Docket No. CP12–504–000 an application pursuant to section 7 of the Natural Gas Act and Part 157 the Commission's Rules and Regulations for all the necessary authorizations required to recertify the minimum bottom hole pressure and to operate four acquired production wells as observation wells at its Elk Basin Storage Reservoir in Park County, Wyoming and Carbon County, Montana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Copies of this filing are available for review at the Commission in the Public Reference Room, or may be viewed on the Commission's Web site web 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 at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

Questions regarding this application should be directed to Keith A. Tiggelaar, Director of Regulatory Affairs, WBI Energy Transmission, Inc., Inc., 1250 West Century Avenue, Bismarck, North Dakota 58503, telephone (701) 530–1560, email *keith.tiggelaar@wbienergy.com.*

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, before the comment date of this notice, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*www.ferc.gov*) under the ''e-Filing'' link. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Comment Date: September 26, 2012

Dated: September 5, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–22323 Filed 9–10–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–2573–000]

Visage Energy Corp.; 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 Visage Energy Corp.'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 September 25, 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 Street 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: September 5, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–22325 Filed 9–10–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–2570–000]

Panther Creek Power Operating, 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 Panther Creek Power Operating, 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 September 25, 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 Street 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: September 5, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–22324 Filed 9–10–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR12–19–000]

Delek Crude Logistics, LLC; Notice of Petition for Waiver

Take notice that on June 11, 2012, Delek Crude Logistics, LLC (''Delek Crude'') respectfully requests that the Federal Energy Regulatory Commission (''Commission'') grant a temporary waiver of the filing and reporting requirements of sections 6 and 201 of the Interstate Commerce Act (''ICA''), and parts 341 and 357 of the Commission's regulations with respect to the East Texas Crude Logistics crude oil pipeline system.

Any person desiring to intervene or to protest in this proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

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 are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on Friday, September 28, 2012.

Dated: September 5, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–22326 Filed 9–10–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Southeastern Power Administration

Georgia-Alabama-South Carolina System

AGENCY: Southeastern Power Administration, (Southeastern), Department of Energy.

ACTION: Notice of interim approval.

SUMMARY: The Deputy Secretary, Department of Energy, confirmed and approved, on an interim basis new rate schedules SOCO–1–E, SOCO–2–E, SOCO–3–E, SOCO–4–E, ALA–1–N, MISS–1–N, Duke–1–E, Duke–2–E, Duke–3–E, Duke–4–E, Santee–1–E, Santee–2–E, Santee–3–E, Santee–4–E, SCE–G–1–E, SCE–G–2–E, SCE&G–3–E, SCE&G–4–E, Pump–1–A, Pump–2, Replacement–1, and Regulation–1. These rate schedules are applicable to Southeastern power sold to existing preference customers in Mississippi, Alabama, Florida, Georgia, North Carolina, and South Carolina. The rate schedules are approved on an interim basis through September 30, 2017, and are subject to confirmation and approval by the Federal Energy Regulatory Commission (FERC) on a final basis.

DATES: Approval of rates on an interim basis is effective October 1, 2012.

FOR FURTHER INFORMATION CONTACT: Virgil Hobbs, Assistant Administrator, Finance and Marketing, Southeastern Power Administration, Department of

Energy, 1166 Athens Tech Road, Elberton, Georgia 30635–4578, (706) 213–3800.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission, by Order issued June 30, 2011, in Docket No. EF10–11–000 (135 FERC ¶ 62,267), confirmed and approved Wholesale Power Rate Schedules SOCO–1–D, SOCO–2–D, SOCO–3–D, SOCO–4–D, ALA–1–M, MISS–1–M, Duke–1–D, Duke–2–D, Duke–3–D, Duke–4–D, Santee–1–D, Santee–2–D, Santee–3–D, Santee–4–D, SCE&G–1–D, SCE&G–2–D, SCE&G–3–D, SCE&G–4–D, Pump–1–A, Pump–2, Replacement–1, and Regulation–1 through September 30, 2015. This order replaces these rate schedules on an interim basis, subject to final approval by FERC.

Dated: September 4, 2012.

Daniel B. Poneman,

Deputy Secretary.

DEPARTMENT OF ENERGY

DEPUTY SECRETARY

In the Matter of: Southeastern Power Administration), Georgia-Alabama-South Carolina System Power Rates

Rate Order No. SEPA–56

ORDER CONFIRMING AND APPROVING POWER RATES ON AN INTERIM BASIS

Pursuant to Sections 302(a) of the Department of Energy Organization Act, Public Law 95–91, the functions of the Secretary of the Interior and the Federal Power Commission under Section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, relating to the Southeastern Power Administration (Southeastern), were transferred to and vested in the Secretary of Energy. By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated to Southeastern's Administrator the authority to develop power and transmission rates, to the Deputy Secretary of Energy the authority to confirm, approve, and place in effect such rates on interim basis, and to the Federal Energy Regulatory Commission (FERC) the authority to confirm, approve, and place into effect on a final basis or to disapprove rates developed by the Administrator under the delegation. This rate is issued by the Deputy Secretary pursuant to that delegation order.

BACKGROUND

Power from the Georgia-Alabama-South Carolina Projects is presently sold under Wholesale Power Rate Schedules SOCO–1–D, SOCO–2–D, SOCO–3–D, SOCO–4–D, ALA–1–M, MISS–1–M, Duke–1–D, Duke–2–D, Duke–3–D, Duke–4–D, Santee–1–D, Santee–2–D, Santee–3–D, Santee–4–D, SCE&G–1–D, SCE&G–2–D, SCE&G–3–D, SCE&G–4–D, Pump–1–A, Pump–2, Replacement–1, and Regulation–1. These rate schedules were approved by the FERC in docket number EF10–11–000 on June 20, 2011, for a period ending September 30, 2015 (135 FERC ¶ 62,267).

Public Notice and Comment

Notice of a proposed rate adjustment was published in the **Federal Register** March 7, 2012 (77 FR 13594). The notice advised interested parties of a proposed increase in the capacity and energy rates of about fifteen percent (15%). The proposed increase in the revenue requirement was about ten percent (10%) and the increase in the capacity and energy rates was about fifteen percent (15%). A public information and comment forum was scheduled for April 24, 2012, in Atlanta, Georgia. By notice published June 8, 2012, (77 FR 34037) the comment period was extended to June 19, 2012. Comments were received from four parties at the forum. Written comments were received from one source.

Comments received from interested parties are summarized below. Southeastern's response follows each comment.

Comment 1: *The proposed rate increase brings the rates for SEPA energy closer to or above prevailing market rates in the Southeast. It simply makes no sense to pay above-market rates for the SEPA energy when less expensive alternatives are available. SEPA is in danger of pricing itself out of the market.*

Response 1: Southeastern believes that each customer should look at their respective situations. Southeastern is not in a position to evaluate whether or not each customer should continue to purchase federal power.

Under section 5 of the Flood Control Act of 1944, Southeastern is required to develop rate schedules that recover the cost of producing and transmitting the power it markets. The proposed rate schedules were developed to meet this criterion. Southeastern believes that these rates will be competitive with alternative resources.

Contract provisions between Southeastern and the preference customers allow any customer to cancel their contract with Southeastern when Southeastern adjusts the rate schedules. Thus far, no customer has notified Southeastern of their intent to cancel their contract.

Southeastern is concerned the cost of federal power is approaching, and in some cases exceeding, the cost of alternative resources. Southeastern will work in partnership with the customers and the generating agency to manage the cost of federal power.

Comment 2: *We [the SeFPC] want to initiate a dialogue with SEPA relating to its strategy for using pumped storage facilities and, in particular, the acquisition of energy for pumping operations at the Carters and Russell projects. Also, cost savings could be achieved if we revisit how replacement energy is secured and whether scheduling practices could help lower the overall rate.*

Response 2: Southeastern currently uses a bidding process for both pumping and replacement energy. Energy is purchased in accordance with the provisions of power purchase contracts or under the terms of utility tariffs. A bidding process is followed and the weekly or daily purchase requirement is awarded based upon the lowest cost to the Government. New bidders can be accepted at any time by implementing a power purchase contract. Currently Southeastern has a number of customers participating in the bidding process, and is always willing to participate in dialogs, consistent with applicable law, to improve the efficiency of the process or find lower cost alternatives.

Comment 3: *The proposed rate will over-recover $53 million at the end of five years.*

Response 3: The proposed rate schedules are designed to recover all capitalized deficits within the five-year term of the schedules. If the estimates used in this rate study are achieved through operating results, there will be about $53 million available for repayment of the federal investment in fiscal year 2017. Under the Flood Control Act of 1944, rate schedules are to recover the amortization of capital investment over a reasonable period of years.

Approval of the proposed rate schedules is requested for a period of five years. However, contract provisions allow rate schedules to be adjusted October 1 of any year. Should operating results exceed expectations and lead to accelerated recovery of costs, new rate schedules can be proposed before the term of these rate schedules expires.

Comment 4: *SEPA could defer any rate increase until the following fiscal year, beginning in 2014.*

Response 4: Two projects in the Georgia-Alabama-South Carolina System are reaching their fiftieth year of operation in fiscal year 2013. These are the Hartwell Project and the Walter F. George Project. The total investment due to be repaid in fiscal year 2013 is almost $80 million. Deferring this rate adjustment could create unacceptably large capitalized deficits. Deferring this rate adjustment to a later date would lead to a much more dramatic rate adjustment at a later date.

Comment 5: *SEPA could institute a temporary or one-year rate increase to introduce a new repayment study next year that would have the effect of lowering the overall rate in coming years. This option allows SEPA to make the required repayments in 2013 with customers' understanding that it is a one-year increase and not a five-year commitment.*

Response 5: A one-year rate increase would require that Southeastern file another rate adjustment in fiscal year 2013. Although approval of the proposed rate schedules is sought for a five-year period, new rate schedules can be proposed while these rate schedules are in effect.

Comment 6: *[The Customers] understand that a significant contributor to the need for a rate increase is the American Recovery and Reinvestment Act stimulus funds spent by the Corps of Engineers over the last few years. It is [The Customers] understanding that a significant portion of these funds were expensed and not capitalized, leading to the department to recover the costs through rates immediately.*

Response 6: The Corps provides estimates of O&M expenses and capitalized items that Southeastern uses in every rate adjustment. In the rate adjustment for the Georgia-Alabama-South Carolina System filed in 2010, the Corps included estimated costs that would be funded through the American Recovery and Reinvestment Act (ARRA). At

the time, the Corps expected these costs to be capitalized. However, subsequent accounting decisions determined these costs should be appropriately expensed. Southeastern and the Customers have reviewed the accounting for these costs and have not discovered material errors. Southeastern will continue to work with the Corps and the Customers to ensure costs are appropriately charged to hydropower.

Comment 7: *The Customers ask SEPA to provide updates on rate levels and associated recovery starting in 2014 and subsequent years to assess whether the rate as designed collects revenues in excess of required payments.*

Response 7: The Flood Control Act of 1944 requires Southeastern to recover the cost of producing and transmitting energy, including the amortization of capital investment allocated to power over a reasonable period of years. If the estimates used in the rate study are higher than the actual costs incurred, the variance is applied to cost recovery. As such, Southeastern would meet its required payments early, but would not over-recover costs.

Under DOE Order RA6120.2, Southeastern is required to update the repayment studies annually. The Customer may request these updates by contacting Virgil Hobbs, Assistant Administrator, Finance and Marketing, Southeastern Power Administration, Department of Energy, 1166 Athens Tech Road, Elberton, Georgia 30635–4578, (706) 213–3800. Southeastern will continue to work with the Customers to ensure appropriate cost recovery and reporting.

Comment 8: *Although it is possible revenues for 2012 may be lower than expected, there has been no discussion or evidence put forth that would support a decision by SEPA to raise rates above the levels published in the Federal Register notice. Indeed, with documentation that the rate could recover more than what is needed for the required payments in later years, the record for the proposed rate supports the proposed rate adjustment and nothing higher. If SEPA sought to deviate from the proposed rate as set forth in the Federal Register notice, the Customers would ask SEPA to re-open the public process and allow the Customers to submit comments accordingly. Failure to do so would deprive the hydropower customers the due process otherwise guaranteed in the revision of power rates.*

Response 8: SEPA has adopted the proposed rate schedules.

Comment 9: *The Customers would encourage SEPA representatives to further engage their counterparts at the Corps to follow through on the statutory obligation for setting rates and ensuring fairness in setting the rates. Small changes in the allocation of O&M expenses can provide substantial savings for the hydropower customers over an extended period if those expenses are properly classified.*

Response 9: SEPA will continue to work with the Customers and the Corps to ensure proper accounting of costs to hydropower.

DISCUSSION

System Repayment

An examination of Southeastern's revised system power repayment study, prepared in July 2012, for the Georgia-Alabama-South Carolina System shows that with the proposed rates, all system power costs are paid within the term of these rate schedules. The Administrator of Southeastern Power Administration has certified that the rates are consistent with applicable law and that they are the lowest possible rates to customers consistent with sound business principles.

Environmental Impact

Southeastern has reviewed the possible environmental impacts of the rate adjustment under consideration and has concluded that, because the adjusted rates would not significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, the proposed action is not a major Federal action for which preparation of an Environmental Impact Statement is required.

Availability of Information

Information regarding these rates, including studies and other supporting materials and transcripts of the public information and comment forum, is available for public review in the offices of Southeastern Power Administration, 1166 Athens Tech Road, Elberton, Georgia 30635, and in the Power Marketing Liaison Office, James Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

ORDER

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis, effective October 1, 2012, attached Wholesale Power Rate Schedules SOCO–1–E, SOCO–2–E, SOCO–3–E, SOCO–4–E, ALA–1–N, MISS–1–N, Duke–1–E, Duke–2–E, Duke–3–E, Duke–4–E, Santee–1–E, Santee–2–E, Santee–3–E, Santee–4–E, SCE&G–1–E, SCE&G–2–E, SCE&G–3–E, SCE&G–4–E, Pump–1–A, Pump–2, Replacement–1, and Regulation–1. The Rate Schedules shall remain in effect on an interim basis through September 30, 2017, unless such period is extended or until the FERC confirms and approves the schedules or substitute Rate Schedules on a final basis.

Dated: September 4, 2012.

Daniel B. Poneman,

Deputy Secretary.

Wholesale Power Rate Schedule SOCO–1–E

Availability:

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Georgia, Alabama, Mississippi, and Florida to whom power may be transmitted and scheduled pursuant to contracts between the Government and Southern Company Services, Incorporated (hereinafter called the Company) and the Customer. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability:

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service:

The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Company's transmission and distribution system.

Monthly Rate:

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge:

$4.81 Per kilowatt of total contract demand per month.

Energy Charge:

12.33 Mills per kilowatt-hour.

Generation Services:

$0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission (FERC) of the Company's rate.

Transmission:

$2.81 Per kilowatt of total contract demand per month estimated as of March 2012 is presented for illustrative purposes.

The initial transmission charge will be the Customer's ratable share of the transmission and distribution charges paid by the Government. The transmission charges are governed by and subject to refund based upon the determination in proceedings before FERC involving the Company's Open Access Transmission Tariff (OATT). The distribution charges may be modified by FERC pursuant to application by the Company under Section 205 of the Federal Power Act or the Government under Section 206 of the Federal Power Act.

Proceedings before FERC involving the OATT or the distribution charges may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission and distribution charges paid by the Government in behalf of the Customer.

Scheduling, System Control and Dispatch Service:

$0.0806 Per kilowatt of total contract demand per month.

Reactive Supply and Voltage Control from Generation Sources Service:

$0.11 Per kilowatt of total contract demand per month.

Regulation and Frequency Response Service:

$0.0483 Per kilowatt of total contract demand per month.

Transmission, System Control, Reactive, and Regulation Services:

The charges for Transmission, System Control, Reactive, and Regulation Services shall be governed by and subject to refund based upon the determination in the proceeding involving Southern Companies' OATT.

Contract Demand:

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government:

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. As of March 2012, applicable energy losses are as follows:

Transmission facilities	2.2%
Sub-transmission	2.0%
Distribution Substations	0.9%
Distribution Lines	2.25%

These losses shall be effective until modified by FERC, pursuant to application by Southern Companies under Section 205 of the Federal Power Act or SEPA under Section 206 of the Federal Power Act or otherwise.

Billing Month:

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule SOCO–2–E

Availability:

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Georgia, Alabama, Mississippi, and Florida to whom power may be transmitted pursuant to contracts between the Government and Southern Company Services, Incorporated (hereinafter called the Company) and the Customer. The Customer is responsible for providing a scheduling arrangement with the Government. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability:

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service:

The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Company's transmission and distribution system.

Monthly Rate:

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge:

$4.81 Per kilowatt of total contract demand per month.

Energy Charge:

12.33 Mills per kilowatt-hour.

Generation Services:

$0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission (FERC) of the Company's rate.

Transmission:

$2.81 Per kilowatt of total contract demand per estimated as of March 2012 is presented for illustrative purposes.

The initial transmission charge will be the Customer's ratable share of the transmission and distribution charges paid by the Government. The transmission charges are governed by and subject to refund based upon the determination in proceedings before FERC involving the Company's Open Access Transmission Tariff (OATT). The distribution charges may be modified by FERC pursuant to application by the Company under Section 205 of the Federal Power Act or the Government under Section 206 of the Federal Power Act.

Proceedings before FERC involving the OATT or the distribution charges may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission and distribution charges paid by the Government in behalf of the Customer.

Reactive Supply and Voltage Control from Generation Sources Service:

$0.11 Per kilowatt of total contract demand per month.

Transmission, System Control, Reactive, and Regulation Services:

The charges for Transmission, System Control, Reactive, and Regulation Services shall be governed by and subject to refund based upon the determination in the proceeding involving Southern Companies' OATT.

Contract Demand:

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government:

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. As of March 2012, applicable energy losses are as follows:

Transmission facilities	2.2%
Sub-Transmission	2.0%
Distribution Substations	0.9%
Distribution Lines	2.25%

These losses shall be effective until modified by FERC, pursuant to application by Southern Companies under Section 205 of the Federal Power Act or SEPA under Section 206 of the Federal Power Act or otherwise.

Billing Month:

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule SOCO–3–E

Availability:

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Georgia, Alabama, Mississippi, and Florida to whom power may be scheduled pursuant to contracts between the Government and Southern Company Services, Incorporated (hereinafter called the Company) and the Customer. The Customer is responsible for providing a transmission arrangement. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability:

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects (hereinafter referred to collectively as the Projects) and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service:

The electric capacity and energy supplied hereunder will be delivered at the Projects.

Monthly Rate:

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge:

$4.81 Per kilowatt of total contract demand per month.

Energy Charge:

12.33 Mills per kilowatt-hour.

Generation Services:

$0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Scheduling, System Control and Dispatch Service:

$0.0806 Per kilowatt of total contract demand per month.

Regulation and Frequency Response Service:

$0.0483 Per kilowatt of total contract demand per month.

Transmission, System Control, Reactive, and Regulation Services

The charges for Transmission, System Control, Reactive, and Regulation Services shall be governed by and subject to refund based upon the determination in the proceeding involving Southern Companies' Open Access Transmission Tariff.

Contract Demand:

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government:

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses).

Billing Month:

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule SOCO–4–E

Availability:

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Georgia, Alabama, Mississippi, and Florida served through the transmission facilities of Southern Company Services, Inc. (hereinafter called the Company) or the Georgia Integrated Transmission System. The Customer is responsible for providing a scheduling arrangement with the Government and for providing a transmission arrangement. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability:

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects (hereinafter referred to collectively as the Projects) and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service:

The electric capacity and energy supplied hereunder will be delivered at the Projects.

Monthly Rate:

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge:

$4.81 Per kilowatt of total contract demand per month.

Energy Charge:

12.33 Mills per kilowatt-hour.

Generation Services:

$0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Transmission, System Control, Reactive, and Regulation Services:

The charges for Transmission, System Control, Reactive, and Regulation Services shall be governed by and subject to refund based upon the determination in the proceeding involving Southern Companies' Open Access Transmission Tariff.

Contract Demand:

The contract demand is the amount of capacity in kilowatts stated in the contract that the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government:

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses).

Billing Month:

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule ALA–1–N

Availability:

This rate schedule shall be available to the PowerSouth Energy Cooperative (hereinafter called the Cooperative).

Applicability:

This rate schedule shall be applicable to power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters, and Richard B. Russell Projects and sold under contract between the Cooperative and the Government. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service:

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of 60 Hertz and shall be delivered at the Walter F. George, West Point, and Robert F. Henry Projects.

Monthly Rate:

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge:

$4.81 Per kilowatt of total contract demand per month.

Energy Charge:

12.33 Mills per kilowatt-hour.

Generation Services:

$0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Southern Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Transmission, System Control, Reactive, and Regulation Services:

The charges for Transmission, System Control, Reactive, and Regulation Services shall be governed by and subject to refund based upon the determination in the proceeding involving Southern Companies' Open Access Transmission Tariff.

Energy to be Furnished by the Government:

The Government will sell to the Cooperative and the Cooperative will purchase from the Government those quantities of energy specified by contract as available to the Cooperative for scheduling on a weekly basis.

Billing Month:

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule ALA–1–N

Availability:

This rate schedule shall be available to the PowerSouth Energy Cooperative (hereinafter called the Cooperative).

Applicability:

This rate schedule shall be applicable to power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters, and Richard B. Russell Projects and sold under contract between the Cooperative and the Government. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service:

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of 60 Hertz and shall be delivered at the Walter F. George, West Point, and Robert F. Henry Projects.

Monthly Rate:

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge:

$4.81 Per kilowatt of total contract demand per month.

Energy Charge:

12.33 Mills per kilowatt-hour.

Generation Services:

$0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Southern Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Transmission, System Control, Reactive, and Regulation Services

The charges for Transmission, System Control, Reactive, and Regulation Services shall be governed by and subject to refund based upon the determination in the proceeding involving Southern Companies' Open Access Transmission Tariff.

Energy to be Furnished by the Government:

The Government will sell to the Cooperative and the Cooperative will purchase from the Government those quantities of energy specified by contract as available to the Cooperative for scheduling on a weekly basis.

Billing Month:

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule Duke-1–E

Availability:

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in North Carolina and South Carolina to whom power may be transmitted and scheduled pursuant to contracts between the Government and Duke Energy Company (hereinafter called the Company) and the Customer. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability:

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service:

The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Company's transmission and distribution system.

Monthly Rate:

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge:

$4.81 Per kilowatt of total contract demand per month.

Energy Charge:

12.33 Mills per kilowatt-hour.

Generation Services:

$0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission (FERC) of the Company's rate.

Transmission:

$1.26 Per kilowatt of total contract demand per month is presented for illustrative purposes.

The initial transmission charge will be the Customer's ratable share of the transmission and distribution charges paid by the Government. The transmission charges are governed by and subject to refund based upon the determination in proceedings before FERC involving the Company's Open Access Transmission Tariff (OATT).

Proceedings before FERC involving the OATT may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission and distribution charges paid by the Government in behalf of the Customer.

Contract Demand:

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government:

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses of three per cent (3%) as of March 2012). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. These losses shall be effective until modified by FERC, pursuant to application by the Company under Section 205 of the Federal Power Act or SEPA under Section 206 of the Federal Power Act or otherwise.

Billing Month:

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule Duke-2–E

Availability:

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in North Carolina and South Carolina to whom power may be transmitted pursuant to contracts between the Government and Duke Energy Company (hereinafter called the Company) and the Customer. The Customer is responsible for providing a scheduling arrangement with the Government. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability:

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service:

The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Company's transmission and distribution system.

Monthly Rate:

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge:

$4.81 Per kilowatt of total contract demand per month.

Energy Charge:

12.33 Mills per kilowatt-hour.

Generation Services:

$0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission (FERC) of the Company's rate.

Transmission:

$1.26 Per kilowatt of total contract demand per month is presented for illustrative purposes.

The initial transmission charge will be the Customer's ratable share of the transmission and distribution charges paid by the Government. The transmission charges are governed by and subject to refund based upon the determination in proceedings before FERC involving the Company's Open Access Transmission Tariff (OATT).

Proceedings before FERC involving the OATT may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission and distribution charges paid by the Government in behalf of the Customer.

Contract Demand:

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government:

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses of three per cent (3%) as of March 2012. The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. These losses shall be effective until modified by the Federal Energy Regulatory Commission, pursuant to application by the Company under Section 205 of the Federal Power Act or SEPA under Section 206 of the Federal Power Act or otherwise.

Billing Month:

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule Duke-3–E

Availability:

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in North Carolina and South Carolina to whom power may be scheduled pursuant to contracts between the Government and Duke Energy Company (hereinafter called the Company) and the Customer. The Customer is responsible for providing a transmission arrangement. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability:

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service:

The electric capacity and energy supplied hereunder will be delivered at the Savannah River Projects.

Monthly Rate:

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge:

$4.81 Per kilowatt of total contract demand per month.

Energy Charge:

12.33 Mills per kilowatt-hour.

Generation Services:

$0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Contract Demand:

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government:

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses).

Billing Month:

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule Duke-4–E

Availability:

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in North Carolina and South Carolina served through the transmission facilities of Duke Energy Company (hereinafter called the Company) and the Customer. The Customer is responsible for providing a scheduling arrangement with the Government and for providing a transmission arrangement with the Company. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability:

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service:

The electric capacity and energy supplied hereunder will be delivered at the Savannah River Projects.

Monthly Rate:

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge:

$4.81 Per kilowatt of total contract demand per month.

Energy Charge:

12.33 Mills per kilowatt-hour.

Generation Services:

$0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Contract Demand:

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government:

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses).

Billing Month:

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule Santee-1–E

Availability:

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter call the Customer) in South Carolina to whom power may be wheeled and scheduled pursuant to contracts between the Government and South Carolina Public Service Authority (hereinafter called the Authority). Nothing in this rate schedule shall preclude an eligible customer from electing service under another rate schedule.

Applicability:

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service:

The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Authority's transmission and distribution system.

Monthly Rate:

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge:

$4.81 Per kilowatt of total contract demand per month.

Energy Charge:

12.33 Mills per kilowatt-hour.

Generation Services:

$0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Authority. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission (FERC) of the Authority's rate.

Transmission:

$1.38 Per kilowatt of total contract demand per month as of March 2012 is presented for illustrative purposes.

The initial transmission rate is subject to annual adjustment on July 1 of each year, and will be computed subject to the formula contained in Appendix A to the Government-Authority Contract.

Proceedings before FERC involving the Authority's Open Access Transmission Tariff may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission and distribution charges paid by the Government in behalf of the Customer.

Contract Demand:

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government:

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Authority (less applicable losses of two per cent (2%) as of March 2012). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Authority's system.

Billing Month:

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Service Interruption:

When energy delivery to the Customer's system for the account of the Government is reduced or interrupted, and such reduction or interruption is not due to conditions on the Customer's system, the demand charge for the month shall be appropriately reduced as to kilowatts of such capacity which have been interrupted or reduced for each day in accordance with the following formula:

$$\left(\begin{array}{c}\text{Number of kilowatts unavailable}\\ \text{for at least 12 hours in}\\ \text{any calendar day}\end{array}\right)\times\left(\frac{\text{Monthly Capacity Charge}}{\text{Number of Days in Billing Month}}\right)$$

Wholesale Power Rate Schedule Santee-2–E

Availability:

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter call the Customer) in South Carolina to whom power may be wheeled pursuant to contracts between the Government and South Carolina Public Service Authority (hereinafter called the Authority). The customer is responsible for providing a scheduling arrangement with the Government. Nothing in this rate schedule shall preclude an eligible customer from electing service under another rate schedule.

Applicability:

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service:

The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Authority's transmission and distribution system.

Monthly Rate:

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge:

$4.81 Per kilowatt of total contract demand per month.

Energy Charge:

12.33 Mills per kilowatt-hour.

Generation Services:

$0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Authority. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission (FERC) of the Authority's rate.

Transmission:

$1.38 Per kilowatt of total contract demand per month as of March 2012 is presented for illustrative purposes.

The initial transmission rate is subject to annual adjustment on July 1 of each year, and will be computed subject to the formula contained in Appendix A to the Government-Authority Contract.

Proceedings before FERC involving the Authority's Open Access Transmission Tariff may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission and distribution charges paid by the Government in behalf of the Customer.

Contract Demand:

The contract demand is the amount of capacity in kilowatts stated in the contract

that the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government:

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Authority (less applicable losses of two per cent (2%) as of March 2012). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Authority's system.

Billing Month:

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Service Interruption:

When energy delivery to the Customer's system for the account of the Government is reduced or interrupted, and such reduction or interruption is not due to conditions on the Customer's system, the demand charge for the month shall be appropriately reduced as to kilowatts of such capacity which have been interrupted or reduced for each day in accordance with the following formula:

$$\left(\begin{array}{c}\text{Number of kilowatts unavailable}\\ \text{for at least 12 hours in}\\ \text{any calendar day}\end{array}\right)\times\left(\frac{\text{Monthly Capacity Charge}}{\text{Number of Days in Billing Month}}\right)$$

Wholesale Power Rate Schedule Santee-3–E

Availability:

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter call the Customer) in South Carolina to whom power may be scheduled pursuant to contracts between the Government and South Carolina Public Service Authority (hereinafter called the Authority). The customer is responsible for providing a transmission arrangement. Nothing in this rate schedule shall preclude an eligible customer from electing service under another rate schedule.

Applicability:

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service:

The electric capacity and energy supplied hereunder will be delivered at the Projects.

Monthly Rate:

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge:

$4.81 Per kilowatt of total contract demand per month.

Energy Charge:

12.33 Mills per kilowatt-hour.

Generation Services:

$0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Authority. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Authority's rate.

Contract Demand:

The contract demand is the amount of capacity in kilowatts stated in the contract that the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government:

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Authority (less applicable losses).

Billing Month:

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Service Interruption:

When energy delivery to the Customer's system for the account of the Government is reduced or interrupted, and such reduction or interruption is not due to conditions on the Customer's system, the demand charge for the month shall be appropriately reduced as to kilowatts of such capacity which have been interrupted or reduced for each day in accordance with the following formula:

$$\left(\begin{array}{c}\text{Number of kilowatts unavailable}\\ \text{for at least 12 hours in}\\ \text{any calendar day}\end{array}\right)\times\left(\frac{\text{Monthly Capacity Charge}}{\text{Number of Days in Billing Month}}\right)$$

Wholesale Power Rate Schedule Santee-4–E

Availability:

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter call the Customer) in South Carolina served through the transmission facilities of South Carolina Public Service Authority (hereinafter called the Authority). The customer is responsible for providing a scheduling arrangement with the Government and for providing a transmission arrangement. Nothing in this rate schedule shall preclude an eligible customer from electing service under another rate schedule.

Applicability:

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service:

The electric capacity and energy supplied hereunder will be delivered at the Projects.

Monthly Rate:

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge:

$4.81 Per kilowatt of total contract demand per month.

Energy Charge:

12.33 Mills per kilowatt-hour.

Generation Services:

$0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services

provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Authority. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Authority's rate.

Contract Demand:

The contract demand is the amount of capacity in kilowatts stated in the contract that the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government:

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Authority (less applicable losses).

Billing Month:

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Service Interruption:

When energy delivery to the Customer's system for the account of the Government is reduced or interrupted, and such reduction or interruption is not due to conditions on the Customer's system, the demand charge for the month shall be appropriately reduced as to kilowatts of such capacity which have been interrupted or reduced for each day in accordance with the following formula:

$$\left(\begin{array}{c}\text{Number of kilowatts unavailable}\\ \text{for at least 12 hours in}\\ \text{any calendar day}\end{array}\right)\times\left(\frac{\text{Monthly Capacity Charge}}{\text{Number of Days in Billing Month}}\right)$$

Wholesale Power Rate Schedule SCE&G–1–E

Availability:

This rate schedule shall be available public bodies and cooperatives (any one of which is hereinafter called the Customer) in South Carolina to whom power may be wheeled and scheduled pursuant to contracts between the Government and the South Carolina Electric & Gas Company (hereinafter called the Company). Nothing in this rate schedule shall preclude an eligible customer from electing service under another rate schedule.

Applicability:

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service:

The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Company's transmission and distribution system.

Monthly Rate:

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge:

$4.81 Per kilowatt of total contract demand per month.

Energy Charge:

12.33 Mills per kilowatt-hour.

Generation Services:

$0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission (FERC) of the Company's rate.

Transmission:

$2.12 Per kilowatt of total contract demand per month as of March 2012 is presented for illustrative purposes.

The initial transmission charge will be the Customer's ratable share of the transmission and distribution charges paid by the Government. The transmission charges are governed by and subject to refund based upon the determination in proceedings before FERC involving the Company's Open Access Transmission Tariff (OATT).

Proceedings before FERC involving the OATT may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission and distribution charges paid by the Government in behalf of the Customer.

Contract Demand:

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government:

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system.

Billing Month:

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Conditions of Service:

The Customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment, and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of the Company on its side of the delivery point.

Wholesale Power Rate Schedule SCE&G–2–E

Availability:

This rate schedule shall be available public bodies and cooperatives (any one of which is hereinafter called the Customer) in South Carolina to whom power may be wheeled pursuant to contracts between the Government and the South Carolina Electric & Gas Company (hereinafter called the Company). The customer is responsible for providing a scheduling arrangement with the Government. Nothing in this rate schedule shall preclude an eligible customer from electing service under another rate schedule.

Applicability:

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service:

The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Company's transmission and distribution system.

Monthly Rate:

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge:

$4.81 Per kilowatt of total contract demand per month.

Energy Charge:

12.33 Mills per kilowatt-hour.

Generation Services:

$0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission (FERC) of the Company's rate.

Transmission:

$2.12 Per kilowatt of total contract demand per month as of March 2012 is presented for illustrative purposes.

The initial transmission charge will be the Customer's ratable share of the transmission and distribution charges paid by the Government. The transmission charges are governed by and subject to refund based upon the determination in proceedings before FERC involving the Company's Open Access Transmission Tariff (OATT).

Proceedings before FERC involving the OATT may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission and distribution charges paid by the Government in behalf of the Customer.

Contract Demand:

The contract demand is the amount of capacity in kilowatts stated in the contract that the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government:

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system.

Billing Month:

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Conditions of Service:

The Customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment, and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of the Company on its side of the delivery point.

Wholesale Power Rate Schedule SCE&G–3–E

Availability:

This rate schedule shall be available public bodies and cooperatives (any one of which is hereinafter called the Customer) in South Carolina to whom power may be scheduled pursuant to contracts between the Government and the South Carolina Electric & Gas Company (hereinafter called the Company). The customer is responsible for providing a transmission arrangement. Nothing in this rate schedule shall preclude an eligible customer from electing service under another rate schedule.

Applicability:

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service:

The electric capacity and energy supplied hereunder will be delivered at the Projects.

Monthly Rate:

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge:

$4.81 Per kilowatt of total contract demand per month.

Energy Charge:

12.33 Mills per kilowatt-hour.

Generation Services:

$0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Contract Demand:

The contract demand is the amount of capacity in kilowatts stated in the contract that the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government:

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses).

Billing Month:

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Conditions of Service:

The Customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment, and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of the Company on its side of the delivery point.

Wholesale Power Rate Schedule SCE&G–4–E

Availability:

This rate schedule shall be available public bodies and cooperatives (any one of which is hereinafter called the Customer) in South Carolina served through the transmission facilities of South Carolina Electric & Gas Company (hereinafter called the Company). The customer is responsible for providing a scheduling arrangement with the Government and for providing a transmission arrangement. Nothing in this rate schedule shall preclude an eligible customer from electing service under another rate schedule.

Applicability:

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service:

The electric capacity and energy supplied hereunder will be delivered at the Projects.

Monthly Rate:

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge:

$4.81 Per kilowatt of total contract demand per month.

Energy Charge:

12.33 Mills per kilowatt-hour.

Generation Services:

$0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Contract Demand:

The contract demand is the amount of capacity in kilowatts stated in the contract that the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government:

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses).

Billing Month:

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Conditions of Service:

The Customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment, and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of the Company on its side of the delivery point.

Wholesale Power Rate Schedule Pump-1–A

Availability:

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Georgia, Alabama, Mississippi, Florida, South Carolina, or North Carolina to whom power is provided pursuant to contracts between the Government and the Customer.

Applicability:

This rate schedule shall be applicable to the sale at wholesale energy generated from pumping operations at the Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. The energy will be segregated from energy from other pumping operations.

Character of Service:

The energy supplied hereunder will be delivered at the delivery points provided for under appropriate contracts between the Government and the Customer.

Monthly Rate:

The rate for energy sold under this rate schedule for the months specified shall be:

$Energy\ Rate = (C_{wav} \div F_{wav}) \div (1 - L_d)$

[computed to the nearest $.00001 (1/100 mill) per kWh]

(The weighted average cost of energy for pumping divided by the energy conversion factor, quantity divided by one minus losses for delivery.)

Where:

$C_{wav} = C_{T1} \div E_{T1}$

(The weighted average cost of energy for pumping for this rate schedule is equal to the cost of energy purchased or supplied for the benefit of the customer for pumping divided by the total energy for pumping.)

$C_{T1} = C_p + C_s$

(Cost of energy for pumping for this rate schedule is equal to the cost of energy purchased or supplied for the benefit of the customer plus the cost of energy in storage carried over from the month preceding the specified month.)

$$E_{T1} = E_p x(1 - L_p) + E_s^{t-1}$$

(Energy for pumping for this rate schedule is equal to the energy purchased or supplied for the benefit of the customer, after losses, plus the energy for pumping in storage as of the end of the month preceding the specified month.)

$$C_s = C_{wav}^{t-1} x\, E_s^{t-1}$$

(Cost of energy in storage is equal to the weighted average cost of energy for pumping for the month preceding the specified month times the energy for pumping in storage at the end of the month preceding the specified month.)

C_p

= Dollars cost of energy purchased or supplied for the benefit of the customer for pumping during the specified month, including all direct costs to deliver energy to the project.

E_p

= Kilowatt-hours of energy purchased or supplied for the benefit of the customer for pumping during the specified month.

L_p

= Energy loss factor for transmission on energy purchased or supplied for the benefit of the customer for pumping (Expected to be .03 or three percent.)

E_s^{t-1}

= Kilowatt-hours of energy in storage as of the end of the month immediately preceding the specified month

C_{wav}^{t-1}

= Weighted average cost of energy for pumping for the month immediately preceding the specified month.

$F_{wav} = E_g \div E_T$

(Weighted average energy conversion factor is equal to the energy generated from pumping divided by the total energy for pumping)

E_G

= Energy generated from pumping.

L_d

= Weighted average energy loss factor on energy delivered by the facilitator to the customer.

Energy to be Furnished by the Government:

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Facilitator (less any losses required by the Facilitator). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Facilitator's system.

Billing Month:

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule Pump-2

Availability:

This rate schedule shall be available to public bodies and cooperatives who provide their own scheduling arrangement and elect to allow Southeastern to use a portion of their allocation for pumping (any one of whom is hereinafter called the Customer) in Georgia, Alabama, Mississippi, Florida, South Carolina, or North Carolina to whom power is provided pursuant to contracts between the Government and the Customer.

Applicability:

This rate schedule shall be applicable to the sale at wholesale energy generated from pumping operations at the Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This energy will be segregated from energy from other pumping operations.

Character of Service:

The energy supplied hereunder will be delivered at the delivery points provided for under appropriate contracts between the Government and the Customer.

Monthly Rate:

The rate for energy sold under this rate schedule for the months specified shall be:

$Energy\ Rate = (C_{wav} \div F_{wav} \div (1 - L_d)$

[computed to the nearest $.00001 (1/100 mill) per kWh]

(The weighted average cost of energy for pumping divided by the energy conversion factor, quantity divided by one minus losses for delivery.)

Where:

$C_{wav} = C_{T2} \div E_{T2}$

(The weighted average cost of energy for pumping for this rate schedule is equal to the cost of energy purchased or supplied for the benefit of the customer for pumping divided by the total energy for pumping.)

$C_{T2} = C_p + C_s$

(Cost of energy for pumping for this rate schedule is equal to the cost of energy purchased or supplied for the benefit of the customer plus the cost of energy in storage carried over from the month preceding the specified month.)

$$E_{T2} = E_p x(1 - L_p) + E_s^{t-1}$$

(Energy for pumping for this rate schedule is equal to the energy purchased or supplied for the benefit of the customer, after losses, plus the energy for pumping in storage as of the end of the month preceding the specified month.)

$$C_s = C_{wav}^{t-1} x\, E_s^{t-1}$$

(Cost of energy in storage is equal to the weighted average cost of energy for pumping for the month preceding the specified month times the energy for pumping in storage at the end of the month preceding the specified month.)

C_p

= Dollars cost of energy purchased or supplied for the benefit of the customer for pumping during the specified month, including all direct costs to deliver energy to the project.

E_p

= Kilowatt-hours of energy purchased or

supplied for the benefit of the customer for pumping during the specified month.

L_p

= Energy loss factor for transmission on energy purchased or supplied for the benefit of the customer for pumping (Expected to be .03 or three percent.)

$$E_s^{t-1}$$

= Kilowatt-hours of energy in storage as of the end of the month immediately preceding the specified month.

$$C_{wav}^{t-1}$$

= Weighted average cost of energy for pumping for the month immediately preceding the specified month.

$F_{wav} = E_G \div E_T$

(Weighted average energy conversion factor is equal to the energy generated from pumping divided by the total energy for pumping)

E_G

= Energy generated from pumping.

L_d

= Weighted average energy loss factor on energy delivered by the facilitator to the customer.

Energy to be Furnished by the Government:

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Facilitator (less any losses required by the Facilitator). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Facilitator's system.

Billing Month:

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule Replacement-1

Availability:

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Georgia, Alabama, Mississippi, Florida, South Carolina, or North Carolina to whom power is provided pursuant to contracts between the Government and the Customer.

Applicability:

This rate schedule shall be applicable to the sale at wholesale energy purchased to meet contract minimum energy and sold under appropriate contracts between the Government and the Customer.

Character of Service:

The energy supplied hereunder will be delivered at the delivery points provided for under appropriate contracts between the Government and the Customer.

Monthly Rate:

The rate for energy sold under this rate schedule for the months specified shall be:

$EnergyRate = C_{wav} \div (1 - L_d)$

[computed to the nearest $.00001 (1/100 mill) per kWh]

(The weighted average cost of energy for replacement energy divided by one minus losses for delivery.)

Where:

$C_{wav} = C_p \div (E_p \, x(\,(1) - L_p))$

(The weighted average cost of energy for replacement energy is equal to the cost of replacement energy purchased divided by the replacement energy purchased, net losses.)

C_p

= Dollars cost of energy purchased for replacement energy during the specified month, including all direct costs to deliver energy to the project.

E_p

= Kilowatt-hours of energy purchased for replacement energy during the specified month.

L_p

= Energy loss factor for transmission on replacement energy purchased (Expected to be 0 or zero percent.)

L_d

= Weighted average energy loss factor on energy delivered by the facilitator to the customer.

Energy to be Furnished by the Government:

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Facilitator (less any losses required by the Facilitator). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Facilitator's system.

Billing Month:

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Wholesale Rate Schedule Regulation-1

Availability:

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Georgia, Alabama, Mississippi, Florida, South Carolina, or North Carolina to whom service is provided pursuant to contracts between the Government and the Customer.

Applicability:

This rate schedule shall be applicable to the sale of regulation services provided from the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters, and Richard B. Russell Projects (hereinafter called the Projects) and sold under appropriate contracts between the Government and the Customer.

Character of Service:

The service supplied hereunder will be delivered at the Projects.

Monthly Rate:

The rate for service supplied under this rate schedule for the period specified shall be:

$0.05 per kilowatt of total contract demand per month.

Contract Demand:

The contract demand is the amount of capacity in kilowatts stated in the contract to which the Government is obligated to supply and the Customer is entitled to receive regulation service.

Billing Month:

The billing month for services provided under this schedule shall end at 12:00 midnight on the last day of each calendar month.

[FR Doc. 2012–22308 Filed 9–10–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration; Grapevine Canyon Wind Project Record of Decision (DOE/EIS–0427)

AGENCY: Western Area Power Administration, DOE.

ACTION: Record of Decision.

SUMMARY: Western Area Power Administration (Western) received a request from Foresight Flying M, LLC (Foresight) to interconnect its proposed Grapevine Canyon Wind Project (Project) to Western's Glen Canyon-Pinnacle Peak No. 1 and No. 2 transmission lines. The Project would be located about 28 miles south and east of Flagstaff, in Coconino County, Arizona. On June 8, 2012, the Notice of Availability of the Final Environmental Impact Statement (EIS) for Grapevine Canyon Wind Project was published in the **Federal Register** (77 FR 34041). After considering the environmental impacts, Western has decided to allow Foresight's request for interconnection to Western's transmission system on its Glen Canyon-Pinnacle Peak transmission lines and to construct, own, and operate a new switchyard to accommodate the interconnection.

FOR FURTHER INFORMATION CONTACT: For further information, please contact Mr. Matt Blevins, Corporate Services Office, Western Area Power Administration, A7400, P.O. Box 281213, Lakewood, CO 80228–8213, telephone (720) 962–7261, fax (720) 962–7263, or email: *GrapevineWindEIS@wapa.gov.* For general information on DOE's National Environmental Policy Act of 1969 (NEPA) review process, please contact Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, GC–54, U.S. Department of Energy, Washington,

DC 20585, telephone (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: Western is a Federal agency under the U.S. Department of Energy (DOE) that markets and transmits wholesale electrical power through an integrated 17,000-circuit mile, high-voltage transmission system across 15 western states. Western's Open Access Transmission Service Tariff (Tariff) provides open access to its electric transmission system. Considering the requester's objectives, Western provides transmission services if there is available capacity and the reliability of the transmission system is maintained.

The U.S. Department of Agriculture, Forest Service, Coconino National Forest (Forest Service) and the Arizona State Land Department participated as cooperating agencies on the EIS. Interested parties were notified of the proposed Project and the public comment opportunity through a Notice of Intent published in the **Federal Register** on July 24, 2009 (74 FR 36689). The U.S. Environmental Protection Agency (EPA) published a Notice of Availability (NOA) of the Draft EIS in the **Federal Register** on July 23, 2010 (75 FR 43161). The NOA also announced a 45-day comment period for receipt of comments on the Draft EIS. On June 8, 2012, the EPA published an NOA of the Final EIS for the Project in the **Federal Register** (77 FR 34041).[1]

Proposed Federal Action

Western's proposed Federal Action is to approve Foresight's request for interconnection to Western's transmission system on the Glen Canyon-Pinnacle Peak 345-kilovolt (kV) transmission lines, an action that would also require a new Western switchyard on Forest Service-managed lands to be constructed, owned, and operated by Western.

Foresight Proposed Project

Foresight proposes to construct and operate a utility-scale wind energy generating facility on private and state trust land. The wind energy generating facility would generate up to 500 megawatts of electricity from wind turbine generators (WTGs). The proposed project includes a wind energy generating facility (wind park) and a 345-kV transmission tie-line. The proposed wind park would be built in one or more phases, dependent on one or more power sale contracts. The proposed wind park would include improved and new access and service roads, WTGs, an electrical collection system, up to two step-up substations, an extension tie-line, communications system, operations and maintenance building, and meteorological monitoring towers. A new 345-kV single-circuit electrical transmission tie-line would be constructed between the initial wind park step-up substation and Western's proposed switchyard at its existing Glen Canyon-Pinnacle Peak No. 1 and No. 2 345-kV transmission lines. The transmission tie-line would be approximately 15 miles in length, extending 8.5 miles across Forest Service-managed lands and up to approximately 6.5 miles across state trust and private lands.

Description of Alternatives

Foresight, in coordination with the Forest Service, proposed a route for the transmission tie-line to address potential effects to visual resources and avoid or minimize impacts to other resources. The alternative tie-line would deviate from Foresight's proposed tie-line route by approximately one-half mile to avoid the intersection of Forest Service routes 125 and 82 on Forest Service-managed lands.

Five alternatives to the location of the proposed transmission tie-line and switchyard were considered during scoping. Additionally, an alternative addressing burying the transmission tie-line was considered. None of the transmission tie-line alternatives were carried forward for consideration based on criteria including cost, construction feasibility, environmental resource sensitivities, and conformance with applicable land use plans. Alternatives addressing the location of the proposed wind park were not evaluated because no alternative locations were proposed during the EIS scoping process, and decisions related to the wind park location are outside the decisions that would be made by the Federal agencies. As required by 40 CFR 1505.2(b), Western has identified the No Action Alternative as its environmentally preferred alternative. Under this alternative, Western would deny the interconnection request and not modify its transmission system to interconnect the proposed Project with its transmission system. Under this alternative, there would be no modifications to Western's transmission system, and thus no new environmental impacts. Foresight's objectives relating to renewable energy development would not be met.

Mitigation Measures

Foresight, the Forest Service, and Western proposed resource protection measures (RPMs) for each resource area to minimize impacts associated with construction, operation, and maintenance of the proposed Project. Foresight and the Federal agencies committed to these RPMs, and they were included in the evaluation of environmental impacts in the Final EIS. Foresight will follow standard construction practices, best management practices, and RPMs during the construction, operation, and maintenance of the proposed wind park and transmission tie-line facilities. To implement the RPMs, an Avian and Bat Protection Plan (ABPP) is being voluntarily developed with the U.S. Fish and Wildlife Service and the Arizona Department of Game and Fish. The ABPP includes components such as additional pre-construction and post-construction wildlife studies to inform final micro-siting of the initial project phase and monitor operational impact levels. An adaptive management protocol will be implemented within the ABPP whereby iterative decision-making (evaluating results and adjusting actions on the basis of what has been learned) will be undertaken to reduce or avoid impacts to biological resources if post-construction monitoring demonstrates that impacts are greater than anticipated.

Western does not have jurisdiction over the siting, construction, or operation of the proposed wind park, so its proposed RPMs apply to the proposed switchyard. The Forest Service has proposed certain measures that will be binding on Western for its proposed switchyard. In addition, Western requires its construction contractors to implement standard environmental protection provisions. These provisions are provided in Western's Construction Standard 13 and will be applied to the proposed switchyard. Specific BMPs that the Forest Service requires will address soil and water resources and invasive species management for the proposed switchyard.

Western, the Forest Service, and Foresight are among the signatories to a Programmatic Agreement (PA) for compliance with the National Historic Preservation Act and, thus, will implement provisions in the PA addressing effects to properties on or eligible for listing to the National Register of Historic Places.

With this decision, Western is not adopting any additional mitigation measures that apply to its action outside

[1] The Final EIS can be found on Western's Web site at: *http://ww2.wapa.gov/sites/Western/transmission/interconn/Pages/Grapevine.aspx.*

of the RPMs addressed in the Final EIS. As such, a Mitigation Action Plan is not required for Western's proposed action. The RPMs in the Final EIS reflect all practicable means to avoid or minimize environmental harm from the Project and Western's Proposed Action.

Comments on Final EIS

Western received comments from the Arizona Department of Environmental Quality (ADEQ) in a letter dated June 4, 2012, and from the EPA in a letter dated June 27, 2012. Additionally, Western received emails on June 6 and 11, 2012, and a letter dated June 29, 2012, from the owner of a 5-acre parcel about 2 miles east of the wind park study area boundary. Based on a review of these comments, Western has determined that the comments do not present any significant new circumstances or information relevant to environmental concerns and bearing on the Project or its impacts, and a Supplemental EIS is not required. The basis for this determination is summarized below.

ADEQ provided information on how to reduce particulate matter disturbances and noted that it agreed with the EIS determination of the need for a minor air quality permit for the portable rock crusher and concrete batch plants. In addition, ADEQ reiterated its recommendations provided in its August 11, 2010, letter with comments on the Draft EIS. As noted in the Final EIS in response to the ADEQ letter, the air quality-related RPMs were expanded to address ADEQ's recommendations.

EPA noted in its comment letter that the U.S. Army Corps of Engineers (Corps) has not verified the preliminary jurisdictional delineation or issued a final jurisdictional determination. EPA recommended that this decision include a final determination of the geographic extent of jurisdictional waters, based on the approved jurisdictional determination. Based on information provided by Foresight, the Preliminary Jurisdictional Determination Report for the initial development phase for the wind park has been resubmitted to the Corps, with modifications in response to comments and suggestions made by the Corps following their review of the initial submittal. The resubmitted report is consistent with the data and analysis regarding the geographic extent of jurisdictional waters included in the Final EIS. Foresight will continue to pursue a final determination by the Corps and intends to obtain the appropriate Clean Water Act Section 404 permits once the size of the initial development and final infrastructure siting are determined. Western's switchyard would not affect any jurisdictional waters.

EPA also recommended that, when hauling material and operating non-earthmoving equipment, speeds be limited to 15 miles per hour. Likewise, for earthmoving equipment, EPA recommended limiting speed to 10 miles per hour. Western agrees with EPA's recommendations and will include provisions in its construction contract for the switchyard that limit construction vehicle speed limits. Foresight indicated that the wind park contractor will set speed limits within the project site with lower speed limits for construction areas as well as other areas with construction and project-related traffic.

The owner of the parcel east of the wind park study area provided comments with concerns about not being notified about the proposed Project and an expansion of the study area boundaries during the EIS scoping process, the scoping map violating standards for color blindness, wind park access, WTG lighting, discrepancies with land cover information, groundwater impacts, ditch network impacts, and visual impacts to views from his parcel and Forest Service-managed lands west, south, and southeast of the proposed wind park.

In response to the owner's concerns about the scoping process, Western sent landowner notifications based on a list of property owners within 10 miles of the proposed Project. The owner of the parcel was inadvertently not included in the list. During the scoping process, however, Western employed several mechanisms to notify potentially interested entities, including display ads in the area newspaper, radio ads, and postings of the project flyer in the Flagstaff and Winslow, Arizona, libraries, and the Meteor Crater RV Park and Visitor Center. In addition, the Forest Service maintained project information under its Schedule of Proposed Actions on its Web site. As explained in the paragraphs that follow, the EIS adequately addressed the property owner's concerns, even with the expansion of the wind park study area between the EIS scoping and the issuance of the Draft EIS. In response to the owner's concern about the scoping map violating the Americans with Disabilities Act, Western's use of color in the maps and figures was used to generally inform readers of various aspects of the Project. Western attempted to use sufficient difference in color tones so that users who are color-blind or have poor vision could distinguish between elements of the page. However, even if a user could not distinguish colors on certain maps or figures, the text of the Final EIS adequately describes the Federal actions and Foresight's proposed Project as well as the associated impacts. In addition, Western posted an electronic copy of the Final EIS, including the scoping map, on its Web site that meets the requirements of Section 508 of Workforce Rehabilitation Act of 1973. In relation to color, the primary requirement is that color cannot be the only means of identification on the page. The Final EIS used text in addition to color on the included maps and figures as well as text in the Final EIS body to convey the pertinent information.

The property owner provided information to augment information included in the Final EIS, including the status of Forest Road 69 between Chavez Pass and State Route 87, the management of lands along the southern boundary of the wind park study area by the Forest Service, and the ownership of lands at KOPs 4 and 5 addressed in the Final EIS. Western has noted this new information provided by the property owner, and it has been taken into account in this decision. Responses to the property owner's other comments follow.

The property owner expressed concerns about the installation of red flashing lights on wind turbine generators per Federal Aviation Administration (FAA) requirements. Per a RPM in the Final EIS, exterior lighting on the WTGs required by the FAA would be kept to the minimum number and intensity required to meet FAA standards. Based on this measure, the proposed wind park would be consistent with current Coconino County goals and policies. The property owner's concern with the lighting does not present any significant new circumstances or information relevant to environmental concerns.

The property owner commented that groundwater impacts extend significantly beyond the water resources evaluation area addressed in the Final EIS. Based on the analysis in the EIS, the water level drawdown contour would extend less than 800 feet from each well used for construction and would be negligible for wells more than one-half mile away. Therefore, the expected impacts at other existing wells in the vicinity are minimal and are not expected to affect the existing groundwater users' ability to continue their existing uses. Western believes the water analysis in the Final EIS accurately reflects drawdown levels.

The property owner noted that the Final EIS failed to mention the ditch

network in and north of Chavez Pass. The RPMs included in the water resources section of the Final EIS would apply to the ditch network and wells in the wind park study area. With these measures, no permanent effects to the ditch network are expected.

The property owner noted that KOP 5 is located about 1.5 miles from his property, and commented that the Scenery Integrity Level would change from high to low, which the commenter maintained would be unacceptable on Forest Service lands. The Final EIS includes photo simulations from a key observation point (KOP No. 5) located near State Highway 87 southeast of the wind park study area near the owner's parcel. No project facilities would be visible from KOP 5 located near the property owner's parcel for the initial development phase. Based on an evaluation in the Final EIS of the views from KOP 5, views of the San Francisco Peaks would be partially blocked by some of the closest WTGs for the subsequent build-out phases. The Final EIS also indicates that the subsequent build-out phases for the proposed wind park would create a high visual contrast from this viewpoint. However, the nearest WTG would be located more than one mile from the property owner's parcel in accordance with current County goals and policies. In addition, the views evaluated from KOP 5 are primarily outside of the Forest Service-defined management objectives. The commenter's concerns related to visual impacts do not present any significant new circumstances or information relevant to environmental concerns.

In response to the property owner's information on land ownership at KOP 4, the property owner is correct that KOP 4 is located on Forest Service-managed lands. The photo simulation from KOP 4 simulates the proposed wind park as it would be seen from a point along Chavez Pass Road. WTGs are depicted at a height of approximately 430 feet, and a distance of approximately 1.7 miles from the road. As such, they are located within middleground views. The KOP represents a view into the proposed wind park, which is not located on Forest Service-managed lands and is therefore outside of the Forest Service-defined management objectives for scenic resources. The Final EIS noted that the proposed wind park would result in visual contrast that ranges from low to high on private and state lands. Therefore, the location of the KOP on Forest Service managed land, versus state or private lands, do not present any significant new circumstances or information relevant to environmental concerns.

The property owner expressed concerns that the views from KOP 6, west of the proposed wind park and near the transmission tie-line routing, would result in a significant, drastic change to a beautiful viewshed. This KOP is located on Forest Service Road 125, along the eastern edge of Anderson Mesa, looking to the east. The Final EIS notes that the proposed wind park and transmission tie-line would introduce elements of form, line, scale, and color that would contrast with the otherwise natural valley floor. Therefore, the concerns expressed by the property owner do not present any significant new circumstances or information relevant to environmental concerns.

The property owner noted that the EIS does not discuss Forest Service opinions of landscape changes on non-Forest Service land visible from Forest Service-managed lands. The purpose of the EIS is to disclose the environmental impacts from the proposed Project, not to provide Western or Forest Service opinions regarding developments on private land. For the reasons stated above in the discussion of visual impacts from KOPs 4, 5, and 6, the Final EIS adequately addresses the effects of views from Forest Service-managed lands towards the wind park development.

Western does not have any jurisdiction over the siting of WTGs, but the owner of the parcel will have opportunities to provide additional input during the approval process for the General Use Permit that would be issued by Coconino County for the Project.

Decision

Western's decision is to allow Foresight's request for interconnection to Western's transmission system at its Glen Canyon-Pinnacle Peak No. 1 and No. 2 transmission lines, and to construct, own, and operate a new switchyard.[2] Western's decision to grant this interconnection request satisfies the agency's statutory mission and Foresight's objectives while minimizing harm to the environment. Full implementation of this decision is contingent upon Foresight obtaining all other applicable permits and approvals as well as executing an interconnection agreement in accordance with Western's Tariff.

This decision is based on the information contained in the Grapevine Canyon Wind Project Final EIS and comments received on the Final EIS. This ROD was prepared pursuant to the requirements of the Council on Environmental Quality Regulations for Implementing NEPA (40 CFR parts 1500–1508) and DOE's Procedures for Implementing NEPA (10 CFR part 1021).

Dated: August 28, 2012.

Anita J. Decker,

Acting Administrator.

[FR Doc. 2012–22316 Filed 9–10–12; 8:45 am]

BILLING CODE 6450–01–P

[2] Western's authority to issue a ROD is pursuant to authority delegated on November 16, 2011, from DOE's Office of the General Counsel.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9726–9]

Ambient Air Monitoring Reference and Equivalent Methods: Designation of a New Equivalent Method

AGENCY: Environmental Protection Agency.

ACTION: Notice of the designation of a new equivalent method for monitoring ambient air quality.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) has designated, in accordance with 40 CFR part 53, a new equivalent method for measuring concentrations of $PM_{2.5}$ in the ambient air.

FOR FURTHER INFORMATION CONTACT: Robert Vanderpool, Human Exposure and Atmospheric Sciences Division (MD–D205–03), National Exposure Research Laboratory, U.S. EPA, Research Triangle Park, North Carolina 27711. Email: *Vanderpool.Robert@epa.gov.*

SUPPLEMENTARY INFORMATION: In accordance with regulations at 40 CFR part 53, the EPA evaluates various methods for monitoring the concentrations of those ambient air pollutants for which EPA has established National Ambient Air Quality Standards (NAAQSs) as set forth in 40 CFR part 50. Monitoring methods that are determined to meet specific requirements for adequacy are designated by the EPA as either reference methods or equivalent methods (as applicable), thereby permitting their use under 40 CFR part 58 by States and other agencies for determining compliance with the NAAQSs.

The EPA hereby announces the designation of a new equivalent method for measuring pollutant concentrations of $PM_{2.5}$ in the ambient air. This designation is made under the provisions of 40 CFR part 53, as

amended on August 31, 2011 (76 FR 54326–54341).

The new equivalent method for $PM_{2.5}$ is an automated monitoring method utilizing a measurement principle based on sample collection by filtration and analysis by beta-ray attenuation. The newly designated equivalent method is identified as follows:

EQPM–0812–203, ''OPSIS SM200-Dust Monitor'' configured for $PM_{2.5}$ with the US EPA PM_{10} inlet specified in 40 CFR part 50 Appendix L, followed by a BGI Inc. Very Sharp Cut Cyclone (VSCC™) particle size separator, operated for a 24-hour continuous sample period at a total actual flow rate of 16.67 L/min. using 47mm PTFE membrane filters, a TS200 temperature stabilizer and software version 1.04.16 or later, in accordance with the OPSIS SM200 Dust Monitor Operation and Instruction Guide.''

The application for equivalent method determination for the $PM_{2.5}$ method was received by the Office of Research and Development on June 21, 2011. This monitor is commercially available from the applicant OPSIS Inc., 150 N. Michigan Ave., Suite 1950, Chicago, IL 60601.

Test monitors representative of this method have been tested in accordance with the applicable test procedures specified in 40 CFR part 53, as amended on August 31, 2011. After reviewing the results of those tests and other information submitted in the application, EPA has determined, in accordance with Part 53, that this method should be designated as an equivalent method. The information in the application will be kept on file, either at EPA's National Exposure Research Laboratory, Research Triangle Park, North Carolina 27711 or in an approved archive storage facility, and will be available for inspection (with advance notice) to the extent consistent with 40 CFR part 2 (EPA's regulations implementing the Freedom of Information Act).

As a designated equivalent method, this method is acceptable for use by states and other air monitoring agencies under the requirements of 40 CFR part 58, Ambient Air Quality Surveillance. For such purposes, the method must be used in strict accordance with the operation or instruction manual associated with the method and subject to any specifications and limitations (e.g., configuration or operational settings) specified in the applicable designated method description (see the identification of the method above).

Use of the method also should be in general accordance with the guidance and recommendations of applicable sections of the ''Quality Assurance Handbook for Air Pollution Measurement Systems, Volume I,'' EPA/600/R–94/038a and ''Quality Assurance Handbook for Air Pollution Measurement Systems, Volume II, Ambient Air Quality Monitoring Program'' EPA–454/B–08–003, December, 2008. Provisions concerning modification of such methods by users are specified under Section 2.8 (Modifications of Methods by Users) of Appendix C to 40 CFR part 58.

Consistent or repeated noncompliance should be reported to: Director, Human Exposure and Atmospheric Sciences Division (MD–E205–01), National Exposure Research Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of this new equivalent method is intended to assist the States in establishing and operating their air quality surveillance systems under 40 CFR part 58. Questions concerning the commercial availability or technical aspects of the method should be directed to the applicant.

Jennifer Orme-Zavaleta,

Director, National Exposure Research Laboratory.

[FR Doc. 2012–22343 Filed 9–10–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2012–0035; FRL–9726–8]

Announcement of Public Meeting on the Consumer Confidence Report (CCR) Rule Retrospective Review and Request for Public Comment on Potential Approaches to Electronic Delivery of the CCR

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of a public meeting and request for public comments.

SUMMARY: The U.S. Environmental Protection Agency (EPA) will be holding a public meeting on October 1, 2012, to listen to stakeholder comments on potential approaches for providing Consumer Confidence Reports (CCR) via electronic delivery. EPA plans to discuss its analysis of electronic delivery and present potential approaches and considerations for stakeholders to evaluate when pursuing electronic delivery of CCRs. EPA invites the public to participate in this listening session. EPA has posted the draft CCR Electronic Delivery Approaches document for public comment on its Web site at *http://water.epa.gov/lawsregs/rulesregs/sdwa/ccr/.* The instructions for registration for the meeting are located in the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: The listening session will be held on October 1, 2012, from 1:00 p.m. to 4:00 p.m., Eastern Standard Time. The 30-day public comment period starts September 11, 2012 and will end on October 11, 2012.

ADDRESSES: The meeting will be held at the EPA's Potomac Yards North (Bldg. 2), 2733 S. Crystal Drive, Arlington, VA 22202, and will be open to the public.

How to Access Information: Meeting materials, including the draft CCR Electronic Delivery Approaches document, will be emailed to registrants or they can be accessed through EPA Docket ID No. EPA–HQ–OW–2012–0035 and EPA's Web site at *http://water.epa.gov/lawsregs/rulesregs/sdwa/ccr/;* background information (including the CCR and Public Notification Rules) is available in this docket. Comments received on the ''Preliminary Plan for Periodic Retrospective Reviews of Existing Regulations'' are available for viewing in EPA's Docket No. EPA–HQ–OA–2011–0154. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Water Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

FOR FURTHER INFORMATION CONTACT: Adrienne Harris, Drinking Water Protection Division, Office of Ground Water and Drinking Water (MC4606M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460 at (202) 250–8793 or *harris.adrienne@epa.gov.*

SUPPLEMENTARY INFORMATION:

Public Meeting Registration

Individuals planning on participating in the public meeting must register for the meeting at *https://www.horsleywitten.com/ccrretroreview.* Registration for this meeting will end on September 26, 2012, or earlier if the meeting room capacity is reached. If there is additional space, on-site registration will be allowed on a first-come, first-served basis.

Meeting Information

The session will begin with a brief presentation by the EPA Office of Ground Water and Drinking Water. Copies of EPA's presentation will be available at the meeting and posted on EPA's Web site following the meeting at *http://water.epa.gov/lawsregs/rulesregs/sdwa/ccr/.* An oral comment session will follow the presentation. Oral comments will be limited to three (3) minutes each, and it is preferred that only one person present the statement on behalf of a group or organization to accommodate as many participants as possible. Registered attendees requesting to make an oral presentation will be placed on the commenting schedule. Time slots are limited and will be filled on a first-come, first-served basis. EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations. A facilitated participant discussion of the potential CCR Electronic Delivery Approaches will follow the oral comment session. You may present oral comments during the meeting and/or submit written comments and supporting information directly to EPA up until the close of the public comment period on October 11, 2012, to provide an opportunity for participants to respond to what they heard at the meeting. Written statements and supporting information submitted during the comment period will be considered in the same manner as any oral comments and supporting information presented at the public meeting. Written comments may be submitted to *ccrretrospectivereview@epa.gov.* If participants are finished before 4:00 p.m., the meeting may come to a close before the scheduled 4:00 p.m. end time. All attendees must go through a metal detector, sign in with the security desk and show government-issued photo identification to enter the building.

Special Accommodations

For information on access or accommodations for individuals with disabilities, please contact Adrienne Harris at (202) 250–8793 or by email at *harris.adrienne@epa.gov.* Please allow at least five business days prior to the meeting to give EPA time to process your request.

Background

Consumer Confidence Reports are a key part of the public right-to-know as established in the 1996 Amendments to the Safe Drinking Water Act (SDWA, section 1414(c)). The Consumer Confidence Report, or CCR, is an annual water quality report that a community water system is required by Federal regulations (63 FR 44512, August 19, 1998) to provide to its customers by July 1 each year. Community Water Systems (CWSs) serving more than 10,000 persons are required to mail or otherwise directly deliver these reports. States may allow CWSs serving fewer than 10,000 persons to provide these reports by other means. The report lists the regulated contaminants found in the drinking water, as well as health effects information related to violations of the drinking water standards. CCRs often allow for informed choices and increases dialogue between water systems and their customers. More information on CCRs can be accessed on EPA's Web site at *http://water.epa.gov/lawsregs/rulesregs/sdwa/ccr/index.cfm.*

In August 2011, EPA finalized its ''Plan for Periodic Retrospective Reviews of Existing Regulations.'' Since 1998, when the CCR rule was finalized, the communication of information and the speed with which information can be shared have greatly expanded, along with a corresponding increase in the diversity of communication tools. EPA included the CCR Rule in its retrospective review plan to explore ways to promote greater transparency and public participation in protecting the nation's drinking water. Through the Agency's CCR retrospective review, EPA is evaluating opportunities to improve the effectiveness of communicating drinking water information to the public, while lowering the burden of CCR requirements for water systems and states. One example suggested by water systems is to allow electronic delivery through email, thereby reducing mailing charges. As EPA evaluates electronic delivery approaches, the Agency will consider impacts on consumer burden, environmental justice and state implementation. By improving communication, customers are better prepared to make informed decisions and the readership of CCRs also may increase.

Dated: September 4, 2012.

Nancy K. Stoner,

Acting Assistant Administrator, Office of Water.

[FR Doc. 2012–22344 Filed 9–10–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2012–0636; FRL–9725–7]

Notice of Opportunity To Comment on a Methodology for Allocating Greenhouse Gas Emissions to a Combined Heat and Power Configuration Under the Renewable Fuels Program, and the Application of this Methodology to a Proposed Plant by Dakota Spirit AgEnergy in Spiritwood, ND

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is evaluating a petition by Dakota Spirit AgEnergy for approval of a fuel pathway for its corn ethanol plant under the Renewable Fuels Standard (RFS) program. The corn ethanol plant would import process steam from a combined heat and power (CHP) system located at an offsite facility. EPA is inviting comment on the application of a certain methodology for allocating greenhouse gas (GHG) emissions for the steam and on the feasibility and appropriateness of using this allocation methodology for other similar CHP configurations under the RFS program.

DATES: Comments must be received on or before October 11, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2012–0636, by one of the following methods:

- *www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov,* Attention Air and Radiation Docket ID EPA–HQ–OAR–2011–0542.
- *Mail:* Air and Radiation Docket, Docket No. EPA–HQ–OAR–2012–0636, Environmental Protection Agency, Mailcode: 6406J, 1200 Pennsylvania Ave. NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20460, Attention Air and Radiation Docket, ID No. EPA–HQ–OAR–2011–0542. 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–HQ–OAR–2012–0636. 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. 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 docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air and Radiation Docket and Information Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Venu Ghanta, Office of Transportation and Air Quality (MC6401A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–1374; fax number: (202) 564–1686; email address: *ghanta.venu@epa.gov*.

SUPPLEMENTARY INFORMATION:

Introduction

As part of changes to the Renewable Fuel Standard (RFS) program adopted in a rule published on March 26, 2010,[1] EPA specified the types of renewable fuels eligible to participate in the RFS program through approved fuel pathways. Table 1 to 40 CFR 80.1426(f) of the RFS regulations lists three critical components of an approved fuel pathway: (1) Fuel type; (2) feedstock; and (3) production process. Each specific combination of the three components, or fuel pathway, is assigned a renewable fuel category for use of the fuel in the RFS program. EPA may also independently approve additional fuel pathways not currently listed in Table 1 for participation in the RFS program, or a third party may petition for EPA to evaluate a new fuel pathway in accordance with § 80.1416.

Pursuant to 40 CFR 80.1416, EPA received a petition from Dakota Spirit AgEnergy (''Dakota'') on October 15, 2011, requesting that EPA evaluate a new fuel pathway's lifecycle GHG reduction and provide a determination of the renewable fuel category for which the new pathway may be eligible. Dakota is proposing to build a dry-mill corn ethanol plant in Spiritwood, North Dakota, with a nameplate production capacity of 65 million gallons of ethanol per year. Dakota's proposed process is unlike those used in pathways modeled for the 2010 RFS rule in that they plan to meet their process steam needs by importing steam from the adjacent Spiritwood Station coal-fired power plant, which would operate in a combined heat and power (CHP) mode.

EPA has not previously considered the treatment of steam from an offsite CHP plant in a lifecycle emissions accounting analysis under the RFS program. EPA is not aware of a previous regulatory context where an allocation approach has been applied to determine the emissions associated with process steam from an offsite facility. This notice describes the methodology EPA is considering to allocate emissions to the imported steam Dakota plans to use for biofuels production, as well as the Agency's rationale for selecting this methodology in the context of the RFS program and for the type of configuration being considered. EPA invites comment on the application of the GHG allocation methodology and on the feasibility and appropriateness of using this allocation methodology for other similar CHP configurations under the RFS program.

[1] 75 FR 14670.

Background on CHP

CHP is an efficient, clean, and reliable approach to generating power and thermal energy from a single fuel source. By installing a CHP system designed to meet the thermal and electrical base loads of a facility, CHP can greatly increase the facility's operational efficiency and decrease energy costs. CHP systems offer considerable environmental benefits when compared with purchased electricity and onsite-generated heat. By capturing and utilizing heat that would otherwise be wasted from the production of electricity, CHP systems require less fuel than equivalent separate heat and power systems to produce the same amount of energy.

In the 2010 RFS rule, EPA evaluated a corn ethanol biorefinery that utilized an onsite CHP system as part of the ethanol production process. The process evaluated a CHP system installed at the biorefinery which generated process steam and electricity for use in the process for producing ethanol. Dakota's proposed approach is different in that they plan to import process steam from the adjacent Spiritwood Station power plant that will operate in CHP mode.

The Spiritwood power plant combusts coal in a circulating fluidized-bed boiler that will generate steam at high temperature and pressure. This high pressure steam will be sent through a high-pressure steam turbine (HPST), where energy will be extracted to produce electricity. The steam will exit the HPST at lower pressure and temperature, at which point some of the steam will be diverted to the Dakota biorefinery plant to provide thermal energy for the ethanol production process. The remaining steam at Spiritwood will be sent through a low-pressure steam turbine (LPST) to produce additional electricity. The extraction steam diverted for use at the ethanol plant will result in a decrease in the amount of power to be generated from the power plant. Therefore, although the amount of electricity generated is reduced, the total fuel consumed and the resulting GHG emissions of the power plant remain unchanged.

To determine the emissions associated with the extracted steam, the total emissions of the Spiritwood power plant need to be allocated to the power plant's power production and to the steam extracted for use at the biorefinery. EPA analyzed the Dakota CHP configuration and reviewed several different allocation methods, including

the GHG Protocol.[2] EPA's review indicated that currently there is no one recommended allocation method for allocating emissions to the energy outputs (electrical and thermal) from a CHP system. EPA's review also indicated that the most appropriate allocation methodology for a CHP system will be dependent on the type of CHP configuration in use, as well as the primary use of the system's electrical and thermal outputs. Based on the plant configuration presented in the Dakota petition, EPA is considering using the ''work potential'' allocation approach to allocate emissions.

Work Potential Allocation Approach

EPA considers the work potential allocation approach to be most appropriate for CHP systems that use heat to primarily produce mechanical work or power, such as the case at the Spiritwood plant where the primary use for the steam is for power generation.[3] The work potential approach allocates emissions based on the useful energy [4] represented by electric power and heat. For the configuration presented in the Dakota petition, the method allocates emissions to the extracted steam based on the amount of electricity that the steam would have produced had the steam not been diverted for use at the biorefinery.

The Spiritwood power plant is designed for the primary function of generating electricity. The total emissions at the Spiritwood plant are constant, whether steam is diverted or not. When steam is diverted to the Dakota biorefinery, the emissions associated with the diverted steam and the resulting loss in electricity production is evaluated via the work potential method. We can determine an emission factor for the power plant when it is just generating electricity and not diverting steam to the Dakota biorefinery (i.e., operating in a ''power only'' mode). The GHG emissions attributed to the extracted steam is determined by estimating the amount of power not generated by the power plant because the steam was diverted from the turbine, and applying the power plant's ''power only'' emissions factor to that value. The emission factor is unchanged since the total emissions at the Spiritwood plant are unchanged and only a small portion of the steam energy generated at the power plant is diverted to the biorefinery. The process for determining the steam GHG emission factor using the work allocation approach is summarized by the following steps:

1. Calculate the GHG emission factor for the Spiritwood power plant without any steam extracted;
2. Determine the amount of electricity that is not generated due to the extraction of steam for the Dakota plant; and
3. Apply the Spiritwood emissions factor to the amount of electricity not generated due to steam extraction and calculate the associated emissions.

This following example illustrates how the work potential method allocates emissions based on useful energy produced. In Dakota's petition, they presented an example where the Spiritwood plant generates 92 MW of electric power in power-only mode, but only produces 82 MW of electric power in CHP mode due to the steam extraction. Thus, the steam extraction displaces about 11% of the total power production. Using the work potential allocation method, the extracted steam is allocated 11% of the total emissions from the Spiritwood plant, whereas the remaining 89% of emissions are allocated to electricity production.

Other Allocation Approaches

EPA reviewed other allocation approaches to assess their appropriateness for allocating emissions for the Dakota petition. The other two most common methods to allocate emissions from a CHP system are:

Efficiency Allocation Method—The efficiency method allocates GHG emissions based on the amount of fuel used to produce each final energy stream. Emissions are allocated based on the efficiencies of thermal energy and electricity production, and the emission allocation will vary based on how the electrical and thermal efficiencies are defined. The actual efficiencies of heat and power production are often not clearly defined for CHP systems, and assumed default values are typically used.

Conversion or Energy Content Method—This method allocates emissions based on the relative amounts of power and thermal energy output. It makes no allowance for the relative value of the outputs or the relative efficiencies of generation and simply allocates emissions based on the relative energy content of each output.

The efficiency and energy content allocation approaches are based on assumptions, either of the efficiencies with which steam and electricity are generated, or on the relative values of energy outputs. As an example, the emission allocation of the efficiency method will vary based on how the electrical and thermal efficiencies are defined. Under these approaches, the emissions allocated to the remaining electricity generation (in terms of lbs/MWh) at the Spiritwood plant in CHP mode would be lower than the original emissions factor for electricity generated by Spiritwood operating in power-only mode, indicating an over-allocation of emissions to the extraction steam.

Since CHP system design and operating characteristics vary so widely, leading organizations in this field have not developed a consensus on one preferred allocation method. The California Air Resources Board issued a technical document as part of its Climate Change Reporting Requirements [5] that reviewed several allocation methods but did not recommend any one allocation method in particular. The Climate Registry (TCR),[6] the former EPA Climate Leaders program, and the GHG Protocol [7] recommend the efficiency method, and that CHP facilities identify actual thermal energy and electricity production efficiencies. In the absence of actual emissions, default efficiencies of 35% for electricity (grid generation efficiency) and 80% for steam (stand alone boiler efficiency) are suggested. Neither the default nor calculated efficiencies appear representative of the Spiritwood operations. However, as stated above, the GHG Protocol [8] also recommends the use of the work potential method if the thermal output of the CHP system is going to be used for mechanical power.

The Western Climate Initiative received various recommendations on the treatment of combined heat and power in its initial draft design guidance for recording greenhouse gas (''GHG'') emissions since it has implications in both the industrial and electricity sectors. The

[2] Jointly convened by the World Business Council for Sustainable Development (WBCSD) and the World Resources Institute (WRI), Allocation of emissions from a Combined Heat and Power Plant, September 2006.

[3] The GHG Protocol recommends the use of this approach if the thermal output of the CHP system is to be used for mechanical power

[4] Useful energy is defined as the ability of heat to perform work.

[5] Cogeneration: Proposed Approach for Mandatory Greenhouse Gas Emissions Reporting. California Air Resources Board: Climate Change Reporting, Handout for ARB's GHG Technical Team Discussions, June 2007.

[6] General Reporting Protocol, Version 1.1, The Climate Registry, May 2008.

[7] Jointly convened by the World Business Council for Sustainable Development (WBCSD) and the World Resources Institute (WRI), Allocation of Emissions from a Combined Heat and Power Plant, September 2006.

[8] Jointly convened by the World Business Council for Sustainable Development (WBCSD) and the World Resources Institute (WRI), Allocation of emissions from a Combined Heat and Power Plant, September 2006.

recommendations varied based on the type of CHP configuration. WCI in its final 2008 recommendation [9] did not advance one allocation method over another, stating ''adequate quantification methods will be established for emissions sources prior to including them in the program''. The British Standards Institute (BSI)'s Publicly Available Specification (PAS) 2050 [10] recommends using an approach based on the unit of useful energy delivered. The specification recommends ''the allocation shall be carried out in proportion to the amount of useful energy delivered in each form, multiplied by the intensity of GHG emissions associated with each unit of useful energy delivered as heat and electricity.'' This methodology acknowledges that each CHP system may have a different ratio of outputs of thermal and electrical energy.

Application of the Work Potential Allocation Methodology to the Dakota Plant

Under the RFS2 program, EPA is considering use of the work potential method for the configuration outlined in the Dakota petition because the primary purpose of the steam generated at Spiritwood power plant before extraction is to produce power. This method allocates the emissions to extracted steam based on the amount of power displaced (i.e., the electricity not generated).

A Memorandum to the Docket explains in more detail how the work potential methodology would be applied to the plant configuration proposed for the Dakota plant, resulting in a specific GHG emission factor per mmbtu of steam energy. This emissions factor would be used in analyzing the total GHG emissions per mmbtu of ethanol produced by the Dakota facility, as part of determining whether the ethanol produced by the facility would qualify under the lifecycle GHG thresholds established in the RFS program. For the configuration outlined in the Dakota petition, EPA's analysis finds that the process steam has an emission factor of 53,175 grams CO2-eq/mmbtu steam.

EPA invites comments on the proposed application of the work potential methodology to determine emissions associated with imported steam to the Dakota plant in the context of lifecycle emissions accounting. Furthermore, EPA invites comment on applying the work potential approach to other plants with similar CHP configurations under the RFS program. EPA also requests information on the appropriateness of applying alternative allocation approaches outlined in this notice to the Dakota plant, as well as any other approaches that could also be used to allocate emissions to steam for this specific CHP configuration under the RFS program.

Dated: August 31, 2012.

Margo Tsirigotis Oge,

Director, Office of Transportation and Air Quality, Office of Air and Radiation.

[FR Doc. 2012–22347 Filed 9–10–12; 8:45 am]

BILLING CODE 6560–50–P

[9] The WCI Partner jurisdictions recognize the importance of combined heat and power (cogeneration) in the program scope and are continuing to evaluate its implications for the program design. Western Climate Initiative, Design Recommendations for the WCI Regional Cap-and-Trade Program. September 23, 2008, Corrected March 13, 2009.

[10] British Standards Institute (BSI), PAS 2050: 2011, Specification for the assessment of the life cycle greenhouse gas emissions of goods and services, Section 8.5, Emissions from energy production using CHP.

FARM CREDIT SYSTEM INSURANCE CORPORATION

Board Meeting

AGENCY: Farm Credit System Insurance Corporation.

ACTION: Regular meeting.

SUMMARY: Notice is hereby given of the regular meeting of the Farm Credit System Insurance Corporation Board (Board).

DATE AND TIME: The meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on September 13, 2012, from 1:00 p.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Dale L. Aultman, Secretary to the Farm Credit System Insurance Corporation Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, Virginia 22102.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available) and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Closed Session

- Confidential Report on Farm Credit System Performance

Open Session

A. Approval of Minutes

- June 14, 2012 (Regular Meeting)

B. Business Reports

- FCSIC Quarterly Financial Reports
- Report on Insured and Other Obligations
- Quarterly Report on Annual Performance Plan

C. New Business

- Annual Performance Plan FY 2013–2014
- Proposed 2013 and 2014 Budgets
- Insurance Fund Progress Review and Setting of Premium Range Guidance for 2013

Dated: September 6, 2012.

Dale L. Aultman,

Secretary, Farm Credit System Insurance Corporation Board.

[FR Doc. 2012–22359 Filed 9–10–12; 8:45 am]

BILLING CODE 6710–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. 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 collection burden on 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 control number. No person shall be

subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before November 13, 2012. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to the Federal Communications Commission via email to *PRA@fcc.gov* and *Cathy.Williams@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0678.

Title: Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Stations and Space Stations.

Form No.: FCC Form 312; Schedule S.

Type of Review: Extension of a currently approved information collection.

Respondents: Business or other for-profit.

Number of Respondents: 1,248 respondents; 1,248 responses.

Estimated Time per Response: 0.25–22 hours per response.

Frequency of Response: On occasion and annual reporting requirements; third-party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 4(i), 7(a), 11, 303(c), 303(f), 303(g) and 303(r) of the Communications Act of 1934, as amended; 47 U.S.C. 154(i), 157(a), 161, 303(c), 303(f), 303(g) and 303(r).

Total Annual Burden: 9,765 hours.

Annual Cost Burden: $22,375,860.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In general, there is no need for confidentiality with this collection of information.

Needs and Uses: This collection will be submitted to the Office of Management and Budget (OMB) as an extension following the 60-day comment period in order to obtain the full three-year clearance from OMB.

The information collection requirements accounted for in this collection are necessary to determine the technical and legal qualifications of applicants or licensees to operate a station, transfer or assign a license, and to determine whether the authorization is in the public interest, convenience and necessity. Without such information, the Commission could not determine whether to permit respondents to provide telecommunications services in the United States. Therefore, the Commission would not be able to fulfill its statutory responsibilities in accordance with the Communications Act of 1934, as amended, and the obligations imposed on parties to the World Trade Organization (WTO) Basic Telecom Agreement.

Federal Communications Commission.

Bulah P. Wheeler,

Associate Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2012–22262 Filed 9–10–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collections Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. 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 collection burden on 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 control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before November 13, 2012. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to the Federal Communications Commission via email to *PRA@fcc.gov* and *Cathy.Williams@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0955.

Title: 2 GHz Mobile Satellite Service Reports, 47 CFR 25.114; 25.115; 25.133; 25.137; 25.143; 25.203 and 25.279.

Form No.: Not Applicable.

Type of Review: Extension of a currently approved information collection.

Respondents: Business or other for-profit.

Number of Respondents: 9 respondents; 81 responses.

Estimated Time per Response: 1–8 hours per response.

Frequency of Response: On occasion and annual reporting requirements; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 4(i), 7(a), 303(c), 303(f), 303(g) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157(a), 303(c), 303(f), 303(g) and 303(r).

Total Annual Burden: 189 hours.

Annual Cost Burden: $36,450.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In general, there is no need for confidentiality with this collection of information.

Needs and Uses: This collection will be submitted to the Office of Management and Budget (OMB) as an extension following the 60-day comment period in order to obtain the full three-year clearance from OMB.

This information collection addresses the licensing and service rules for entities to provide Mobile Satellite Service in the 2 GHz Band, specifically the 1990–2025 MHz and 2165–2200 MHz frequency bands. The information will be used by the Commission staff in carrying out its duties under the Communications Act of 1934, as amended, and to ensure the public

interest, safety and convenience are served. Without such information, the Commission could not determine whether to permit the respondents to provide telecommunications services in the United States and, therefore, fulfill its statutory responsibilities in accordance with the Communications Act of 1934, as amended.

OMB Control No.: 3060–0994.

Title: Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L Band, and the 1.6/2.4 GHz Band.

Form No.: Not Applicable.

Type of Review: Extension of a currently approved information collection.

Respondents: Business or other for-profit.

Number of Respondents: 141 respondents; 141 responses.

Estimated Time per Response: .50–50 hours per response.

Frequency of Response: On occasion, one time and annual reporting requirements, third-party disclosure and recordkeeping requirements.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 4(i), 7, 302, 303(c), 303(e), 303(f) and 303(r) of the Communications Act of 1934, as amended; 47 U.S.C. 154(i), 157, 302, 303(c), 303(e), 303(f) and 303(r).

Total Annual Burden: 685 hours.

Annual Cost Burden: $544,560.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In general, there is no need for confidentiality with this collection of information.

Needs and Uses: This collection will be submitted to the Office of Management and Budget (OMB) as an extension following the 60-day comment period in order to obtain the full three-year clearance from OMB.

The purposes of this information collections are to license commercial satellite services in the United States; obtain the legal and technical information required to facilitate the integration of Ancillary Terrestrial Components (ATCs) into Mobile Satellite Service (MSS) networks in the 2 GHz band, the L-Band and the 1.6/2.4 GHz Bands; and to ensure that the licensees meet the Commission's legal and technical requirements to develop and maintain MSS networks while conserving limited spectrum for other telecommunications services. This information is used by the Commission to license commercial satellite services in the United States. Without the collection of information, the Commission would not have the information necessary to grant entities the authority to operate commercial satellite stations and provide telecommunications services to consumers.

OMB Control No.: 3060–1054.

Title: Application for Renewal of an International Broadcast Station License.

Form No.: Form 422–IB.

Type of Review: Extension of a currently approved information collection.

Respondents: Business or other for-profit.

Number of Respondents: 10 respondents; 50 responses.

Estimated Time per Response: 1–8 hours per response.

Frequency of Response: On occasion reporting requirement; Recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in 47 U.S.C. 154, 303, 334, 336 and 339.

Total Annual Burden: 160 hours.

Annual Cost Burden: $36,000.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In general, there is no need for confidentiality with this collection of information.

Needs and Uses: This collection will be submitted to the Office of Management and Budget (OMB) as an extension following the 60-day comment period in order to obtain the full three-year clearance from OMB.

The Federal Communications Commission (''Commission'') plans to implement and release to the public an ''Application for Renewal of an International Broadcast Station License (FCC Form 422–IB).'' The form has not been implemented yet due to a lack of budget resources and technical staff. After the FCC Form 422–IB has been implemented and the Commission receives final approval from OMB, applicants will complete the FCC Form 422–IB in lieu of the ''Application for Renewal of an International or Experimental Broadcast Station License,'' (FCC Form 311). In the interim, applicants will continue to file the FCC Form 311 with the Commission. (**Note:** The OMB approved the FCC Form 311 under OMB Control No. 3060–1035).

The Commission stated previously that the FCC Form 422–IB will be available to applicants in the International Bureau Filing System (''MyIBFS'') after it is implemented. However, the Commission plans to develop a new Consolidated Licensing System (CLS) within the next five years that will replace MyIBFS. Therefore, the FCC Form 422–IB will be made available to the public in CLS instead of MyIBFS.

The information collected pursuant to the rules set forth in 47 CFR Part 73, Subpart F, is used by the Commission to assign frequencies for use by international broadcast stations, to grant authority to operate such stations and to determine if interference or adverse propagation conditions exist that may impact the operation of such stations. If the Commission did not collect this information, it would not be in a position to effectively coordinate spectrum for international broadcasters or to act for entities in times of frequency interference or adverse propagation conditions. The orderly nature of the provision of international broadcast service would be in jeopardy without the Commission's involvement.

OMB Control No.: 3060–1056.

Title: Application for International Broadcast Station License.

Form No.: FCC Form 421–IB.

Type of Review: Extension of a currently approved information collection.

Respondents: Business or other for-profit.

Number of Respondents: 10 respondents; 10 responses.

Estimated Time per Response: 6 hour per response.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in 47 U.S.C. 154, 303, 334, 336 and 339.

Total Annual Burden: 60 hours.

Annual Cost Burden: $40,500.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In general, there is no need for confidentiality with this collection of information.

Needs and Uses: This collection will be submitted to the Office of Management and Budget (OMB) as an extension following the 60-day comment period in order to obtain the full three-year clearance from OMB.

The Federal Communications Commission (''Commission'') plans to implement and release to the public an ''Application for an International Broadcast Station License'' (FCC Form 421–IB). The FCC Form 421–IB will be used by applicants to request licenses to operate international broadcast stations. The FCC Form 421–IB has not been

implemented yet due to a lack of budget resources and technical staff. After the form has been implemented and the Commission has obtained final approval from the OMB, applicants will file the FCC Form 421–IB with the Commission in lieu of the ''Application for an International, Experimental Television, Experimental Facsimile, or a Developmental Broadcast Station,'' (FCC Form 310).

(**Note:** The Commission received approval from the OMB for the FCC Form 310 under OMB Control No 3060–1035). In the interim, applicants will continue to file the FCC Form 310 with the Commission.

The Commission stated previously that the FCC Form 421–IB will be available to applicants in the International Bureau Filing System (''MyIBFS'') after its development. The Commission plans to develop a new Consolidated Licensing System (CLS) that will replace MyIBFS. Therefore, the FCC Form 421–IB will be made available to the public in CLS instead of MyIBFS.

The information collected is used by the Commission to assign frequencies for use by international broadcast stations, to grant authority to operate such stations and to determine if interference or adverse propagation conditions exist that may impact the operation of such stations. If the Commission did not collect this information, it would not be in a position to effectively coordinate spectrum for international broadcasters or to act for entities in times of frequency interference or adverse propagation conditions. The orderly nature of the provision of international broadcast service would be in jeopardy without the Commission's involvement.

OMB Control No.: 3060–1057.

Title: Application for Authority to Construct or Make Changes in an International Broadcast Station.

Form No.: FCC Form 420–IB.

Type of Review: Extension of a currently approved information collection.

Respondents: Business or other for-profit.

Number of Respondents: 10 respondents; 10 responses.

Estimated Time per Response: 6 hours per response.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in 47 U.S.C. 154, 303, 334, 336 and 339.

Total Annual Burden: 60 hours.

Annual Cost Burden: $46,050.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In general, there is no need for confidentiality with this collection of information.

Needs and Uses: This collection will be submitted to the Office of Management and Budget (OMB) as an extension following the 60-day comment period in order to obtain the full three-year clearance from OMB.

The Federal Communications Commission (''Commission'') received approval from the OMB to develop a new application titled, ''Application for Authority to Construct or Make Changes in an International Broadcast Station (FCC Form 420–IB)'' to request authority from the Commission to construct or make changes in an international broadcast station. This application has not been implemented and released to the public yet due to a lack of budget resources and technical staff. After the FCC Form 420–IB has been implemented and the Commission has obtained final approval from the OMB, it will be completed by international broadcasters in lieu of the ''Application for Authority to Construct or Make Changes in an International, Experimental Television, Experimental Facsimile, or a Developmental Broadcast Station,'' (FCC Form 309). In the interim, applicants will continue to file the FCC Form 309 with the Commission. (Note: The OMB approved the FCC Form 309 under OMB Control No. 3060–1035.

The Commission stated previously that the FCC Form 420–IB will be available to applicants in the International Bureau Filing System (''MyIBFS'') after its development. Within the next five years, the agency will develop a new Consolidated Licensing System that will replace MyIBFS. Therefore, the FCC Form 420–IB will be made available to the public in CLS instead of MyIBFS.

The information collected pursuant to the rules set forth in 47 CFR Part 73, Subpart F, is used by the Commission to assign frequencies for use by international broadcast stations, to grant authority to operate such stations and to determine if interference or adverse propagation conditions exist that may impact the operation of such stations. If the Commission did not collect this information, it would not be in a position to effectively coordinate spectrum for international broadcasters or to act for entities in times of frequency interference or adverse propagation conditions. The orderly nature of the provision of international broadcast service would be in jeopardy without the Commission's involvement.

OMB Control No.: 3060–1059.

Title: Global Mobile Personal Communications by Satellite (GMPCS)/E911 Call Centers.

Form No.: Not Applicable.

Type of Review: Extension of a currently approved information collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 25 respondents; 25 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: Annual reporting requirement and recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in 47 USC 154, 301, 302, 303, 307, 309 and 332.

Total Annual Burden: 25 hours.

Annual Cost Burden: $7,500.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: This collection will be submitted as an extension after this 60 day comment period to Office of Management and Budget (OMB) in order to obtain the full three year clearance from them. The information collection requirements under this OMB control number (3060–1059) are used by the Commission under its authority to license commercial satellite services in the United States pursuant to 47 CFR Part 25. Additionally, the Commission has the authority to ensure that Mobile Satellite Service (MSS) providers establish and maintain Emergency Call Center Service pursuant to 47 CFR 25.284. The recordkeeping and reporting requirements include data on MSS call center usage such as the aggregate number of calls that the call centers receive and the number of calls that required forwarding to a local Public Safety Answering Point (PSAP). The Commission uses this data to monitor compliance with the call center requirement and track usage trends. Such information is useful to the Commission in considering whether FCC rules require modification to accommodate the changing market. Without this collection of information that result from these rules, the Commission would not be able to monitor the MSS carriers' establishment of call centers which are essential to provide emergency services, such as handling emergency 911 telephone calls from American citizens.

OMB Control No.: 3060–1063.

Title: Global Mobile Personal Communications by Satellite (GMPCS) Authorization, Marketing and Importation Rules.

Form No.: Not Applicable.

Type of Review: Extension of a currently approved information collection.

Respondents: Business or other for-profit.

Number of Respondents: 19 respondents; 19 responses.

Estimated Time per Response: 1–24 hours per response.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Mandatory. The Commission has authority for this information collection pursuant to Sections 4(i), 301, 302(a), 303(e), 303(f), 303(g), 303(n) and 303(r) of the Communications Act of 1934, as amended; 47 U.S.C. 4(i), 301, 302(a), 303(e), 303(f), 303(g), 303(n) and 303(r).

Total Annual Burden: 684 hours.

Annual Cost Burden: $11,685.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In general, there is no need for confidentiality with this collection of information.

Needs and Uses: This collection will be submitted to the Office of Management and Budget (OMB) as an extension (no change in requirements) after this 60-day comment period has ended in order to obtain the full three year OMB clearance.

The purpose of this information collection is to maintain OMB approval of a certification requirement for portable GMPCS transceivers to prevent interference, reduce radio-frequency (''RF'') radiation exposure risk, and make regulatory treatment of portable GMPCS transceivers consistent with treatment of similar terrestrial wireless devices, such as cellular phones.

The Commission is requiring that applicants obtain authorization for the equipment by submitting an application and exhibits, including test data. If the Commission did not obtain such information, it would not be able to ascertain whether the equipment meets the FCC's technical standards for operation in the United States. Furthermore, the data is required to ensure that the equipment will not cause catastrophic interference to other telecommunications services that may impact the health and safety of American citizens.

OMB Control No.: 3060–1066.

Title: Renewal of Application for Satellite Space and Earth Station Authorization.

Form No.: FCC Form 312–R.

Type of Review: Extension of a currently approved information collection.

Respondents: Business or other for-profit.

Number of Respondents: 6 respondents; 6 responses.

Estimated Time per Response: 2 hours per response.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The Commission has authority for this information collection under Sections 4(i), 7(a), 303(c), 303(f), 303(g) and 303(r) of the Communications Act of 1934, as amended; 47 U.S.C. 154(i), 157(a), 303(c), 303(f), 303(g) and 303(r).

Total Annual Burden: 12 hours.

Annual Cost Burden: $2,700.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In general, there is no need for confidentiality with this collection of information.

Needs and Uses: This collection will be submitted to the Office of Management and Budget (OMB) as an extension following the 60-day comment period in order to obtain the full three-year clearance from OMB.

The Commission is requesting continued OMB approval of the application titled, ''Renewal of Application for Satellite Space and Earth Station Authorization (FCC Form 312–R). The FCC Form 312–R is used by earth station licensees to request renewals of their applications. Currently, this application is available in MyIBFS. However, the Commission plans to develop a new Consolidated Licensing System (CLS) that will replace MyIBFS. Therefore, the FCC Form 312–R will be made available to the public in CLS instead of MyIBFS.

This collection is used by the Commission staff in carrying out its duties concerning satellite communications as required by Sections 301, 308, 309 and 310 of the Communications Act, 47 U.S.C. 301, 308, 309, 310. This collection is also used by the Commission staff in carrying out its duties under the World Trade Organization (WTO) Basic Telecom Agreement.

The information collection requirements accounted for in this collection are necessary to determine the technical and legal qualifications of applicants or licensees to operate a station, transfer or assign a license, and to determine whether the authorization is in the public interest, convenience and necessity. Without such information, the Commission could not determine whether to permit respondents to provide telecommunication services in the U.S. Therefore, the Commission would be unable to fulfill its statutory responsibilities in accordance with the Communications Act of 1934, as amended, and the obligations imposed on parties to the WTO Basic Telecom Agreement.

OMB Control Number: 3060–1067.

Title: Qualification Questions (FCC Form 312–EZ).

Form No.: FCC Form 312–EZ.

Type of Review: Extension of a currently approved information collection.

Respondents: Business or other for-profit.

Number of Respondents/Responses: 64 respondents; 64 responses.

Estimated Time per Response: 10 hours.

Frequency of Response: One time reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The Commission has authority for this information collection under Sections 4(i), 7(a), 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157(a), 303(c), 303(f), 303(g), and 303(r).

Total Annual Burden: 640 hours.

Annual Cost Burden: $163,680.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In general, there is no need for confidentiality.

Needs and Uses: This collection will be submitted to the Office of Management and Budget (OMB) as an extension (no change in requirements) after this 60-day comment period has ended in order to obtain the full three year OMB clearance.

The Federal Communications Commission (''Commission'') is requesting continued OMB approval of the application,''Qualification Questions'' (FCC Form 312–EZ) used by applicants for C-band and Ku-band earth stations (non-common carrier applicants) that are eligible for the''auto-grant'' procedure. Under the ''autogrant process,'' the International Bureau automatically grants''routine'' earth station applications proposing to use the C-band or Ku-band. By ''routine,'' we mean consistent with all the technical requirements in Part 25 applicable to earth stations.

This collection is used by the Commission staff in carrying out its duties concerning satellite communications as required by Sections

301, 308, 309 and 310 of the Communications Act, 47 U.S.C. 301, 308, 309, 310. This collection is also used by the Commission staff in carrying out its duties under the World Trade Organization (WTO) Basic Telecom Agreement.

The information collection requirements accounted for in this collection are necessary to determine the technical and legal qualifications of applicants or licensees to operate a station, transfer or assign a license, and to determine whether the authorization is in the public interest, convenience and necessity. Without such information, the Commission could not determine whether to permit respondents to provide telecommunication services in the U.S. Therefore, the Commission would be unable to fulfill its statutory responsibilities in accordance with the Communications Act of 1934, as amended, and the obligations imposed on parties to the WTO Basic Telecom Agreement.

OMB Control Number: 3060–1108.

Title: Consummation of Assignments and Transfers of Control of Authorization.

Form No.: Not Applicable.

Type of Review: Extension of a currently approved information collection.

Respondents: Business or other for-profit.

Number of Respondents/Responses: 468 respondents; 468 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The Commission has authority for this information collection pursuant to 47 U.S.C. 154(i) and 47 CFR Sections 1.767, 25.119, 63.24(e)(4), 73.3540 and 73.3541.

Total Annual Burden: 468 hours.

Annual Cost Burden: $140,400.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In general, there is no need for confidentiality.

Needs and Uses: This collection will be submitted to the Office of Management and Budget (OMB) as an extension (no change in requirements) after this 60-day comment period has ended in order to obtain the full three year OMB clearance.

The purpose of this information collection is to request continued OMB approval of a module in the International Bureau Filing System (''MyIBFS'') to facilitate the consummation of Assignments and Transfers of Control of Authorization. A consummation is a party's notification to the Commission that a transaction (assignment or transfer of control of authorization) has been completed. A consummation is applicable to all international telecommunications and satellite services, including International High Frequency (IHF), Section 214 Applications (ITC), Satellite Space Stations (SAT), Submarine Cable Landing Licenses (SCL) and Satellite Earth Station (SES) licenses.

Without this collection of information, the Commission would not have critical information such as a change in a controlling interest in the ownership of the licensee. The Commission would not be able to carry out its duties under the Communications Act and to determine the qualifications of applicants to provide international telecommunications service, including applicants that are affiliated with foreign entities, and to determine whether and under what conditions the authorizations are in the public interest, convenience, and necessity. Furthermore, without this collection of information, the Commission would not be able to maintain effective oversight of U.S. providers of international telecommunications services that are affiliated with, or involved in certain co-marketing or similar arrangements with, foreign entities that have market power.

OMB Control Number: 3060–1133

Title: Application for Permit to Deliver Programs to Foreign Broadcast Stations (FCC Form 308); 47 CFR Section 73.3545 and 73.3580.

Form No.: FCC Form 308.

Type of Review: Extension of a currently approved information collection.

Respondents: Business or other for-profit entities.

Number of Respondents/Responses: 26 respondents; 70 responses.

Estimated Time per Response: 1–2 hours.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Section 325(c) of the Communications Act of 1934, as amended.

Total Annual Burden: 73 hours.

Annual Cost Burden: $26,451.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In general, there is no need for confidentiality with this collection of information.

Needs and Uses: The Federal Communications Commission (''Commission'') is requesting that the Office of Management and Budget (OMB) approve the establishment of a new information collection titled, ''Application for Permit to Deliver Programs to Foreign Broadcast Stations (FCC Form 308).'' Applicants use the FCC Form 308 to apply, under Section 325(c) of the Communications Act of 1934, as amended, for authority to locate, use, or maintain a studio in the United States for the purpose of supplying program material to a foreign radio or TV broadcast station whose signals are consistently received in the United States, or for extension of existing authority.

Currently, the FCC Form 308 is only available to the public in paper form. The Commission is requesting OMB approval of a revised FCC Form 308, in Excel format, that will be made available to the public on the FCC Forms page of the FCC's Web site, *www.fcc.gov.* The form was revised to make it more user friendly and to include questions to obtain only the legal and technical information that is essential to grant authority to U.S. broadcasters to supply program material to a foreign radio or TV broadcast station whose signals are consistently received in the U.S. or to extend the current authority. After the applicant completes the form, it is mailed to the U.S. Bank along with the application fee. Then, it is forwarded to the International Bureau with the exception of fee exempt applications which are filed directly with the FCC Secretary's Office and then forwarded to the Bureau.

Without this collection of information, the Commission would not be able to ascertain whether the main studio owner in the U.S. meets various legal requirements or the foreign broadcast facility, which receives and retransmits programming from the main studio in the U.S., meets various technical requirements that prevent harmful interference to other broadcast stations or telecommunications facilities.

Federal Communications Commission.

Bulah P. Wheeler,

Associate Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2012–22263 Filed 9–10–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection(s) Being Submitted for Review and Approval to the Office of Management and Budget (OMB)

AGENCY: Federal Communications Commission.

ACTION: Notice; request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required b y the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3502–3520), 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 estimates; 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 collection burden on 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 October 11, 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 Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at 202–395–5167 or via Internet at *Nicholas_A._Fraser@omb.eop.gov* <*mailto:Nicholas_A._Fraser@omb.eop.gov*> and 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* <*mailto:PRA@fcc.gov*>.

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, FCC, at 202–418–0214.

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 3060–0979.

Title: License Audit Letter.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households; business or other for-profit entities, not-for-profit institutions and state, local or tribal government.

Number of Respondents: 25,000 respondents; 25,000 responses.

Estimated Time per Response: .50 hours.

Frequency of Response: One time reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. sections 151, 152, 154(i), 155(c), 157, 201, 202, 208, 214, 301, 302a, 303, 307–311, 314, 316, 319, 324, 331, 332, 333, 336, 534 and 535 of the Communications Act of 1934, as amended.

Total Annual Burden: 12,500 hours.

Total Annual Cost: N/A.

Privacy Impact Assessment: Yes.

Nature and Extent of Confidentiality: Respondents may request material or information submitted to the Commission be withheld from public inspection under 47 CFR 0.459 of the Commission's rules.

Information within the Wireless Radio Services is maintained in the Commission's system of records notice (SORN), FCC–WTB–1, ''Wireless Services Licensing Records.'' These licensee records are publicly available and routinely used in accordance with subsection b of the Privacy Act of 1974, 5 U.S.C. 552a(b), as amended. Material that is afforded confidential treatment pursuant to a request being made under 47 CFR 0.459 will not be available for public inspection.

The Commission has in place the following policy and procedures for records retention and disposal:

- Records will be actively maintained as long as the individual remains a licensee.
- Paper records will be archived after being keyed or scanned into the system.
- Electronic records will be backed up on tape.
- Electronic and paper records will be maintained for at least twelve years and three months.

Needs and Uses: The Commission will submit this expiring information collection to the Office of Management and Budget (OMB) for approval for an extension (no change in the reporting requirement). There is no change in the Commission's previous burden estimates.

The Commission's Wireless Telecommunications Bureau (WTB) periodically conducts audits of the construction and/or operational status of various wireless radio stations in its licensing database that are subject to rule-based construction and operational requirements. The Commission's rules for these wireless services require construction within a specified time frame and require a station to remain operational in order for the license to remain valid.

This reporting requirement will be used by FCC staff to assure that licensee stations are constructed and currently operating in accordance with the parameters of the current FCC authorization and rules.

Federal Communications Commission.

Bulah P. Wheeler,

Deputy Manager, Office of the Secretary, Office of Managing Director.

[FR Doc. 2012–22264 Filed 9–10–12; 8:45 am]

BILLING CODE 6712–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control NO. 3090–0287; Docket 2012–0001; Sequence 7]

Office of Facilities Management and Program Services; Submission for OMB Review; Background Investigations for Child Care Workers

AGENCY: Office of Facilities Management and Program Services, Public Building Service (PBS), U.S. General Services Administration (GSA).

ACTION: Notice of request for comments regarding an existing OMB information collection.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve a previously approved information collection requirement regarding the collection of personal data for background investigations for child care workers accessing GSA owned and leased controlled facilities. A notice was published in the **Federal Register** at 77 FR 31017, on May 24, 2012. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate,

and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: October 11, 2012.

FOR FURTHER INFORMATION CONTACT: Mr. Reginald Johnson, Program Analyst, Building Security and Policy Division, GSA, by telephone at (202) 208–7909 or email at *Reginald.johnson@gsa.gov.*

ADDRESSES: Submit comments identified by Information Collection 3090–0287, Background Investigations for Child Care Workers by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 3090–0287, Background Investigations for Child Care Workers''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 3090–0287, Background Investigations for Child Care Workers'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. ATTN: Hada Flowers/IC 3090–0287, Background Investigations for Child Care Workers.

Instructions: Please submit comments only and cite Information Collection 3090–0287, Background Investigations for Child Care Workers, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

SUPPLEMENTARY INFORMATION:

A. Purpose

Homeland Security Presidential Directive (HSPD) 12 ''Policy for a Common Identification Standard for Federal Employees and Contractors'' requires the implementation of a governmentwide standard for secure and reliable forms of identification for Federal employees and contractors. OMB's implementing instructions requires all contract employees requiring routine access to federally controlled facilities for greater than six (6) months to receive a background investigation. The minimum background investigation is the National Agency Check with Written Inquiries or NACI.

However, there is no requirement in the law or HSPD–12 that requires child care employees to be subject to the NACI since employees of child care providers are neither government employees nor government contractors. Instead, the child care providers are required to complete the criminal history background checks mandated in the Crime Control Act of 1990, Public Law 101–647, dated November 29, 1990, as amended by Public Law 102–190, dated December 5, 1991. These statutes require that each employee of a child care center located in a Federal building or in leased space must undergo a background check.

According to GSA policy, child care workers (as described above) will need to submit the following:

1. An original signed copy of a *Basic National Agency Check Criminal History,* GSA Form 176; and

2. Two sets of fingerprints on FBI Fingerprint Cards, for FD–258.

This is not a request to collect new information, this is a request to change the form that is currently being used to collect this information. The new GSA forms will be less of a public burden. This information is presently being collected on either the old Federal Protective Service 176 Form or the SF85P.

Please Note: The original request to review and approve the new information collection requirement regarding the collection of personal data for background check investigations was for both temporary contractors and child care workers accessing GSA owned and leased controlled facilities. However, through discussions with OMB a more streamlined will be developed for conducting background checks on temporary contractors. GSA is therefore pulling the request for review and approval of the collection of personal data for background check investigations of temporary contractors, form GSA 176T, presented in the **Federal Register** publication of February 17, 2009, 74 FR 7439. GSA is proceeding with the request for review and approval for background check investigations of child care workers, form GSA 176C—to be referred to as form GSA 176, HSPD–12, Background Check Investigations for Child Care Workers.

B. Annual Reporting Burden

Respondents: 3,060.
Responses per Respondent: 1.
Hours per Response: 1.
Total Burden Hours: 3,060.

Obtaining copies of proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417, telephone (202) 501–4755. Please cite Background Investigations for Child Care Workers, in all correspondence.

Dated: August 28, 2012.

Casey Coleman,

Chief Information Officer.

[FR Doc. 2012–22306 Filed 9–10–12; 8:45 am]

BILLING CODE 6820–23–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Tribal Consultation Meeting; Correction

AGENCY: Office of Head Start (OHS), ACF, HHS.

ACTION: Notice of meeting; correction.

SUMMARY: The Office of Head Start published a document in the **Federal Register** of Monday, August 13, 2012 concerning a Notice of two one-day Tribal Consultation Meetings to be held between the Department of Health and Human Services, Administration for Children and Families', Office of Head Start leadership and the leadership of Tribal Governments operating Head Start and Early Head Start programs in Region X on October 15, 2012 and October 17, 2012. This document contained incorrect supplementary information.

FOR FURTHER INFORMATION CONTACT: Ann Linehan, Deputy Director, Office of Head Start, email *Ann.Linehan@acf.hhs.gov* or phone (202) 205–8579. Additional information and online meeting registration is available at *http://www.headstartresourcecenter.org.*

Correction

In the **Federal Register** on August 13, 2012, in FR Doc. No: 2012–19587, on page 48159, in the third paragraph, first sentence under ''Supplementary Information,'' change ''the Oklahoma City Consultation Session'' to ''these Consultation Sessions'' and in the same paragraph, second sentence change ''the session'' to ''each session.'' (Corrected full paragraph below.)

SUPPLEMENTARY INFORMATION: Tribal leaders and designated representatives interested in submitting written testimony or proposing specific agenda topics for these Consultation Sessions should contact Ann Linehan at *Ann.Linehan@acf.hhs.gov.* Proposals must be submitted at least three days in advance

of each session and should include a brief description of the topic area, along with the name and contact information of the suggested presenter.

Dated: September 4, 2012.

Yvette Sanchez Fuentes,

Director, Office of Head Start.

[FR Doc. 2012–22351 Filed 9–10–12; 8:45 am]

BILLING CODE 4184–40–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0001]

Anti-Infective Drugs Advisory Committee; 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: Anti-Infective Drugs Advisory Committee.

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 November 2, 2012, from 8 a.m. to 5 p.m.

Location: DoubleTree by Hilton Hotel Washington DC-Silver Spring, The Ballroom, 8727 Colesville Rd., Silver Spring, MD. The hotel's phone number is 301–589–5200.

Contact Person: Philip Bautista, 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: *AIDAC@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: The committee will discuss biologics license application (BLA) 125346, raxibacumab injection, a humanized monoclonal antibody against protective antigen of *Bacillis anthracis,* by Human Genome Sciences, Inc., for the proposed indication of treatment of inhalational anthrax.

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 meeting 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 October 19, 2012. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. 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 October 11, 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 October 12, 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 Philip Bautista 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: September 5, 2012.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2012–22208 Filed 9–10–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0001]

Science Board to the Food and Drug Administration: Request for Nominations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations to serve on the Science Board to FDA (Science Board).

FDA seeks to include the views of women and men, members of all racial and ethnic groups, and individuals with and without disabilities on its advisory committees and, therefore, encourages nominations of appropriately qualified candidates from these groups.

DATES: Nominations received on or before October 11, 2012 will be given first consideration for membership on the Science Board. Nominations received after October 11, 2012 will be considered for nomination to the Board should nominees still be needed.

ADDRESSES: All nominations for membership should be sent electronically to *CV@FDA.HHS.GOV* or by mail to Advisory Committee Oversight and Management Staff, 10903 New Hampshire Ave., Bldg. 32, rm. 5103, Silver Spring, MD 20993–0002.

FOR FURTHER INFORMATION CONTACT: Regarding all nomination questions for membership, the primary contact is Martha Monser, Office of the Chief Scientist, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 4286, Silver Spring, MD 20993–0002, 301–796–4627, email: *martha.monser@fda.hhs.gov*.

Information about becoming a member on an FDA advisory committee can also be obtained by visiting FDA's Web site by using the following link *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/CommitteeMembership/default.htm.*

SUPPLEMENTARY INFORMATION: FDA is requesting nominations to the Science Board. The Science Board will meet approximately three times a year. Meetings of the Science Board will be open to the public. All meetings will be announced in the **Federal Register** at least 15 days prior to each public meeting.

I. General Function of the Committee

The Science Board shall provide advice primarily to the Commissioner and other appropriate officials on specific complex scientific and technical issues important to FDA and its mission, including emerging issues within the scientific community. Additionally, the Science Board will provide advice that supports the Agency in keeping pace with technical and scientific developments, including in regulatory science and input into the Agency's research agenda and on upgrading its scientific and research facilities and training opportunities. It will also provide, where requested, expert review of Agency sponsored intramural and extramural scientific research programs.

II. Desired Expertise

FDA is specifically considering persons knowledgeable in the fields of food science, safety, and nutrition; chemistry; pharmacology; translational and clinical medicine and research; toxicology; biostatistics; medical devices; imaging; robotics; cell and tissue based products; regenerative medicine; public health and epidemiology; international health and regulation; product safety; product manufacturing sciences and quality; and other scientific areas relevant to FDA-regulated products such as systems biology, informatics, nanotechnology, and combination products. Members shall be chosen from academia and industry. The Science Board may also include technically qualified federal members.

III. Nomination Procedures

Any interested person may nominate one or more qualified person(s) for membership on the Science Board. Self nominations are also accepted. Nominations shall include the name of the committee, complete curriculum vitae of each nominee, and their current business address and/or home address, telephone number, and email address, if available. Nominations must also acknowledge that the nominee is aware of the nomination unless self-nominated. FDA will ask the potential candidates to provide detailed information concerning such matters related to financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflict of interest.

This notice is issued under the Federal Advisory Act (5 U.S.C. app. 2) and 21 CFR part 14 relating to advisory committees.

Dated: Sept. 5, 2012.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2012–22210 Filed 9–10–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed belowin advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group; Kidney, Urologic and Hematologic Diseases D Subcommittee.

Date: October 23–25, 2012

Open: October 23, 2012, 4 p.m. to 4:30 p.m.

Agenda; To discuss committee activities.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Closed: October 23, 2012, 4:30 p.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Closed: October 24, 2012, 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Closed: October 25, 2012, 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Barbara A. Woynarowska, Ph.D., Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 754, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 402–7172, *woynarowskab@niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group; Diabetes, Endocrinology and Metabolic Diseases B Subcommittee.

Date: October 24–26, 2012.

Open: October 24, 2012, 5 p.m. to 5:30 p.m.

Agenda: To discuss committee activities.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Closed: October 24, 2012, 5:30 p.m. to 9 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Closed: October 25, 2012, 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Closed: October 26, 2012, 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: John F. Connaughton, Chief, Chartered Committees Section, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7797, *connaughtonj@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group; Digestive Diseases and Nutrition C Subcommittee.

Date: October 24–26, 2012.

Open: October 24, 2012, 6 p.m. to 6:30 p.m.

Agenda: To discuss committee activities.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Closed: October 24, 2012, 6:30 p.m. to 10 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Closed: October 25, 2012, 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Closed: October 26, 2012, 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Robert Wellner, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 706, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, *rw175w@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: September 4, 2012.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–22282 Filed 9–10–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Biology of Neurodegeneration.

Date: October 4, 2012.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave. NW., Washington, DC 20037.

Contact Person: Carol Hamelink, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7850, Bethesda, MD 20892, (301) 213–9887, *hamelinc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR11–038: Biomarkers in Models of Intellectual and Developmental Disabilities.

Date: October 4, 2012.

Time: 5 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Arlington Capital View, 2850 South Potomac Avenue, Arlington, VA 22202.

Contact Person: Joanne T Fujii, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7850, Bethesda, MD 20892, (301) 435–1178, *fujiij@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Developmental and degenerative pathways in CNS.

Date: October 5, 2012.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Suzan Nadi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217B, MSC 7846, Bethesda, MD 20892, 301–435–1259, *nadis@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Psychiatric and Physiological Domains in Mental Diseases.

Date: October 11–12, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Boris P Sokolov, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217A, MSC 7846, Bethesda, MD 20892, 301–408–9115, *bsokolov@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Clinical Research and Field Studies of Infectious Diseases Study Section.

Date: October 11, 2012.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Embassy Suites DC Convention Center, 900 10th Street NW., Washington, DC 20001.

Contact Person: Soheyla Saadi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3211, MSC 7808, Bethesda, MD 20892, 301–435–0903, *saadisoh@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Neural Basis of Psychopathology, Addictions and Sleep Disorders Study Section.

Date: October 11–12, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Boris P Sokolov, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217A, MSC 7846, Bethesda, MD 20892, 301–408–9115, *bsokolov@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Adult Psychopathology and Disorders of Aging Study Section.

Date: October 11–12, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street NW., Washington, DC 20036.

Contact Person: Serena Chu, Ph.D., Scientific Review Officer, BBBP IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, 301–500–5829, *sechu@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Biobehavioral Regulation, Learning and Ethology Study Section.

Date: October 11–12, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Monaco Alexandria, 480 King Street, Alexandria, VA 22314.

Contact Person: Melissa Gerald, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892, (301) 408–9107, *geraldmel@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Drug Discovery for Aging, Neuropsychiatric and Neurologic Disorders.

Date: October 11–12, 2012.

Time: 8 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Mazarin, New Orleans, 730 Bienville Street, New Orleans, LA 70130.

Contact Person: Yuan Luo, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5207 MSC 7846, Bethesda, MD 20892–7846, 301–827–7915.

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Clinical and Integrative Diabetes and Obesity Study Section.

Date: October 11, 2012.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Avenue Hotel Chicago, 160 E. Huron Street, Chicago, IL 60611.

Contact Person: Nancy Sheard, SCD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6046–E, MSC 7892, Bethesda, MD 20892, 301–408–9901, *sheardn@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Virology—A Study Section.

Date: October 11–12, 2012.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Person: Joanna M Pyper, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3198, MSC 7808, Bethesda, MD 20892, (301) 435–1151, *pyperj@csr.nih.gov.*

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Neurological, Aging and Musculoskeletal Epidemiology Study Section.

Date: October 11, 2012.

Time: 8:30 a.m. to 7:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave. NW., Washington, DC 20037.

Contact Person: Heidi B Friedman, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1012A, MSC 7770, Bethesda, MD 20892, 301–435–1721, *hfriedman@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Drug Discovery and Mechanisms of Antimicrobial Resistance Study Section.

Date: October 11–12, 2012.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Guangyong Ji, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, MSC 7808, Bethesda, MD 20892, 301–435–1146, *jig@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Drug Abuse.

Date: October 11, 2012.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Spring Hill Suites New Orleans Downtown, 301 St. Joseph Street, New Orleans, LA 70130.

Contact Person: Christine L Melchior, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, (301) 435–1713, *melchioc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Pathophysiology and Clinical Studies of Osteonecrosis of the Jaw.

Date: October 11, 2012.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Yi-Hsin Liu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, 301–435–1781, *liuyh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Biobehavioral Regulation, Learning and Ethology Academic Research Enhancement Award AREA Review.

Date: October 12, 2012.

Time: 10 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Monaco Alexandria, 480 King Street, Alexandria, VA 22314.

Contact Person: Melissa Gerald, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892, (301) 408–9107, *geraldmel@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR11–304: Development of Appropriate Pediatric Formulations and Drug Delivery.

Date: October 12, 2012.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Mazarin, New Orleans, 730 Bienville Street, New Orleans, LA 70130.

Contact Person: Yuan Luo, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5207 MSC 7846, Bethesda, MD 20892–7846, 301–827–7915.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR09–259: Optimization of Small Molecule Probes For the Nervous System.

Date: October 12, 2012.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Mazarin, New Orleans, 730 Bienville Street, New Orleans, LA 70130.

Contact Person: Yuan Luo, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5207 MSC 7846, Bethesda, MD 20892–7846, 301–827–7915.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR12–077: NINDS Competing Renewal Awards of SBIR Phase II.

Date: October 12, 2012.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Mazarin, New Orleans, 730 Bienville Street, New Orleans, LA 70130.

Contact Person: Yuan Luo, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5207 MSC 7846, Bethesda, MD 20892–7846, 301–827–7915.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 5, 2012.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–22284 Filed 9–10–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Cancer Institute Clinical Trials and Translational Research Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Cancer Institute Clinical Trials and Translational Research Advisory Committee; Ad hoc Clinical Trials and Strategic Planning Subcommittee.

Date: September 24, 2012.

Time: 5 p.m. to 6 p.m.

Agenda: Update on the NCI National Clinical Trials Network (NCTN) Working Group of the Ad hoc Clinical Trials Strategic Planning Subcommittee. Dial in number: 1–866–652–9542 and Passcode: 4596704.

Place: National Institutes of Health, 6120 Executive Blvd., Suite 300, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Sheila A. Prindiville, MD, MPH, Director, Coordinating Center for Clinical Trials, Office of the Director, National Cancer Institute, National Institutes of Health, 6120 Executive Blvd., 3rd Floor Suite, Bethesda, MD 20892, 301–451–5048, *prindivs@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to scheduling conflicts.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/ctac/ctac.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention

Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 5, 2012.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–22286 Filed 9–10–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors, NIA.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed belowin advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute on Aging, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIA.

Date: October 23–24, 2012.

Closed: October 23, 2012, 8 a.m. to 8:30 a.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, 3rd Floor Conference Room, Baltimore, MD 21224.

Open: October 23, 2012, 8:30 a.m. to 9:30 a.m.

Agenda: Committee discussion, individual presentations, laboratory overview.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, 3rd Floor Conference Room, Baltimore, MD 21224.

Closed: October 23, 2012, 9:30 a.m. to 10:05 a.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, 3rd Floor Conference Room, Baltimore, MD 21224.

Open: October 23, 2012, 10:05 a.m. to 11:35 a.m.

Agenda: Committee discussion, individual presentations, laboratory overview.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, 3rd Floor Conference Room, Baltimore, MD 21224.

Closed: October 23, 2012, 11:35 a.m. to 12:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute on Aging Biomedical Research Center, 251 Bayview Boulevard, 3rd Floor Conference Room, Baltimore, MD 21224.

Open: October 23, 2012, 12:30 p.m. to 4:30 p.m.

Agenda: Committee discussion, individual presentations, laboratory overview.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, 3rd Floor Conference Room, Baltimore, MD 21224.

Closed: October 23, 2012, 4:30 p.m. to 6:20 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, 3rd Floor Conference Room, Baltimore, MD 21224.

Closed: October 24, 2012, 8 a.m. to 8:30 a.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, 3rd Floor Conference Room, Baltimore, MD 21224.

Open: October 24, 2012, 8:30 a.m. to 10:00 a.m.

Agenda: Committee discussion, individual presentations, laboratory overview.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, 3rd Floor Conference Room, Baltimore, MD 21224.

Closed: October 24, 2012, 10 a.m. to 10:10 a.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, 3rd Floor Conference Room, Baltimore, MD 21224.

Open: October 24, 2012, 10:10 a.m. to 11:10 a.m.

Agenda: Committee discussion, individual presentations, laboratory overview.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, 3rd Floor Conference Room, Baltimore, MD 21224.

Closed: October 24, 2012, 11:10 a.m. to 12:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, 3rd Floor Conference Room, Baltimore, MD 21224.

Open: October 24, 2012, 12:30 p.m. to 3:30 p.m.

Agenda: Committee discussion, individual presentations, laboratory overview.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, 3rd Floor Conference Room, Baltimore, MD 21224.

Closed: October 24, 2012, 3:30 p.m. to 5:15 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, 3rd Floor Conference Room, Baltimore, MD 21224.

Contact Person: Luigi Ferrucci, Ph.D., MD, Scientific Director, National Institute on Aging, 251 Bayview Boulevard, Suite 100, Room 4C225, Baltimore, MD 21224, 410–558–8110 *LF27Z@NIH.GOV.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: September 4, 2012.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–22291 Filed 9–10–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute ;Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Program Project Meeting Panel I.

Date: October 1–2, 2012.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Majed M. Hamawy, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 8135, Bethesda, MD 20892, 301–594–5659, *mh101v@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; a Data Resource for Analyzing Blood and Marrow Transplants.

Date: October 10, 2012.

Time: 11:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6116 Executive Boulevard, Room 406, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Viatcheslav A Soldatenkov, MD, Ph.D., Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities National Cancer Institute, 6116 Executive Blvd. Room 8057, Bethesda, MD 20892–8329, 301–451–4758, *soldatenkovv@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Small Grants Program for Cancer Epidemiology (R03).

Date: October 16–17, 2012.

Time: 4 p.m. to 5 p.m.

Agenda: Place: To review and evaluate grant applications.

Place: Embassy Suites Alexandria, 1900 Diagonal Road, Alexandria, VA 22314.

Contact Person: Marvin L. Salin, Ph.D., Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 7073, Bethesda, MD 20892–8329, 301–496–0694, *msalin@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Strategic Partnering to Evaluate Cancer Signatures (SPECS II).

Date: October 24–25, 2012.

Time: 10 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6116 Executive Boulevard, Room 507, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Marvin L. Salin, Ph.D., Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 7073, Bethesda, MD 20892–8329, 301–496–0694 *msalin@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Developmental Therapeutics/Omnibus.

Date: October 25–26, 2012.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Holiday Inn Express, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Joyce C. Pegues, Ph.D., Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, NIH National Cancer Institute, 6116 Executive Boulevard, Room 7149, Bethesda, MD 20892–8329, 301–594–1286, *peguesj@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Cancer Detection.

Date: October 29–30, 2012.

Time: 4 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Viatcheslav A Soldatenkov, MD, Ph.D., Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd. Room 8057, Bethesda, MD 20892–8329, 301–451–4758, *soldatenkovv@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/sep/sep.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 5, 2012 .

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–22287 Filed 9–10–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a stakeholder forum hosted by the NIH Scientific Management Review Board (SMRB). In Fall 2011, the SMRB was asked by NIH to recommend strategies for how NIH can optimize its utilization of its Small Business Innovation Research/Small Business Technology Transfer (SBIR/STTR) programs in keeping with the NIH mission. This meeting will be part of a series of sessions aimed at soliciting input from experts and stakeholders of the SBIR/STTR programs at NIH.

The NIH Reform Act of 2006 (Pub. L. 109–482) provides organizational authorities to HHS and NIH officials to: (1) Establish or abolish national research institutes; (2) reorganize the offices within the Office of the Director, NIH including adding, removing, or transferring the functions of such offices or establishing or terminating such offices; and (3) reorganize, divisions, centers, or other administrative units within an NIH national research institute or national center including adding, removing, or transferring the functions of such units, or establishing or terminating such units. The purpose of the Scientific Management Review Board (also referred to as SMRB or Board) is to advise appropriate HHS and NIH officials on the use of these organizational authorities and identify the reasons underlying the recommendations.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Scientific Management Review Board

Date: October 3, 2012.

Time: 08:30 a.m. to 5 p.m.

Agenda: Presentation and discussion will focus on the deliberations of the BIR/STTR Working Group and soliciting input during this stakeholder consultation. Presentation and discussion will include, but is not limited to, representatives from the small business community and investors in biomedical research with interest in the SBIR/STTR programs. Time will be allotted on the agenda for public comment. Sign up for public comments will begin approximately at 8 a.m. on October 3, 2012 and will be restricted to one sign-in per person. In the event that time does not allow for all those interested to present oral comments, any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person. Members of the public viewing the meeting via webcast (see *http://smrb.od.nih.gov*) can submit comments during the public comment periods by submitting comments to *smrb@mail.nih.gov.* Only comments submitted to this address will be read. It is not unusual for the meeting to run ahead or behind schedule due to changes in the time needed for discussion. It is advisable to monitor the webcast to determine when public comments will be read. Each public comment period follows a specific discussion item. Comments related to the discussion will be read at that time. General comments unrelated to a specific agenda item will be read at the end of the meeting, time permitting. Comments submitted by email through

smrb@mail.nih.gov will follow comments by individuals attending the meeting. Comments will be read in the order received and your name and affiliation will be read with the comments. Please note, time may not permit for every comment received to be read in the time allotted for public comment. Comments not read will become part of the public record.

Place: National Institutes of Health, Building 31, C-Wing, 6th Floor, Conference Room 10, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Lyric Jorgenson, Ph.D., Office of Science Policy, Office of the Director, NIH, National Institutes of Health, 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892, *smrb@mail.nih.gov,* (301) 496–6837.

The meeting will also be webcast. The draft meeting agenda and other information about the SMRB, including information about access to the webcast, will be available at *http://smrb.od.nih.gov.*

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxis, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: September 5, 2012.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–22278 Filed 9–10–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Neurobiology of Brain Disease.

Date: October 3, 2012.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Boris P Sokolov, Ph.D.,, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217A, MSC 7846, Bethesda, MD 20892, 301–408–9115, *bsokolov@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Retinopathy and Diabetic Eyes.

Date: October 3, 2012.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: James P Harwood, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7840, Bethesda, MD 20892, 301–435–1256, *harwoodj@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences, Integrated Review Group; Integrative Nutrition and Metabolic Processes Study Section.

Date: October 4, 2012.

Time: 7:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Delfina Santa Monica Hotel, 530 West Pico Boulevard, Santa Monica, CA 90405.

Contact Person: Dianne Camp, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, Bethesda, MD 20892, 301–435–1044, *campdm@mail.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Oral, Dental and Craniofacial Sciences Study Section.

Date: October 10–11, 2012.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW, Washington, DC 20015.

Contact Person: Yi-Hsin Liu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, 301–435–1781, *liuyh@csr.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group; Development—1 Study Section.

Date: October 10, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Fisherman's Wharf, 2620 Jones Street, San Francisco, CA 94133.

Contact Person: Jonathan Arias, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7840, Bethesda, MD 20892, 301–435–2406, *ariasj@csr.nih.gov.*

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group; Xenobiotic and Nutrient Disposition and Action Study Section.

Date: October 10, 2012.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Patricia Greenwel, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2172, MSC 7818, Bethesda, MD 20892, 301–435–1169, *greenwep@csr.nih.gov.*

Name of Committee: Oncology 1-Basic Translational Integrated Review Group; Tumor Cell Biology Study Section.

Date: October 10–11, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Kabuki, 1625 Post Street, San Francisco, CA 94115.

Contact Person: Charles Morrow, Ph.D., M.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6202, MSC 7804, Bethesda, MD 20892, 301–451–4467, *morrowcs@csr.nih.gov.*

Name of Committee: Interdisciplinary Molecular Sciences and Training Integrated Review Group; Enabling Bioanalytical and Imaging Technologies Study Section.

Date: October 10–11, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Gunter Hotel, 205 E. Houston Street, San Antonio, TX 78205.

Contact Person: Vonda K Smith, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7801, Bethesda, MD 20892, 301–435–1789, *smithvo@csr.nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group; Instrumentation and Systems Development Study Section.

Date: October 10–11, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Suites Old Town Alexandria, 801 North Saint Asaph Street, Alexandria, VA 22314.

Contact Person: Kathryn Kalasinsky, Ph.D., Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158 MSC 7806, Bethesda, MD 20892, 301–402–1074, *kalasinskyks@mail.nih.gov.*

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Epidemiology of Cancer Study Section.

Date: October 10–11, 2012.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Avenue NW, Washington, DC 20037.

Contact Person: Denise Wiesch, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3150, MSC 7770, Bethesda, MD 20892, (301) 435–0684, *wieschd@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Vector Biology Study Section.

Date: October 10, 2012.

Time: 8:30 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Avenue NW, Washington, DC 20009.

Contact Person: Liangbiao Zheng, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3214, MSC 7808, Bethesda, MD 20892, 301–402–5671, *zhengli@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 4, 2012.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–22292 Filed 9–10–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended, for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Eye Institute, including consideration of personnel qualifications and performances, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Eye Institute

Date: September 30–October 2, 2012

Time: 5:30 p.m. to 5 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Sheldon S. Miller, Ph.D., Scientific Director, National Institutes of Health, National Eye Institute, Bethesda, MD 20892, (301) 451–6763.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *www.nei.nih.gov*, where an agenda and any additional information will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: September 5, 2012.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–22289 Filed 9–10–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the National Advisory Eye Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Eye Council.

Date: October 4, 2012.

Open: 8:30 a.m. to 2 p.m.

Agenda: Following opening remarks by the Director, NEI, there will be presentations by the staff of the Institute and discussions concerning Institute programs.

Place: National Institutes of Health, 5635 Fishers Lane, Terrace Level Conference Center, Bethesda, MD 20892.

Closed: 2 p.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Terrace Level Conference Center, Bethesda, MD 20892.

Contact Person: Lore Anne McNicol, Ph.D., Director, Division of Extramural Research, National Eye Institute, National Institutes of Health, 301–451–2020, *lam@nei.nih.gov.*

Any person interested may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *www.nei.nih.gov,* where an agenda and any additional information will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: September 5, 2012.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–22288 Filed 9–10–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material,

and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Neurogenesis and Cell Fate Study Section.

Date: October 4, 2012.

Time: 8 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott-Residence Inn Arlington Capital View, 2850 South Potomac Avenue, Arlington, VA 22202.

Contact Person: Joanne T Fujii, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7850, Bethesda, MD 20892, (301) 435–1178, *fujiij@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Synapses, Cytoskeleton and Trafficking Study Section.

Date: October 4–5, 2012.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Lorien Hotel & Spa, 1600 King Street, Alexandria, VA 22314.

Contact Person: Jonathan K Ivins, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4186, MSC 7850, Bethesda, MD 20892, (301) 594–1245, *ivinsj@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Cellular and Molecular Biology of Neurodegeneration Study Section.

Date: October 4–5, 2012.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: Laurent Taupenot, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4183, MSC 7850, Bethesda, MD 20892, 301–435–1203, *taupenol@csr.nih.gov.*

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Infectious Diseases, Reproductive Health, Asthma and Pulmonary Conditions Study Section.

Date: October 4–5, 2012.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Alexandra Old Town (Marriott), 1456 Duke Street, Alexandria, VA 22314.

Contact Person: Lisa Steele, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, MSC 7770, Bethesda, MD 20892, 301–594–6594, *steeleln@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 5, 2012.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–22285 Filed 9–10–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK DEM Fellowships Review.

Date: October 4–5, 2012.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Avenue NW., Washington, DC 20037.

Contact Person: Carol J. Goter-Robinson, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 748, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7791, *goterrobinsonc@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Childhood Obesity Prevention.

Date: October 10, 2012.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Lakshmanan Sankaran, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 755, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7799, *ls38z@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: September 4, 2012 .

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–22283 Filed 9–10–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Council for Human Genome Research, September 10, 2012, 8:30 a.m. to September 11, 2012, 5 p.m., National Institutes of Health, 5635 Fishers Lane, Terrace Level Conference Room, Rockville, MD, 20892 which was published in the **Federal Register** on January 19, 2012, 77 FR 2735.

The agenda has changed for September 10. Closed session 8 a.m. to 9:45 a.m., Open session 10 a.m. to 4 p.m., and Closed session 3 p.m. to 6 p.m. The meeting is partially Closed to the public.

Dated: September 4, 2012.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–22281 Filed 9–10–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; K23, K24, K25 Research Career Development Awards.

Date: October 3–4, 2012.

Time: 8:30 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Contact Person: Stephanie J Webb, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7196, Bethesda, MD 20892, 301–435–0291, *stephanie.webb@nih.gov*.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; MRI High Intensity Focused Ultrasound Catheter.

Date: October 4, 2012.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Susan Wohler Sunnarborg, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National, Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7185, Bethesda, MD 20892, *sunnarborgsw@nhlbi.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: September 5, 2012.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–22277 Filed 9–10–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute: Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute, Initial Review Group; Subcommittee I—Transition to Independence.

Date: October 15–16, 2012.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Sergei Radaev, Ph.D., Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Room 8113, Bethesda, MD 20892. 301–435–5655. *SRADAEV@MAIL.NIH.GOV*.

Name of Committee: National Cancer Institute, Initial Review Group; Subcommittee F—Institutional Training and Education.

Date: October 15–16, 2012.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Timothy C. Meeker, Ph.D., M.D., Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 8103, Bethesda, MD 20892, 301–594–1279. *meekert@mail.nih.gov*.

Name of Committee: National Cancer Institute Initial Review Group; Subcommittee J—Career Development.

Date: November 1–2, 2012.

Time: 7:30 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Person: Ilda M. McKenna, Ph.D., Scientific Review Officer, Research Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 8111, Bethesda, MD 20892, 301–496–7481. *mckennai@mail.nih.gov*.

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/irg/irg.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 5, 2012,

Melanie Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–22279 Filed 9–10–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Initial Review Group; Interventions Committee for Disorders Involving Children and Their Families.

Date: October 10, 2012.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, B1/B2, Rockville, MD 20852.

Contact Person: Marina Broitman, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6143, MSC 9606, Bethesda, MD 20892–9606, 301–402–8152, *mbroitma@mail.nih.gov*.

Name of Committee: National Institute of Mental Health Initial Review Group; Mental Health Services Research Committee.

Date: October 12, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, C/D, Rockville, MD 20852.

Contact Person: Aileen Schulte, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6136, MSC 9606, Bethesda, MD 20852, 301–443–1225, *aschulte@mail.nih.gov*.

Name of Committee: National Institute of Mental Health Initial Review Group; Interventions Committee for Adult Disorders.

Date: October 17, 2012.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: David I. Sommers, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Blvd., Room 6154, MSC 9606, Bethesda, MD 20892–9606, 301–443–7861, *dsommers@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: September 5, 2012.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–22280 Filed 9–10–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2012–0027; OMB No. 1660–0054]

Agency Information Collection Activities: Proposed Collection; Comment Request, Assistance to Firefighters Grant Program-Grant Application Supplemental Information

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency, 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 a revision of a currently approved collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning grant application information necessary to assess the needs and benefits of applicants for the Assistance to Firefighters Grant Program.

DATES: Comments must be submitted on or before November 13, 2012.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *www.regulations.gov* under Docket ID FEMA–2012–0027. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street SW., Room 835, Washington, DC 20472–3100.

(3) *Facsimile.* Submit comments to (703) 483–2999.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Sabrina R. Vaughn, Management/Program Analyst, Grant Program Directorate, 202–786–9793. You may contact the Records Management Division for copies of the proposed collection of information at facsimile number (202) 646–3347 or email address: *FEMA-Information-Collections-Management@dhs.gov.*

SUPPLEMENTARY INFORMATION: Information sought under this submission will comprise of applications for Assistance to Firefighters Grant Program (AFG) and Fire Prevention and Safety (FPS) grants. The authorizing legislation allows FEMA to fund fire department activities. The authority for AFG and FPS is derived from the Federal Fire Protection and Control Act of 1974 (15 U.S.C. 2229 *et seq.*), as amended. The information collected through the program's application is the minimum necessary to evaluate grant applications and is necessary for FEMA to comply with mandates delineated in AFG laws.

Collection of Information

Title: Assistance to Firefighters Grant Program-Grant Application Supplemental Information.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: OMB No. 1660–0054.

FEMA Forms: FEMA Form 080–2, AFG Application (General Questions and Narrative); FEMA Form 080–2a, Activity Specific Questions for AFG Vehicle Applicants; FEMA Form 080–2b, Activity Specific Questions for AFG Operations and Safety Applications; FEMA Form 080–3, Activity Specific Questions for Fire Prevention and Safety Applicants; FEMA Form 080–3a, Fire Prevention and Safety; and FEMA Form 080–3b, Research and Development.

Abstract: The FEMA forms for this collection are used to objectively evaluate each of the anticipated applicants to determine which applicants' submission in each of the AFG activities are close to the established program priorities. FEMA also uses the information to determine eligibility and whether the proposed use of funds meets the requirements and intent of AFG legislation.

Affected Public: State, Local or Tribal Government, and Not-for-profit institutions.

Number of Respondents: 48,500.

Number of Responses: 48,500.

Estimated Total Annual Burden Hours: 212,975.

Estimated Cost: There are no recordkeeping, capital, start-up or maintenance costs associated with this information collection.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Dated: September 5, 2012.

Charlene D. Myrthil,

Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2012–22303 Filed 9–10–12; 8:45 am]

BILLING CODE 9111–78–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2012–0003; Internal Agency Docket No. FEMA–B–1266]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before December 10, 2012.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1266, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov*.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information exchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *www.fema.gov/pdf/media/factsheets/2010/srp_fs.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

Community	Community Map Repository Address
City and County of Broomfield, Colorado	
Maps Available for Inspection Online at: *http://www.bakeraecom.com/index.php/colorado/broomfield/*	
City and County of Broomfield	City Hall Engineering Department, 1 Descombes Drive, Broomfield, CO 80020.
City and County of Denver, Colorado	
Maps Available for Inspection Online at: *http://www.bakeraecom.com/index.php/colorado/denver/*	
City and County of Denver	Department of Public Works, 201 West Colfax Avenue, Denver, CO 80202.

Community	Community Map Repository Address
Yavapai County, Arizona, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.r9map.org/Pages/ProjectDetailsPage.aspx?choLoco=72&choProj=377*	
City of Cottonwood	Public Works Department, 1490 West Mingus Avenue, Cottonwood, AZ 86326.
Town of Camp Verde	Town Clerk's Office, 473 South Main Street, Suite 102, Camp Verde, AZ 86322.
Town of Clarkdale	Public Works Department, 890 Main Street, Clarkdale, AZ 86324.
Unincorporated Areas of Yavapai County	Yavapai County Flood Control District Office, 500 South Marina Street, Prescott, AZ 86303.
Yuma County, Arizona, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.r9map.org/Pages/Arizona.aspx?choState=Arizona*	
City of Yuma	Community Planning Department, 1 City Plaza, Yuma, AZ 85364.
Town of Wellton	Town Hall, 28634 Oakland Avenue, Wellton, AZ 85356.
Unincorporated Areas of Yuma County	Yuma County Department of Development Services, 2351 West 26th Street, Yuma, AZ 85364.
Hampden County, Massachusetts (All Jurisdictions)	
Maps Available for Inspection Online at: *http://www.starr-team.com/starr/RegionalWorkspaces/RegionI/HampdenCountyMA/Preliminary%20Maps/Forms/AllItems.aspx*	
City of Chicopee	City Hall Annex, 274 Front Street, Fourth Floor, Chicopee, MA 01013.
City of Holyoke	Building Department, 20 Korean Veterans Plaza, Holyoke, MA 01040.
City of Springfield	Planning and Economic Development, 70 Tapley Street, Springfield, MA 01104.
City of Westfield	Municipal Building, 59 Court Street, Westfield, MA 01085.
Town of Agawam	Inspection Service Department, 1000 Suffield Street, Agawam, MA 01001.
Town of Blandford	Town Hall, 1 Russell Stage Road, Blandford, MA 01008.
Town of Brimfield	Town Hall, 21 Main Street, Brimfield, MA 01010.
Town of Chester	Town Hall, 15 Middlefield Road, Chester, MA 01011.
Town of East Longmeadow	Town Hall, 60 Center Square, East Longmeadow, MA 01028.
Town of Granville	Town Hall, 707 Main Road, Granville, MA 01034.
Town of Hampden	Town Hall, 625 Main Street, Hampden, MA 01036.
Town of Holland	Town Hall, 27 Sturbridge Road, Holland, MA 01521.
Town of Longmeadow	Town Hall, 20 Williams Street, Longmeadow, MA 01106.
Town of Ludlow	Town Hall, 488 Chapin Street, Third Floor, Room 305, Ludlow, MA 01056.
Town of Monson	Town Hall, 29 Thompson Street, Monson, MA 01057.
Town of Montgomery	Town Hall, 161 Main Road, Montgomery, MA 01085.
Town of Palmer	Town Hall, 4417 Main Street, Palmer, MA 01069.
Town of Russell	Town Hall, 65 Main Street, Russell, MA 01071.
Town of Southwick	Town Office, 454 College Highway, Southwick, MA 01077.
Town of Tolland	Town Hall, 241 West Granville Road, Tolland, MA 01034.
Town of Wales	Town Hall, 3 Hollow Road, Wales, MA 01081.
Town of West Springfield	Town Hall, 26 Central Street, Suite 17, West Springfield, MA 01089.
Town of Wilbraham	Town Office, 240 Springfield Street, Wilbraham, MA 01095.
Charlevoix County, Michigan (All Jurisdictions)	
Maps Available for Inspection Online at: *http://www.starr-team.com/starr/RegionalWorkspaces/RegionV/CharlevoixCoMI/SitePages/Home.aspx*	
City of Boyne City	City Hall, 319 North Lake Street, Boyne City, MI 49712.
City of Charlevoix	City Hall, 210 State Street, Charlevoix, MI 49720.
City of East Jordan	City Hall, 201 Main Street, East Jordan, MI 49727.
Township of Bay	Bay Township Hall, 05045 Boyne City Road, Boyne City, MI 49712.
Township of Boyne Valley	Boyne Valley Township Hall, 2489 Railroad Street, Boyne Falls, MI 49713.
Township of Charlevoix	Township Hall, 12491 Waller Road, Charlevoix, MI 49720.
Township of Evangeline	Evangeline Township Hall, 02746 Wildwood Harbor Road, Boyne City, MI 49712.
Township of Eveline	Eveline Township Hall, 08525 Ferry Road, East Jordan, MI 49727.
Township of Hayes	Hayes Township Hall, 09195 Old U.S. Route 31 North, Charlevoix, MI 49720.
Township of Marion	Marion Township Hall, 03735 Marion Center Road, Charlevoix, MI 49720.
Township of Melrose	Melrose Township Hall, 04289 M–75 North, Walloon Lake, MI 49796.
Township of Norwood	Norwood Township Hall, 19759 Lake Street, Charlevoix, MI 49720.
Township of Peaine	Peaine Township Hall, 36825 Kings Highway, Beaver Island, MI 49782.
Township of South Arm	South Arm Township Hall, 02811 M–66 South, East Jordan, MI 49727.

Community	Community Map Repository Address
Township of St. James	St. James Township Hall, 37735 Michigan Avenue, Beaver Island, MI 49782.
Hillsdale County, Michigan (All Jurisdictions)	
Maps Available for Inspection Online at: *http://www.starr-team.com/starr/regionalworkspaces/regionv/hillsdalemi/sitepages/home.aspx*	
City of Hillsdale	City Hall, 97 North Broad Street, Hillsdale, MI 49242.
City of Litchfield	City Council Room, 221 Jonesville Street, Litchfield, MI 49252.
Township of Adams	Adams Township Hall, 5675 Knowles Road, North Adams, MI 49262.
Township of Allen	139 West Chicago Road, Allen, MI 49227.
Township of Cambria	Cambria Township Hall, 7249 Cambria Road, Hillsdale, MI 49242.
Township of Camden	13500 Bishop Road, Montgomery, MI 49255.
Township of Fayette	Fayette Township Hall, 211 North Street, Jonesville, MI 49250.
Township of Hillsdale	Township Hall, 2985 West Bacon Road, Hillsdale, MI 49242.
Township of Jefferson	Jefferson Township Hall, 2837 Bird Lake Road South, Osseo, MI 49266.
Township of Litchfield	Township Hall, 9596 Homer Road, Litchfield, MI 49252.
Township of Reading	Township Hall, 5355 South Edon Road/M–49, Reading, MI 49274.
Township of Scipio	11740 French Road, Litchfield, MI 49252.
Village of Jonesville	Village Hall, 265 East Chicago Street, Jonesville, MI 49250.
Florence County, South Carolina, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.dnr.sc.gov/water/flood/comaps.html*	
City of Florence	Planning, Research and Development, 218 West Evans Street, Florence, SC 29501.
City of Johnsonville	City Hall, 111 West Broadway Street, Johnsonville, SC 29555.
City of Lake City	City Hall, 202 Kelley Street, Lake City, SC 29560.
Town of Coward	Town Office, 3720 U.S. Route 52, Coward, SC 29530.
Town of Olanta	Town Hall, 365 North Magnolia Avenue, Olanta, SC 29114.
Town of Pamplico	Town Hall, 201 River Road, Pamplico, SC 29583.
Town of Quinby	Town Hall, 611 East Ashby Road, Quinby, SC 29506.
Town of Scranton	Town Hall, 1818 U.S. Route 52, Scranton, SC 29591.
Town of Timmonsville	Town Hall, 115 West Main Street, Timmonsville, SC 29161.
Unincorporated Areas of Florence County	Florence County Planning Department, 518 South Irby Street, Florence, SC 29501.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: September 5, 2012.

Sandra K. Knight,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2012–22297 Filed 9–10–12; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0092]

Agency Information Collection Activities: E-Verify Program; Revision of a Currently Approved Collection

ACTION: 60-Day Notice of Information Collection Under Review: OMB–18, E-Verify Program.

The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until November 13, 2012.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Office of Policy and Strategy, Laura Dawkins, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529. Comments may be submitted to DHS via email at *uscisfrcomment@dhs.gov* and must include OMB Control Number 1615–0092 in the subject box. Comments may also be submitted via the Federal eRulemaking Portal at *http://www.regulations.gov* under e-Docket ID number USCIS–2007–0023.

If submitting comment on one of the six E-Verify Memoranda of Understanding (MOU), please identify the MOU that concerns your business process, and, if possible, the article, section and paragraph number within the MOU that is associated with the comment.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* E-Verify Program.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No Agency Form Number; File OMB–18. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for profit. E-Verify allows employers to electronically verify the employment eligibility status of newly hired employees.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

- 65,000 respondents averaging 2.26 hours (2 hours 16 minutes) per response (enrollment time includes review and signing of the MOU, registration, new user training, and review of the user guides); plus
- 425,000, the number of already-enrolled respondents receiving training on new features and system updates averaging 1 hour per response; plus
- 425,000, the number of respondents submitting E-Verify cases averaging .129 hours (approximately 8 minutes) per case.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,587,275 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit the Federal eRulemaking Portal at *http://www.regulations.gov.* We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529, Telephone number 202–272–1470.

Dated: September 5, 2012.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2012–22256 Filed 9–10–12; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5607–C–25]

Notice of Proposed Information Collection; Comment Request: Section 8 Renewal Policy Guide

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Correction.

SUMMARY: On August 8, 2012, at 77 FR 47430, HUD published [Section 8 Renewal Policy Guide].

DATES: *Comments Due Date:* November 13, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, Room 9120 or the number for the Federal Information Relay Service (1–800–877–8339).

FOR FURTHER INFORMATION CONTACT: Catherine Brennan, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–3000, extension 6732 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Section 8 Renewal Policy Guide.

OMB Control Number, if applicable: 2502–0587.

Description of the need for the information and proposed use:

The Section 8 Renewal Policy Guide implements Section 524 of the Multifamily Housing Reform and Affordability Act of 1997 (MAHRA) (public law 105–65, enacted on October 27, 1997), which governs how expiring Section 8 project-based assistance contracts are renewed. The Section 8 contract renewal process is an essential component to preserving low income rental housing affordability and availability, while reducing long-term costs of project-based assistance. Project-based assistance contracts are renewed under MAHRA to protect tenants and preserve affordable housing for low and very low-income tenants. The Section 8 contract renewal process will provide housing protection for the low and very low-income tenants living in various United States communities.

The Section 8 Renewal Policy Guide sets forth six renewal options from which a project owner may choose when renewing their expiring Section 8 contract:

Option One—Mark-Up-To-Market;

Option Two—Other Contract Renewal with Current Rents at or Below Comparable Market Rents;

Option Three—Referral to the Office of Affordable Preservation (OAHP);

Option Four—Renewal of Projects Exempted From OAHP;

Option Five—Renewal of Portfolio Reengineering Demonstration or Preservation Projects;

Option Six—Opt Outs.

Owners should select one of six options which are applicable to their project and should submit contract

renewal on an annual basis to renew contract.

Agency form numbers, if applicable:

Contract Renewal Request Form (HUD–9624)
OCAF Rent Adjustment Worksheet (HUD–9625)
Auto-OCAF Letter Option One and Three, (HUD–9626)
Auto-OCAF Letter Option Two and Four (HUD–9627)
Request to Renew Using Non-Section 8 Units in the Section 8 Project as a Market Rent Ceiling (HUD–9629)
Request to Renew Using FMR's as Market Ceiling (HUD–9630)
Use Agreement (HUD–9634)
Projects Preparing a Budget-Based Rent Increase (HUD–9635)
Basic Renewal Contract—One Year Term (HUD–9636)
Basic Renewal Contract—Multi-Year Term (HUD–9637)
Renewal Contract for Mark-Up-To-Market Projects (HUD–9638)
Housing Assistance Payment Preservation Renewal Contract (HUD–9639)
Interim (Full) Mark-to-Market Renewal Contract (HUD–9640)
Interim (Lite) Mark-To-Market Renewal Contract (HUD–9641)
Full Mark-To-Market Renewal Contract (HUD–9642)
Watch List Renewal Contract (HUD–9643)
Project Based Assistance Payments Amendment Contract Moderate Rehabilitation (HUD–9644)
Consent to Assignment of HAP Contract for Freddie Mac Financing (HUD 9648A)
Consent to Assignment of HAP Contract as Security to FNMA as Security for FNMA Credit Enhancement (HUD–9648D)
Consent to Assignment of HAP Contract as Security for Financing (HUD–9649)
Consent to Assignment of HAP Contract as Security for FNMA Financing (HUD–9651)

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of burden hours is 24,603. The number of respondents is 25,324, the number of responses is 25,324, and the burden hour per response is 1 or less.

Status of the proposed information collection: This is a revision of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: August 28, 2012.

Laura M. Marin,

Acting General Deputy Assistant Secretary for Housing-Acting General Deputy Federal Housing Commissioner.

[FR Doc. 2012–22378 Filed 9–10–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Tribal Listening Sessions on Sacred Sites on Federal Lands

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: Indian Affairs will conduct a listening session with Indian tribes to obtain oral and written comments concerning sacred sites located on Federal lands. This session in Tulsa, Oklahoma, is the sixth in a series of listening sessions held since the beginning of August.

DATES: The listening session will be held Tuesday, September 18, 2012. Written input/suggestions are due September 21, 2012.

ADDRESSES: See the **SUPPLMENTARY INFORMATION** section of this notice for the location of the tribal listening session. Submit comments by email to: *consultation@bia.gov* or by U.S. mail to: Office of the Assistant Secretary—Indian Affairs, U.S. Department of the Interior, attn: Dion Killsback, Mail Stop 4141 MIB, 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Dion Killsback, Counselor to the Assistant Secretary—Indian Affairs, (202) 208–6939.

SUPPLEMENTARY INFORMATION: The Department, through the Office of the Assistant Secretary—Indian Affairs, intends to develop a policy to strengthen the protection of sacred sites on Federal lands. For many years the Department has received input on sacred sites and to that end, the Department is seeking specific input on, but not limited to, the following topics regarding sacred sites:

- Meanings of sacred sites and whether the Departments should attempt to define the term ''sacred site'' more definitively;
- Recognized leaders of tribal government and tribal spiritual leaders who should be included in the Department's determination of whether a site is considered ''sacred'' by a tribe.
- Cultural and social views of existing Departmental practices or policies that should be revised to protect sacred sites and steps necessary to make appropriate revisions;
- Development of potential Departmental practices or policies to protect sacred sites;
- How the Department should facilitate tribal access to tribally provided information regarding sacred sites.

The tribal listening session will be held at the following date and location. Please arrive early to allow time for security clearance and bring identification:

Date	Time	Venue
September 18, 2012	9:00 a.m.–12:30 p.m..	Federal Building, 3rd Floor Courtroom, 333 South Boulder Avenue, Tulsa, Oklahoma 74103.

Dated: August 31, 2012.

Donald E. Laverdure,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 2012–22355 Filed 9–10–12; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLUT030000–L17110000–PH0000–24–1A]

Notice of Grand Staircase-Escalante National Monument Advisory Committee Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the Department of the Interior, Bureau of Land Management (BLM), Grand Staircase-Escalante National Monument Advisory Committee (GSENMAC) will meet as indicated below.

DATES: The GSENM MAC will meet Tuesday, October 16, 2012, (1 p.m.–6 p.m.) and Wednesday, October 17, 2012, (8 a.m.–12 p.m.) in Kanab, Utah.

ADDRESSES: The Committee will meet in the Cottonwood Room at the Bureau of Land Management Complex, 669 South Highway 89A, Kanab, Utah.

FOR FURTHER INFORMATION CONTACT: Larry Crutchfield, Public Affairs Officer, Grand Staircase-Escalante National Monument, Bureau of Land Management, 669 South Highway 89A, Kanab, Utah, 84741; phone (435) 644–1209.

SUPPLEMENTARY INFORMATION: The 15-member GSENMAC was appointed by the Secretary of the Interior on August 2, 2011, pursuant to the Monument Management Plan, the Federal Land Policy and Management Act of 1976 (FLPMA), and the Federal Advisory Committee Act of 1972 (FACA). As specified in the Monument Management Plan, the GSENMAC will have several primary tasks: (1) Review evaluation reports produced by the Management Science Team and make recommendations on protocols and projects to meet overall objectives; (2) Review appropriate research proposals and make recommendations on project necessity and validity; (3) Make recommendations regarding allocation of research funds through review of research and project proposals as well as needs identified through the evaluation process above; and, (4) Could be consulted on issues such as protocols for specific projects.

Topics to be discussed by the GSENMAC during this meeting include review of the draft GSENM Science Plan, Science and Hole-In-The-Rock Corridor Strategy subcommittee reports, GSENM division reports, future meeting dates and other matters as may reasonably come before the GSENMAC.

The entire meeting is open to the public. Members of the public are welcome to address the Committee at 5 p.m., local time, on October 16, 2012. Depending on the number of persons wishing to speak, a time limit could be established. Interested persons may make oral statements to the GSENMAC during this time or written statements may be submitted for the GSENMAC's consideration. Written statements can be sent to: Grand Staircase-Escalante National Monument, Attn.: Larry Crutchfield, 669 South Highway 89A, Kanab, Utah, 84741. Information to be distributed to the GSENMAC is requested 10 days prior to the start of the GSENMAC meeting.

All meetings are open to the public; however, transportation, lodging, and meals are the responsibility of the participating public.

Rene C. Berkhoudt,

Grand Staircase-Escalante National Monument Manager.

[FR Doc. 2012–22367 Filed 9–10–12; 8:45 am]

BILLING CODE 4310–DQ–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–12–025]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: September 12, 2012 at 9:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none.
2. Minutes.
3. Ratification List.
4. Vote in Inv. No. 731–TA–895 (Second Review) (Pure Magnesium (Granular) from China). The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before September 25, 2012.
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting. Earlier announcement of this meeting was not possible.

Issued: September 6, 2012.

By order of the Commission.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. 2012–22372 Filed 9–7–12; 11:15 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Oil Pollution Act of 1990 (''OPA'')

Notice is hereby given that on September 4, 2012, a proposed Consent Decree in *United States et al.* v. *Evergreen International, S.A.,* Civil Action No. 2:12–cv–02532–RMG, was lodged with the United States District Court for the District of South Carolina.

The Consent Decree resolves claims brought by the United States, on behalf of the United States Department of the Interior, acting through the United States Fish and Wildlife Service, and the National Oceanic and Atmospheric Administration, against Evergreen International, S.A. under Section 1002 of OPA, 33 U.S.C. 2702. The Consent Decree also resolves claims brought by the South Carolina Department of Health and Environmental Control and the South Carolina Department of Natural Resources (collectively, the ''State Trustees'') against Evergreen International under Section 1002 of OPA and Section 48–1–90 of the South Carolina Pollution Control Act, S.C. Code Ann. § 48–1–90. In their joint complaint, filed concurrently with the Consent Decree, the United States and the State Trustees sought damages in order to compensate for natural resources injured by the discharge of fuel oil from the vessel M/V EVER REACH into the Cooper River and nearby areas in Charleston Harbor, South Carolina, in September 2002, along with the recovery of costs incurred in assessing such damages.

Under the Consent Decree, the owner of the vessel, Evergreen International, will perform a compensatory marsh restoration project along Noisette Creek in North Charleston, South Carolina; pay $121,000 in monetary damages; and pay $820,685.27 in past assessment costs and all future assessment and oversight costs incurred by the United States and the State Trustees.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States et al.* v. *Evergreen International, S.A.,* D.J. Ref. No. 90–5–1–1–08592.

During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site: *http://www.justice.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or emailing a request to ''Consent Decree Copy'' (*EESCDCopy.ENRD@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–5271. If requesting a copy from the Consent Decree Library by mail, please enclose a check in the

amount of $17.75 (25 cents per page reproduction cost), payable to the U.S. Treasury or, if requesting by email or fax, forward a check in that amount to the Consent Decree Library at the address given above.

Henry Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–22272 Filed 9–10–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Judgment Under the Resource Recovery and Conservation Act

On September 4, 2012, the Department of Justice lodged a proposed consent judgment with the United States District Court for the Eastern District of New York in the lawsuit entitled *United States* v. *Citygas Gasoline Corporation, et al.,* Civil Action No. CV–03–6374.

The proposed consent judgment will resolve the United States' claims under section 9006 of the Resource Recovery and Conservation Act, as amended, on behalf of the U.S. Environmental Protection Agency, against the following defendants: Tijuana Enterprises, Inc., One More Gasoline Company, Inc., E.D. Fuels, LLC, Enkido Gasoline Corporation, Satin Ventures, Inc., Eden Equities, Inc., Slingshot Gasoline, Inc., Stop Enterprise, Inc., Whitestone Gasoline, Inc., Java Gasoline, Inc., BBZZ Equities, Inc., 21st Century Fuel, LLC, A Penny Less Gasoline, Inc., and 46 Fuels, LLC (collectively, ''Finkelstein Entities'') and Richard Finkelstein. The United States alleges that the Finkelstein Entities violated the regulations set forth at 40 CFR part 280, governing underground storage tanks (''USTs''), at seven facilities—automobile fueling stations with USTs—that the Finkelstein Entities have owned and/or operated at the following locations:

(1) 1508 Bushwick Avenue, Brooklyn, NY.

(2) 2800 Bruckner Boulevard, Bronx, NY.

(3) 141–50 Union Turnpike, Flushing, NY.

(4) 83–10 Astoria Boulevard, Jackson Heights, NY.

(5) 17–46 Clintonville Street, Whitestone, NY.

(6) 880 Garrison Avenue, Bronx, NY.

(7) 1945 Bartow Avenue, Bronx, NY.

The consent judgment requires the Finkelstein Entities to pay a civil penalty of $475,000. The consent judgment also provides for injunctive relief, which will consist of maintaining compliance with the UST regulations and submission of reports demonstrating such compliance, to be implemented over the next five years at the Finkelstein Entities' facilities.

The publication of this notice opens a period for public comment on the proposed consent judgment. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Citygas Gasoline Corp.,* D.J. Ref. No. 90–7–1–0764. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By e-mail	*pubcomment-ees.enrd@usdoj.gov*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the consent judgment may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the consent judgment upon written request and payment of reproduction costs. Please mail your request and payment to:

Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611.

Please enclose a check or money order for $34.50 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without the exhibits and signature pages, the cost is $15.75.

Robert E. Maher, Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–22273 Filed 9–10–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121–0277]

Agency Information Collection Activities; Revision of Currently Approved Collection; Comments Requested: Office for Victims of Crime Training and Technical Assistance Center (OVC TTAC) Feedback Form Package

ACTION: 60-Day Notice of Information Collection Under Review.

The Department of Justice, Office of Justice Programs, Office for Victims of Crime, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until November 13, 2012. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Shelby Jones Crawford, Victim Justice Program Specialist, Office for Victims of Crime, Office of Justice Programs, United States Department of Justice, 810 7th Street NW., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of

information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of Existing Collection.

(2) *The Title of the Form/Collection:* OVC TTAC Feedback Form Package.

(3) *The Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number(s):* NA. Office for Victims of Crime, Office of Justice Programs, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract.* Primary: State, Local or Tribal agencies/organizations. Other: Federal Government; Individuals or households; Not-for-profit institutions; Businesses or other for-profit. Abstract: The Office for Victims of Crime Training and Technical Assistance Center (OVC TTAC) Feedback Form Package is designed to collect the data necessary to continuously assess the satisfaction and outcomes of assistance provided through OVC TTAC for both monitoring and accountability purposes to continuously meet the needs of the victim services field. OVC TTAC will give these forms to recipients of training and technical assistance, scholarship applicants, users of the Web site and call center, consultants/instructors providing training, agencies requesting services, and other professionals receiving assistance from OVC TTAC. The purpose of this data collection will be to capture important feedback on the respondent's satisfaction and outcomes of the resources provided. The data will then be used to advise OVC on ways to improve the support that it provides to the victim services field at-large.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* There are approximately 11,119 respondents who will require an average of 8 minutes (ranging from 4 to 15 minutes across all forms) to respond to a single form each year.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual public burden hours for this information collection are estimated to be 1,736 hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, U.S. Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 2E–508, Washington, DC 20530.

Dated: September 5, 2012.

Jerri Murray,

Department Clearance Officer, U.S. Department of Justice.

[FR Doc. 2012–22232 Filed 9–10–12; 8:45 am]

BILLING CODE 4410–18–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (12–072)]

NASA Advisory Council; Science Committee; Earth Science Subcommittee; Applied Sciences Advisory Group Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Applied Science Advisory Group. This Subcommittee reports to the Earth Science Subcommittee Committee of the NASA Advisory Council. The Meeting will be held for the purpose of soliciting from the scientific community and other person's scientific and technical information relevant to program planning.

DATES: Tuesday October 9, 8:30 a.m. to 5 p.m., and Wednesday, October 10, 2012, 8:30 a.m. to 3 p.m. EDT.

ADDRESSES: NASA Headquarters, 300 E Street SW., Room 9H40, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Meister, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–1557, fax (202) 358–4118, or *peter.g.meister@nasa.gov*.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—Applied Sciences Program Update
—Earth Science Data Latency Study Preliminary Update
—Capacity Building Assessment Report and Discussion

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID to Security before access to NASA Headquarters. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 10 working days prior to the meeting: full name; gender; date/place of birth; citizenship; visa information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee; and home address to Peter Meister via email at *peter.g.meister@nasa.gov*. U.S. citizens and green card holders are requested to submit their name and affiliation 3 working days prior to the meeting to Peter Meister.

Susan M. Burch,

Acting, Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2012–22336 Filed 9–10–12; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

Name: Site visit review of the Materials Research Science and Engineering Center (MRSEC) at Princeton University by the Division of Materials Research (DMR) #1203.

Dates & Times:

Sept 19, 2012; 6 p.m.–8:30 p.m.;
Sept 20, 2012; 7:15 a.m.–6:45 p.m.;
Sept 21, 2012; 7:15 a.m.–4:30 p.m.

Place: Princeton University, Princeton, NJ.

Type of Meeting: Part open.

Contact Person: Dr. Mary E. Galvin, Program Director, Materials Research Science and Engineering Centers Program, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 292–8562.

Purpose of Meeting: To provide advice and recommendations concerning further support of the MRSEC at Princeton University.

Agenda:

Wednesday, September 19, 2012

6 p.m.–7 p.m. Closed—Briefing of panel
7 p.m.–8:30 p.m. Open—Poster Session

Thursday, September 20, 2012

7:15 a.m.–4:30 p.m. Open–Review of the MRSEC
5 p.m.–6:45 p.m. Closed—Executive Session

Friday, September 21, 2012

7:15 a.m.–9:50 a.m. Closed—Executive Session
9:50 a.m.–4:30 p.m. Closed—Executive Session, Draft and Review Report

Reason for Late Notice: Due to scheduling conflicts and the necessity to proceed with the review.

Reason for Closing: The work being reviewed may include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the MRSEC. These matters are exempt under 5 U.S.C. 552 b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 6, 2012.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2012–22375 Filed 9–10–12; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Tuesday, September 25, 2012.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza SW., Washington, DC 20594.

STATUS: The ONE item is open to the public.

MATTER TO BE CONSIDERED:

8434 *Marine Accident Report—Collision of Tankship* Elka Apollon *With Containership* MSC Nederland, *Houston Ship Channel, Upper Galveston Bay, Texas, October 29, 2011.*

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

The press and public may enter the NTSB Conference Center one hour prior to the meeting for set up and seating.

Individuals requesting specific accommodations should contact Rochelle Hall at (202) 314–6305 by Friday, September 21, 2012.

The public may view the meeting via a live or archived webcast by accessing a link under ''News & Events'' on the NTSB home page at *www.ntsb.gov.*

Schedule updates including weather-related cancellations are also available at *www.ntsb.gov.*

FOR MORE INFORMATION CONTACT: Candi Bing, (202) 314–6403 or by email at *bingc@ntsb.gov.*

FOR MEDIA INFORMATION CONTACT: Terry Williams (202) 314–6126 or by email at *williat@ntsb.gov.*

Dated: September 7, 2012.

Candi R. Bing,

Federal Register Liaison Officer.

[FR Doc. 2012–22424 Filed 9–7–12; 4:15 pm]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0208]

Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving Proposed No Significant Hazards Considerations and Containing Sensitive Unclassified Non-Safeguards Information and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment request; opportunity to comment, request a hearing and petition for leave to intervene, order.

DATES: Comments must be filed by October 11, 2012. A request for a hearing must be filed by November 13, 2012. Any potential party as defined in Section 2.4 of Title 10 of the *Code of Federal Regulations* (10 CFR), who believes access to Sensitive Unclassified Non-Safeguards Information (SUNSI) is necessary to respond to this notice must request document access by September 21, 2012.

ADDRESSES: You may access information and comment submissions related to this document, which the NRC possesses and are publicly available, by searching on *http://www.regulations.gov* under Docket ID NRC–2012–0208. You may submit comments by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0208. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2012–0208 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, by the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0208.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2012–0208 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS, and the NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for

submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Background

Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This notice includes notices of amendments containing SUNSI.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, then any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment

request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment.

All documents filed in the NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with the NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email at *MSHD.Resource@nrc.gov*, or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the following three factors in 10 CFR 2.309(c)(1): (i) The information upon which the filing is based was not previously available; (ii) the information upon which the filing is based is materially different from

information previously available; and (iii) the filing has been submitted in a timely fashion based on the availability of the subsequent information.

For further details with respect to these amendment actions, see the applications for amendment which are available for public inspection at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR's Reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.*

Entergy Gulf States Louisiana, LLC, and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: June 20, 2012. A publicly available version is available under ADAMS Accession No. ML12191A122.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The amendment would revise License Amendment No. 171 to the Facility Operating License for the River Bend Station (RBS), dated July 29, 2011 (ADAMS Accession No. ML111940200), which approved the RBS Cyber Security Plan and associated implementation milestone schedule. The Cyber Security Plan Implementation Schedule contained in the licensee's letter dated April 4, 2011 (ADAMS Accession No. ML11103A043), was utilized, as a portion of the basis for the NRC's safety evaluation report provided by Amendment No. 171. The proposed amendment does not change the Implementation Schedule date, but Entergy has proposed this amendment to implement the requirements of Implementation Schedule Milestone 6 in a slightly different manner than described in the approved Implementation Schedule.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to the Cyber Security Plan Implementation Schedule is administrative in nature. This change does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed change does not require any plant modifications which affect the performance capability of the structures, systems, and components relied upon to mitigate the consequences of postulated accidents and has no impact on the probability or consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change to the Cyber Security Plan Implementation Schedule is administrative in nature. This proposed change does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed change does not require any plant modifications which affect the performance capability of the structures, systems, and components relied upon to mitigate the consequences of postulated accidents and does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Plant safety margins are established through limiting conditions for operation, limiting safety system settings, and safety limits specified in the technical specifications. The proposed change to the Cyber Security Plan Implementation Schedule is administrative in nature. Because there is no change to these established safety margins as result of this change, the proposed change does not involve a significant reduction in a margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Joseph A. Aluise, Associate General Counsel—Nuclear, Entergy Services, Inc., 639 Loyola Avenue, New Orleans, Louisiana 70113.

NRC Branch Chief: Michael T. Markley.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of amendment request: January 31, 2012. A publicly available version is available under ADAMS Accession No. ML120400144.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The amendment would allow the licensee to expand the operating domain by the implementation of Average Power Range Monitor/Rod Block Monitor/Technical Specifications/Power Range Neutron Monitoring/Maximum Extended Load Line Limit Analysis (ARTS/PRNM/MELLLA). The Neutron Monitoring System would be modified by replacing the analog Average Power Range Monitor (APRM) subsystem with the Nuclear Measurement Analysis and Control (NUMAC) Power Range Neutron Monitoring (PRNM) System. The licensee would expand the operating domain to Maximum Extended Load Line Limit Analysis (MELLLA) and make changes to certain allowable values (AVs) and limits and to the Technical Specifications (TSs). The changes to the TSs include the adoption of Technical Specifications Task Force (TSTF) Change Traveler TSTF–493, ''Clarify Application of Setpoint Methodology for LSSS [Limiting Safety System Setting] Functions,'' Option A surveillance notes. Furthermore, the amendment would allow a change in the licensing basis to support Anticipated Transient without Scram (ATWS) accident mitigation with one Standby Liquid Control (SLC) pump instead of two.

Basis for proposed no significant hazards consideration (NSHC) determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of NSHC, by classification of change, which is presented below. The proposed NSHC for PRNM system upgrade is presented first, followed by the proposed NSHC for the implementation of ARTS/MELLLA.

PRNM System Upgrade

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The probability (frequency of occurrence) of Design Basis Accidents occurring is not affected by the PRNM system, as the PRNM system does not interact with equipment whose failure could cause an accident. The

regulatory criteria established for plant equipment such as the APRM, OPRM [Oscillation Power Range Monitor], and RBM [Rod Block Monitor] systems will be maintained with the installation of the upgraded PRNM system. Scram setpoints in the PRNM system will be established so that all analytical limits are met.

The unavailability of the new system will be equal to or less than the existing system and, as a result, the scram reliability will be equal to or better than the existing system. No new challenges to safety-related equipment will result from the PRNM system modification.

Therefore, the proposed change does not involve a significant increase in the consequences of an accident previously evaluated.

The proposed change will replace the currently installed and NRC approved OPRM Option III long-term stability solution with an NRC approved Option III long-term stability solution digitally integrated into the PRNM equipment. The PRNM hardware incorporates the OPRM Option III detect and suppress solution reviewed and approved by the NRC in References 1, 2, 3, and 4 [References in Attachment 2 of the License Amendment Request] Licensing Topical Reports [(LTRs)], the same as the currently installed separate OPRM System. The OPRM meets the [General Design Criteria (GDCs)] 10, ''Reactor Design,'' and 12, ''Suppression of Reactor Power Oscillations,'' requirements by automatically detecting and suppressing design basis thermal hydraulic oscillations to protect specified fuel design limits.

Therefore, the proposed change does not involve a significant increase in the consequences of an accident previously evaluated.

Based on the above, the operation of the new PRNM system and replacement of the currently installed OPRM Option III stability solution with the Option III OPRM function integrated into the PRNM equipment will not increase the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The components of the PRNM system will be supplied to equivalent or better design and qualification criteria than is currently required for the plant. Equipment that could be affected by PRNM system has been evaluated. No new operating mode, safety-related equipment lineup, accident scenario, or system interaction mode was identified. Therefore, the upgraded PRNM system will not adversely affect plant equipment.

The new PRNM system uses digital equipment that has ''control'', processing points and software controlled digital processing compared to the existing PRNM system that uses mostly analog and discrete component processing (excluding the existing OPRM). Specific failures of hardware and potential software common cause failures are different from the existing system. The effects of potential software common cause failure are mitigated by specific hardware design and system architecture as discussed in Section 6.0 of the NUMAC PRNM LTR reference [in the license amendment request]. Failure(s) of the system have the same overall effect as the present design. No new or different kind of accident is introduced. Therefore, the PRNM system will not adversely affect plant equipment.

The currently installed APRM System is replaced with a NUMAC PRNM system that performs the existing power range monitoring functions and adds an OPRM to react automatically to potential reactor thermal-hydraulic instabilities.

Based on the above, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed TS changes associated with the NUMAC PRNM system retrofit implement the constraints of the NUMAC PRNM system design and related stability analyses. The NUMAC PRNM system change does not impact reactor operating parameters or the functional requirements of the PRNM system. The replacement equipment continues to provide information, enforce control rod blocks, and initiate reactor scrams under appropriate specified conditions. The proposed change does not reduce safety margins. The replacement PRNM equipment has improved channel trip accuracy compared to the current analog system, and meets or exceeds system requirements previously assumed in setpoint analysis. Thus, the ability of the new equipment to enforce compliance with margins of safety equals or exceeds the ability of the equipment which it replaces.

Therefore, the proposed changes do not involve a reduction in a margin of safety.

ARTS/MELLLA Implementation

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change eliminates the APRM flow-biased STP [Simulated Thermal Power] setdown requirement and substitutes power and flow dependent adjustments to the [Maximum Critical Power Ratio (MCPR)] and Linear Heat Generation Rate (LHGR) thermal limits. Thermal limits will be determined using NRC approved analytical methods. The proposed change will have no effect upon any accident initiating mechanism. The power and flow dependent adjustments will ensure that the MCPR SL [Safely Limit] will not be violated as a result of any [anticipated operational occurrence (AOO)], and that the fuel thermal and mechanical design bases will be maintained.

The proposed change also expands the power and flow operating domain by relaxing the restrictions imposed by the formulation of the APRM flow-biased STP AV and by the replacement of the current flow-biased RBM with a new power-dependent RBM. As discussed in the Technical Evaluation Section 1.0 [in the license amendment request], and Attachment 1 [to the license amendment request], operation in the MELLLA expanded operating domain will not increase the probability or consequences of previously analyzed accidents. The APRM and RBM are not involved in the initiation of any accident, and the APRM flow-biased STP function is not credited in any CGS [Columbia Generating Station] safety analyses. The proposed change will not introduce any initial conditions that would result in NRC approved criteria being exceeded and the APRM and RBM will remain capable of performing their design functions.

The SLC system is provided to shutdown the reactor without reliance on control rod movement, to mitigate anticipated transients without scram (ATWS) events and provide suppression pool pH control following a LOCA [loss-of-coolant accident]. As such, SLC is not considered an initiator of an ATWS event, LOCA or any other analyzed accident. The revised SLC pump flow rate and increased Boron-10 enrichment continue to meet the shutdown requirement of SLC. The changes do not reduce the ability of the SLC system to respond to or mitigate an ATWS event or LOCA. Nor do these changes increase the likelihood of a system malfunction that could increase the consequences of an accident.

Based on the above discussion, it is concluded that the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change eliminates the APRM flow-biased STP setdown requirement and substitutes power and flow dependent adjustments to the MCPR and LHGR thermal limits. Because the thermal limits will continue to be met, no analyzed transient event will escalate into a new or different type of accident due to the initial starting conditions permitted by the adjusted thermal limits.

The proposed change also expands the power and flow operating domain by relaxing the restrictions imposed by the formulation of the APRM flow-biased STP AV and the replacement of the current flow-biased RBM with a new power-dependent RBM. Changing the formulation for the flow-biased STP AV and changing from a flow-biased RBM to a power-dependent RBM does not change their respective functions and manner of operation. The change does not introduce a sequence of events or introduce a new failure mode that would create a new or different type of accident. While not credited for MCPR [safety limit (SL)] protection, the APRM flow-biased STP AV and associated scram trip setpoint will continue to provide a redundant trip for the credited trip functions (such as APRM Fixed Neutron Flux—High or Reactor Pressure—High). The power-dependent RBM will prevent rod withdrawal when the power-dependent RBM rod block setpoint is reached, thus protecting

MCPR SL. No new failure mechanisms, malfunctions, or accident initiators are being introduced by the proposed change. In addition, operating within the expanded power flow map will not require any systems, structures or components to function differently than previously evaluated and will not create initial conditions that would result in a new or different kind of accident from any accident previously evaluated.

The proposed change to the SLC pump flow rate credited in the ATWS analysis, in conjunction with the increased enrichment of Boron-10 in the sodium pentaborate solution, is consistent with the functional requirements of the ATWS rule (10 CFR 50.62). These proposed changes do not involve the installation of any new or different type of equipment, do not introduce any new modes of plant operation, and do not change any methods governing normal plant operation.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change eliminates the APRM flow-biased STP setdown requirement and substitutes power and flow dependent adjustments to the MCPR and LHGR thermal limits. Replacement of the APRM setdown requirement with power and flow dependent adjustments to the MCPR and LHGR thermal limits will continue to ensure that margins to the fuel cladding SL are preserved during operation at other than rated conditions. Thermal limits will be determined using NRC approved analytical methods. The power and flow dependent adjustments will ensure that the MCPR SL will not be violated as a result of any AOO, and that the fuel thermal and mechanical design bases will be maintained.

The proposed change also expands the power and flow operating domain by relaxing the restrictions imposed by the formulation of the APRM flow-biased STP AV and the replacement of the current flow-biased RBM with a new power-dependent RBM. The APRM flow-biased STP AV and associated scram trip setpoint will continue to initiate a scram, providing a redundant trip that is not credited for protection of MCPR SL. The RBM will continue to prevent rod withdrawal when the power-dependent RBM rod block setpoint is reached. The MCPR and LHGR thermal limits will be developed to ensure that fuel thermal mechanical design bases remain within the licensing limits during a control rod withdrawal error event and to ensure that the MCPR SL will not be violated as a result of a control rod withdrawal error event. Operation in the expanded operating domain will not alter the manner in which SLs, Limiting Safety System Setpoints (LSSSs), or limiting conditions for operation are determined. AOOs and postulated accidents within the expanded operating domain will continue to be evaluated using NRC approved methods. The 10 CFR 50.46 acceptance criteria for the performance of the ECCS [emergency core cooling system] following postulated LOCAs will continue to be met.

The proposed change to the SLC flow rate, in conjunction with the increased Boron-10 enrichment in the sodium pentaborate solution, credited in the ATWS analysis continues to meet accident analyses limits. The proposed change is consistent with the functional requirements of the ATWS rule (10 CFR 50.62) and the flow rate credited for LOCA suppression pool pH control. The ability of the SLC system to respond to and mitigate an ATWS event or LOCA is not affected.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William A. Horin, Esq., Winston & Strawn, 1700 K Street, NW., Washington, DC 20006–3817.

NRC Branch Chief: Michael T. Markley.

Entergy Nuclear Operations, Inc., Docket Nos. 50–003, 50–247 and 50–286, Indian Point Nuclear Generating Units 1, 2 and 3, Westchester County, New York

Date of amendment request: June 14, 2012. A publicly available version is available under ADAMS Accession No. ML12184A050.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The amendments would revise the Cyber Security Plan Implementation Schedule as approved in license amendments issued on August 2, 2011 (ADAMS Accession No. ML11152A027).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to the Cyber Security Plan Implementation Schedule is administrative in nature. This change does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed change does not require any plant modifications which affect the performance capability of the structures, systems, and components relied upon to mitigate the consequences of postulated accidents and has no impact on the probability or consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change to the Cyber Security Plan Implementation Schedule is administrative in nature. The proposed change does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed change does not require any plant modifications which affect the performance capability of the structures, systems, and components relied upon to mitigate the consequences of postulated accidents and does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Plant safety margins are established through limiting conditions for operation, limiting safety system settings, and safety limits specified in the technical specifications. The proposed change to the Cyber Security Plan Implementation Schedule is administrative in nature. Because there is no change to these established safety margins as result of this change, the proposed change does not involve a significant reduction in a margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. William C. Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Branch Chief: George Wilson.

Entergy Nuclear Operations, Inc., Docket No. 50–255, Palisades Nuclear Plant, Van Buren County, Michigan

Date of amendment request: June 20, 2012. A publicly available version is available under ADAMS Accession Nos. ML12184A149, ML12177A363, and ML12177A365.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The NRC issued the Palisades Cyber Security Plan and associate Implementation Schedule on July 28, 2011 (ADAMS Accession No. ML111801243). The amendment would implement the requirements of Implementation Schedule Milestone 6 in a slightly different manner than described in the approved Implementation Schedule.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to the Cyber Security Plan Implementation Schedule is administrative in nature. This change does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed change does not require any plant modifications which affect the performance capability of the structures, systems, and components relied upon to mitigate the consequences of postulated accidents and has no impact on the probability or consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change to the Cyber Security Plan Implementation Schedule is administrative in nature. This proposed change does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed change does not require any plant modifications which affect the performance capability of the structures, systems, and components relied upon to mitigate the consequences of postulated accidents and does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Plant safety margins are established through limiting conditions for operation, limiting safety system settings, and safety limits specified in the technical specifications. The proposed change to the Cyber Security Plan Implementation Schedule is administrative in nature. Because there is no change to these established safety margins as result of this change, the proposed change does not involve a significant reduction in a margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. William Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 400 Hamilton Ave., White Plains, NY 10601.

NRC Acting Branch Chief: Istvan Frankl.

Entergy Nuclear Operations, Inc., Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: June 22, 2012. A publicly available version is available under ADAMS Accession No. ML12184A047.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The amendments would revise the Cyber Security Plan Implementation Schedule as approved in license amendment issued on July 20, 2011 (ADAMS Accession No. ML11152A043).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to the Cyber Security Plan Implementation Schedule is administrative in nature. This change does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed change does not require any plant modifications which affect the performance capability of the structures, systems, and components relied upon to mitigate the consequences of postulated accidents and has no impact on the probability or consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change to the Cyber Security Plan Implementation Schedule is administrative in nature. The proposed change does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed change does not require any plant modifications which affect the performance capability of the structures, systems, and components relied upon to mitigate the consequences of postulated accidents and does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Plant safety margins are established through limiting conditions for operation, limiting safety system settings, and safety limits specified in the technical specifications. The proposed change to the Cyber Security Plan Implementation Schedule is administrative in nature. Because there is no change to these established safety margins as result of this change, the proposed change does not involve a significant reduction in a margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. William C. Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Branch Chief: George Wilson.

Entergy Nuclear Vermont Yankee (VY), LLC and Entergy Nuclear Operations, Inc., Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: July 2, 2012. A publicly available version is available under ADAMS Accession No. ML121910298.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards

information (SUNSI). The amendments would revise the Cyber Security Plan Implementation Schedule as approved in license amendment issued on July 20, 2011 (ADAMS Accession No. ML11152A013).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to the Cyber Security Plan Implementation Schedule is administrative in nature. This change does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed change does not require any plant modifications which affect the performance capability of the structures, systems, and components relied upon to mitigate the consequences of postulated accidents and has no impact on the probability or consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change to the Cyber Security Plan Implementation Schedule is administrative in nature. The proposed change does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed change does not require any plant modifications which affect the performance capability of the structures, systems, and components relied upon to mitigate the consequences of postulated accidents and does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Plant safety margins are established through limiting conditions for operation, limiting safety system settings, and safety limits specified in the technical specifications. The proposed change to the Cyber Security Plan Implementation Schedule is administrative in nature. Because there is no change to these established safety margins as result of this change, the proposed change does not involve a significant reduction in a margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. William C. Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Branch Chief: George Wilson.

Entergy Operations, Inc., Docket Nos. 50–313 and 50–368, Arkansas Nuclear One, Units 1 and 2, Pope County, Arkansas

Date of amendment request: June 18, 2012. A publicly available version of the application is available under ADAMS Accession No. ML12192A102.

Description of amendment request: This application contains sensitive unclassified non-safeguards information (SUNSI). Entergy, the licensee, is planning to implement the requirements of Cyber Security Plan Implementation Schedule Milestone 6, approved by the NRC staff by letter dated July 27, 2011 (Amendment Nos. 244 and 294, for Arkansas Nuclear One, Units 1 and 2, respectively), in a slightly different manner than described in the approved Implementation Schedule. Although no change to the Implementation Schedule date is proposed, the change to the description of the milestone activity is considered to be a change to the Implementation Schedule, and in accordance with the provisions of 10 CFR 50.4 and 10 CFR 50.90, Entergy is submitting this request for an amendment to the physical protection license condition in the facility operating licenses.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to the Cyber Security Plan Implementation Schedule is administrative in nature. This change does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed change does not require any plant modifications which affect the performance capability of the structures, systems, and components relied upon to mitigate the consequences of postulated accidents and has no impact on the probability or consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change to the Cyber Security Plan Implementation Schedule is administrative in nature. This proposed change does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed change does not require any plant modifications which affect the performance capability of the structures, systems, and components relied upon to mitigate the consequences of postulated accidents and does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Plant safety margins are established through limiting conditions for operation, limiting safety system settings, and safety limits specified in the technical specifications. The proposed change to the Cyber Security Plan Implementation Schedule is administrative in nature. Because there is no change to established safety margins as a result of this change, the proposed change does not involve a significant reduction in a margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Joseph A. Aluise, Associate General Council—Nuclear, Entergy Services, Inc., 639 Loyola Avenue, New Orleans, Louisiana 70113.

NRC Branch Chief: Michael T. Markley.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: June 27, 2012. A publicly available version is available under ADAMS Accession No. ML12215A381.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The amendment would revise License Amendment No. 186 to the Facility Operating License for Grand Gulf Nuclear Station (GGNS), dated July 27, 2011 (ADAMS Accession No. ML111940165), which approved the GGNS Cyber Security Plan and associated implementation milestone schedule. The Cyber Security Plan Implementation Schedule contained in the licensee's letter dated April 4, 2011 (ADAMS Access No. ML11103A042), was utilized, as a portion of the basis for the NRC's safety evaluation report provided by Amendment No. 186. The proposed amendment does not change the Implementation Schedule date, but Entergy has proposed this amendment to implement the requirements of Implementation Schedule Milestone 6 in a slightly different manner than described in the approved Implementation Schedule.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to the Cyber Security Plan Implementation Schedule is administrative in nature. This change does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed change does not require any plant modifications which affect the performance capability of the structures, systems, and components relied upon to mitigate the consequences of postulated accidents and has no impact on the probability or consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change to the Cyber Security Plan Implementation Schedule is administrative in nature. This proposed change does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed change does not require any plant modifications which affect the performance capability of the structures, systems, and components relied upon to mitigate the consequences of postulated accidents and does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Plant safety margins are established through limiting conditions for operation, limiting safety system settings, and safety limits specified in the technical specifications. The proposed change to the Cyber Security Plan Implementation Schedule is administrative in nature. Because there is no change to established safety margins as a result of this change, the proposed change does not involve a significant reduction in a margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Joseph A. Aluise, Associate General Council—Nuclear, Entergy Services, Inc., 639 Loyola Avenue, New Orleans, Louisiana 70113.

NRC Branch Chief: Michael T. Markley.

Florida Power and Light Company, et al., Docket Nos. 50–250 and 50–251, Turkey Point Nuclear Generating (TPN), Units 3 and 4, Florida City, Florida

Date of amendment request: June 13, 2012. A publicly available version of the application is available under ADAMS Accession No. ML12227A452.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The proposed amendments would change the cyber security plan implementation schedule for Milestone 6 at TPN, Units 3 and 4. The NRC issued license Amendment Nos. 245 and 241 to the renewed facility operating licenses for TPN Units 3 and 4, respectively, which approved the TPN Cyber Security Plan and associated implementation milestone schedule.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed scope change to Cyber Security Plan Implementation Schedule milestone 6 is administrative in nature. This change does not alter accident analysis assumptions, add any accident initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed change does not require any plant modifications that affect the performance capability of the structures, systems, and components relied upon to mitigate the consequences of postulated accidents and has no impact on the probability or consequences of an accident previously evaluated.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed scope change to Cyber Security Plan Implementation Schedule milestone 6 is administrative in nature. This proposed change does not alter accident analysis assumptions, add any accident initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed change does not require any plant modifications that affect the performance capability of the structures, systems, and components relied upon to mitigate the consequences of postulated accidents and does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed amendment does not create a possibility for an accident of a new or different type than those previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Plant safety margins are established through limiting conditions for operation, limiting safety system settings, and safety limits specified in the technical specifications. The proposed scope change to Cyber Security Plan Implementation Schedule milestone 6 is administrative in nature. Because there is no change to these established safety margins as a result of this change, the proposed change does not involve a significant reduction in a margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Acting Branch Chief: Jessie F. Quichocho.

NextEra Energy Duane Arnold, LLC, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: June 13, 2012. A publicly available version of the application is available under ADAMS Accession No. ML12230A072.

Description of amendment request: This application contains sensitive unclassified non-safeguards information (SUNSI). NextEra Energy Duane Arnold, LLC, (the licensee), is planning to implement the requirements of Cyber Security Plan Implementation Schedule Milestone 6, approved by the NRC staff in a letter dated July 29, 2011 (Amendment No. 278, for the Duane Arnold Energy Center (DAEC)), in a slightly different manner than described in the approved Implementation Schedule. Although no change to the Implementation Schedule date is proposed, the change to the description of the milestone activity is conservatively considered to be a change to the Implementation Schedule, and in accordance with the provisions of 10 CFR 50.4 and 50.90, NextEra Energy Duane Arnold is submitting this request for an amendment to the facility operating license for DAEC.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to the Cyber Security Plan Implementation Schedule is administrative in nature. This change does not alter accident analysis assumptions, add any accident initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed change does not require any plant modifications that affect the performance capability of the structures, systems, and components relied upon to mitigate the consequences of postulated accidents and has no impact on the probability or consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change to the Cyber Security Plan Implementation Schedule is administrative in nature. This proposed change does not alter accident analysis assumptions, add any accident initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed change does not require any plant modifications that affect the performance capability of the structures, systems, and components relied upon to mitigate the consequences of postulated accidents and does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Plant safety margins are established through limiting conditions for operation, limiting safety system settings, and safety limits specified in the technical specifications. The proposed change to the Cyber Security Plan Implementation Schedule is administrative in nature. Because there is no change to these established safety margins as result of this change, the proposed change does not involve a significant reduction in a margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Mitchell S. Ross, P.O. Box 14000 Juno Beach, FL 33408–0420.

NRC Acting Branch Chief: Istvan Frankl.

NextEra Energy Point Beach, LLC, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowac County, Wisconsin

Date of amendment request: June 18, 2012.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The proposed amendment would make changes to the cyber security plan implementation schedule for Milestone 6 at the Point Beach Nuclear Plant (PBNP), Units 1 and 2. NextEra Energy Point Beach, LLC (NextEra) is planning to implement the requirements of Cyber Security Plan Implementation Schedule Milestone 6, as approved by the NRC staff in a letter dated July 21, 2011 (Amendment Nos. 243 and 247, for PBNP Units 1 and 2, respectively), in a slightly different manner than described in the approved Implementation Schedule. Although no change to the Implementation Schedule is proposed, the change to the description of the milestone activity is conservatively considered to be a change to the Implementation Schedule; therefore, in accordance with the provisions of 10 CFR 50.4 and 10 CFR 50.90, NextEra is requesting an amendment to the Renewed Facility Operating Licenses for PBNP Units 1 and 2, as it relates to the Physical Protection license condition associated with the PBNP Cyber Security Plan.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to the Cyber Security Plan Implementation Schedule is administrative in nature. This change does not alter accident analysis assumptions, add any accident initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed change does not require any plant modifications that affect the performance capability of the structures, systems, and components relied upon to mitigate the consequences of postulated accidents, and has no impact on the probability or consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change to the Cyber Security Plan Implementation Schedule is administrative in nature. This change does not alter accident analysis assumptions, add any accident initiators, or affect the function

of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed change does not require any plant modifications that affect the performance capability of the structures, systems, and components relied upon to mitigate the consequences of postulated accidents, and does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Plant safety margins are established through limiting conditions for operation, limiting safety system settings, and safety limits specified in the technical specifications. The proposed change to the Cyber Security Plan Implementation Schedule is administrative in nature. Because there is no change to these established safety margins as result of this change, the proposed change does not involve a significant reduction in a margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William Blair, Senior Attorney, NextEra Energy Point Beach, LLC, P. O. Box 14000, Juno Beach, FL 33408–0420.

NRC Acting Branch Chief: Istvan Frankl.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–220, Nine Mile Point Nuclear Station, Unit 1, Oswego County, New York

Date of amendment request: June 11, 2012. A publicly available version of the application is available under ADAMS Accession No. ML12170A868.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The proposed amendment is for adoption of a new risk-informed performance-based (RI–PB) fire protection licensing basis which complies with the requirements in 10 CFR 50.48(a) and 10 CFR 50.48(c); the guidance in Regulatory Guide (RG) 1.205, ''Risk-Informed Performance-Based Fire Protection for Existing Light-Water Nuclear Power Plants,'' Revision 1, and National Fire Protection Association (NFPA) 805, ''Performance-Based Standard for Fire Protection for Light Water Reactor Electric Generating Plants,'' 2001 Edition. This amendment request also follows the guidance in Nuclear Energy Institute (NEI) 04–02, ''Guidance for Implementing a Risk-Informed, Performance-Based Fire Protection Program under 10 CFR 50.48(c),'' Revision 2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The purpose of the proposed amendment is to permit NMP1 to adopt a new fire protection licensing basis that complies with the requirements of 10 CFR 50.48(a) and (c) and the guidance in Regulatory Guide 1.205. The NRC considers that NFPA 805 provides an acceptable methodology and performance criteria for licensees to identify fire protection requirements that are an acceptable alternative to the 10 CFR Part 50, Appendix R required fire protection features (69 FR 33536; June 16, 2004).

Operation of NMP1 in accordance with the proposed amendment does not increase the probability or consequences of accidents previously evaluated. Engineering analyses, which may include engineering evaluations, probabilistic safety assessments, and fire modeling calculations, have been performed to demonstrate that the performance-based requirements of NFPA 805 have been satisfied. The Updated Final Safety Analysis Report (UFSAR) documents the analyses of design basis accidents at NMP1. The proposed amendment does not affect accident initiators, nor does it alter design assumptions, conditions, or configurations of the facility that would increase the probability of accidents previously evaluated. Further, the changes to be made for fire hazard protection and mitigation do not adversely affect the ability of structures, systems, or components to perform their design functions for accident mitigation, nor do they affect the postulated initiators or assumed failure modes for accidents described and evaluated in the UFSAR. Structures, systems, or components required to safely shutdown the reactor and to maintain it in a safe shutdown condition will remain capable of performing their design functions.

NFPA 805, taken as a whole, provides an acceptable alternative for satisfying General Design Criterion 3 of Appendix A to 10 CFR Part 50, meets the underlying intent of the NRC's existing fire protection regulations and guidance, and provides for defense-in-depth. The goals, performance objectives, and performance criteria specified in Chapter 1 of the standard ensure that, if there are any increases in core damage frequency or risk, the increase will be small and consistent with the intent of the Commission's Safety Goal Policy.

The proposed amendment will not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of any accident previously evaluated, and equipment required to mitigate an accident remains capable of performing the assumed function(s). The applicable radiological dose criteria will continue to be met.

Based on the above discussion, it is concluded that the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any kind of accident previously evaluated?

Response: No.

Operation of NMP1 in accordance with the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change does not alter the requirements or functions for systems required during accident conditions. Implementation of the new fire protection licensing basis, which complies with the requirements of 10 CFR 50.48(a) and (c) and the guidance Regulatory Guide 1.205, will not result in new or different accidents.

The proposed amendment does not introduce new or different accident initiators, nor does it alter design assumptions, conditions, or configurations of the facility in such a manner as to introduce new or different accident initiators. The proposed amendment does not adversely affect the ability of structures, systems, or components to perform their design function. Structures, systems, or components required to safely shutdown the reactor and maintain it in a safe shutdown condition remain capable of performing their design functions.

The requirements of NFPA 805 address only fire protection and the impacts of fire on the plant that have previously been evaluated. Thus, implementation of the proposed amendment would not create the possibility of a new or different kind of accident beyond those already analyzed in the UFSAR. No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures will be introduced, and there will be no adverse effect or challenges imposed on any safety-related system as a result of the proposed amendment.

Based on the above discussion, it is concluded that the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in the margin of safety?

Response: No.

The purpose of the proposed amendment is to permit NMP1 to adopt a new fire protection licensing basis which complies with the requirements in 10 CFR 50.48(a) and (c) and the guidance in Regulatory Guide 1.205. The NRC considers that NFPA 805 provides an acceptable methodology and performance criteria for licensees to identify fire protection systems and features that are

an acceptable alternative to the 10 CFR Part 50, Appendix R required fire protection features (69 FR 33536; June 16, 2004).

The overall approach of NFPA 805 is consistent with the key principles for evaluating license basis changes, as described in Regulatory Guide 1.174, is consistent with the defense-in-depth philosophy, and maintains sufficient safety margins. Engineering analyses, which may include engineering evaluations, probabilistic safety assessments, and fire modeling calculations, have been performed to demonstrate that the performance based methods do not result in a significant reduction in the margin of safety.

Operation of NMP1 in accordance with the proposed amendment does not involve a significant reduction in the margin of safety. The proposed amendment does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The safety analysis acceptance criteria are not affected by this change. The proposed amendment does not adversely affect existing plant safety margins or the reliability of equipment assumed to mitigate accidents in the UFSAR. The proposed amendment does not adversely affect the ability of structures, systems, or components to perform their design function. Structures, systems, or components required to safely shut down the reactor and to maintain it in a safe shutdown condition remain capable of performing their design functions.

Based on the above discussion, it is concluded that the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Carey W. Fleming, Senior Counsel, Constellation Energy Nuclear Group, LLC, 100 Constellation Way, Suite 200C, Baltimore, MD 21202.

NRC Branch Chief: George Wilson.

PSEG Nuclear LLC, Docket Nos. 50–354, 50–272, and 50–311, Hope Creek Generating Station and Salem Nuclear Generating Station, Units 1 and 2, Salem County, New Jersey

Date of amendment request: July 26, 2012. A publicly available version is available under ADAMS Accession No. ML12209A394.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The proposed amendment would make changes to the Hope Creek Generating Station and Salem Nuclear Generating Station, Units 1 and 2, Renewed Facility Operating Licenses, to revise the physical protection license condition as it relates to the cyber security plan. Specifically, PSEG proposes a change to the scope of Implementation Milestone 6 to apply to only technical cyber security controls.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes to the Cyber Security Plan Implementation Schedule are administrative in nature. The changes do not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed changes do not require any plant modifications which affect the performance capability of the structures, systems, and components relied upon to mitigate the consequences of postulated accidents and have no impact on the probability or consequences of an accident previously evaluated.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes to the Cyber Security Plan Implementation Schedule are administrative in nature. The proposed changes do not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed changes do not require any plant modifications which affect the performance capability of the structures, systems, and components relied upon to mitigate the consequences of postulated accidents and do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

Plant safety margins are established through limiting conditions for operation, limiting safety system settings, and safety limits specified in the technical specifications. The proposed change to the Cyber Security Plan Implementation Schedule is administrative in nature. Because there is no change to these established safety margins as result of this change, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, PSEG Nuclear LLC—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Branch Chief: Meena K. Khanna.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

Entergy Gulf States Louisiana, LLC, and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Entergy Nuclear Operations, Inc., Docket Nos. 50–003, 50–247 and 50–286, Indian Point Nuclear Generating Units 1, 2 and 3, Westchester County, New York

Entergy Nuclear Operations, Inc., Docket No. 50–255, Palisades Nuclear Plant, Van Buren County, Michigan

Entergy Nuclear Operations, Inc., Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Entergy Nuclear Vermont Yankee (VY), LLC and Entergy Nuclear Operations, Inc., Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Entergy Operations, Inc., Docket Nos. 50–313 and 50–368, Arkansas Nuclear One, Units 1 and 2, Pope County, Arkansas

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Florida Power and Light Company, et al., Docket Nos. 50–250 and 50–251, Turkey Point Nuclear Generating, Units 3 and 4, Florida City, Florida

NextEra Energy Duane Arnold, LLC, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

NextEra Energy Point Beach, LLC, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowac County, Wisconsin

Nine Mile Point Nuclear Station, LLC, Docket No. 50–220, Nine Mile Point Nuclear Station, Unit 1, Oswego County, New York

PSEG Nuclear LLC, Docket Nos. 50–354, 50–272, and 50–311, Hope Creek Generating Station and Salem Nuclear Generating Station, Units 1 and 2, Salem County, New Jersey

A. This Order contains instructions regarding how potential parties to this proceeding may request access to

documents containing sensitive unclassified information (including Sensitive Unclassified Non-Safeguards Information (SUNSI).

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request access to SUNSI. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requestor shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmailcenter@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and

(3) The identity of the individual or entity requesting access to SUNSI and the requestor's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C.(3) above, as applicable, the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after the requestor is granted access to that information. However, if more than 25 days remain between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff after a determination on standing and requisite need, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requestor may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

H. Review of Grants of Access. A party other than the requestor may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated at Rockville, Maryland, this 5th day of September, 2012.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

[3] Requestors should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING

Day	Event/Activity
0	Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: Supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 requestor/petitioner reply).
20	Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents.)
25	If NRC staff finds no ''need,'' no ''need to know,'' or no likelihood of standing, the deadline for requestor/petitioner to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds ''need'' for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. 2012–22307 Filed 9–10–12; 8:45 am]
BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0064]

Initial Test Program of Condensate and Feedwater Systems for Light-Water Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory guide; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is issuing Revision 2 to Regulatory Guide (RG) 1.68.1, ''Preoperational and Initial Startup Testing of Feedwater and Condensate Systems for Boiling Water Reactor Power Plants.'' This regulatory guide is being revised to: (1) Expand the scope of the guide to encompass preoperational, initial plant startup, and power ascension tests for the condensate and feedwater systems in all types of light water reactor facilities; and (2) to incorporate lessons learned by the NRC staff since the last revision.

ADDRESSES: Please refer to Docket ID NRC–2012–0064 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and are publicly available, using any of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–064. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. Revision 2 of Regulatory Guide 1.68.1 is available under ADAMS Accession No. ML12160A169. The regulatory analysis may be found under ADAMS Accession No. ML12160A170.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

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FOR FURTHER INFORMATION CONTACT: Kurt Cozens, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–251–7448; email: *Kurt.Cozens@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is issuing a revision to an existing guide in the NRC's ''Regulatory Guide'' series. This series was developed to describe and make available to the public information such as methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the staff uses in evaluating specific problems or

postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

Revision 2 of RG1.68.1 was issued with a temporary identification as Draft Regulatory Guide, DG–1265. This guide describes the methods that the NRC staff considers acceptable to implement multiple criteria in Appendix A, ''General Design Criteria for Nuclear Power Plants,'' to Part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR), ''Domestic Licensing of Production and Utilization Facilities, of 10 CFR Part 50,'' regarding the initial test program (ITP) for condensate and feedwater (FW) systems, including condensate storage and supply, for light-water reactors (LWRs) and for startup feedwater (SFW), auxiliary feedwater (AFW) or emergency feedwater (EFW) systems for pressurized-water reactors (PWRs). This guide also describes methods that the NRC staff finds acceptable for testing condensate, FW, SFW/AFW/EFW (PWR only) structures, systems, and components (SSCs) in accordance with Subpart B, ''Standard Design Certifications,'' and Subpart C, ''Combined Licenses,'' of 10 CFR Part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants.''

II. Further Information

DG–1265, was published in the **Federal Register** on March 16, 2012 (77 FR 15812), for a 60-day public comment period. The public comment period closed on May 18, 2012. No public comments on DG–1265 were received; therefore no content changes were made during its conversion to a regulatory guide.

III. Backfitting and Issue Finality

Issuance of this final regulatory guide does not constitute backfitting as defined in 10 CFR 50.109 (the Backfit Rule) and is not otherwise inconsistent with the issue finality provisions in 10 CFR Part 52. As discussed in the ''Implementation'' section of this regulatory guide, the NRC has no current intention to impose this regulatory guide on holders of current operating licenses or combined licenses.

This regulatory guide may be applied to applications for operating licenses and combined licenses docketed by the NRC as of the date of issuance of the final regulatory guide, as well as future applications for operating licenses and combined licenses submitted after the issuance of the regulatory guide. Such action does not constitute backfitting as defined in 10 CRF 50.109(a)(1) or is otherwise inconsistent with the applicable issue finality provision in 10 CFR Part 52, inasmuch as such applicants or potential applicants are not within the scope of entities protected by the Backfit Rule or the relevant issue finality provisions in Part 52.

Dated at Rockville, Maryland, this 30th day of August, 2012.

For the Nuclear Regulatory Commission.

Thomas H. Boyce,

Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2012–22310 Filed 9–10–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission [NRC–2012–0002]

DATES: Weeks of September 10, 17, 24, October 1, 8, 15, 2012.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of September 10, 2012

Tuesday, September 11, 2012

9 a.m. Briefing on Economic Consequences (Public Meeting) (Contact: Richard Correia, 301–251–7430).

This meeting will be webcast live at the Web address—*www.nrc.gov.*

Friday, September 14, 2012

11 a.m. Discussion of Management and Personnel Issues (Closed—Ex. 2 and 6).

Week of September 17, 2012—Tentative

There are no meetings scheduled for the week of September 17, 2012.

Week of September 24, 2012—Tentative

Tuesday, September 25, 2012

9:30 a.m. Strategic Programmatic Overview of the New Reactors Business Line (Public Meeting) (Contact: Donna Williams, 301–415–1322).

This meeting will be webcast live at the Web address—*www.nrc.gov.*

Week of October 1, 2012—Tentative

Tuesday, October 2, 2012

9:30 a.m. Strategic Programmatic Overview of the Nuclear Materials Users and Decommissioning and Low-Level Waste Business Lines (Public Meeting) (Contact: Kimyata Morgan Butler, 301–415–0733).

This meeting will be webcast live at the Web address—*www.nrc.gov.*

Week of October 8, 2012—Tentative

There are no meetings scheduled for the week of October 8, 2012.

Week of October 15, 2012—Tentative

There are no meetings scheduled for the week of October 15, 2012.

* * * * *

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—301–415–1292. Contact person for more information: Rochelle Bavol, 301–415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Bill Dosch, Chief, Work Life and Benefits Branch, at 301–415–6200, TDD: 301–415–2100, or by email at *william.dosch@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an email to *darlene.wright@nrc.gov.*

Dated: September 6, 2012.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2012–22423 Filed 9–7–12; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos.: 50–250, 50–251, 50–335, and 50–389; NRC–2012–0210; License Nos.: DPR–31, DPR–41, DPR–67, and NPF–16]

Florida Power & Light Company; Receipt of Request for Action

Notice is hereby given that by petition dated April 23, 2012, Mr. Thomas King (petitioner) has requested that the U.S.

Nuclear Regulatory Commission (NRC) take action with regard to St. Lucie Plant, Units 1 and 2, and Turkey Point Nuclear Generating, Units 3 and 4. The petitioner requested that the NRC take immediate action to shut down or prohibit restart of the St. Lucie Plant, Units 1 and 2, and Turkey Point Nuclear Generating, Units 3 and 4, ''until a criminal investigation of the AMES Group LLC is complete and everything has been verified safe.''

The request is being treated pursuant to Section 2.206 of Title 10 of the Code of Federal Regulations (10 CFR) of the Commission's regulations. The request has been referred to the Director of the Office of Nuclear Reactor Regulation. As provided by Section 2.206, appropriate action will be taken on this petition within a reasonable time. The petition review board (PRB) held a teleconference with the petitioner on July 9, 2012, during which the petitioner was given the opportunity to supplement the original request with additional information in advance of the PRB's decision to accept or deny the petition. The PRB denied the petitioner's request for immediate action because the NRC staff did not have sufficient information to support a shut-down or prohibit the restart of the St. Lucie and Turkey Point plants. The NRC Region II Office is conducting an examination of the petitioner's concerns. The PRB accepted the petition for review but it will be held in abeyance pending the outcome of Region II's examination. A copy of the petition is available for 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 the Agencywide Documents Access and Management System (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 29th day of August 2012.

For the Nuclear Regulatory Commission.

Eric J. Leeds,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 2012–22309 Filed 9–10–12; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Submission of Information Collection for OMB Review; Comment Request; Payment of Premiums

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for OMB approval of revised collection of information.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) is modifying the collection of information under its regulation on Payment of Premiums (OMB control number 1212–0007; expires December 31, 2013) and is requesting that the Office of Management and Budget (OMB) approve the revised collection of information under the Paperwork Reduction Act for three years. This notice informs the public of PBGC's request and solicits public comment on the collection of information.

DATES: Comments must be submitted by October 11, 2012.

ADDRESSES: Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Pension Benefit Guaranty Corporation, via electronic mail at *OIRA_DOCKET@omb.eop.gov* or by fax to 202–395–6974.

Copies of the collection of information and comments may be obtained without charge by writing to the Disclosure Division, Office of General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026; visiting the Disclosure Division; faxing a request to 202–326–4042; or calling 202–326–4040 during normal business hours. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.) The premium payment regulation and the premium instructions (including illustrative forms) for 2012 are available at *www.pbgc.gov.*

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026; 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: Section 4007 of Title IV of the Employee Retirement Income Security Act of 1974 (ERISA) requires pension plans covered under Title IV pension insurance programs to pay premiums to PBGC. Pursuant to section 4007, PBGC has issued its regulation on Payment of Premiums (29 CFR part 4007). Under § 4007.3 of the premium payment regulation, plan administrators are required to file premium payments and information prescribed by PBGC. Premium information must be filed electronically using ''My Plan Administration Account'' (''My PAA'') through PBGC's Web site except to the extent PBGC grants an exemption for good cause in appropriate circumstances, in which case the information must be filed using an approved PBGC form. The plan administrator of each pension plan covered by Title IV of ERISA is required to submit one or more premium filings for each premium payment year. Under § 4007.10 of the premium payment regulation, plan administrators are required to retain records about premiums and information submitted in premium filings.

PBGC needs information from premium filings to identify the plans for which premiums are paid, to verify whether the amounts paid are correct, to help PBGC determine the magnitude of its exposure in the event of plan termination, to help track the creation of new plans and transfer of participants and plan assets and liabilities among plans, and to keep PBGC's insured-plan inventory up to date. That information and the retained records are also needed for audit purposes.

All plans covered by Title IV of ERISA pay a flat-rate per-participant premium. An underfunded single-employer plan also pays a variable-rate premium based on the value of the plan's unfunded vested benefits.

Large-plan filers (i.e., plans that were required to pay premiums for 500 or more participants for the prior plan year) are required to pay PBGC's flat-rate premium early in the premium payment year. To accommodate plans that find it impractical to do an accurate participant count until later in the premium payment year, PBGC permits filers to make an estimated flat-rate premium filing.

All plans are required to make a comprehensive premium filing. Comprehensive filings are used to report flat- and (for single-employer plans) variable-rate premiums, premium-related data, and information about plan identity, status, and events. (For large plans, the comprehensive filing reconciles an estimated flat-rate premium paid earlier in the year.)

PBGC proposes to revise its premium filing procedures and instructions for

the 2013 plan year. On May 8, 2012 (at 77 FR 27099), PBGC gave public notice that it was submitting the revised procedures and instructions to OMB for review. On July 6, 2012, the President signed into law the Moving Ahead for Progress in the 21st Century Act (MAP–21). MAP–21 includes provisions affecting PBGC premiums. PBGC has modified its proposed premium filing procedures and instructions accordingly; this notice informs the public of the modified OMB submission.

PBGC now intends to revise the 2013 filing procedures and instructions to:

- Provide for revoking a prior election to use the Alternative Premium Funding Target (APFT) to determine unfunded vested benefits (UVBs). (Under PBGC regulations, an election to use the APFT is irrevocable for 5 years; 2008 was the first year that plans were permitted to elect the APFT, so 2013 is the first year for which it is necessary to collect this information.)
- Require plan administrators to provide a breakdown of the total premium funding target into the same categories of participants used for reporting on Schedule SB to Form 5500, i.e., active participants, terminated vested participants, and retirees and beneficiaries receiving payment. PBGC uses the premium funding target to estimate termination liability, e.g., for the annual contingency list, and a breakdown will enable PBGC to make a much better estimate than simply using only the total premium funding target.
- Require plan administrators to report a contact name to make it easier for PBGC to contact a plan. Filers also will have the option of providing an additional plan contact.
- Require plan administrators to report the plan effective date for all plans rather than just new and newly covered plans. This date helps PBGC trace plans that change Employer Identification Number or Plan Number.
- Require plan administrators to break down the premium credit information in the comprehensive premium filing into two items rather than aggregating the premium credit. This information will help PBGC to manage the application of overpayments.
- Add a data item for the MAP–21 variable-rate premium cap, which is first effective for 2013.
- Explain how MAP–21 affects premium computations.
- Eliminate the following data items—
  - The plan sponsor's address.
  - The boxes to check if there has been a change in name for a plan sponsor or a change in name or address for a plan administrator.
  - The payment method for paper filers.
- Reorder and re-number some items on the illustrative form that accompanies and is part of the instructions, and make other minor changes.

The collection of information under the regulation has been approved by OMB through December 31, 2013, under control number 1212–0007. PBGC is requesting that OMB extend approval of this revised collection of information for three years. 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.

PBGC estimates that it will receive 29,900 premium filings per year from 24,600 plan administrators under this collection of information. PBGC further estimates that the average annual burden of this collection of information is 8,200 hours and $54,387,000.

Issued in Washington, DC, this 6th day of September, 2012.

John H. Hanley,

Director, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation.

[FR Doc. 2012–22352 Filed 9–10–12; 8:45 am]

BILLING CODE 7709–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30195; File No. 812–13998]

Prudential Short Duration High Yield Fund, Inc. and Prudential Investments LLC; Notice of Application

September 5, 2012.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 19(b) of the Act and rule 19b–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered closed-end investment companies to make periodic distributions of long-term capital gains with respect to their outstanding common stock as frequently as monthly in any one taxable year, and as frequently as distributions are specified by or in accordance with the terms of any outstanding preferred stock that such investment companies may issue.

APPLICANTS: Prudential Short Duration High Yield Fund, Inc. (''Initial Fund'') and Prudential Investments LLC (''PI'' or the ''Adviser'').

FILING DATES: The application was filed on January 13, 2012, and amended on July 10, 2012.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 1, 2012, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants, Gateway Center 3, 100 Mulberry Street, 4th Floor, Newark, NJ 07102, Contact: Kathryn Quirk, Esq. and Claudia DiGiacomo, Esq.

FOR FURTHER INFORMATION CONTACT: Jaea F. Hahn, Senior Counsel, at (202) 551–6870, or Jennifer L. Sawin, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm*, or by calling (202) 551–8090.

Applicants' Representations

1. The Initial Fund is a closed-end management investment company registered under the Act and is organized as a Maryland corporation.[1]

[1] Applicants request that any order issued granting the relief requested in the application also apply to any registered closed-end investment company currently advised or to be advised in the future by PI (including any successor in interest) or by an entity controlling, controlled by or under common control (within the meaning of section 2(a)(9) of the Act) with PI (such entities, together with PI, the ''Advisers'') that decides in the future to rely on the requested relief (''Future Fund'' and together with the Initial Fund, the ''Funds''). The Initial Fund and PI are referred to collectively as ''Applicants''. Any Future Funds that may rely on

The investment objective of the Initial Fund is to provide a high level of current income by investing primarily in a diversified portfolio of high yield fixed income instruments that are rated below investment grade or, if unrated, are considered to be of comparable quality. The Initial Fund's shares of common stock are currently listed on the New York Stock Exchange, a national securities exchange as defined in section 2(a)(26) of the Act. The Initial Fund and any Future Fund may issue preferred stock. Applicants believe that closed-end fund investors may prefer an investment vehicle that provides regular current income through fixed distribution policies.

2. PI, a New York limited liability company, is, and all other Advisers will be, registered under the Investment Advisers Act of 1940, as amended (''Advisers Act''), or exempt from such registration. PI acts as investment adviser to the Initial Fund and has responsibility for the implementation of the Initial Fund's overall investment strategy. PI entered into a subadvisory agreement with Prudential Investment Management Inc. (the ''Subadviser''), an affiliate of PI, for the day-to-day management of the Initial Fund's portfolio. The Subadviser is, and any subadviser to any Future Fund will be, registered as an investment adviser under the Advisers Act or exempt from such registration.

3. Applicants state that, prior to a Fund's implementing a distribution policy (''Distribution Policy'') in reliance on the order, the board of directors (the ''Board'') of the Fund, including a majority of the directors who are not ''interested persons,'' of such Fund as defined in section 2(a)(19) of the Act (the ''Independent Directors''), shall have requested, and the Adviser shall have provided, such information as is reasonably necessary to make an informed determination of whether the Board should adopt a proposed Distribution Policy. In particular, the Board and the Independent Directors will review information regarding the purpose and terms of a proposed Distribution Policy; the likely effects of such policy on such Fund's long-term total return (in relation to market price and its net asset value (''NAV'') per share of common stock); the expected relationship between such Fund's distribution rate on its common stock under the policy and the Fund's total return (in relation to NAV per share); whether the rate of distribution would exceed such Fund's expected total return in relation to its NAV per share; and any foreseeable material effects of such policy on such Fund's long-term total return (in relation to market price and NAV per share). The Independent Directors shall also have considered what conflicts of interest the Adviser and the affiliated persons of the Adviser and each such Fund might have with respect to the adoption or implementation of the Distribution Policy. Applicants state that, only after considering such information shall the Board, including the Independent Directors, of a Fund approve a Distribution Policy and in connection with such approval shall have determined that the Distribution Policy is consistent with a Fund's investment objectives and in the best interests of the holders of a Fund's common stock.

4. Applicants state that the purpose of a Distribution Policy, generally, would be to permit a Fund to distribute over the course of each year, through periodic distributions in relatively equal amounts (plus any required special distributions), an amount closely approximating the total taxable income of such Fund during such year and, if so determined by its Board, all or a portion of returns of capital paid by portfolio companies to such Fund during the year. Under the Distribution Policy of a Fund, such Fund would distribute to its respective common stockholders a fixed monthly percentage of the market price of such Fund's common stock at a particular point in time or a fixed monthly percentage of NAV at a particular time or a fixed monthly amount, any of which may be adjusted from time to time. It is anticipated that under a Distribution Policy, the minimum annual distribution rate with respect to such Fund's common stock would be independent of the Fund's performance during any particular period but would be expected to correlate with the Fund's performance over time. Except for extraordinary distributions and potential increases or decreases in the final dividend periods in light of a Fund's performance for an entire calendar year and to enable a Fund to comply with the distribution requirements of Subchapter M of the Internal Revenue Code (''Code'') for the calendar year, each distribution on the Fund's common stock would be at the stated rate then in effect.

5. Applicants state that prior to the implementation of a Distribution Policy for a Fund, the Board shall have adopted policies and procedures under rule 38a-1 under the Act that: (i) are reasonably designed to ensure that all notices required to be sent to the Fund's stockholders pursuant to section 19(a) of the Act, rule 19a-1 thereunder and condition 4 below (each a ''19(a) Notice'') include the disclosure required by rule 19a-1 under the Act and by condition 2(a) below, and that all other written communications by the Fund or its agents regarding distributions under the Distribution Policy include the disclosure required by condition 3(a) below; and (ii) require the Fund to keep records that demonstrate its compliance with all of the conditions of the order and that are necessary for such Fund to form the basis for, or demonstrate the calculation of, the amounts disclosed in its 19(a) Notices.

Applicants' Legal Analysis

1. Section 19(b) of the Act generally makes it unlawful for any registered investment company to make long-term capital gains distributions more than once every twelve months. Rule 19b–1 limits the number of capital gains dividends, as defined in section 852(b)(3)(C) of the Code (''distributions''), that a fund may make with respect to any one taxable year to one, plus a supplemental distribution made pursuant to section 855 of the Code not exceeding 10% of the total amount distributed for the year, plus one additional capital gain dividend made in whole or in part to avoid the excise tax under section 4982 of the Code.

2. Section 6(c) of the Act provides, in relevant part, that the Commission may exempt any person or transaction from any provision of the Act to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Applicants state that the one of the concerns leading to the enactment of section 19(b) and adoption of rule 19b–1 was that stockholders might be unable to distinguish between frequent distributions of capital gains and dividends from investment income. Applicants state, however, that rule 19a-1 effectively addresses this concern by requiring that distributions (or the confirmation of the reinvestment thereof) estimated to be sourced in part from capital gains or capital be accompanied by a separate statement showing the sources of the distribution

the order in the future will comply with the terms and conditions of the application. All existing registered closed-end investment companies currently intending to rely on the order have been named as Applicants. A successor in interest is limited solely to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

(*e.g.,* estimated net income, net short-term capital gains, net long-term capital gains and/or return of capital). Applicants state that similar information is included in the Funds' annual reports to stockholders and on the Internal Revenue Service Form 1099 DIV, which is sent to each common and preferred stockholder who received distributions during a particular year.

4. Applicants further state that each of the Funds will make the additional disclosures required by the conditions set forth below, and each of them will adopt compliance policies and procedures in accordance with rule 38a-1 under the Act to ensure that all required 19(a) Notices and disclosures are sent to stockholders. Applicants state that the information required by section 19(a), rule 19a-1, the Distribution Policy, the policies and procedures under rule 38a-1 noted above, and the conditions listed below will help ensure that each Fund's stockholders are provided sufficient information to understand that their periodic distributions are not tied to a Fund's net investment income (which for this purpose is the Fund's taxable income other than from capital gains) and realized capital gains to date, and may not represent yield or investment return. Accordingly, Applicants assert that continuing to subject the Funds to section 19(b) and rule 19b–1 would afford stockholders no extra protection.

5. Applicants note that section 19(b) and rule 19b–1 also were intended to prevent certain improper sales practices, including, in particular, the practice of urging an investor to purchase shares of a fund on the basis of an upcoming capital gains dividend (''selling the dividend''), where the dividend would result in an immediate corresponding reduction in NAV and would be in effect a taxable return of the investor's capital. Applicants submit that the ''selling the dividend'' concern should not apply to closed-end investment companies, such as the Funds, which do not continuously distribute shares. According to Applicants, if the underlying concern extends to secondary market purchases of shares of closed-end funds that are subject to a large upcoming capital gains dividend, adoption of a periodic distribution plan actually helps minimize the concern by avoiding, through periodic distributions, any buildup of large end-of-the-year distributions.

6. Applicants also note that the common stock of closed-end funds often trades in the marketplace at a discount to its NAV. Applicants believe that this discount may be reduced if the Funds are permitted to pay relatively frequent dividends on their common stock at a consistent rate, whether or not those dividends contain an element of long-term capital gain.

7. Applicants assert that the application of rule 19b–1 to a Distribution Policy actually could have an inappropriate influence on portfolio management decisions. Applicants state that, in the absence of an exemption from rule 19b–1, the adoption of a periodic distribution plan imposes pressure on management (i) not to realize any net long-term capital gains until the point in the year that the fund can pay all of its remaining distributions in accordance with rule 19b–1, and (ii) not to realize any long-term capital gains during any particular year in excess of the amount of the aggregate pay-out for the year (since as a practical matter excess gains must be distributed and accordingly would not be available to satisfy pay-out requirements in following years), notwithstanding that purely investment considerations might favor realization of long-term gains at different times or in different amounts. Applicants assert that by limiting the number of long-term capital gain dividends that a Fund may make with respect to any one year, rule 19b–1 may prevent the normal and efficient operation of a periodic distribution plan whenever that Fund's realized net long-term capital gains in any year exceed the total of the periodic distributions that may include such capital gains under the rule.

8. Applicants also assert that rule 19b–1 may force fixed regular periodic distributions under a periodic distribution plan to be funded with returns of capital [2] (to the extent net investment income and realized short-term capital gains are insufficient to fund the distribution), even though realized net long-term capital gains otherwise would be available. To distribute all of a Fund's long-term capital gains within the limits in rule 19b–1, a Fund may be required to make total distributions in excess of the annual amount called for by its periodic distribution plan, or to retain and pay taxes on the excess amount. Applicants assert that the requested order would minimize these anomalous effects of rule 19b–1 by enabling the Funds to realize long-term capital gains as often as investment considerations dictate without fear of violating rule 19b–1.

9. Applicants state that Revenue Ruling 89–81 under the Code requires that a fund that seeks to qualify as a regulated investment company under the Code and that has both common stock and preferred stock outstanding designate the types of income, e.g., investment income and capital gains, in the same proportion as the total distributions distributed to each class for the tax year. To satisfy the proportionate designation requirements of Revenue Ruling 89–81, whenever a fund has realized a long-term capital gain with respect to a given tax year, the fund must designate the required proportionate share of such capital gain to be included in common and preferred stock dividends. Applicants state that although rule 19b–1 allows a fund some flexibility with respect to the frequency of capital gains distributions, a fund might use all of the exceptions available under the rule for a tax year and still need to distribute additional capital gains allocated to the preferred stock to comply with Revenue Ruling 89–81.

10. Applicants assert that the potential abuses addressed by section 19(b) and rule 19b–1 do not arise with respect to preferred stock issued by a closed-end fund. Applicants assert that such distributions are either fixed or determined in periodic auctions by reference to short-term interest rates rather than by reference to performance of the issuer, and Revenue Ruling 89–81 determines the proportion of such distributions that are comprised of long-term capital gains.

11. Applicants also submit that the ''selling the dividend'' concern is not applicable to preferred stock, which entitles a holder to no more than a specified periodic dividend at a fixed rate or the rate determined by the market, and, like a debt security, is priced based upon its liquidation preference, dividend rate, credit quality, and frequency of payment. Applicants state that investors buy preferred stock for the purpose of receiving payments at the frequency bargained for, and any application of rule 19b–1 to preferred stock would be contrary to the expectation of investors.

12. Applicants request an order under section 6(c) of the Act granting an exemption from the provisions of section 19(b) of the Act and rule 19b–1 thereunder to permit each Fund to distribute periodic capital gain dividends (as defined in section 852(b)(3)(C) of the Code) as often as monthly in any one taxable year in respect of its common stock and as often as specified by or determined in accordance with the terms thereof in respect of its preferred stock.

[2] Returns of capital as used in the application means return of capital for financial accounting purposes and not for tax accounting purposes.

Applicants' Conditions

Applicants agree that, with respect to each Fund seeking to rely on the order, the order will be subject to the following conditions:

1. Compliance Review and Reporting

The Fund's chief compliance officer will: (a) report to the Fund's Board, no less frequently than once every three months or at the next regularly scheduled quarterly Board meeting, whether (i) the Fund and its Adviser have complied with the conditions of the order, and (ii) a material compliance matter (as defined in rule 38a-1(e)(2) under the Act) has occurred with respect to such conditions; and (b) review the adequacy of the policies and procedures adopted by the Board no less frequently than annually.

2. Disclosures to Fund Stockholders

(a) Each 19(a) Notice disseminated to the holders of the Fund's common stock, in addition to the information required by section19(a) and rule 19a-1:

(i) will provide, in a tabular or graphical format:

(1) the amount of the distribution, on a per share of common stock basis, together with the amounts of such distribution amount, on a per share of common stock basis and as a percentage of such distribution amount, from estimated: (A) net investment income; (B) net realized short-term capital gains; (C) net realized long-term capital gains; and (D) return of capital or other capital source;

(2) the fiscal year-to-date cumulative amount of distributions, on a per share of common stock basis, together with the amounts of such cumulative amount, on a per share of common stock basis and as a percentage of such cumulative amount of distributions, from estimated: (A) Net investment income; (B) net realized short-term capital gains; (C) net realized long-term capital gains; and (D) return of capital or other capital source;

(3) the average annual total return in relation to the change in NAV for the 5-year period (or, if the Fund's history of operations is less than five years, the time period commencing immediately following the Fund's first public offering) ending on the last day of the month ended immediately prior to the most recent distribution record date compared to the current fiscal period's annualized distribution rate expressed as a percentage of NAV as of the last day of the month prior to the most recent distribution record date; and

(4) the cumulative total return in relation to the change in NAV from the last completed fiscal year to the last day of the month prior to the most recent distribution record date compared to the fiscal year-to-date cumulative distribution rate expressed as a percentage of NAV as of the last day of the month prior to the most recent distribution record date. Such disclosure shall be made in a type size at least as large and as prominent as the estimate of the sources of the current distribution; and

(ii) will include the following disclosure:

(1) ''You should not draw any conclusions about the Fund's investment performance from the amount of this distribution or from the terms of the Fund's Distribution Policy'';

(2) ''The Fund estimates that it has distributed more than its income and net realized capital gains; therefore, a portion of your distribution may be a return of capital. A return of capital may occur, for example, when some or all of the money that you invested in the Fund is paid back to you. A return of capital distribution does not necessarily reflect the Fund's investment performance and should not be confused with 'yield' or 'income'' [3]; and

(3) ''The amounts and sources of distributions reported in this 19(a) Notice are only estimates and are not being provided for tax reporting purposes. The actual amounts and sources of the amounts for tax reporting purposes will depend upon the Fund's investment experience during the remainder of its fiscal year and may be subject to changes based on tax regulations. The Fund will send you a Form 1099–DIV for the calendar year that will tell you how to report these distributions for federal income tax purposes.''

Such disclosure shall be made in a type size at least as large as and as prominent as any other information in the 19(a) Notice and placed on the same page in close proximity to the amount and the sources of the distribution.

(b) On the inside front cover of each report to stockholders under rule 30e-1 under the Act, the Fund will:

(i) Describe the terms of the Distribution Policy (including the fixed amount or fixed percentage of the distributions and the frequency of the distributions);

(ii) include the disclosure required by condition 2(a)(ii)(1) above;

(iii) state, if applicable, that the Distribution Policy provides that the Board may amend or terminate the Distribution Policy at any time without prior notice to Fund stockholders; and

(iv) describe any reasonably foreseeable circumstances that might cause the Fund to terminate the Distribution Policy and any reasonably foreseeable consequences of such termination.

(c) Each report provided to stockholders under rule 30e-1 under the Act and each prospectus filed with the Commission on Form N–2 under the Act, will provide the Fund's total return in relation to changes in NAV in the financial highlights table and in any discussion about the Fund's total return.

3. Disclosure to Stockholders, Prospective Stockholders and Third Parties

(a) The Fund will include the information contained in the relevant 19(a) Notice, including the disclosure required by condition 2(a)(ii) above, in any written communication (other than a communication on Form 1099) about the Distribution Policy or distributions under the Distribution Policy by the Fund, or agents that the Fund has authorized to make such communication on the Fund's behalf, to any Fund stockholder, prospective stockholder or third-party information provider;

(b) The Fund will issue, contemporaneously with the issuance of any 19(a) Notice, a press release containing the information in the 19(a) Notice and will file with the Commission the information contained in such 19(a) Notice, including the disclosure required by condition 2(a)(ii) above, as an exhibit to its next filed Form N–CSR; and

(c) The Fund will post prominently a statement on its (or the Adviser's) Web site containing the information in each 19(a) Notice, including the disclosure required by condition 2(a)(ii) above, and will maintain such information on such Web site for at least 24 months.

4. Delivery of 19(a) Notices to Beneficial Owners

If a broker, dealer, bank or other person (''financial intermediary'') holds common stock issued by the Fund in nominee name, or otherwise, on behalf of a beneficial owner, the Fund: (a) Will request that the financial intermediary, or its agent, forward the 19(a) Notice to all beneficial owners of the Fund's stock held through such financial intermediary; (b) will provide, in a timely manner, to the financial intermediary, or its agent, enough copies of the 19(a) Notice assembled in the form and at the place that the

[3] The disclosure in condition 2(a)(ii)(2) will be included only if the current distribution or the fiscal year-to-date cumulative distributions are estimated to include a return of capital.

financial intermediary, or its agent, reasonably requests to facilitate the financial intermediary's sending of the 19(a) Notice to each beneficial owner of the Fund's stock; and (c) upon the request of any financial intermediary, or its agent, that receives copies of the 19(a) Notice, will pay the financial intermediary, or its agent, the reasonable expenses of sending the 19(a) Notice to such beneficial owners.

5. Additional Board Determinations for Funds Whose Common Stock Trades at a Premium

If:

(a) The Fund's common stock has traded on the stock exchange that they primarily trade on at the time in question at an average premium to NAV equal to or greater than 10%, as determined on the basis of the average of the discount or premium to NAV of the Fund's common stock as of the close of each trading day over a 12-week rolling period (each such 12-week rolling period ending on the last trading day of each week); and

(b) The Fund's annualized distribution rate for such 12-week rolling period, expressed as a percentage of NAV as of the ending date of such 12-week rolling period, is greater than the Fund's average annual total return in relation to the change in NAV over the 2-year period ending on the last day of such 12-week rolling period; then:

(i) At the earlier of the next regularly scheduled meeting or within four months of the last day of such 12-week rolling period, the Board, including a majority of the Independent Directors:

(1) Will request and evaluate, and the Fund's Adviser will furnish, such information as may be reasonably necessary to make an informed determination of whether the Distribution Policy should be continued or continued after amendment;

(2) will determine whether continuation, or continuation after amendment, of the Distribution Policy is consistent with the Fund's investment objective(s) and policies and is in the best interests of the Fund and its stockholders, after considering the information in condition 5(b)(i)(1) above; including, without limitation:

(A) whether the Distribution Policy is accomplishing its purpose(s);

(B) the reasonably foreseeable material effects of the Distribution Policy on the Fund's long-term total return in relation to the market price and NAV of the Fund's common stock; and

(C) the Fund's current distribution rate, as described in condition 5(b) above, compared with the Fund's average annual taxable income or total return over the 2-year period, as described in condition 5(b), or such longer period as the Board deems appropriate; and

(3) based upon that determination, will approve or disapprove the continuation, or continuation after amendment, of the Distribution Policy; and

(ii) The Board will record the information considered by it, including its consideration of the factors listed in condition 5(b)(i)(2) above, and the basis for its approval or disapproval of the continuation, or continuation after amendment, of the Distribution Policy in its meeting minutes, which must be made and preserved for a period of not less than six years from the date of such meeting, the first two years in an easily accessible place.

6. Public Offerings

The Fund will not make a public offering of the Fund's common stock other than:

(a) A rights offering below NAV to holders of the Fund's common stock;

(b) an offering in connection with a dividend reinvestment plan, merger, consolidation, acquisition, spin-off or reorganization of the Fund; or

(c) an offering other than an offering described in conditions 6(a) and 6(b) above, provided that, with respect to such other offering:

(i) the Fund's annualized distribution rate for the six months ending on the last day of the month ended immediately prior to the most recent distribution record date,[4] expressed as a percentage of NAV per share as of such date, is no more than 1 percentage point greater than the Fund's average annual total return for the 5-year period ending on such date; [5] and

(ii) the transmittal letter accompanying any registration statement filed with the Commission in connection with such offering discloses that the Fund has received an order under section 19(b) to permit it to make periodic distributions of long-term capital gains with respect to its common stock as frequently as twelve times each year, and as frequently as distributions are specified by or determined in accordance with the terms of any outstanding preferred stock as such Fund may issue.

[4] If the Fund has been in operation fewer than six months, the measured period will begin immediately following the Fund's first public offering.

[5] If the Fund has been in operation fewer than five years, the measured period will begin immediately following the Fund's first public offering.

7. Amendments to Rule 19b–1

The requested order will expire on the effective date of any amendments to rule 19b–1 that provide relief permitting certain closed-end investment companies to make periodic distributions of long-term capital gains with respect to their outstanding common stock as frequently as twelve times each year.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–22244 Filed 9–10–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, September 13, 2012 at 2:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Gallagher, as duty officer, voted to consider the items listed for the Closed Meeting in closed session, and determined that no earlier notice thereof was possible.

The subject matter of the Closed Meeting scheduled for Thursday, September 13, 2012 will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 551–5400.

Dated:September 7, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–22446 Filed 9–7–12; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67780; File No. SR–Phlx–2012–106]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Withdrawal of Proposed Rule Change To Modify Exchange Rule 3307 To Institute a Five Millisecond Delay in the Execution Time of Marketable Orders on NASDAQ OMX PSX

September 5, 2012.

On August 9, 2012, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1] and Rule 19b–4 thereunder,[2] a proposed rule change to institute a five millisecond delay in the execution time of marketable orders on NASDAQ OMX PSX. Notice of the proposed rule change was published in the **Federal Register** on August 23, 2012.[3] The Commission received no comments on the proposed rule change. On August 30, 2012, Phlx withdrew the proposed rule change (SR–Phlx–2012–106).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[4]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–22218 Filed 9–10–12; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 67680 (August 17, 2012), 77 FR 51073.

[4] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67784; File No. SR–FINRA–2012–040]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Amend the By-Laws of FINRA Dispute Resolution, Inc. To Clarify That Services Provided by Mediators Should Not Cause Them To Be Classified as Industry Members Under the By-Laws

September 5, 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 August 23, 2012, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), the proposed rule change as described in Items I, II and III below, which Items have been prepared by FINRA. 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

FINRA is proposing to amend the By-Laws of FINRA Dispute Resolution, Inc. (By-Laws) to clarify that services provided by mediators, when acting in such capacity and not representing parties in mediation, should not cause the individuals to be classified as Industry Members under the By-Laws.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

FINRA believes that mediators who are otherwise qualified should be eligible to become Public Members of the National Arbitration and Mediation Committee (NAMC), a committee appointed by the Board of Directors of FINRA Dispute Resolution, Inc. (FINRA DR). Currently, they cannot because of the definitions of Industry Member [3] and Public Member [4] in the FINRA Dispute Resolution By-Laws (By-Laws).

In a FINRA mediation, all parties agree on the selection of a mediator, agree on the compensation of the mediator, and agree on how to allocate the mediator's compensation among the parties. Thus, a mediator receives part of the compensation in each case from an industry party. However, for mediations to which investors are parties, mediators represent neither the investors nor the FINRA-registered individuals or entities. Similarly, for mediations involving industry parties only, mediators represent neither the FINRA-registered individuals nor entities. In both types of mediations, FINRA believes that the revenue mediators receive from FINRA-registered individuals or firms for their mediation activity should not prevent mediators from being classified as Public Members under the By-Laws.

Pursuant to the Plan of Allocation and Delegation of Functions by FINRA to Subsidiaries (Delegation Plan), the NAMC has the powers and authority pursuant to FINRA's Rules to advise the FINRA DR Board on the development and maintenance of an equitable and efficient system of dispute resolution that will equally serve the needs of public investors and FINRA members, to monitor rules and procedures governing the conduct of dispute resolution, and to have such other powers and authority as is necessary to effectuate the purposes of FINRA's Rules.[5] The Delegation Plan provides that the FINRA DR Board must appoint the NAMC, whose membership must

[3] *See* Dispute Resolution By-Laws, Article I(s) (Definitions—Industry Member).

[4] *See* Dispute Resolution By-Laws, Article I(x) (Definitions—Public Member).

[5] *See* Plan of Allocation and Delegation of Functions by FINRA to Subsidiaries—NASD Dispute Resolution, § III(C)(1)(b).

consist of a majority of Public Members.[6]

Currently, under the By-Laws, a mediator could be classified as an Industry Member rather than a Public Member for purposes of Committee participation because of the services provided by a mediator to an industry party. Mediators are neutrals and do not represent any party in the mediation. In FINRA's mediation forum, mediators are retained only by agreement of all parties to a dispute rather than by any one party. Further, the parties compensate mediators jointly pursuant to that agreement. While mediators derive some of their revenue from brokers or dealers, FINRA does not believe the compensation earned in the capacity as a mediator compromises the mediator's neutrality. As such, FINRA believes that the unique role played by mediators should be recognized in the By-Laws. Further, FINRA believes that mediation activity in cases involving industry parties should not prevent individuals from being classified as Public Members under the By-Laws.

FINRA is, therefore, proposing to amend the definitions of Industry Members[7] and Public Members[8] in the By-Laws so that services provided by mediators, while acting in such capacity and not representing parties in mediation, would not cause these individuals to be classified as Industry Members.

Proposal To Amend the By-Laws

FINRA is proposing to amend the definitions of Industry Member[9] and Public Member[10] under the By-Laws. These amendments would create an exception for any services provided by mediators in the capacity as a mediator of disputes involving a broker or dealer and not representing any party in such mediations, so that mediators may be eligible to serve as Public Members of the NAMC if they are not otherwise disqualified from being classified as Public Members. Parties in a mediation select their mediator by agreement. The mediators work with all parties simultaneously to help them resolve a dispute. The mediator has no power to decide the outcome and does not represent any party in the matter.

The proposal would amend two parts of the definition of Industry Member.[11] First, Article I(s)(4) of the By-Laws defines an Industry Member as a committee member who provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Director or member or 20 percent or more of the gross revenues received by the Director's or member's firm or partnership. The proposal would amend the definition to exempt any services provided in the capacity as a mediator of disputes involving a broker or dealer and not representing any party in such mediations from being considered professional services provided to brokers or dealers.

Second, Article I(s)(5) of the By-Laws defines an Industry Member as a committee member who provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the Director or member or 20 percent or more of the gross revenues received by the Director's or member's firm or partnership. Similar to the change in Article I(s)(4) described in the paragraph above, FINRA proposes to amend the definition to exempt any services provided in the capacity as a mediator of disputes involving a director, officer, or employee as described in this definition and not representing any party in such mediations from being considered professional services provided to such individuals.

The proposed revisions to the definition of Industry Member would establish that any services provided in the capacity as a mediator of disputes involving a broker or dealer and not representing any party in such mediations would not be considered services provided to brokers or dealers or affiliated individuals for purposes of measuring the professional revenues received by the NAMC member. FINRA believes the proposed amendments to the Industry Member definition would acknowledge the capacity in which mediators derive revenue from parties, including industry parties, yet recognize that the revenue earned in the capacity would not compromise the person's neutrality.

The proposal would also amend the definition of Public Member. The By-Laws define a Public Member as a committee member who has no material business relationship with a broker or dealer or a self-regulatory organization registered under the Act (other than serving as a public director or public member on a committee of such a self-regulatory organization). The proposal would amend the definition by adding language to the parenthetical to clarify that acting in the capacity as a mediator of disputes involving a broker or dealer and not representing any party in such mediations is not considered a material business relationship with a broker or dealer. FINRA believes that the proposed amendment to the Public Member definition would recognize that a mediator's service as a mediator would not, in itself, create any relationships with the securities industry that could compromise the mediator's independent judgment or decision-making.

Moreover, the proposed revisions to the By-Law definitions would incorporate current rule language from the definitions of non-public and public arbitrators found in the Code of Arbitration Procedure for Customer Disputes and the Code of Arbitration Procedure for Industry Disputes. In 2005, the SEC approved the then-NASD's new Interpretive Material (IM) 10308 which stated, among other things, that mediation fees received by mediators who are also arbitrators shall not be included in the definition of ''revenue'' for purposes of Rule 10308(a)(5)(A)(iv), so long as the mediator is acting in the capacity of a mediator and is not representing a party in the mediation.[12] FINRA believes that using current rule language to amend its By-Laws, as proposed, would facilitate the uniform interpretation and application of its rules.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A of the Act, including Section 15A(b)(2) of the Act, in that it provides for the organization of FINRA and FINRA Dispute Resolution in a manner that will permit FINRA to carry

[6] *Id. See also* Rules 12102(a) and 12102(a)(1) of the Code of Arbitration Procedure for Customer Disputes (''Customer Code'') and Rules 13102(a) and 13102(a)(1) of the Code of Arbitration Procedure for Industry Disputes (''Industry Code'').

[7] *See* note 3, *supra.*

[8] *See* note 4, *supra.*

[9] *See* note 3, *supra.*

[10] *See* note 4, *supra.*

[11] The By-Laws define an Industry Member using six criteria. The proposal would amend two of them, subsections (4) and (5). *See* Dispute Resolution By-Laws, Article I(s) (Definitions—Industry Member).

[12] *See* Securities Exchange Act Rel. No. 51325 (Mar. 7, 2005), 70 FR 12522 (Mar. 14, 2005). The IM was renumbered and the rule language modified and added to the definitions of non-public and public arbitrator when FINRA adopted the revisions to the Customer and Industry Codes. *See* Securities Exchange Act Rel. No. 55158 (Jan. 24, 2007), 72 FR 4574 (Jan. 31, 2007) (File Nos. SR–NASD–2003–158 and SR–NASD–2004–011).

out the purposes of the Act, to comply with the Act, and to enforce compliance by FINRA members and persons associated with FINRA members with the Act, the rules and regulations thereunder, FINRA rules and the federal securities laws. FINRA further believes that the proposed rule change is consistent with Section 15A(b)(4) of the Act, which requires, among other things, that FINRA's rules assure a fair representation of its members in the selection of its directors and administration of its affairs and provides that one or more directors shall be representative of issuers and investors and not be associated with a member of FINRA, broker or dealer. FINRA believes that the proposal would assure fair administration of its Dispute Resolution affairs by providing another source of qualified and experienced candidates from which to select public members for the NAMC.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition or capital formation that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.[13] Further, FINRA believes that the proposal will promote efficiency in the arbitration forum as it will provide another source of qualified and experienced candidates from which to select public members for the NAMC.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the 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.

[13] 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2012–040 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2012–040. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2012–040 and should be submitted on or before October 2, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–22219 Filed 9–10–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67782; File No. SR–OCC–2012–12]

Self-Regulatory Organizations; the Options Clearing Corporation; Order Approving Proposed Rule Change To Amend OCC's By-Laws To Allow the Corporation To Approve OCC's Form of Clearing Member Application and Form of Clearing Agreement

September 5, 2012.

I. Introduction

On July 16, 2012, The Options Clearing Corporation (''OCC'' or the ''Corporation'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–OCC–2012–12 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] The proposed rule change was published for comment in the **Federal Register** on August 1, 2012.[2] The Commission received no comment letters. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

The proposed rule change would amend OCC's By-Laws to allow the Corporation to approve OCC's form of clearing member application and form of clearing agreement. The proposed rule change also amends the Agreement for OCC Services to reflect operational changes OCC made since OCC first created the agreement.

A. Background

Currently, OCC's Board of Directors must approve the form of OCC's clearing member application and form of clearing agreement. OCC requires applicants for clearing membership at OCC to complete an application and, once an applicant becomes a clearing member, requires clearing members to enter into a clearing member agreement. OCC's By-Laws and Rules set forth the qualifications and requirements for clearing membership at OCC. The

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 34–67506 (July 26, 2012), 77 FR 45702 (August 1, 2012).

clearing member application is designed to elicit relevant information from an applicant for clearing membership in order for OCC to determine if the applicant meets OCC's qualifications for clearing membership. The clearing member agreement is a contract between OCC and a clearing member whereby the clearing member agrees to meet all of the requirements of clearing membership at OCC. The By-Laws require OCC's Board of Directors to approve both the form of clearing member application and the form of clearing member agreement.

In addition to the clearing member agreement, clearing members may also enter into an Agreement for OCC Services. The Agreement for OCC Services sets forth certain ancillary services OCC provides to its clearing members that are in addition to those services set forth in the By-Laws and Rules. The Agreement for OCC Services is set up as a master agreement. Clearing members may then choose the specific ancillary services they desire and then execute the appropriate ancillary services supplement. Such ancillary services may include, for example, access to OCC's Data Distribution Services, internet access to OCC information and data systems, and OCC's theoretical profit and loss values service.

B. Proposed By-Law and Rule Changes

OCC proposes to amend the applicable provisions of its By-Laws to state that both the form of clearing member application and the form of clearing member agreement be specified by OCC generally, rather than its Board of Directors. The requirement that the Board of Directors approve the form of such documents is overly ministerial given that OCC's By-Laws specify the substantive requirements of both the clearing member application and the clearing member agreement.

OCC also proposes to amend its Agreement for OCC Services to reflect operational changes OCC made since OCC first created the agreement. These changes include broader references to ''clearing services'' provided by OCC and not only to ''options'' clearing services. Advanced notice of 90 days of fee changes would be eliminated because fee changes to the ancillary services program are filed as rule changes and are infrequent in nature. Language would be added to the Agreement for OCC Services such that the clearing member authorizes OCC to withdraw funds from the clearing member's firm account, on or after the fifth business day following the end of the calendar month. This language conforms to OCC Rules. In addition, a provision referring to the exclusivity of the warranties set forth in the Agreement for OCC Services would be eliminated because the agreement contains no warranty provisions. Any applicable warranty provisions would be contained within the ancillary supplements to the Agreement for OCC Services.

III. Discussion

Section 19(b)(2)(C) of the Act[3] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act[4] requires, among other things, that the rules of a clearing agency are designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.

The Commission believes that these changes are consistent with the requirements of Section 17A of the Act[5] and the rules and regulations thereunder applicable to OCC. The changes to OCC's By-Laws eliminate inefficient and burdensome administrative procedures which unnecessarily require OCC's Board approval for the form of clearing member application and agreement. The changes to the Agreement for OCC Services are designed to reflect operational changes OCC made since creating the agreement.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act[6] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR–OCC–2012–12) be, and hereby is, approved.[8]

[3] 15 U.S.C. 78s(b)(2)(C).

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] 15 U.S.C. 78q–1.

[6] Id.

[7] 15 U.S.C. 78s(b)(2).

[8] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–22242 Filed 9–10–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67785; File No. SR–NYSEArca–2012–48]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change Amending NYSE Arca Equities Rule 7.31(h) To Add a PL Select Order

September 5, 2012.

I. Introduction

On May 22, 2012, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') 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 amend NYSE Arca Equities Rule 7.31(h) to add a PL Select Order. The proposed rule change was published for comment in the **Federal Register** on June 8, 2012.[3] A designation of a longer period for Commission action was published in the **Federal Register** on July 26, 2012.[4] The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to amend NYSE Arca Equities Rule 7.31(h) to add a PL Select Order. The PL Select Order would be a subset of a Passive Liquidity (''PL'') Order.[5] NYSE Arca Equities Rule 7.31(h)(7) would define the PL Select Order as a PL Order that would not interact with an incoming order that: (i) Has an immediate-or-cancel (''IOC'') time in force condition,[6] (ii) is an ISO,[7] or (iii) is larger than the size of the PL Select Order. The PL Select Order

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Securities Exchange Act Release No. 67101 (June 4, 2012), 77 FR 34115 (''Notice'').

[4] See Securities Exchange Act Release No. 67475 (July 20, 2012), 77 FR 43879 (Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change Amending NYSE Arca Equities Rule 7.31(h) To Add a PL Select Order Type).

[5] See NYSE Arca Equities Rule 7.31(h)(4).

[6] See NYSE Arca Equities Rule 7.31(e).

[7] See NYSE Arca Equities Rule 7.31(jj).

would otherwise, except for the specified restrictions on trading with certain incoming orders, operate as a PL Order and retain its standing in execution priority among PL Orders. In the instances when an incoming order meets one of the PL Select Order restrictions, the PL Select Order would not interact with the incoming order and could be traded through.

The Exchange believes that the restrictions on trading with incoming IOC or ISO orders would enable Users [8] to designate that their PL Orders would not trade with interest that would never become displayed or passive liquidity on the Exchange. The Exchange believes that the final restriction would serve to attract larger-sized PL Orders because the User would not have to risk having the PL Select Order being swept up by larger-sized contra interest, thereby obviating the primary purpose of the PL Order types: to provide price improvement.

The Exchange further proposes that upon notice to ETP Holders, the Corporation [9] may suspend the entry of PL Select Orders. If such provision is invoked, Users may continue to submit PL Orders, but would not be able to enter PL Select Orders and all open PL Select Orders on the NYSE Arca trading book would be cancelled back to the User. The Exchange believes that it is appropriate to be able to suspend the entry of PL Select Orders in circumstances where the volume of orders creates an issue with the ability of the Exchange to timely process inbound orders to the Exchange.

Because of the related technology changes that this proposed rule change would require, the Exchange proposes to announce the initial implementation date via Trader Update.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[11] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, 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; and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

The Commission finds the instant proposed rule change to be consistent with the Act. The Commission notes that the Exchange believes that the proposed rule change should allow PL Select Order users to avoid interacting with market participants that are submitting orders primarily for the purpose of probing for or ''pinging'' hidden interest on the NYSE Arca book as opposed to adding liquidity to the market. The Exchange also indicates that the probing or ''pinging'' interest that PL Select Orders would avoid is more likely to come from professional traders than non-professional traders. In addition, the Exchange believes that use of the PL Select Order could attract displayed liquidity that would be eligible for execution against PL Select Orders or posting on the NYSE Arca book if not executed by PL Select Orders or other resting liquidity.

The Commission notes further that the Exchange believes that, because PL Select Orders would not interact with larger-sized incoming interest, market participants could be incentivized to use PL Select Orders to provide price improvement opportunities, thereby promoting more favorable executions for the benefit of public customers. In addition, the Exchange believes that market participants also could be incentivized to route more aggressively priced, displayable interest to the Exchange because of an increased likelihood of receiving price improvement.

Based on the Exchange's statements, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–NYSEArca–2012–48) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–22243 Filed 9–10–12; 8:45 am]

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[8] See Arca Equities Rule 1.1(yy) (defining the term ''User'').

[9] See Arca Equities Rule 1.1(k) (defining the term ''Corporation'').

[10] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13271 and #13272]

Louisiana Disaster Number LA–00048

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Louisiana (FEMA–4080–DR), dated 08/31/2012.

Incident: Hurricane Isaac.

Incident Period: 08/26/2012 and continuing.

Effective Date: 09/01/2012.

Physical Loan Application Deadline Date: 10/30/2012.

EIDL Loan Application Deadline Date: 05/29/2013.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Louisiana, dated 08/31/2012 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Parishes: (Physical Damage and Economic Injury Loans): Ascension, Lafourche, Livingston, Orleans.

Contiguous Parishes: (Economic Injury Loans Only):

Louisiana: Assumption, East Baton Rouge, Iberville, Saint Helena, Terrebonne.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2012–22265 Filed 9–10–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 13273 and # 13274]

Mississippi Disaster # MS–00059

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Mississippi (FEMA–4081–DR), dated 09/01/2012.

Incident: Hurricane Isaac.

Incident Period: 08/26/2012 and continuing.

Effective Date: 09/01/2012.

Physical Loan Application Deadline Date: 10/31/2012.

Economic Injury (EIDL) Loan Application Deadline Date: 05/30/2013.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 09/01/2012, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Hancock, Harrison, Jackson, Pearl River.

Contiguous Counties (Economic Injury Loans Only):

Mississippi: Forrest, George, Lamar, Marion, Stone.

Alabama: Mobile.

Louisiana: Saint Tammany, Washington.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	3.375
Homeowners Without Credit Available Elsewhere	1.688
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.125
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 132738 and for economic injury is 132740.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2012–22266 Filed 9–10–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 13154 and # 13155]

West Virginia Disaster Number WV–00028

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of West Virginia (FEMA—4071—DR), dated 07/23/2012.

Incident: Severe Storms and Straight-line Winds.

Incident Period: 06/29/2012 through 07/08/2012.

Effective Date: 08/31/2012.

Physical Loan Application Deadline Date: 09/21/2012.

Economic Injury (EIDL) Loan Application Deadline Date: 04/23/2013.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of West Virginia, dated 07/23/2012, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Berkeley; Taylor.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2012–22267 Filed 9–10–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 13271 and # 13272]

Louisiana Disaster # LA–00048

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Louisiana (FEMA–4080–DR), dated 08/31/2012.

Incident: Hurricane Isaac.

Incident Period: 08/26/2012 and continuing.

Effective Date: 08/31/2012.

Physical Loan Application Deadline Date: 10/30/2012.

Economic Injury (EIDL) Loan Application Deadline Date: 05/29/2013.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 08/31/2012, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Parishes (Physical Damage and Economic Injury Loans): Jefferson; Plaquemines; Saint Bernard; St John The Baptist; Saint Tammany.

Contiguous Parishes/Counties (Economic Injury Loans Only):

Louisiana: Ascension; Lafourche; Livingston; Orleans; Saint Charles; Saint James; Tangipahoa; Washington.

Mississippi: Hancock; Pearl River.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere:	3.375.

	Percent
Homeowners Without Credit Available Elsewhere:	1.688.
Businesses With Credit Available Elsewhere:	6.000.
Businesses Without Credit Available Elsewhere:	4.000.
Non-Profit Organizations With Credit Available Elsewhere:	3.125.
Non-Profit Organizations Without Credit Available Elsewhere:	3.000.
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere:	4.000.
Non-Profit Organizations Without Credit Available Elsewhere:	3.000.

The number assigned to this disaster for physical damage is 132718 and for economic injury is 132720.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2012–22268 Filed 9–10–12; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 8018]

Notice of Public Meeting of the President's Emergency Plan for AIDS Relief (PEPFAR) Scientific Advisory Board

SUMMARY: In accordance with the Federal Advisory Committee Act (FACA), the PEPFAR Scientific Advisory Board (hereinafter referred to as ''the Board'') will meet from October 2–3, 2012 at the House of Sweden Event Center, 2900 K Street NW., Washington, DC 20007. The meeting will last from 9 a.m. until approximately 5 p.m. on October 2nd and from 9 a.m. until approximately 3 p.m. on October 3rd and is open to the public. The meeting will be hosted by the Office of the U.S. Global AIDS Coordinator, and led by Ambassador Eric Goosby, who leads implementation of the President's Emergency Plan for AIDS Relief (PEPFAR).

The Board serves the Global AIDS Coordinator in a solely advisory capacity concerning scientific, implementation, and policy issues related to the global response to HIV/AIDS. These issues will be of concern as they influence the priorities and direction of PEPFAR evaluation and research, the content of national and international strategies and implementation, and the role of PEPFAR in international discourse regarding an appropriate and resourced response. Topics for the meeting will include an update on PEPFAR-funded combination prevention studies and implementation science awards; recommendations to Ambassador Goosby on key populations, children and adolescents, and data management; and discussions on relevant scientific topics, including antiretroviral therapy in pregnancy and adherence/retention issues.

The public may attend this meeting as seating capacity allows. Admittance to the meeting will be by means of a pre-arranged clearance list. In order to be placed on the list and, if applicable, to request reasonable accommodation, please register by sending your name, organization/affiliation, and title to *SABRegistration@s-3.com.* While the meeting is open to public attendance, the Board will determine procedures for public participation. Requests for reasonable accommodation that are made after September 25 might not be possible to fulfill.

For further information about the meeting, please contact Charles Holmes, Chief Medical Officer, Office of the U.S. Global AIDS Coordinator at (202) 663–2440 or *HolmesCB@state.gov.*

Dated: September 5, 2012.

Charles B. Holmes,

Chief Medical Officer, Office of the U.S. Global AIDS Coordinator, Department of State.

[FR Doc. 2012–22333 Filed 9–10–12; 8:45 am]

BILLING CODE 4710–10–P

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists the projects approved by rule by the Susquehanna River Basin Commission during the period set forth in **DATES.**

DATES: May 1, 2012 through May 31, 2012.

ADDRESSES: Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, PA 17102–2391.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: (717) 238–0423, ext. 306; fax: (717) 238–2436; email: *rcairo@srbc.net.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22(f) for the time period specified above:

Approvals by Rule Issued Under 18 CFR 806.22(f)

1. Cabot Oil & Gas Corporation, Pad ID: BunnellE P2, ABR–201205001, Bridgewater and Dimock Townships, Susquehanna County, Pa.; Consumptive Use of Up to 3.575 mgd; Approval Date: May 4, 2012.

2. Cabot Oil & Gas Corporation, Pad ID: PetersenH P1, ABR–201205002, Dimock Township, Susquehanna County, Pa.; Consumptive Use of Up to 3.575 mgd; Approval Date: May 4, 2012.

3. EXCO Resources (PA), LLC, Pad ID: Daisy Barto Unit Well Pad, ABR–201205003, Penn Township, Lycoming County, Pa.; Consumptive Use of Up to 8.000 mgd; Approval Date: May 7, 2012.

4. Chief Oil & Gas LLC, Pad ID: Ambrosius Drilling Pad #1, ABR–201205004, Wilmot Township, Bradford County, Pa.; Consumptive Use of Up to 2.000 mgd; Approval Date: May 7, 2012.

5. WPX Energy Appalachia, LLC, Pad ID: Barnhart Well Pad, ABR–201205005, Liberty Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: May 7, 2012.

6. WPX Energy Appalachia, LLC, Pad ID: Coyle Well Pad, ABR–201205006, Liberty Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: May 7, 2012.

7. Chief Oil & Gas LLC, Pad ID: King Drilling Pad #1, ABR–201205007, Towanda Township, Bradford County, Pa.; Consumptive Use of Up to 2.000 mgd; Approval Date: May 14, 2012.

8. Chief Oil & Gas LLC, Pad ID: Polowy Drilling Pad #1, ABR–201205008, Ulster Township, Bradford County, Pa.; Consumptive Use of Up to 2.000 mgd; Approval Date: May 14, 2012.

9. Chesapeake Appalachia, LLC, Pad ID: Hart, ABR–201205009, Wyalusing Township, Bradford County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: May 17, 2012.

10. Chesapeake Appalachia, LLC, Pad ID: Maris, ABR–201205010, Auburn Township, Susquehanna County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: May 17, 2012.

11. Seneca Resources Corporation, Pad ID: DCNR 100 Pad P, ABR–201205011, Lewis Township, Lycoming County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: May 18, 2012.

12. Southwestern Energy Production Company, Pad ID: O'Brien Pad, ABR–201205012, Jackson Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.999 mgd; Approval Date: May 24, 2012.

13. EXCO Resources (PA), LLC, Pad ID: Kepner Unit Well Pad, ABR–201205013, Penn Township, Lycoming County, Pa.; Consumptive Use of Up to 8.000 mgd; Approval Date: May 25, 2012.

14. Chesapeake Appalachia, LLC, Pad ID: WGC, ABR–201205014, Albany Township, Bradford County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: May 30, 2012.

15. Chesapeake Appalachia, LLC, Pad ID: Carter, ABR–201205015, North Towanda Township, Bradford County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: May 30, 2012.

16. Chesapeake Appalachia, LLC, Pad ID: Iceman, ABR–201205016, Wilmot Township, Bradford County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: May 30, 2012.

17. Southwestern Energy Production Company, Pad ID: Marcucci_Jones Pad, ABR–201205017, Stevens Township, Bradford County, Pa.; Consumptive Use of Up to 4.999 mgd; Approval Date: May 30, 2012.

18. Southwestern Energy Production Company, Pad ID: Humbert III Pad (RU–9), ABR–201205018, New Milford Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.999 mgd; Approval Date: May 30, 2012.

19. Chesapeake Appalachia, LLC, Pad ID: Shumhurst, ABR–201205019, Tuscarora Township, Bradford County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: May 30, 2012.

20. Southwestern Energy Production Company, Pad ID: Scarlet Oaks Pad (RU–38), ABR–201205020, New Milford Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.999 mgd; Approval Date: May 30, 2012.

21. WPX Energy Appalachia, LLC, Pad ID: Moore Well Pad, ABR–201205021, Silver Lake Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: May 31, 2012.

22. WPX Energy Appalachia, LLC, Pad ID: Wheeler Well Pad, ABR–201205022, Silver Lake Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: May 31, 2012.

23. WPX Energy Appalachia, LLC, Pad ID: O'Reilly Well Pad, ABR–201205023, Forest Lake Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: May 31, 2012.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR Parts 806, 807, and 808.

Dated: August 21, 2012.

Stephanie L. Richardson,

Secretary to the Commission.

[FR Doc. 2012–22226 Filed 9–10–12; 8:45 am]

BILLING CODE 7040–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists the projects approved by rule by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: June 1, 2012 through June 30, 2012.

ADDRESSES: Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, PA 17102–2391.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: (717) 238–0423, ext. 306; fax: (717) 238–2436; email: *rcairo@srbc.net.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22(f) for the time period specified above:

Approvals By Rule Issued Under 18 CFR 806.22(f)

1. Cabot Oil & Gas Corporation, Pad ID: BusikJ P1, ABR–201206001, Dimock Township, Susquehanna County, Pa.; Consumptive Use of Up to 3.575 mgd; Approval Date: June 11, 2012.

2. Cabot Oil & Gas Corporation, Pad ID: WaldenbergerP P1, ABR–201206002, Dimock Township, Susquehanna County, Pa.; Consumptive Use of Up to 3.575 mgd; Approval Date: June 11, 2012.

3. Southwestern Energy Production Company, Pad ID: Humbert Pad (RU–8), ABR–201206003, New Milford Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.999 mgd; Approval Date: June 18, 2012.

4. SWEPI, LP, Pad ID: Harer 713, ABR–201206004, Liberty Township, Tioga County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: June 18, 2012.

5. SWEPI, LP, Pad ID: Lovell 707, ABR–201206005, Liberty Township, Tioga County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: June 18, 2012.

6. Pennsylvania General Energy Company, LLC, Pad ID: COP Tract 293 Pad B, ABR–201206006, Cummings Township, Lycoming County, Pa.; Consumptive Use of Up to 3.500 mgd; Approval Date: June 18, 2012.

7. Anadarko E&P Company, LP, Pad ID: Elbow F&G Pad B, ABR–201206007, Cogan House Township, Lycoming County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: June 18, 2012.

8. EXCO Resources (PA), LLC, Pad ID: Elk Run Hunt Club Drilling Pad 2, ABR–201206008, Davidson Township, Sullivan County, Pa.; Consumptive Use of Up to 8.000 mgd; Approval Date: June 22, 2012.

9. SWEPI, LP, Pad ID: Guillaume 714, ABR–201206009, Liberty Township, Tioga County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: June 22, 2012.

10. Great Plains Operating, LLC dba Great Mountain Operating, Pad ID: SGL Tract 268-Pad B, ABR–201206010, Morris Township, Tioga County, Pa.; Consumptive Use of Up to 6.000 mgd; Approval Date: June 22, 2012.

11. Inflection Energy LLC, Pad ID: Eck, ABR–201206011, Fairfield Township, Lycoming County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: June 27, 2012.

12. Inflection Energy LLC, Pad ID: G. Adams, ABR–201206012, Mill Creek Township, Lycoming County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: June 29, 2012.

13. Inflection Energy LLC, Pad ID: Eichenlaub B Pad, ABR–201206013, Upper Fairfield Township, Lycoming County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: June 29, 2012.

14. Inflection Energy LLC, Pad ID: Eichenlaub A Pad, ABR–201206014, Upper Fairfield Township, Lycoming County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: June 29, 2012.

15. Inflection Energy LLC, Pad ID: Iffland, ABR–201206015, Upper Fairfield Township, Lycoming County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: June 29, 2012.

16. Southwestern Energy Production Company, Pad ID: KOZIOL PAD, ABR–201206016, New Milford Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.999 mgd; Approval Date: June 29, 2012.

17. Campbell Oil & Gas, Inc., Pad ID: Mid Penn Unit B Well Pad, ABR–201206017, Bigler Township, Clearfield County, Pa.; Consumptive Use of Up to

2.000 mgd; Approval Date: June 29, 2012.

18. XTO Energy Incorporated, Pad ID: PA Tract Unit H, ABR–201206018, Chapman Township, Clinton County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: June 29, 2012.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: August 21, 2012.

Stephanie L. Richardson,

Secretary to the Commission.

[FR Doc. 2012–22230 Filed 9–10–12; 8:45 am]

BILLING CODE 7040–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Rescinded for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists the projects rescinded by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: May 1, 2012 through June 30, 2012.

ADDRESSES: Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, PA 17102–2391.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: (717) 238–0423, ext. 306; fax: (717) 238–2436; email: *rcairo@srbc.net*. Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, being rescinded for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22(f) for the time period specified above:

Approvals by Rule Rescissions Under 18 CFR 806.22(f)

1. Talisman Energy USA, Inc., Pad ID: 02 016 DCNR 587, ABR–201008071, Ward Township, Tioga County, Pa.; Rescind Date: May 18, 2012.

2. Talisman Energy USA, Inc., Pad ID: 05 069 Porcupine Enterprise, LLC, ABR–201009035, Orwell Township, Bradford County, Pa.; Rescind Date: May 18, 2012.

3. Talisman Energy USA, Inc., Pad ID: 05 064 Manchester K, ABR–201010012, Orwell Township, Bradford County, Pa.; Rescind Date: May 18, 2012.

4. Talisman Energy USA, Inc., Pad ID: 05 070 Corbin T, ABR–201010024, Orwell Township, Bradford County, Pa.; Rescind Date: May 18, 2012.

5. Talisman Energy USA, Inc., Pad ID: 03 088 Andrews A, ABR–201103005, Wells Township, Bradford County, Pa.; Rescind Date: May 18, 2012.

6. Talisman Energy USA, Inc., Pad ID: 03 081 Bergeys, ABR–201105012, Wells Township, Bradford County, Pa.; Rescind Date: May 18, 2012.

7. Talisman Energy USA, Inc., Pad ID: 05 257 Lombardo J, ABR–201108028, Pike Township, Bradford County, Pa.; Rescind Date: May 18, 2012.

8. Talisman Energy USA, Inc., Pad ID: 05 203 Race, ABR–201109001, Windham Township, Bradford County, Pa.; Rescind Date: May 18, 2012.

9. Talisman Energy USA, Inc., Pad ID: 05 068 PNMT and Associates Inc., ABR–201109008, Pike Township, Bradford County, Pa.; Rescind Date: May 18, 2012.

10. Novus Operating, LLC, Pad ID: Lucca, ABR–201106028, Covington and Sullivan Townships, Tioga County, Pa.; Rescind Date: June 25, 2012.

11. Penn Virginia Oil & Gas Corporation, Pad ID: Cady #1, ABR–20091026, Brookfield Township, Tioga County, Pa.; Rescind Date: June 25, 2012.

12. Penn Virginia Oil & Gas Corporation, Pad ID: Hurler, ABR–201103002, Harrison Township, Potter County, Pa.; Rescind Date: June 25, 2012.

13. Penn Virginia Oil & Gas Corporation, Pad ID: Kibbe Pad, ABR–201104026, Harrison Township, Potter County, Pa.; Rescind Date: June 25, 2012.

14. Penn Virginia Oil & Gas Corporation, Pad ID: Godshall B Pad, ABR–201107008, Hector Township, Potter County, Pa.; Rescind Date: June 25, 2012.

15. Penn Virginia Oil & Gas Corporation, Pad ID: Godshall A Pad, ABR–201107026, Hector Township, Potter County, Pa.; Rescind Date: June 25, 2012.

16. Penn Virginia Oil & Gas Corporation, Pad ID: Original Ten Pad, ABR–201107025, Hector Township, Potter County, Pa.; Rescind Date: June 25, 2012.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: August 21, 2012.

Stephanie L. Richardson,

Secretary to the Commission.

[FR Doc. 2012–22228 Filed 9–10–12; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

[Docket No. DOT–OST–2004–16951]

Agency Requests for Renewal of a Previously Approved Information Collection: Exemptions for Air Taxi Operations

AGENCY: Office of the Secretary.

ACTION: Notice and request for comments.

SUMMARY: The Department of Transportation (DOT) invites public comments about our intention to request the Office of Management and Budget (OMB)'s approval to renew an information collection. The collection involves a classification of air carriers known as air taxi operators and their filings of a one-page form that enables them to obtain economic authority from DOT. The information to be collected is necessary for DOT to determine whether an air taxi operator meets DOT's criteria for an economic authorization in accordance with DOT rules. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995, Public Law 104–13.

DATES: Written comments should be submitted by November 13, 2012.

ADDRESSES: You may submit comments [identified by Docket No. DOT–OST–2004–16951] through one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Vanessa R. Balgobin, (202) 366–9721, Office of Aviation Analysis, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC, 20590.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2105–0565.

Title: Exemptions for Air Taxi Operations.

Form Numbers: OST Form 4507.

Type of Review: Renewal of an information collection.

Background: Part 298 of Title 14 of the Code of Federal Regulations, Exemptions for Air Taxi Registration, establishes a classification of air carriers known as air taxi operators that offer on-demand passenger service. The regulation exempts these small

operators from certain provisions of the Federal statute to permit them to obtain economic authority by filing a one-page, front and back, OST Form 4507, Air Taxi Operator Registration, and Amendments under Part 298 of DOT's Regulations.

DOT expects to receive 200 new air taxi registrations and 2,200 amended air taxi registrations each year, resulting in 2,400 total respondents. Further, DOT expects filers of new registrations to take 1 hour to complete the form, while it should only take 30 minutes to prepare amendments to the form. Thus, the total annual burden is expected to be 1,300 hours.

Respondents: U.S. air taxi operators.
Number of Respondents: 2,400.
Frequency: On occasion.
Number of Responses: 2,400.
Total Annual Burden: 1,300 hours.

Public Comments Invited

You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for [your office]'s performance; (b) the accuracy of the estimated burden; (c) ways for [your office] to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1:48.

Issued in Washington, DC, on September 5, 2012.

Lauralyn J. Remo,

Chief, Air Carrier Fitness Division, Office of Aviation Analysis.

[FR Doc. 2012–22330 Filed 9–10–12; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Thirteenth Meeting: RTCA Special Committee 223, Airport Surface Wireless Communications

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

ACTION: Meeting Notice of RTCA Special Committee 223, Airport Surface Wireless Communications.

SUMMARY: The FAA is issuing this notice to advise the public of the thirteenth meeting of the RTCA Special Committee 223, Airport Surface Wireless Communications.

DATES: The meeting will be held October 2–3, 2012, from 9 a.m.–5 p.m.

ADDRESSES: The meeting will be held at the secured facilities at RTCA, Inc., 1150 18th Street NW., Suite 910, Washington, DC, 20036.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street, NW., Suite 910, Washington, DC, 20036, or by telephone at (202) 330–0652/(202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 223. The agenda will include the following:

October 2, 2012

- Welcome/Introductions/ Administrative Remarks
- Agenda Overview
- Review/Approve Prior Plenary Meeting Summary
  - RTCA Paper No. 170–12/SC223–027 and Action Item Status
- General Presentations of Interest

Tuesday Afternoon—General Presentations Continued

MOPS Working Group Breakout Session

Wednesday, October 3, 2012

Wednesday Morning—MOPS Working Group Breakout Session

Wednesday Afternoon—Reconvene Plenary

- Establish Agenda, Date, and Place for RTCA Plenary Meeting #14
- Review of Meeting Summary Report
- Adjourn by 1500

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 4, 2012.

Kathy Hitt,

Management Analyst, Business Operations Group, Federal Aviation Administration.

[FR Doc. 2012–22252 Filed 9–10–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Fifteenth Meeting: RTCA Special Committee 224, Airport Security Access Control Systems

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

ACTION: Meeting Notice of RTCA Special Committee 224, Airport Security Access Control Systems.

SUMMARY: The FAA is issuing this notice to advise the public of the fifteenth meeting of the RTCA Special Committee 224, Airport Security Access Control Systems

DATES: The meeting will be held September 27–28, 2012, from 9 a.m.–4 p.m.

ADDRESSES: The meeting will be held at the secured facilities at RTCA, Inc., 1150 18th Street NW., Suite 910, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 330–0652/(202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 224. The agenda will include the following:

September 27–28, 2012

- Welcome/Introductions/ Administrative Remarks
- Review/Approve Summary—Fourteenth Meeting
- Updates from the TSA (as required)
- Workgroup Reports
- Industry Solicitation Progress Report
- Time and Place of Next Meeting
- Any Other Business
- Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 4, 2012.

Kathy Hitt,

Management Analyst, Business Operations Group, Federal Aviation Administration.

[FR Doc. 2012–22246 Filed 9–10–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Meeting: RTCA Program Management Committee (PMC)

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

ACTION: Meeting Notice of RTCA Program Management Committee (PMC).

SUMMARY: The FAA is issuing this notice to advise the public of the meeting of the RTCA Program Management Committee (PMC).

DATES: The meeting will be held September 26, 2012, from 8:30 a.m.–1:30 p.m.

ADDRESSES: The meeting will be held at the secured facilities at RTCA, Inc., 1150 18th Street NW., Suite 910, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 330–0652/(202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of the Program Management Committee. The agenda will include the following:

September 26, 2012

- Welcome and Introductions
- Review/Approve Meeting Summary
  - June 13, 2012
- Publication Consideration/Approval
  - Final Draft, New Document—*Concept of Use for Aeronautical Information Services (AIS) and Meteorological (MET) Data Link Services,* prepared by SC–206.
  - Final Draft, New Document, *Minimum Aviation System Performance Standards (MASPS) for an Enhanced Flight Vision System to Enable All-Weather Approach, Landing and Roll-Out to a Safe Taxi Speed,* prepared by SC–213.
  - Final Draft, Revised DO–276A, *User Requirements for Terrain and Obstacle Data,* prepared by SC–217.
  - Integration and Coordination Committee (ICC)—Report
  - MASPS, SPR Guidance—Status Update.
  - DO–160 Primer—Discussion and Approval
  - Installation Guidance Document Outline and Update
- Action Item Review
  - SC–203—Unmanned Aircraft Systems—Discussion—Committee Status and Terms of Reference Update
  - SC–214—Standards for Air Traffic Data Communication Services—Discussion—ICAO Activities and Schedule Affecting SC–214
  - European/EUROCAE Coordination—Update
  - SC–217—Terrain and Airport Databases—Discussion—Possible Future Activity to Revise RTCA DO–200A and DO–201A
- Discussion
  - SC–186—Automatic Dependent Surveillance Broadcast—Discussion—Revised Terms of Reference
  - SC–216—Aeronautical Systems Security—Discussion—Security/Safety Relationships
  - NAC Update
  - FAA Actions Taken on Previously Published Documents
  - Special Committees—Chairmen's Reports
  - Other Business
  - Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 4, 2012.

Kathy Hitt,

Management Analyst, Business Operations Group, Federal Aviation Administration.

[FR Doc. 2012–22251 Filed 9–10–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Permanent Closure of Cincinnati Blue Ash Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of permanent closure of Cincinnati Blue Ash Airport (ISZ).

SUMMARY: The Federal Aviation Administration (FAA) received written notice, dated July 30, 2012, from the city of Cincinnati advising that on August 29, 2012, it was permanently closing Cincinnati Blue Ash Airport (ISZ), Cincinnati, Ohio; the notice was in excess of 30 days before the closure in accordance with 49 U.S.C. 46319(a). The FAA hereby publishes the city of Cincinnati's notice of permanent closure of Cincinnati Blue Ash Airport in accordance with 49 U.S.C. 46319(b).

DATES: The permanent closure of the airport is effective as of August 29, 2012.

FOR FURTHER INFORMATION CONTACT: Susan Mowery Schalk, A.A.E., AICP Manager, Airports Division, FAA Great Lakes Region, 847.294.7272 office.

SUPPLEMENTARY INFORMATION:

Introduction and Background

On July 30, 2012, the city of Cincinnati, sponsor of Cincinnati Blue Ash Airport (ISZ), informed the Federal Aviation Administration that the Airport will close permanently on August 29, 2012. (*See enclosed letter)* Cincinnati Blue Ash Airport (ISZ) is a general aviation reliever airport to Cincinnati/Northern Kentucky International Airport (CVG). It has been owned and operated by the city of Cincinnati since 1946. ISZ is a small 257-acre non-towered, general aviation airport. The useful life of the federally funded improvements extinguished in 2003. The Federal Aviation Administration recognizes that the city is no longer contractually obligated to continue operating this airport. Title 49 United States Code§ 46319 requires a public agency (as defined in section *47102*) may not permanently close an airport listed in the national plan of integrated airport systems under section *47103* without providing written notice to the Administrator of the Federal Aviation Administration at least 30 days before the date of the closure. The FAA recognizes the letter dated July 30, 2012 from the City of Cincinnati meets that requirement.

Issued in Washington, DC, on August 28, 2012.

Randall S. Fiertz,

Director, Office of Airport Compliance and Management Analysis.

[FR Doc. 2012–22255 Filed 9–10–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Release Effecting Federal Grant Assurance Obligations Due to Airport Layout Plan Revision at Mather Airport, Sacramento, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of a Release of Grant Assurance Obligations.

SUMMARY: The Federal Aviation Administration (FAA) proposes to rule and invites public comment on the application for an Airport Layout Plan revision effecting approximately 422 acres of airport property at Mather Airport, Sacramento, California, which will provide for a release from the Grant Agreement Assurance obligations since the property does not have an airport purpose. The property was leased by the United States Air Force (Air Force) to the County of Sacramento (County) for airport purposes following the closure of Mather Air Force Base pursuant to the Defense Base Closure and Realignment Act of 1988, as amended. The Air Force is now preparing to terminate the lease and convey the airport land to the County under the provision of the Surplus Property Act of 1944, as amended. The County and Air Force determined that certain portions of the leased land do not have an airport purpose, so these parcels of land will not be conveyed by the Air Force to the County. As a result, the existing Airport Layout Plan will be revised to delete the parcels that will not be conveyed to the County because these parcels do not have any airport purposes now or in the future.

DATES: Comments must be received on or before October 11, 2012.

FOR FURTHER INFORMATION CONTACT: Comments on the request may be mailed or delivered to the FAA at the following address: Robert Lee, Airports Compliance Specialist, Federal Aviation Administration, Airports District Office, Federal Register Comment, 1000 Marina Boulevard, Suite 220, Brisbane, CA 94005–1835. In addition, one copy of the comment submitted to the FAA must be mailed or delivered to Mr. J. Glen Rickelton, Manager of Planning and Environment, Sacramento County Airport System, 6900 Airport Boulevard, Sacramento, CA 95837.

SUPPLEMENTARY INFORMATION: In accordance with the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), Public Law 106–181 (Apr. 5, 2000; 114 Stat. 61), this notice must be published in the **Federal Register** 30 days before the Secretary of Transportation may waive any condition imposed on a federally obligated airport by surplus property conveyance deeds or grant agreements.

The following is a brief overview of the request:

The County of Sacramento requested a modification to the conditions in the Grant Agreement Assurances to permit airport land depicted on the existing Airport Layout Plan to be released from its obligation to serve an airport purpose. The County wishes to remove approximately 422 acres from the Airport Layout Plan because the County and the Air Force determined that these acres of land that had been leased cannot be conveyed for airport purposes because the land was not used for an airport purpose and will not serve an airport purpose in the future. Following the closure of Mather Air Force Base under the provisions of the Defense Base Closure and Realignment Act, the Air Force leased part of the base to the County to be used as a civilian airport. Included in the leasehold property were three parcels that did not serve an airport purpose. The three parcels are a wildlife preserve containing approximately 412 acres, a trailer park containing 2.12 acres, and four lots of land containing approximately 7.8 acres near the National Guard property. The County and Air Force determined that the preserve and trailer park did not serve any airport purpose. As a result, the Air Force decided that these two parcels would not be transferred as a public benefit conveyance for airport purposes to the County. The four lots were included in the Airport Layout Plan in error and were never used for airport purposes. These lots were set aside for another purpose and have already been conveyed to another recipient by the Air Force. To correct the error, the lots have to be removed from the Airport Layout Plan. This change in the Airport Layout Plan is necessary to accommodate the reapportionment of land that the Air Force is conveying as a public benefit conveyance for airport purposes.

Issued in Brisbane, California, on August 29, 2012.

Robin K. Hunt,

Manager, Airports District Office, Western-Pacific Region.

[FR Doc. 2012–22274 Filed 9–10–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Loop 1 in Texas

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA and Other Federal Agencies.

SUMMARY: This notice announces actions taken by the FHWA, and other Federal agencies that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to a proposed highway project, Loop 1, from Farm-to-Market (FM) 734 to Cesar Chavez Street in Travis County, Texas. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before March 10, 2013. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Mr. Salvador Deocampo, District Engineer, Texas Division, Federal Highway Administration, 300 East 8th Street, Room 826, Austin, Texas 78701; telephone: (512) 536–5950; email: *Salvador.Deocampo@dot.gov.* The FHWA Texas Division Office's normal business hours are 8 a.m. to 5 p.m. (central time) Monday through Friday. You may also contact Carlos Swonke, Director Environmental Affairs Division, Texas Department of Transportation (TxDOT), 118 E. Riverside Drive, Austin, Texas 78704; telephone: (512) 416–2734; email: *carlos.swonke@txdot.gov.* The Texas Department of Transportation normal business hours are 8 a.m. to 5 p.m. (central time) Monday through Friday.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the following highway project in the State of Texas: Loop 1 from Farm-to-Market (FM) 734 to Cesar Chavez Street in Travis County; Project Reference Number: TxDOT CSJ: 3136–01–107. The proposed improvements would consist of upgrading Loop 1 by adding a new express (tolled) travel lane in each direction. The actions by the Federal agencies, and the laws under

which such actions were taken, are described in the documented Environmental Assessment (EA), with a Finding of No Significant Impact (FONSI) issued August 23, 2012 and in other documents in the FHWA administrative record. The EA, FONSI, and other documents in the FHWA administrative record file are available by contacting the FHWA or the TxDOT at the addresses provided above. The FHWA EA and FONSI can be viewed and downloaded from the project Web site at *http://www.mopacexpress.com/* or viewed at public libraries in the project area.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. General: National Environmental Policy Act (NEPA) [42 U.S.C. 4321 *et seq.*]; Federal-Aid Highway Act [23 U.S.C. 109, 128].

2. Air: Clean Air Act [42 U.S.C. 7401–7671(q)].

3. Land: Section 4(f) of the Department of Transportation Act of 1966 [23 U.S.C. 138 and 49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers) [23 U.S.C. 319].

4. Wildlife: Endangered Species Act [16 U.S.C. 1531–1544]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]; and, Migratory Bird Treaty Act [16 U.S.C. 703–712].

5. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archaeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)—470(ll)]; Archaeological and Historical Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].

6. Social and Economic: Title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000(d) *et seq.*]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

7. Wetlands and Water Resources: Clean Water Act (Section 404, Section 401, Section 319) [33 U.S.C. 1251–1342]; Land and Water Conservation Fund (LWCF) [16 U.S.C. 4601–4604]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300(f)–300(j)(6); Emergency Wetlands Resources Act [16 U.S.C. 3921, 3931]; Wetlands Mitigation [23 U.S.C. 103(b)(6)(M) and 133(b)(11); Flood Disaster Protection Act [42 U.S.C. 4001–4128].

8. Executive Orders: E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1)

Issued on: September 5, 2012.

Salvador Deocampo,

District Engineer, Austin, Texas.

[FR Doc. 2012–22331 Filed 9–10–12; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements: Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 14, 2012, and comments were due by August 13, 2012. No comments were received.

DATES: Comments for this notice must be submitted on or before October 11, 2012.

FOR FURTHER INFORMATION CONTACT: Mr. Jerome Davis, Maritime Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: 202–366–0688; or email: *jerome.davis@dot.gov.* Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Request for Transfer of Ownership, Registry, and Flag, or Charter, Lease, or Mortgage of U.S.-Citizen Owned Documented Vessels.

OMB Control Number: 2133–0006.

Type of Request: Extension of currently approved collection.

Affected Public: Vessel owners who have applied for foreign transfer of U.S.-flag vessels.

Forms: MA–29, MA–29A, MA–29B (**Note:** MA–29A is used only in cases of a National emergency).

Abstract: This collection provides information necessary for MARAD to approve the sale, transfer, charter, lease, or mortgage of U.S. documented vessels to non-citizens, or the transfer of such vessels to foreign registry and flag, or the transfer of foreign flag vessels by their owners as required by various contractual requirements. The information will enable MARAD to determine whether the vessel proposed for transfer will initially require retention under the U.S.-flag statutory regulations.

Annual Estimated Burden Hours: 170 hours.

ADDRESSES: Send comments regarding these information collections to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street NW., Washington, DC 20503, Attention: MARAD Desk Officer. Alternatively, comments may be sent via email to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, at the following address: *oira.submissions@omb.eop.gov.*

Comments Are Invited On: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Authority: 49 CFR 1.66.

Issued in Washington, DC on September 4, 2012.

Christine Gurland,

Acting Secretary, Maritime Administration.

[FR Doc. 2012–22275 Filed 9–10–12; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2012–0059]

Request for Comments on a Renewal of a Previously Approved Information Collection: Automotive Fuel Economy Reports

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comments. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on May 18, 2012 (77 FR 29751). No comments were received.

DATES: Comments must be submitted on or before October 11, 2012.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Katz, Fuel Economy Division, Office of International Policy, Fuel Economy and Consumer Programs, NVS–132, National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, Phone: (202) 366–4936.

SUPPLEMENTARY INFORMATION:

Title: 49 CFR Part 537, Automotive Fuel Economy Reports.

OMB Control Number: 2127–0019.

Type of Request: Renewal of a Previously Approved Information Collection.

Abstract: 49 United States Code (U.S.C.) 32907(a) requires a manufacturer to submit reports to the Secretary of Transportation on whether a manufacturer will comply with an applicable average fuel economy standard under 49 U.S.C. 32902 of this title for the model year for which the report is made, the actions a manufacturer has taken or intends to take to comply with the standard, and other information the Secretary requires by regulation. Under 49 CFR Part 537, NHTSA also requires manufacturers to provide data on vehicle footprint so that the agency can determine a manufacturer's required fuel economy level and its compliance with that level. The information collected provides the National Highway Traffic Safety Administration (NHTSA) with advance indication whether automotive manufacturers expect to comply with the applicable average fuel economy standards; furnishes NHTSA with the necessary information to prepare its annual update on the Automotive Fuel Economy Program; aids NHTSA in responding to general requests concerning automotive fuel economy; and supplies NHTSA with detailed and current technical and economic information that will be used to evaluate possible future average fuel economy standards.

Affected Public: Automobile manufacturers.

Number of Respondents: Thirty.

Number of Responses: Fifty-four; some manufacturers have multiple fleets and 49 CFR Part 537 requires a separate report for each fleet.

Total Annual Burden Hours: Thirty automotive manufacturers must comply with 49 CFR 537. For each current model year, each manufacturer is required to submit semi-annual reports: a pre-model year report and a mid-model year report. The pre-model year report must be submitted during the month of December, and the mid-model year report must be submitted during the month of July. The total number of responses submitted by automotive manufacturers is 54. We currently have a clearance for 2,339 hours based on reports being received from 22 manufacturers. Including the 8 additional manufacturers results in an additional reporting burden of 850 hours. Adding that burden to the existing burden of 2,339 hours results in a total of 3,189 hours.

Frequency of Collection: A pre-model report and a mid-model report are required to be submitted by manufacturers once per model year for each applicable fleet (domestic passenger car, imported passenger car, light trucks).

ADDRESSES: Please send comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, 725 17th Street NW., Washington, DC 20503. *Comments are invited on:* whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1:48.

Issued on: September 5, 2012.

Christopher J. Bonanti,

Associate Administrator for Rulemaking.

[FR Doc. 2012–22322 Filed 9–10–12; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 290 (Sub-No. 338X)]

Norfolk Southern Railway Company—Abandonment Exemption—in Beaufort County, NC

Norfolk Southern Railway Company (NSR) has filed a verified notice of exemption under 49 CFR part 1152 subpart F–*Exempt Abandonments* to abandon approximately 0.76 miles of rail line between milepost WL 25.94 (at the line's crossing of Highway 306) and milepost WL 26.70, in Aurora, Beaufort County, NC.[1] The line traverses United States Postal Service Zip Code 27806.

NSR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the two-year period; and (4) the requirements at 49 CFR 1105.7(c) (environmental report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

[1] NSR states that it does not own the right-of-way (ROW) underlying the line. It seeks this abandonment at the behest of the ROW owner, PCS Phosphate, which wants to use the land for its own industrial purposes.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on October 11, 2012, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by September 21, 2012. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 1, 2012, with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to NSR's representative: Robert A. Wimbish, Baker & Miller PLLC, 2401 Pennsylvania Ave. NW., Suite 300, Washington, DC 20037.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

NSR has filed a combined environmental and historic report that addresses the effects, if any, of the abandonment on the environment and historic resources. OEA will issue an environmental assessment (EA) by September 14, 2012. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling OEA at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service at (800) 877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by NSR's filing of a notice of consummation by September 11, 2013, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *www.stb.dot.gov*.

Decided: September 6, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Derrick A. Gardner,

Clearance Clerk.

[FR Doc. 2012–22339 Filed 9–10–12; 8:45 am]

BILLING CODE 4915–01–P

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C. 2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which is currently set at $1,600. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 55 (Sub-No. 725X]

CSX Transportation, Inc.—Discontinuance of Service Exemption—in Raleigh County, WV

On August 22, 2012, CSX Transportation, Inc. (CSXT) filed with the Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to discontinue rail service over approximately 13.5 miles of rail line between milepost WG 12.0 near Helen and milepost WG 25.5 at McVey in Raleigh County, W. Va. The line is owned by Norfolk Southern Railway Company (NSR) and has been operated by CSXT since 1996 under lease from NSR.[1] The line traverses U.S. Postal Service Zip Codes 25915, 25920, 25823, and 25827 and includes no stations.

CSXT states that the line does not contain any federally granted rights-of-way. Any documentation in CSXT's possession will be made available promptly to those requesting it.

CSXT points out that, in a letter dated May 16, 2011, NSR invoked its termination rights under the lease. According to CSXT, NSR may, upon a written 30-day notice, terminate the lease at its sole discretion provided that NSR offers trackage rights or another appropriate agreement to CSXT that would allow CSXT to continue operating between milepost WG 12.0 near Helen and milepost WG 23.6 at Pemberton, W. Va., for CSXT's own purposes and with its own trains and crews. In a decision served on August 10, 2012, pursuant to a written trackage rights agreement dated May 18, 2012, between the parties, CSXT was authorized to acquire overhead and local trackage rights from NSR to continue operating over the line of railroad, known as the Pemberton Line, between milepost WG 12.0 near Helen and milepost WG 23.6 at Pemberton, a distance of 11.6 miles.[2] CSXT states that NSR will resume providing rail service on the 13.5-mile line but that, pursuant to the lease, CSXT will retain the right and obligation to continue to provide common carrier service on the line between Helen and McVey until it receives discontinuance authority from the Board and consummates that authority.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line Railroad–Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by December 10, 2012.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) to subsidize continued rail service will be due no later than 10 days after service of a decision granting the petition for exemption. [3] Each offer must be accompanied by the filing fee, which is currently set at $1,600. *See Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services—2012 Update,* Ex Parte No. 542 (Sub-No. 20) (STB served July 27, 2012).

All filings in response to this notice must refer to Docket No. AB 55 (Sub-No. 725X) and must be sent to: (1) Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001, and (2) Melanie B. Yasbin, Law Offices of Louis E. Gitomer, LLC, 600 Baltimore Avenue, Suite 301, Towson, MD 21204. Replies to the petition are due on or before October 1, 2012.

Persons seeking further information concerning discontinuance procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238 or refer to the full abandonment and discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis (OEA) at (202) 245–0305.

[1] *See CSX Transp., Inc.—Lease & Operation Exemption—Norfolk & W. Ry.,* FD 32768 (ICC served Oct. 27, 1995). According to CSXT, the lease was amended in 1996.

[2] *See CSXT Transp., Inc.—Trackage Rights Exemption—Norfolk S. Ry.,* FD 35626 (STB served Aug. 10, 2012).

[3] Because this is a discontinuance proceeding and not an abandonment proceeding, trail use/rail banking and public use conditions are not appropriate. Similarly, no environmental or historic documentation is required under 49 CFR 1105.6(c)(2) and 1105.8.

Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: August 31, 2012.

By the Board, Richard Armstrong, Acting Director, Office of Proceedings.

Derrick A. Gardner,

Clearance Clerk.

[FR Doc. 2012–22340 Filed 9–10–12; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to comment on a currently approved information collection that is due for extension approval by the Office of Management and Budget. The Office of International Affairs within the Department of the Treasury is soliciting comments concerning the Annual Report of U.S. Ownership of Foreign Securities, including Selected Money Market Instruments. The next such collection is a benchmark survey is to be conducted as of December 31, 2012.

DATES: Written comments should be received on or before November 13, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Dwight Wolkow, International Portfolio Investment Data Systems, Department of the Treasury, Room 5422 MT, 1500 Pennsylvania Avenue NW., Washington, DC 20220. In view of possible delays in mail delivery, you may also wish to send a copy to Mr. Wolkow by email (*comments2TIC@do.treas.gov*) or FAX (202–622–2009). Mr. Wolkow can also be reached by telephone (202–622–1276).

FOR FURTHER INFORMATION CONTACT: Copies of the proposed forms and instructions are available on the Treasury International Capital (TIC) Forms Web page for ''Forms SHL/SHLA & SHC/SHCA'', at: *http://www.treasury.gov/resource-center/data-chart-center/tic/Pages/forms-sh.aspx*. Requests for additional information should be directed to Mr. Wolkow.

SUPPLEMENTARY INFORMATION:

Title: Treasury Department Forms SHC and SHCA, U.S. Ownership of Foreign Securities, including Selected Money Market Instruments.

OMB Number: 1505–0146.

Abstract: These forms are used to conduct annual surveys of holdings by U.S. residents of foreign securities for portfolio investment purposes. These data are used by the U.S. Government in the formulation of international financial and monetary policies, and for the computation of the U.S. balance of payments accounts and of the U.S. international investment position. These data are also used to provide information to the public and to meet international reporting commitments. This survey is part of an internationally coordinated effort under the auspices of the International Monetary Fund to improve data on securities worldwide. Most of the major industrial and financial countries conduct similar surveys.

A benchmark survey (Form SHC) of all significant U.S.-resident custodians and end-investors is conducted every five years. In non-benchmark years, the annual survey (Form SHCA) requires reports generally from only the very largest U.S.-resident custodians and end-investors. The data requested in Form SHCA will generally be the same as in the preceding benchmark report. The determination of who must report in the annual surveys (Form SHCA) is based primarily on the data submitted during the preceding benchmark survey. The data collected under the annual surveys (SHCA) will be used in conjunction with the results of the preceding benchmark survey to make economy-wide estimates for the non-benchmark years.

Current Actions: None. No changes in the forms or in the instructions will be made from the previous survey that was conducted as of December 31, 2011. [Note that some clarifications may be made in the instructions.]

Type of Review: Extension of a currently approved data collection.

Affected Public: Business/Financial Institutions.

Forms: TDF SHC, Schedules 1, 2 and 3 (1505–0146);

TDF SHCA, Schedules 1, 2 and 3 (1505–0146).

Estimated Number of Respondents: an annual average (over five years) of 395, but this varies widely from about 1,200 in benchmark years (once every five years) to about 195 in other years (four out of every five years).

Estimated Average Time per Respondent: An annual average (over five years) of about 142 hours, but this will vary widely from respondent to respondent. (a) In the year of a benchmark survey (using Form SHC), i.e., once every five years, it is estimated that exempt respondents will require an average of 16 hours; custodians of securities providing security-by-security information will require an average of 360 hours, but this figure will vary widely for individual custodians; end-investors providing security-by-security information will require an average of 120 hours; and end-investors and custodians employing U.S. custodians will require an average of 40 hours. (b) In a non-benchmark year (using Form SHCA), i.e., four years out of every five years, custodians of securities providing security-by-security information will require an average of 700 hours (because only the largest U.S.-resident custodians will report), but this figure will vary widely for individual custodians; end-investors providing security-by-security information will require an average of 145 hours; and reporters entrusting their foreign securities to U.S. custodians will require an average of 48 hours. The exemption level, which applies only in benchmark years, for custodians is the holding of less than $100 million in foreign securities and for end-investors the owning of less than $100 million in foreign securities with a single custodian.

Estimated Total Annual Burden Hours: annual average (over five years) of 56,080 hours.

Frequency of Response: Annual.

Request 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. The public is invited to submit written comments concerning: (a) Whether the Survey is necessary for the proper performance of the functions of the Office of International Affairs within the Department of the Treasury, including whether the information collected will have practical uses; (b) the accuracy of the above estimate of the burdens; (c) ways to enhance the quality, usefulness and clarity of the information to be collected; (d) ways to minimize the reporting and/or record keeping burdens on respondents, including the use of information technologies to automate the collection of the data requested; and (e) estimates of capital or start-up costs of operation, maintenance and purchase

of services to provide the information requested.

Dwight Wolkow,

Administrator, International Portfolio Investment Data Systems.

[FR Doc. 2012–22305 Filed 9–10–12; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Designation of Eight (8) Individuals Pursuant to Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism''

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the names of eight (8) individuals whose property and interests in property are blocked pursuant to Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism.''

DATES: The designations by the Director of OFAC of the eight (8) individuals in this notice, pursuant to Executive Order 13224, are effective on August 30, 2012.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Background

On September 23, 2001, the President issued Executive Order 13224 (the ''Order'') pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701–1706, and the United Nations Participation Act of 1945, 22 U.S.C. 287c. In the Order, the President declared a national emergency to address grave acts of terrorism and threats of terrorism committed by foreign terrorists, including the September 11, 2001 terrorist attacks in New York, Pennsylvania, and at the Pentagon. The Order imposes economic sanctions on persons who have committed, pose a significant risk of committing, or support acts of terrorism. The President identified in the Annex to the Order, as amended by Executive Order 13268 of July 2, 2002, 13 individuals and 16 entities as subject to the economic sanctions. The Order was further amended by Executive Order 13284 of January 23, 2003, to reflect the creation of the Department of Homeland Security.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in or hereafter come within the United States or the possession or control of United States persons, of: (1) Foreign persons listed in the Annex to the Order; (2) foreign persons determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, to have committed, or to pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States; (3) persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to be owned or controlled by, or to act for or on behalf of those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order; and (4) except as provided in section 5 of the Order and after such consultation, if any, with foreign authorities as the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, deems appropriate in the exercise of his discretion, persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of, such acts of terrorism or those persons listed in the Annex to the Order or determined to be subject to the Order or to be otherwise associated with those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order.

On August 30, 2012 the Director of OFAC, in consultation with the Departments of State, Homeland Security, Justice and other relevant agencies, designated, pursuant to one or more of the criteria set forth in subsections 1(b), 1(c) or 1(d) of the Order, eight (8) individuals whose property and interests in property are blocked pursuant to Executive Order 13224.

The listings for these individuals on OFAC's list of Specially Designated Nationals and Blocked Persons appear as follows:

Individuals

1. HAMZA, Amir (a.k.a. HAMZA, Maulana Ameer), Jamia Masjid, al Qadsia, Chauburji Chowk, Lahore, Pakistan; DOB 10 May 1959; POB Sheikhupura, Punjab Province, Pakistan; citizen Pakistan; Passport AB6217491 issued 01 Jun 2006 expires 01 Jun 2011; National ID No. 3520149847497 (Pakistan) (individual) [SDGT].

2. MIR, Sajjid (a.k.a. CHAUDARY, Sajid Majeed; a.k.a. CHUHDRI, Sajid Majid; a.k.a. MAJEED, Sajid; a.k.a. MAJID, Sajid; a.k.a. MAJID, Sajjid; a.k.a. MIR, Sajid); DOB 31 Jan 1976; alt. DOB 01 Jan 1978; POB Lahore, Pakistan; nationality Pakistan; Passport KE381676 (Pakistan) issued 14 Oct 2004; National ID No. 3520163573447 (Pakistan) (individual) [SDGT].

3. MUJAHID, Abdullah (a.k.a. ABDALLAH, Abu), Mohallah Markaz Tayyeba Street, Muridke, Lahore, Pakistan; DOB 15 May 1970; POB Bhalwal, Sargodha District, Punjab Province, Pakistan; citizen Pakistan; Passport DM1074371 (Pakistan) issued 30 May 2009 expires 29 May 2014; National ID No. 3540118204373 (Pakistan) (individual) [SDGT].

4. MUNTAZIR, Abdullah (a.k.a. KHAN, Abdullah; a.k.a. MUNTAZER, Abdullah); DOB 17 Jan 1974; POB Abbottabad, Pakistan; National ID No. 3520203526763 (Pakistan) (individual) [SDGT].

5. SAEED, Talha (a.k.a. SAEED, Hafiz Talha; a.k.a. SAEED, Mohammad Talha; a.k.a. SAEED, Tahil), 116–E Block, Johar Town, Lahore, Pakistan; DOB 25 Oct 1975; POB Sarghoda, Punjab Province, Pakistan; Passport BM5971331 (Pakistan) issued 24 Mar 2007 expires 22 Mar 2012 (individual) [SDGT].

6. SHEIKH, Qari Muhammad Yaqoob (a.k.a. SHEIKH, Qari Muhammad Yaqub; a.k.a. YAQOOB, Mohammad; a.k.a. YAQOOB, Qari Shaikh Muhammad); DOB 20 Dec 1972; POB Bahawalpur, Punjab, Pakistan; Passport BX5192361 (Pakistan) issued 04 Aug 2007 expires 02 Aug 2012; National ID No. 3120128002365 (Pakistan) (individual) [SDGT].

7. WALID, Hafiz Khalid (a.k.a. NAIK, Khalid; a.k.a. WALEED, Khalid); DOB 25 Oct 1974; alt. DOB 1971; POB Lahore, Pakistan; citizen Pakistan; Passport AA9967331 (Pakistan) issued 03 Jun 2006 expires 02 Jun 2011;

National ID No. 3410104067339 (Pakistan) (individual) [SDGT].

8. YAQUB, Ahmed (a.k.a. GHANI, Hamad; a.k.a. YAKOOB, Mohammad); DOB 1966; alt. DOB 1967; POB Faisalabad, Pakistan; alt. POB Jeda Walah, Punjab Province, Pakistan (individual) [SDGT].

Dated: August 30, 2012.

Barbara C. Hammerle,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2012–21953 Filed 9–10–12; 8:45 am]

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Part II

Commodity Futures Trading Commission

17 CFR Part 23
Confirmation, Portfolio Reconciliation, Portfolio Compression, and Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants; Final Rule

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 23

RIN 3038–AC96

Confirmation, Portfolio Reconciliation, Portfolio Compression, and Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is adopting regulations to implement certain provisions of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). Section 731 of the Dodd-Frank Act added a new section 4s(i) to the Commodity Exchange Act (CEA), which requires the Commission to prescribe standards for swap dealers (SDs) and major swap participants (MSPs) related to the timely and accurate confirmation, processing, netting, documentation, and valuation of swaps. These regulations set forth requirements for swap confirmation, portfolio reconciliation, portfolio compression, and swap trading relationship documentation for SDs and MSPs.

DATES: The rules will become effective November 13, 2012. Specific compliance dates are discussed in the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Frank N. Fisanich, Chief Counsel, 202–418–5949, *ffisanich@cftc.gov,* Ward P. Griffin, Associate Chief Counsel, 202–418–5425, *wgriffin@cftc.gov* Division of Swap Dealer and Intermediary Oversight, and Hannah Ropp, Economist, 202–418–5228, *hropp@cftc.gov,* Office of the Chief Economist, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION

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I. Background

The Commission is hereby adopting § 23.500 through § 23.505 [1] setting forth standards for the timely and accurate confirmation of swaps, requiring the reconciliation and compression of swap portfolios, and setting forth requirements for documenting the swap trading relationship between SDs, MSPs, and their counterparties. These regulations are being adopted by the Commission pursuant to the authority granted under sections 4s(h)(1)(D), 4s(h)(3)(D), 4s(i), and 8a(5) of the CEA. Section 4s(i)(1) of the CEA, requires SDs and MSPs to ''conform with such standards as may be prescribed by the Commission by rule or regulation that relate to timely and accurate confirmation, processing, netting, documentation, and valuation of all swaps.'' Documentation of swaps is a critical component of the bilaterally-traded, over-the-counter (OTC) derivatives market, while confirmation, portfolio reconciliation, and portfolio compression have been recognized as important post-trade processing mechanisms for reducing risk and improving operational efficiency. Each of these processes has been the focus of significant domestic and international attention in recent years by both market participants and their regulators.

II. Comments on the Notices of Proposed Rulemaking

The final rules adopted herein were proposed in three separate notices of proposed rulemaking.[2] Each proposed rulemaking was subject to an initial 60-day public comment period and a re-opened comment period of 30 days.[3] The Commission received a total of approximately 62 comment letters directed specifically at the proposed rules.[4] The Commission considered each of these comments in formulating the final regulations.[5]

The Chairman and Commissioners, as well as Commission staff, participated in numerous meetings with representatives of potential SDs and MSPs, trade associations, public interest groups, traders, and other interested parties. In addition, the Commission has consulted with other U.S. financial regulators including: (i) The Securities and Exchange Commission (SEC); (ii) the Board of Governors of the Federal Reserve System; (iii) the Office of the Comptroller of the Currency; and (iv) the Federal Deposit Insurance Corporation. Staff from each of these agencies has had the opportunity to provide oral and/or written comments to this adopting release, and the final regulations incorporate elements of the comments provided.

The Commission is mindful of the benefits of harmonizing its regulatory framework with that of its counterparts in foreign countries. The Commission has therefore monitored global advisory, legislative, and regulatory proposals, and has consulted with foreign regulators in developing the final regulations. Specifically, Commission staff has consulted with the European Securities and Markets Authority (ESMA), which has recently released a consultation paper for the regulation of OTC derivatives containing draft technical standards that are substantially similar to some of the rules adopted by the Commission in this release, as further noted below.[6]

A. Regulatory Structure

Several commenters raised general concerns with the legal authority for or structure of the proposed rules, or their possible effect on existing transactions.

1. Statutory Authority for the Proposed Rules

The Working Group of Commercial Energy Firms (The Working Group)

[1] Commission regulations referred to herein are found at 17 CFR Ch. 1.

[2] *See* 75 FR 81519 (Dec. 28, 2010) (Confirmation, Portfolio Reconciliation, and Portfolio Compression Requirements for Swap Dealers and Major Swap Participants (Confirmation NPRM)); 76 FR 6715 (Feb. 8, 2011) (Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants (Documentation NPRM)); and 76 FR 6708 (Feb. 8, 2011) (Orderly Liquidation Termination Provision in Swap Trading Relationship Documentation for Swap Dealers and Major Swap Participants (Orderly Liquidation NPRM)).

[3] *See* 76 FR 25274 (May 4, 2011) (extending or re-opening comment periods for multiple Dodd-Frank proposed rulemakings).

[4] Comment files for each proposed rulemaking can be found on the Commission Web site, *www.cftc.gov.*

[5] The Commission also reviewed the proposed rule of the Securities and Exchange Commission concerning trade acknowledgement and verification of security-based swap transactions. *See* 76 FR 3859 (Jan. 21, 2011).

[6] *See* ESMA Consultation Paper 2012/379, Draft Technical Standards for the Regulation of OTC Derivatives, CCPs and Trade Repositories (June 25, 2012) (ESMA Draft Technical Standards).

commented that many of the specific provisions in the proposed rules are not required by section 731 of the Dodd-Frank Act and that such provisions are not ''reasonably necessary'' to achieve the goals of the CEA. The Working Group believes that the Commission could meet its statutory mandate by publishing principle-based rules, rather than the detailed approach of the proposed rules. Dominion Resources, Inc. (Dominion) also asserted that the proposed rules would achieve a regulatory scope beyond what is required by section 4s(i) and may require end users to change their business practices. Dominion requested that the proposed rules be further tailored to ensure the effect of the rules is limited to SDs and MSPs.

The Commission notes that section 731 of the Dodd-Frank Act added a new section 4s(i) to the CEA that states that each registered SD and MSP shall conform with such standards as may be prescribed by the Commission by rule or regulation that relate to timely and accurate confirmation, processing, netting, documentation, and valuation of all swaps. Section 4s(i) also states that the Commission shall adopt rules governing documentation standards for SDs and MSPs.

Swaps and swap trading relationship documentation are contractual arrangements that necessarily involve more than a single party. The Commission believes that the statutory requirement that the Commission adopt rules governing documentation standards relating to confirmation, processing, netting, documentation, and valuation of *all* swaps reflects the intent of Congress to have the Commission adopt rules that necessarily effect SDs, MSPs, and their swap counterparties. The Commission also believes the rules establish a set of documentation standards for prudent risk management for registered SDs and MSPs while minimizing the burdens on non-SDs and non-MSPs.

2. Application to Existing Swaps and Documentation

In response to a request for comment in the Documentation NPRM asking how long SDs and MSPs should have to bring existing swap documentation into compliance with the proposed rules and whether a safe harbor should be provided for dormant trade documentation, the International Swaps and Derivatives Association (ISDA) and the Securities Industry and Financial Markets Association (SIFMA), in a joint comment letter (ISDA & SIFMA), strongly urged the Commission to specify that only new transactions entered into after the effective date of the rules are subject to the rules' requirements, and that it is not mandatory to amend terms or agreements that apply to transactions entered into prior to such date. ISDA & SIFMA further argued that Commission rules relating to business conduct, the confirmation process, confidentiality and privacy, collateral segregation requirements, and margin and capital may all directly or indirectly require registrants to make amendments to existing relationship documentation, and that it would be extremely inefficient, time consuming and costly for registrants to engage in separate rounds of amendments with their trading counterparties for each set of Dodd-Frank Act rulemakings. ISDA & SIFMA recommended that registrants be permitted to develop plans to update their agreements in an integrated manner for the full range of Dodd-Frank Act requirements, and implementation timelines should reflect the requirements of such an approach, keeping in mind that those requirements will not be known until the scope and terms of all of the relevant Commission regulations (and those of the SEC) are more clearly delineated.

The Working Group and the Financial Services Roundtable (FSR) also urged the Commission to apply the rules to new swaps only, arguing that renegotiation of existing documentation would take significantly longer than six months; may be impossible in some cases; and is not a good use of limited resources of market participants that will already be taxed with the necessary changes mandated by the Dodd-Frank Act and the Commission's other rules. Likewise, the Coalition for Derivatives End-Users urged the Commission to exempt trades entered into before the enactment of the Dodd-Frank Act from the requirements of the rules and the Managed Funds Association (MFA) strongly objected to the Commission applying any of these requirements to existing contracts. MFA argued that section 739(5) of the Dodd-Frank Act specifically provides that the Dodd-Frank Act shall not constitute a ''regulatory change, or similar event * * * that would permit a party to terminate, renegotiate, modify, amend, or supplement one or more transactions under the swap.'' MFA believes that imposing these requirements on existing agreements would clearly require that existing agreements be ''renegotiated.''

The Federal Home Loan Banks (FHLBs) noted on the other hand that netting of pre-existing transactions with new transactions is critical to efficient hedging, and thus documentation for pre-existing swaps will need to be modified to maintain the benefits of netting.

Having considered these comments, the Commission agrees with commenters that the rules should not apply retrospectively and will require compliance with the rules only with respect to swaps entered after the date on which compliance with the rules is required, as discussed below. With respect to the comment of the FHLBs, the Commission notes that the rules would not prohibit parties from arranging their documentation to maintain the benefits of netting between pre-existing swaps and swaps entered after the date compliance with the rules is required if they so choose. In addition, with regard to ISDA & SIFMA's argument that swap trading documentation would need to be amended when rules relating to segregation and margin are finalized, the Commission observes that those rules are likely to provide for additional time for documentation to be brought into compliance.

3. Legal Certainty

With respect to the validity of transactions where the parties fail to comply with the rules, The Working Group argued that for the sake of legal certainty, a failure to comply with the proposed rules should not result in invalidation of swaps entered into under deficient swap trading relationship documentation. The Coalition of Physical Energy Companies (COPE) recommended that the Commission make clear that section 739 of the Dodd-Frank Act, regarding legal certainty, applies to the proposed regulations so that SD or MSP noncompliance with the rules will not otherwise affect the enforceability of a swap. MFA and the International Energy Credit Association (IECA) also believe that it is imperative that the Commission affirmatively clarify that defects in required regulatory documentation do not render a contract void or voidable by one of the parties or constitute a breach of the swap documentation. IECA added that a party should not have a private right of action with respect to documentation that does not comply with the rules. IECA further requested that the Commission add specific language to proposed § 23.504. The FHLBs made the same argument as IECA, adding that the Commission can enforce the provisions through penalties for SDs and MSPs.

Upon consideration of these comments, the Commission is clarifying that it is not the intent of the rules to provide swap counterparties with a

basis for voiding or rescinding a swap transaction based solely on the failure of the parties to document the swap transaction in compliance with the rules. However, the Commission believes it does not have the authority to immunize SDs or MSPs from private rights of action for conduct within the scope of section 22 of the CEA, i.e., for violations of the CEA. In the interest of legal certainty, to avoid disruptions in the swaps market, and to reduce compliance costs, the Commission has determined that it will, in the absence of fraud, consider an SD or MSP to be in compliance with the rules if it has complied in good faith with its policies and procedures reasonably designed to comply with the requirements of each rule.

4. Standing of the ISDA Agreements

Several commenters requested that the Commission clarify the standing under the rules of the ISDA Master Agreement and Credit Support Annex (the ISDA Agreements), which are prevalent in the swaps market. Specifically, ISDA & SIFMA commented that the proposed rules could create uncertainty as to the level of documentation required because the proposed rules require that ''all terms'' governing the swap trading relationship be documented. ISDA & SIFMA thus requested that the Commission acknowledge the general adequacy of the ISDA Agreements for purposes of the rule to enhance legal certainty and market stability. Similarly, COPE argued that many end users have already negotiated existing documentation under the ISDA architecture and thus requested that the Commission make clear that: (1) ISDA Agreements or any substantially similar master agreements satisfy the documentation requirements of the final rules; (2) in accordance with the ISDA Agreements and applicable state law, swaps are binding when made orally; and (3) long-form confirmations that contain all requisite legal terms to establish a binding agreement also satisfy the requirements of the rules. IECA also recommended that the Commission expressly state that the ISDA Agreements satisfy the documentation requirements of the final rules or state how the ISDA Agreements are deficient to eliminate any confusion. Finally, the Coalition for Derivatives End-Users argued that, given that the ISDA Agreements are used by nearly all end users and that such documentation substantially complies with the proposed rules, the Commission should expressly state that the ISDA Agreements satisfy the documentation requirements of the rules.

On the other hand, the Committee on the Investment of Employee Benefit Assets (CIEBA) anticipates that ISDA may initiate a uniform protocol to conform existing ISDA Agreements to the requirements of the rules. In this regard, CIEBA stated that ISDA protocols, which in the past have typically been developed by dealer-dominated ISDA committees, are not form documents that can be revised by the parties. Rather, CIEBA argues, end users may only adopt these protocols on a ''take it or leave it'' basis, which may not be in their best interests. Accordingly, CIEBA recommended that the Commission not, either explicitly or implicitly, require market participants to consent to ISDA protocols in order to comply with the Dodd-Frank Act or the Commission's regulations.

The Commission notes that many comments received with respect to this and other rulemakings stated that swaps are privately negotiated bilateral contracts. Although the Commission recognizes that the ISDA Agreements in their pre-printed form as published by ISDA are capable of compliance with the rules, such agreements are subject to customization by counterparties. In addition, the Commission notes that while the pre-printed form of the ISDA Master Agreement is capable of addressing the requirements of proposed § 23.504(b)(1), it is not possible to determine if the pre-printed form of the ISDA Credit Support Annex will comply with proposed § 23.504(b)(3), because that section requires that the documentation include credit support arrangements that comply with the Commission's rules regarding initial and variation margin and custodial arrangements, which have been proposed but not yet finalized. Further, the Commission does not believe that the standard ISDA Agreements address the swap valuation requirements of § 23.504(b)(4), the orderly liquidation termination provisions of § 23.504(b)(5), or the clearing records required by § 23.504(b)(6). Given the foregoing, the Commission declines to endorse the ISDA Agreements as meeting the requirements of the rules in all instances.

5. Identical Rules Applicable to SDs and MSPs

The proposed regulations did not differentiate between SDs and MSPs, but, rather, applied identical rules to both types of entities. In this regard, BlackRock commented that MSPs are buy-side entities, yet many of the proposed documentation standards are designed to regulate dealing activity. BlackRock believes these requirements should not apply to MSPs because they are unnecessary and will cause both MSPs and the Commission to use resources inefficiently.

The Commission is not modifying the regulations to differentiate between SDs and MSPs. The Commission observes that section 4s(i) of the CEA, as added by the Dodd-Frank Act, does not differentiate between SDs and MSPs. The Commission thus has determined that the intent of section 4s(i) is to apply the same requirements to MSPs and SDs, and the Commission is taking the same approach in the final regulations.

B. Swap Trading Relationship Documentation—§ 23.504

Section 4s(i)(1) requires swap dealers and major swap participants to ''conform with such standards as may be prescribed by the Commission by rule or regulation that relate to timely and accurate confirmation, processing, netting, documentation, and valuation of all swaps.'' Under section 4s(i)(2), the Commission is required to adopt rules ''governing documentation standards for swap dealers and major swap participants.''

OTC derivatives market participants typically have relied on the use of industry standard legal documentation, including master netting agreements, definitions, schedules, and confirmations, to document their swap trading relationships. This industry standard documentation, such as the widely used ISDA Master Agreement and related definitions, schedules, and confirmations specific to particular asset classes, offers a framework for documenting the transactions between counterparties for OTC derivatives products.[7] The standard documentation is designed to set forth the legal, trading, and credit relationship between the parties and to facilitate netting of transactions in the event that parties have to close-out their position with one another or determine credit exposure for margin and collateral management. Notwithstanding the standardization of such documentation, some or all of the terms of the master agreement and other documents are subject to negotiation and modification.

To promote the ''timely and accurate * * * documentation * * * of all swaps'' under section 4s(i)(1) of the CEA, in the Documentation NPRM, the Commission proposed § 23.504(a), which required that swap dealers and major swap participants establish,

[7] The International Swaps and Derivatives Association (ISDA) is a trade association for the OTC derivatives industry (*http://www.isda.org*).

maintain, and enforce written policies and procedures reasonably designed to ensure that each swap dealer or major swap participant and its counterparties have agreed in writing to all of the terms governing their swap trading relationship and have executed all agreements required by proposed § 23.504. The Commission received approximately 31 comment letters in response to the Documentation NPRM and considered each comment in formulating the final rules, as discussed below.

1. Application to Swaps Executed on a SEF or DCM, or Cleared by a DCO

In response to a request for comment in the Documentation NPRM regarding whether proposed § 23.504 should include a safe harbor for swaps entered into on, or subject to the rules of, a board of trade designated as a contract market, ISDA & SIFMA, as well as the American Benefits Counsel and the Committee on Investment of Employee Benefit Assets (jointly, ABC & CIEBA), recommended that the Commission provide such a safe harbor for swaps executed on a swap execution facility (SEF) or designated contract market (DCM). ISDA & SIFMA commented that the safe harbor is especially needed for those transactions where the SD or MSP will not know the identity of its counterparty until just before or after execution. ISDA & SIFMA also urged the Commission to clarify that the term ''swap trading relationship documentation'' is used to describe only bilateral documentation between parties to uncleared swaps. MFA also recommended that the Commission clarify that exchange traded or cleared swaps, which will be subject to standard contract terms, are not subject to the documentation rules. The Working Group commented that the swap trading relationship requirement in § 23.504(a) includes a carve-out for swaps cleared with a DCO, but § 23.504(b)(6) includes express requirements for the swap trading relationship documentation with respect to cleared swaps. Given the apparent contradiction, The Working Group requested that the Commission clarify whether the other requirements of § 23.504 apply to swaps that are intended to be cleared contemporaneously with execution or that are executed on a SEF or DCM.

In response to The Working Group's comment expressing confusion about whether § 23.504 applies to swaps that are cleared by a DCO and to ISDA & SIFMA's comment regarding applicability to cleared swaps, as well as the applicability to pre-existing swaps per the discussion above, the Commission is modifying § 23.504 to clarify the overall applicability of the rule by adding a new paragraph (a)(1) as set forth in the regulatory text of this rule.

This revision clarifies the circumstances under which the rule applies. The proviso in § 23.504(a)(1)(ii) would achieve the rule's goal of avoiding differences between the terms of a swap as carried at the DCO level and at the clearing member level, which could compromise the benefits of clearing. Any such differences raise both customer protection and systemic risk concerns. From a customer protection standpoint, if the terms of the swap at the customer level differ from those at the clearing level, then the customer will not receive the full transparency and liquidity benefits of clearing, and legal and basis risk will be introduced into the customer position. Similarly, from a systemic perspective, any differences could diminish overall price discovery and liquidity and increase uncertainties and unnecessary costs into the insolvency resolution process. The cross reference to § 39.12(b)(6) imports the specific requirements that had been included in proposed § 23.504(b)(6)(v). See below for a more complete discussion of § 23.504(b)(6).

In response to the comment from ISDA & SIFMA, the Commission clarifies that swaps executed anonymously on a SEF or traded on a DCM prior to clearing by a DCO are not subject to the requirements of § 23.504. For those swaps that are not executed anonymously, the swap trading relationship documentation requirements of § 23.504 would apply.

2. Viability of Long-Form Confirmations as Swap Trading Relationship Documentation—§ 23.504(a) & (b)

Proposed § 23.504(b) required that all terms governing the trading relationship between an SD or MSP and its counterparty be documented in writing. Proposed § 23.504(a) required that SDs and MSPs establish policies and procedures reasonably designed to ensure that the required swap trading relationship documentation be executed prior to or contemporaneously with entering into a swap transaction with any counterparty. The Commission notes the industry practice whereby counterparties enter into a ''long-form confirmation'' after execution of transaction, where the long-form confirmation contains both the terms of the transaction and many, if not all, terms usually documented in a master agreement until such time as a complete master agreement is negotiated and executed.

The Office of the Comptroller of the Currency (OCC) commented that the proposed rule may require master agreements between all counterparties even if a ''long-form'' confirmation would sufficiently address legal risks, creating a significant expense and burden for end users. Similarly, IECA commented that long form confirmations that incorporate the terms of a standard master agreement are useful for certain new transaction relationships. In this respect, IECA recommends that § 23.504(b)(1) be modified to make clear that terms can be incorporated by reference.

In response to these comments, the Commission has determined that so long as a ''long-form'' confirmation includes all terms of the trading relationship documented in writing prior to or contemporaneously with the assumption of risk arising from swap transactions, the ''long-form'' confirmation would comply with the rules. However, the Commission is not modifying the rule to permit execution of a long-form confirmation subsequent to the execution of a swap transaction, which the Commission believes results in some period, however short, in which the terms of the trading relationship between the parties are not in written form. In response to the comment of IECA, the rule does not prohibit incorporation of terms by reference. Thus, so long as the terms incorporated by reference are in written form, the documentation would be in compliance with the rule.

3. Confirmation Execution Timing and Swap Trading Relationship Documentation—§ 23.504(a) & (b)(2)

Proposed § 23.504(b)(2) states that swap trading relationship documentation includes transaction confirmations. Proposed § 23.504(a) requires swap trading relationship documentation to be executed prior to or contemporaneously with entering into any swap with a counterparty. However, proposed § 23.501 provides for specific post-execution time periods for confirming swaps. This apparent contradiction was identified by a number of commenters.

In order to reconcile the apparent contradiction, ISDA & SIFMA recommended that confirmations be excluded from swap trading relationship documentation and be treated solely in § 23.501. MFA also recommended that confirmations be treated solely in § 23.501, noting that if forced to choose between quick execution and the negotiation of all

terms, the proposed rule's timing requirements might substantially limit end users' ability to engage in proper risk management using tailored swaps. MFA also commented that unless modified, the rule might decrease the number of transactions in the markets, thereby decreasing liquidity and increasing volatility.

IECA noted that many short term transactions are executed orally and often documented by recording, ending before a written confirmation can be completed. IECA also stated that if all confirmations must be in writing, the additional employee time cost for each market participant would be substantial and is not included in the annual cost analysis. The Working Group also commented that in some instances, it may take longer to negotiate a written confirmation for a swap or complete the necessary mid- and back-office processes than the planned duration of the swap at issue. IECA recommended that proposed § 23.504(b)(2) be modified by adding at the end, ''which confirmations need not be in writing.''

MetLife commented that the requirement to document ''all'' terms of a trading relationship is overly burdensome. MetLife believes the documentation subject to regulation should be clarified to mean two sets of documents: A master agreement, credit support arrangement and master confirmation agreement and second, transaction specific confirmations. The confirmations can include any trade specific terms including specific valuation methodologies or inputs not already contained in the master documentation. Differentiation would assist with clarity for policies and procedures and with the audit requirements.

The Coalition for Derivatives End-Users and The Working Group commented that the rule may require pre-trade negotiation and disadvantage the party that is most sensitive to the timing of the swap in such negotiations. The Working Group believes such party may have to accept less than favorable terms in order to execute within its desired time frame, and that the rule would make it very difficult for parties to enter into short-term swaps. The Coalition for Derivatives End-Users point out that end-users often trade by auction and given the low probability of winning, SDs will not want to incur the expense of negotiating documents in advance. The Coalition for Derivatives End-Users also point out that even where established relationships exist, newly formed affiliates may trade based on existing expectations, but without the documents fully executed.

On the other hand, CIEBA commended the Commission for including all terms in swap trading relationship documentation. CIEBA believes this approach will minimize the potential for disputes over swap terms during the confirmation process caused by the introduction of new ''standard'' terms after the swap is executed, which CIEBA stated is a frequent occurrence. CIEBA recommended that the Commission confirm in its final rules that the requirement that documentation ''shall include all terms governing the trading relationship between the swap dealer or major swap participant and its counterparty'' would require all terms to be in writing prior to or at the time of entering into the swap transaction, except for terms such as price, quantity and tenor, that are customarily agreed to contemporaneously with entering into a swap transaction. CIEBA recommended that the rule require these remaining terms to be documented in writing contemporaneously with entering into the swap transaction.

Having considered these comments, the Commission has determined that proposed § 23.504(a) should be clarified with respect to the inclusion of swap confirmations in swap trading relationship documentation. The Commission is therefore modifying the proposed rule to make clear that the timing of confirmations of swap transactions is subject to § 23.501, and that swap trading relationship documentation other than confirmations of swap transactions is required to be executed prior to or contemporaneously with entering into any swap transaction.

The Commission does not, however, agree with commenters suggesting that terms governing a swap or a trading relationship need not be in writing. The Commission recognizes that binding swap contracts may be created orally under applicable law and the rule does not affect parties' ability to enforce such contracts. However, an orderly swap market and the goal of reducing operational risk require that such oral contracts be appropriately documented as soon as possible. In response to the comments of CIEBA, the Commission believes the modifications to the confirmation time periods in § 23.501 discussed below adequately address CIEBA's concerns. Given the foregoing, the Commission is modifying proposed § 23.504(a) to read as set forth in the regulatory text of this rule

4. Swap Trading Relationship Documentation Among Affiliates

The proposed regulations did not include an exemption or different rules for documenting swap trading relationships between affiliates. Shell Energy North America (Shell) commented that an end user trading with an affiliated SD/MSP does not have valuation, trade, and documentation risks that nonaffiliated entities may have, that such transactions only allocate risk within the legal entity, and, accordingly, affiliate transactions should be exempted from the documentation rules.

The Commission is not persuaded that the risk of undocumented (and therefore objectively indiscernible) terms governing swaps is obviated because the trading relationship is with an affiliate. The Commission has regulatory interests in knowing or being able to discover the full extent of a registered SD's or MSP's risk exposure, whether to external or affiliated counterparties, and is not modifying the rule in response to this comment. The Commission observes that to the extent certain risks are not present in affiliate trading relationships, the documentation of the terms related to such risks should be non-controversial and easily accomplished. For example, because affiliates are generally under common control, the documentation of an agreement on valuation methodologies should not require extensive negotiation as it may between non-affiliated counterparties.

5. Use of ''Enforce'' in Proposed § 23.504(a)

Proposed § 23.504(a) required that each SD and MSP establish, maintain, and enforce policies and procedures designed to ensure that prior to or contemporaneously with entering into a swap transaction, it executes swap trading relationship documentation that complies with the rules.

CEIBA questions what is intended by the requirement for SDs and MSPs to ''enforce policies and procedures'' in § 23.504(a). CEIBA believes the use of the term ''enforce'' with respect to SDs' and MSPs' procedures is contrary to the Dodd-Frank Act, because it implies that such procedures have the force of law and can be imposed on counterparties absent mutual agreement. CIEBA recommended that the word ''enforce'' should be deleted.

Having considered this comment, the Commission is modifying the proposed rule by replacing the term ''enforce'' with the term ''follow.'' The intent of the term ''enforce'' in the proposed rule was to require SDs and MSPs to in fact follow the policies and procedures established to meet the requirements of the proposed rule, rather than to enforce

its internal policies and procedures against third parties.

6. Payment Obligation Terms—§ 23.504(b)

In the Documentation NPRM, the Commission asked whether the proposed rules should specifically delineate the types of payment obligation terms that must be included in the trading relationship documentation.

CIEBA commented that the Commission need not dictate every term that must appear in swap trading relationship documentation, and that it is important to defined benefit plans to be able to negotiate payment obligation terms in their documentation.

The Commission agrees with CIEBA on this issue and has not modified the rule to further define the types of payment obligation terms required to be specified in swap trading relationship documentation.

7. Additional Requirements for Events of Default and Termination Events

In the Documentation NPRM, the Commission asked whether the requirement for agreement on events of default or termination events should be further defined, such as adding provisions related to cross default.

The Coalition for Derivatives End-Users commented that the ISDA documentation sufficiently addresses these issues and that parties should be allowed to negotiate these terms bilaterally so the Commission need not further define such terms. CIEBA agreed that parties should be allowed to negotiate these terms bilaterally so the Commission need not further define such terms.

The Commission agrees with the commenters on this point and has not modified the rule to further define the types of events of defaults and termination events required to be specified in swap trading relationship documentation.

8. Senior Management Approval of Documentation Policies and Procedures—§ 23.504(a)

Proposed § 23.504(a) required SDs' and MSPs' documentation policies and procedures to be approved in writing by senior management of the SD or MSP.

The Working Group raised a concern that this requirement will be used to the negotiating advantage by SDs and MSPs who will claim that the form of documentation had been approved for regulatory purposes and cannot be changed without a prohibitively lengthy internal approval process. In addition, The Working Group argued that rigid documentation standards that must be approved by senior management could severely limit the flexibility of SDs, ending the ability of end users to obtain customized swaps in a timely manner. The Working Group recommended that the Commission allow current practice to continue where trading managers can authorize deviations from standard trade documentation so long as such amendment does not violate the overarching policies and procedures set by internal management authorized by the governing body.

MFA similarly commented that the senior management approval requirement, together with the cumulative effect of the proscriptive documentation rules, may lead to the institutionalization of the terms favored by SDs and MSPs. As a result, MFA is concerned that SDs and MSPs will compel their customers to accept unfavorable terms or forego time-sensitive market opportunities. Accordingly, MFA recommended that each party should be free to assess requisite approval levels for various kinds of swap activity based on its unique organizational structure.

IECA commented that review by senior management is an unnecessary use of management time. Most SDs and MSPs have risk management policies that provide a framework for elevating issues through levels of management as applicable. By requiring senior management to review too many modifications, many that can be reviewed by lower levels with appropriate expertise, it is likely that senior management may actually miss the major issues that should get attention. Also, IECA argued that the chilling effect of the rule could stifle risk management efforts, innovation, and increase counterparty risk as review processes become too rigid in order to comply with regulatory requirements.

The Commission is not modifying the rule based on these comments. The commenters' concerns are overly broad because the rule requires senior management of SDs and MSPs to approve the ''policies and procedures'' governing swap trading documentation practices, not to approve each agreement, transaction, or modifications thereto. The rule does not prohibit SDs and MSPs from establishing policies and procedures instituting a framework for elevating issues through a hierarchy of management as each sees fit, so long as such framework has been approved in writing by senior management.

9. Dispute Resolution Procedures—§ 23.504(b)(1)

Proposed § 23.504(b)(1) required SDs' and MSP's swap trading relationship documentation to include dispute resolution procedures. In the Documentation NPRM preamble, the Commission asked whether the proposed rules should include specific requirements for dispute resolution (such as time limits), and if so, what requirements are appropriate for all swaps.

ISDA & SIFMA objected that the requirement that the parties agree to dispute resolution procedures is not authorized by the Dodd-Frank Act and that denying parties to a swap access to the judicial system is not a measure that should be taken lightly or without Congressional consideration. Similarly, IECA believes the proposed regulations for dispute resolution are too specific and could violate separation of powers under the Constitution.

On the other hand, CIEBA responded that the rules should not include specific requirements, with the exception of requiring the availability of independent valuation agents that are agreed upon by the parties. CIEBA recommended that the Commission propose only a set of fair and even-handed principles for resolving disputes.

In response to these comments, the Commission is modifying the proposed rule to delete the term ''procedures'' from the requirement that swap trading relationship documentation include ''terms addressing * * * dispute resolution procedures.'' The Commission notes that the rule as proposed was not intended to require SDs and MSPs to agree with their counterparties on specific procedures to be followed in the event of a dispute, but rather to require that dispute resolution be addressed in a manner agreeable to both parties, whether it be in the form of specific procedures or a general statement that disputes will be resolved in accordance with applicable law. The Commission believes that some form of agreement on the handling of disputes between SDs, MSPs, and their counterparties will be essential to ensuring the orderly operation of the swaps market.

10. Documentation of Credit Support Arrangements—§ 23.504(b)(3)

Proposed § 23.504(b)(3) required that the swap trading relationship documentation include certain specified details of the credit support arrangements of the parties.

Better Markets recommended that the Commission revise the proposed rule to

require documentation of the terms under which credit may be extended to a counterparty by a registrant in the form of forbearance from funding of margin and the cost of such credit extension, arguing that such credit extension and the cost thereof, which is embedded in the price of a swap, seriously impairs the transparency of the market by concealing the true price of a swap divorced from the cost of credit.

Michael Greenberger commented that leaving terms and rules regarding credit extension and transactional fees to subjective desires of market participants will be counterproductive. Mr. Greenberger supports the comment letter by Better Markets, Inc., which urges the Commission to propose definitive rules requiring documentation of credit extension and transactional fees.

COPE asked the Commission to clarify that the rule requires trading documentation to include any applicable margin provisions and related haircuts, but does not require margining and haircuts unless agreed by the parties. IECA echoed the COPE comment, stating that the proposed rule is unclear whether parties can enter into a swap that requires no margin, as is contemplated in the Dodd Frank Act.

CIEBA commented that proposed § 23.504(b)(3) should be clarified by adding the words ''if any'' to the end of each of subsections (i) through (iv) to make clear that end users are not required to post initial margin or allow rehypothecation.

Having considered these comments, the Commission is of the view that the proposed rule was not intended to require margin or related terms where such are not required pursuant to other Commission regulations or the applicable regulations adopted by prudential regulators. The proposed rule was intended to require written documentation of any credit support arrangement, whether that be a guarantee, security agreement, a margining agreement, or other collateral arrangement, but only to require written documentation of margin terms if margin requirements are imposed by Commission regulations, the regulations of prudential regulators, or are otherwise agreed between SDs, MSPs, and their counterparties. Thus, in response to commenters' requests for clarification, the Commission is modifying the proposed rule as recommended by CIEBA by adding ''if any'' at the end of each of subsections (i) through (iv) of § 23.504(b)(3). The Commission expects that other forms of credit support arrangements will be documented in accordance with the rule as well.

However, the Commission is not revising the rule to enumerate the terms of any extension of credit that are required to be included in the documentation, as recommended by Better Markets. The Commission believes that the rule, as proposed and as adopted by this release, already requires documentation of initial and variation margin requirements, which necessarily will entail documentation of any extension of credit, i.e., the documentation will reflect whether margining is subject to any credit extension threshold. Thus, to the extent applicable, credit support arrangements must include, at a minimum, the maximum amount of credit to be extended, the method for determining how much credit has been extended, and any term of the facility and early call rights. During negotiations regarding credit support arrangements, counterparties would be well served to address issues related to the embedded cost of credit. The Commission also observes that transactional fees are required to be disclosed under § 23.431 of the Business Conduct Standards for SDs and MSPs Dealing with Counterparties.[8]

11. Legal Enforceability of Netting and Collateral Arrangements—§ 23.504

The proposed regulations did not require SDs and MSPs to document the legal enforceability of netting and collateral arrangements in the swap trading relationship documentation.

In this regard, Volvo Financial Services Europe (Volvo) recommended that the Commission adopt a rule that states clearly that credit support arrangements should include legal opinions (updated annually) verifying the perfection of security interests in collateral supporting net exposures. Volvo argued that lack of legal certainty contributed to losses in the 2008 financial crisis where counterparties discovered that un-perfected security interests resulted in the unenforceability of pledged collateral. Specifically, Volvo recommended that the Commission revise the proposed rules to require: (i) Mandatory collateralization, (ii) robust legal opinions (updated annually) on enforceability of collateral arrangements, (iii) zero risk weighting if robust legal opinions are obtained, and (iv) regular collateral audits by the Commission to ensure that market participants perform the perfection formalities of security interests.

Although the Commission agrees with the commenter that SDs and MSPs should support their collateral arrangements with all necessary legal analysis, the Commission has not made any changes to the proposed rule based on this comment because the Commission believes (1) Volvo's concerns regarding margining of uncleared swaps are addressed in the Commission's proposed margin rules, or the prudential regulators' proposed margin rules, as applicable, and (2) Volvo's concerns regarding the legal enforceability of collateral arrangements is addressed in risk management rules adopted by the Commission in February, 2012.[9]

12. Valuation Methodology Requirement—§ 23.504(b)(4)

Proposed § 23.504(b)(4) required that the swap trading relationship documentation of each SD and MSP with their counterparties include an agreement in writing on the methods, procedures, rules, and inputs for determining the value of each swap at any time from execution to the termination, maturity, or expiration of such swap.

a. Comments Received

Twenty of the comment letters received by the Commission addressed the proposed valuation requirement in § 23.504(b)(4). Many of those comments raised similar concerns about the proposal, as summarized thematically, below:

The Working Group, ISDA & SIFMA, FSR, White & Case, Morgan Stanley, COPE, MFA, IECA, FHLBs, Hess Energy Trading Company, LLC (Hess), Riverside Risk Advisors LLC, and Edison Electric Institute (EEI) commented that valuation disputes provide valuable information to both market participants and regulators about pricing dislocations and associated credit risks and a static, rigid valuation methodology necessarily produces values that become increasingly outdated over time and could impede

[8] *See* Subpart H of Part 23 of the Commission's Regulations, Business Conduct Standards for Swap Dealers and Major Swap Participants with Counterparties, 77 FR 9734, 9824 (Feb. 17, 2012). In addition, to the extent that any cost of credit may be embedded in the price of a swap, the Commission believes that the disclosure of the mid-market mark, which must be disclosed when an SD or MSP discloses the price of a swap, will facilitate greater transparency concerning the embedded cost of credit. *Id.* at 9765–66 (discussing new § 23.431(a)(3)(i)).

[9] *See* 17 CFR 23.600(c)(4)(v)(A) requiring SDs and MSPs to establish policies and procedures to monitor and manage legal risk, including policies and procedures that take into account determinations that transactions and netting arrangements entered into have a sound legal basis. 77 FR 20128, 20206 (Apr. 3, 2012).

the transmission of this important risk information.

The Working Group, ISDA & SIFMA, FSR, Markit, Freddie Mac, COPE, MFA, FHLBs, CIEBA, EEI, and the Coalition of Derivatives End Users commented that requiring agreement on valuation methodologies and set alternative methods will materially increase the pre-execution negotiating burden without an offsetting benefit and agreement on models for complex swaps would require negotiations that could take sophisticated professionals months to complete, if such could be completed at all.

The Working Group, FSR, OCC, and Markit commented that it is impossible to state valuation methodologies with the required specificity without disclosing proprietary information about the parties' internal models.

OCC and Hess commented that requiring agreement on valuation methodologies may discourage development of more refined, dynamic swap valuation models, which would lead to use of less sophisticated or vanilla models that are less accurate than their proprietary counterparts.

ISDA & SIFMA and IECA commented that agreeing on a methodology that could survive the loss of any input to the valuation is wholly unworkable, will diminish standardization as parties negotiate bespoke approaches to valuation, and will undermine legal certainty if the valuation methodology is determined not to be adaptable to all circumstances.

COPE, FHLBs, MFA, EEI, and Markit commented that there is no business need for swap-by-swap valuation formulas because valuation of exposures with counterparties is usually conducted on a portfolio basis and documented in a master agreement, and that agreement on swap-by-swap valuation formulas also is likely to disrupt trading.

Several commenters also recommended alternative approaches to the valuation requirement. The Working Group, Morgan Stanley, MFA, IECA, FHLBs, CIEBA, and MetLife suggested that the focus of the rule should be on the valuation dispute resolution process rather than valuation methodologies that include fallback alternatives and other static terms. MetLife specifically recommended that the Commission establish ''mandatory dispute resolution guidelines'' that include a requirement for a third party arbiter after a set period of time.

With respect to valuation methodologies, CIEBA and Chris Barnard recommended that the rule require SDs to value swaps on the basis of transparent models that can be replicated by their counterparty. The Working Group requested that the Commission clarify that parties are permitted to use different valuation methodologies under different circumstances (i.e., mid-market valuation for collateral purposes and replacement cost valuation for terminations). Markit and MFA requested that the Commission clarify that parties may rely on a more general set of inputs, models, and fallbacks for valuation purposes, rather than the exhaustive fallbacks required by the rule. White & Case and IECA recommended that the Commission permit parties to change the valuation method and inputs as the market changes over time. Freddie Mac suggested that the rule should provide that the valuation methodology requirement can be satisfied by executing industry standard documentation that provides for a commercially reasonable valuation methodology. The Coalition of Derivatives End Users, IECA, and Chris Barnard recommended that proprietary inputs be allowed under the rule.

More generally, FSR recommended that the Commission withdraw the proposed valuation requirement until the Commission has the time to conduct a thorough study, including a comprehensive cost-benefit analysis, whereas Markit recommended that the rule be modified to explicitly allow parties to comply with the rule by agreeing that an independent third party may provide any or all of the elements required to agree upon the valuation of swaps. The Coalition of Derivatives End Users recommended that the Commission change the rule to require SDs and MSPs to provide commercially reasonable information to substantiate its valuations upon an end user's request, instead of requiring extensive pre-trade documentation of valuation methodology.

The Working Group recommended that the Commission modify the rule to provide that the valuation requirements for cleared swaps or swaps executed on a trading facility should be satisfied by referencing the price provided by the relevant DCO or facility, while Markit recommended that the Commission clarify that neither prices of recently executed transactions or any other single pricing input should be regarded as preferable inputs for the valuation of swaps and explicitly permit parties to use pricing sources other than DCOs, even for cleared swaps.

A number of commenters supported the rule. Chris Barnard strongly supported the requirement that the agreed methods, procedures, rules and inputs constitute a ''complete and independently verifiable methodology for valuing each swap entered into between the parties,'' and that the methodology must include alternatives ''in the event that one or more inputs to the methodology become unavailable or fail.'' Mr. Barnard also supported the requirement for SDs and MSPs to ''resolve a dispute over the valuation of a swap within one business day.'' Michael Greenberger generally supported the valuation methodology rule to promote transparency and financial integrity. MetLife agreed with the proposal that parties should determine upfront what the valuation methodologies will be to help mitigate disputes, but believes that disputes will not be eliminated by the rule.

CIEBA commended the Commission for requiring objective and specific valuation mechanisms in swaps documentation and believes that this requirement will limit the potential for valuation disputes. However, CIEBA believes requiring objective and specific valuation mechanisms is not enough. In addition to requiring SDs to value swaps using transparent models that can be replicated by their counterparties, CIEBA recommended that the Commission require the mechanisms or procedures by which disputes are resolved to be fair and even-handed and should not override existing contractual protections negotiated by the parties.

b. Commission Response

Having considered these comments, the Commission is modifying and clarifying the proposal in a number of ways. First, in response to concerns from non-financial entities regarding the cost and the challenges of pre-execution negotiation, the Commission is modifying the rule to require valuation documentation only at the request of non-financial entities. In other words, non-financial entities will have the ability, but not the obligation, to enter into negotiations on valuation with their SD or MSP counterparties. As discussed below, the rule will continue to apply to SDs, MSPs, and financial entities.

While the Commission agrees with commenters regarding the importance of using transparent models that can be replicated, the Commission recognizes concerns about protecting proprietary information used in internal valuation models. Thus, the Commission has modified the rule to clarify the requirement that the agreement on valuation use objective criteria, such as recently-executed transactions and valuations provided by independent third parties. In this regard, the

Commission agrees with The Working Group that the valuation requirements for cleared swaps or swaps executed on a trading facility would be satisfied by referencing the price provided by the relevant DCO, SEF, or DCM.

Additionally, the Commission confirms commenters' understanding that proprietary models may be used for purposes of valuation, provided that both parties agree to the use of one party's confidential, proprietary model. An agreement by the parties to use one party's confidential, proprietary model is sufficient to satisfy the requirements of § 23.504(b)(4)(i), including the requirement that the parties agree on the methods, procedures, rules and inputs for determining the value of each swap. On the other end of the spectrum from simply agreeing to use one party's model, counterparties may, if they choose, elect to negotiate precisely which model and inputs will govern the valuation of their swaps. Counterparties would be free to elect either of these options or many other possibilities under the terms of § 23.504(b)(4) so long as the resulting valuations are sufficient to comply with the margin requirements under section 4s(e) of the CEA and the risk management requirements under section 4s(j) of the CEA, and there is a dispute resolution process in place or a viable alternative method for determining the value of the swap. Moreover, the Commission is modifying proposed § 23.504(b)(4)(iii) to clarify that confidential, proprietary model information is protected under the rule.

To address concerns that the use of the phrase ''methods, procedures, rules, and inputs'' could be interpreted as requiring agreement on the precise model and all inputs for valuing a swap, the Commission is modifying the rule text to require that parties agree on ''the process, including methods, procedures, rules, and inputs for determining the value of each swap.''

Importantly, the Commission is responding to commenters' concerns about the requirement that the valuation documentation be stated with sufficient specificity to allow the SD, MSP, the Commission, and any prudential regulator to value the swap ''independently in a substantially comparable manner.'' Commenters viewed this standard as problematic because they read it to require disclosure of proprietary information or to prevent the updating or revising of models, among other things. Accordingly, the Commission has determined to remove this provision from the final rule. So long as the valuation documentation is stated with sufficient specificity to determine the value of the swap for purposes of complying with the requirements of the rule—namely, the margin and risk management requirements under section 4s of the CEA and Part 23 of Commission regulations—the requirements of § 23.504(b)(4)(i) would be met.

Under this approach, parties may rely on a general set of methods, inputs, models, and fallbacks for valuation purposes so long as the process is sufficient to determine the value of a swap. In response to concerns that the proposal would require a methodology that would be static or rigid over time, the Commission is further modifying the rule to make explicitly clear that the parties may agree on a process, including methods or procedures for modifying or amending the valuation process as circumstances require and as the market changes over time.[10]

The Commission does not disagree with commenters that differences in valuations can provide valuable information to both market participants and regulators about pricing dislocations and associated credit risks. Moreover, the objective is not to produce values that become increasingly outdated over time. Rather, the Commission believes that by requiring agreement between counterparties on the methods and inputs for valuation of each swap, § 23.504(b)(4) will assist SDs and MSPs and their counterparties to arrive at valuations necessary for margining and internal risk management, and to resolve valuation disputes in a timely manner, thereby reducing risk.

Agreement between SDs, MSPs, and their financial entity counterparties on the proper daily valuation of the swaps in their swap portfolio is an essential component of the Commission's margin proposal. Under proposed § 23.151, non-bank SDs and MSPs must document the process by which they will arrive at a valuation for each swap for the purpose of collecting initial and variation margin in compliance with the requirements of § 23.504. All non-bank SDs and MSPs must collect variation margin from their non-bank SD, MSP, and financial entity counterparties for uncleared swaps on a daily basis. Variation margin requires a daily valuation for each swap. For swaps between non-bank SDs and MSPs and non-financial entities, no margin is required to be exchanged under Commission regulation, but the non-bank SDs and MSPs must calculate a hypothetical variation margin requirement for each uncleared swap for risk management purposes under proposed § 23.154(b)(6).[11] The daily valuation agreed to by the counterparties is necessary for compliance with the margin requirements proposed by the Commission and the prudential regulators under section 4s(e) of the CEA.

In addition to the fact that arriving at a daily valuation is one of the building blocks for the margin rules, timely and accurate valuations are essential for the risk management of swaps by SDs and MSPs. Under § 23.600(c)(4)(i), the Commission required that SDs and MSPs have risk management policies and procedures that take into account the daily measurement of market exposure, along with timely and reliable valuation data. The valuation documentation requirements under § 23.504(b) and the risk management provisions of § 23.600 work together to ensure that SDs and MSPs have the most accurate and reliable valuation data available for internal risk management and for collateralization of risk exposures with counterparties. This is not to say that valuation disputes can be prevented entirely or that these disputes do not, at times, offer useful insight into the marketplace. Indeed, risk management personnel and management within the SD or MSP should pay particular attention to different valuations for the same swap originating within their organization or from outside the entity. For these purposes, the Commission expects that valuation disputes that are not resolved in accordance with these rules be elevated to senior management in the firm.[12] However, the final rule reflects the recognition that accurate and

[10] To the extent that one or both parties foresee that the valuation method or inputs agreed for a swap or a class or category of swaps will likely require modification, parties would be well-served to agree in advance in their swap trading relationship documentation on an appropriate arrangement for accommodating such modifications.

[11] SDs and MSPs that are banks are subject to the requirements of section 4s(i). In addition, under the prudential regulators' margin proposal, SDs and MSPs that are banks would be required to have documentation in place that specifies the ''(1) [t]he methods, procedures, rules, and inputs for determining the value of each swap * * * for purposes of calculating variation margin requirements; and (2) [t]he procedures by which any disputes concerning the valuation of swaps * * * or the valuation of assets collected or posted as initial margin or variation margin, may be resolved.'' Margin and Capital Requirements for Covered Swap Entities, 76 FR 27564, 27589 (May 11, 2011).

[12] Under § 23.600(c)(1)(1)(iii), the risk management program requires SDs and MSPs to have policies and procedures for detecting breaches of risk tolerance limits set by an SD or MSP, and alerting supervisors within the risk management unit and senior management, as appropriate.

reliable valuations are the foundation of margining and risk management.

The Commission also agrees with commenters that the trading documentation should be permitted to focus on the valuation dispute resolution process rather than exclusively on fallback methodologies, and has further modified the rule to allow for either fallback methodologies or agreement on a dispute resolution process, but does not think it necessary or desirable to specify a standard dispute resolution process at this time, as requested by MetLife.

Lastly, the Commission wishes to distinguish its use of the terms ''valuation'' under section 4s(i) of the CEA and ''daily mark'' under section 4s(h). In its final rules for Business Conduct Standards for SDs and MSPs with Counterparties, the Commission explained that the daily mark for uncleared swaps represented the mid-market mark of a swap provided by an SD or MSP to its counterparty.[13] The mid-market mark of the swap represents an objective value that provides counterparties with a baseline to assess swap valuations for other purposes.[14] By contrast, in § 23.504(b)(4), the Commission is requiring that SDs, MSPs, and their counterparties agree to a process for determining the current market value or net present value of a swap for purposes of collateralizing the risk posed by the swap and internal risk management. The critical difference being the agreement of both counterparties to the process for determining the value of a swap, rather than just the SD's or MSP's calculation of the mid-market value of the swap.

13. Application to Cleared Swaps—§ 23.504(b)(6)

Proposed § 23.504(b)(6) required the swap trading relationship documentation of SDs and MSPs to include certain items upon acceptance of a swap for clearing by a DCO, including documentation of each counterparty's clearing member, the date and time the swap was cleared, that the swap conforms to the terms of the DCO's templates, and that the clearing member's books reflect the terms of the swap at the DCO. The proposed regulation also required the documentation to contain a statement that the original swap is extinguished and replaced by a swap subject to the rules of the DCO.

ISDA & SIFMA urged the Commission to clarify that the term ''swap trading relationship documentation'' is used to describe only bilateral documentation between parties to uncleared swaps. ISDA & SIFMA recommend that the Commission not finalize § 23.504(b)(6) because ISDA & SIFMA (1) Saw no need to record the identity of its counterparty's clearing member; (2) recommended that the obligation to provide notice of the date and time of clearing and the identity of the DCO is deemed satisfied when the counterparty receives a clearing report from the DCO; (3) objected to notifying the counterparty of the SD's or MSP's clearing member as that information may be sensitive and is not material to the counterparty; and (4) saw no need to state facts about the counterparty's cleared swap in trading relationship documentation.

CME commented that existing clearing houses use an agency model with FCMs acting as the agent and guarantor for customers, providing numerous benefits. To preserve the agency structure, CME requested that § 23.504(b)(6)(v)(B) be changed to read ''The original swap is replaced by equal and opposite swaps with the derivatives clearing organization.''

CME further commented that under the rule the anonymity of the customer of the clearing member on the other side of the trade to the clearing member will be lost. CME does not believe the anonymity needs to be lost to serve the purposes of the documentation rules.

MFA commented that one of the benefits of central clearing is anonymity, such that once parties submit a swap for central clearing, it need not retain or know any information about the counterparty. MFA recommended that the final rule not require any identifying information about the parties and their firms.

The Commission has considered the commenters' recommendation to delete the clearing record provisions of § 23.504(b)(6)(iii) and (iv) and agrees that there is no need to include in the trading documentation a record of the names of the clearing members for the SD, MSP, or counterparty. The Commission notes that the new applicability provision added to § 23.504(a)(1) provides that the swap trading relationship documentation rule does not apply to swaps executed anonymously on a DCM or SEF, but believes that anonymity may also be important in the execution of swaps executed off-facility, such as in the execution of block trades with asset managers where allocation may take place following acceptance of the block trade for clearing by a DCO. Once a swap is accepted for clearing, the identity of a counterparty's clearing member is no longer relevant and requiring such a record has the possibility to undermine the anonymity of central clearing. Therefore, those provisions have been deleted from the final rule. Similarly, § 23.504(b)(6)(i) and (ii) have been removed because those records will be captured under the SD and MSP recordkeeping requirement, § 23.201(a)(3), and the Commission believes those records are sufficient.

With regard to proposed § 23.504(b)(6)(v), the Commission has retained but streamlined the provision, as recommended by ISDA & SIFMA and CME, to include only the text in § 23.504(b)(6) set forth in the regulatory text of this rule.

The Commission continues to believe that swap trading relationship documentation should make clear the effects of clearing a trade with a DCO; i.e., that the original swap is extinguished and replaced with a swap facing the DCO that conforms to the terms established under the DCO's rules. The Commission has determined that an orderly swap market requires this notice to clarify that the terms of the swap under a DCO's rules are definitive and trump any contradictory terms that may have been included in the swap as executed between an SD or MSP and its counterparty.[15]

14. Annual Audit of 5 Percent of Swap Trading Relationship Documentation—§ 23.504(c)

Proposed § 23.504(c) required that SDs and MSPs, at least once during each calendar year, have an independent internal or external auditor examine no less than 5 percent of the swap trading relationship documentation created during the previous twelve month period to ensure compliance with Commission regulations and the written policies and procedures established pursuant to § 23.504.

In response to the proposal, ISDA & SIFMA, FSR, and Hess urged the Commission to adopt a principles-based approach to the audit requirement and only require SDs and MSPs to conduct periodic audits sufficient to identify material weaknesses in their documentation policies and procedures.

[13] *See* 77 FR 9734, 9767–68 (Feb. 17, 2012); *see also* Swap Data Recordkeeping and Reporting Requirements, 77 FR 2136, (Jan. 13, 2012) (defining ''valuation data'' by reference to section 4s(h)(3)(B)(iii) of the CEA and § 23.431.

[14] *See* § 23.431(d). SDs and MSPs must provide a daily mark for uncleared swaps that is the mid-market mark of the swap which does not include amounts for profit, credit reserve, hedging, funding, liquidity, or any other costs or adjustments.

[15] This provision corresponds to § 39.12(b)(6), which establishes parallel requirements for DCOs clearing swaps. Both proposals have been modified in a similar manner for the final rules.

Similarly, IECA recommended that the Commission require an audit of a random sample, rather than 5 percent, which IECA found too costly. Commenting on a different aspect of the proposal, Michael Greenberger thought that allowing internal audits, as opposed to external, could undermine transparency and accountability.

In response to commenters and as a cost-saving measure, the Commission is modifying the proposed rule in accordance with the alternative recommended by ISDA & SIFMA, FSR, and Hess by removing the 5 percent audit requirement and replacing it with a more general requirement that SDs and MSPs conduct periodic audits sufficient to identify material weaknesses in their documentation policies and procedures. With respect to Mr. Greenberger's comment, the Commission continues to believe that internal auditors are sufficient as a record of the results of each audit will be retained and can be reviewed by Commission staff during examinations of the SD or MSP or investigations by Commission enforcement staff.

15. Dispute Reporting—§ 23.504(e)

The proposed regulations required SDs and MSPs to notify the Commission and any applicable prudential regulator or the SEC of any swap valuation dispute not resolved within one business day, if the dispute is with a counterparty that is an SD or MSP, or within five business days if the dispute is with any other counterparty.

In response to the proposal, ISDA & SIFMA recommended that the Commission should limit reporting to material disputes at the portfolio level, urging the Commission to accept the materiality thresholds for reporting established by the OTC Derivatives Supervisors' Group process, which require reporting of disputes above a certain dollar threshold and only after such disputes have had a proper time to mature. ISDA & SIFMA argued that rule as proposed will be overly burdensome and the over-reporting will cause substantial informational ''noise.''

MFA strongly agreed that the Commission should adopt rules related to valuation disputes and their timely resolution, but questioned whether regulators need notice of every unresolved dispute regardless of their materiality from a systemic risk or regulatory perspective. MFA also commented that the proposed dispute resolution period of one business day for unresolved disputes among SDs and MSPs is too short, arguing that valuation disputes may require discussion and negotiation by and among several levels of management and many different operational teams at an SD or MSP. MFA thus recommended that the Commission provide for five business days to resolve a valuation dispute in an account before they must give regulators notice and only require notice to regulators where the amount in dispute exceeds either (a) $100 million, or (b) both 10 percent of the higher of the parties' valuation and $50 million. In addition, MFA strongly believes that any notices of disputes should be treated confidentially by regulators, and not be subject to public access.

IECA argued that the proposed rule should be removed because it creates an unlevel playing field by creating pressure on a party that wants to avoid reporting to concede in any dispute.

MetLife agreed that the Commission should establish strict timelines for reporting disputes, but argued that the periods proposed are too short to allow parties to resolve disputes on their own. MetLife recommended that disputes between SD/MSPs should be given 3 days before reporting is required and be subject to a materiality condition of 10 percent of the calculated valuation of the swap in dispute.

Hess recommended that the Commission limit reporting to material disputes dependent on the risk the dispute may pose to the financial system taking into account the size of the dispute relative to the size of the trade, the collateral involved, and the size of the parties involved.

For the reasons submitted by these commenters, the Commission has determined that only material swap valuation disputes should be reported to the Commission, any applicable prudential regulator, and the SEC (with regard to swaps defined in section 1a(47)(A)(v) of the Act). Thus, the Commission is modifying the rule to provide that SDs and MSPs shall provide notice of any swap valuation dispute in excess of $20,000,000 (or its equivalent in any other currency).[16] The Commission has determined that the $20,000,000 materiality threshold for reporting is sufficiently high to eliminate unnecessary ''noise'' from over-reporting, but not so high as to eliminate reporting that the Commission may find of regulatory value, such as a large number of relatively small disputes that in aggregate could provide the Commission with information regarding a widespread market disruption.

In addition, the Commission is modifying the requirement for SDs and MSPs to report unresolved valuation disputes within one business day if the dispute is with a counterparty that is a SD or MSP. SDs and MSPs now will be required to report unresolved valuation disputes within three business days. For disputes with counterparties that are not SDs or MSPs, the rule is unchanged from the proposal, requiring that unresolved disputes be reported within five business days.

The Commission has also determined that the reporting requirement of the rule better fits with the resolution requirement under the portfolio reconciliation rule at § 23.502 and has renumbered the rule as § 23.502(c). The Commission notes that the reporting requirement under the rule as adopted is distinct from the swap valuation methodology requirement under § 23.504(b)(4), discussed above, and the time period requirement for SDs and MSPs to resolve swap valuation disputes in § 23.502, discussed below.

16. Orderly Liquidation Termination—§ 23.504(b)(5)

Proposed § 23.504(b)(5) required SDs and MSPs to include in their swap trading relationship documentation an agreement with their counterparties that, in the event a counterparty is a covered financial company (as defined in section 201(a)(8) of the Dodd-Frank Act) or an insured depository institution (as defined in 12 U.S.C. 1813) for which the Federal Deposit Insurance Corporation (FDIC) has been appointed as a receiver (the ''covered party''), the non-covered party is subject to certain limitations specified by law following the appointment of the FDIC as receiver of the covered party and the non-covered party acknowledges that the FDIC may take certain actions with respect to the transactions governed by such documentation.

In response to the proposal, ISDA & SIFMA and FSR argued that because the rule language is not identical to section 210 of the Dodd-Frank Act, the proposed rule requiring an agreement between counterparties in swap trading relationship documentation could inadvertently expand FDIC powers beyond limits set by Congress by creating a discrepancy between the FDIC's actual powers under Title II of the Dodd-Frank Act and the treatment consented to by the parties. ISDA & SIFMA believe that any discrepancy could operate to strip parties of legal

[16] Compare with ESMA Draft Technical Standards, Article 4 RM, subsection 2, (stating that ''counterparties shall report to the competent authority * * * any disputes between counterparties relating to an OTC derivative contract, its valuation or the exchange of collateral for an amount or a value higher than EUR 15 million and outstanding for at least 15 business days.'')

rights to challenge their treatment under Title II of the Dodd-Frank Act. This, in turn, could raise questions about whether the rule is a proper exercise of the Commission's rulemaking authority. ISDA & SIFMA recommended that the Commission revise the rule to only require a notice of the relevant provisions of Title II.

CIEBA also noted that the proposed language is similar to, but not the same as, the statutory text in the Dodd-Frank Act and the FDIA, and could harm its constituents. By substituting terms and apprising parties of some, but not all, of their rights, the proposed rule increases the risk of disputes and creates uncertainty as to what will be required to comply with both the statute and the regulatory regime. As an example, CIEBA cited section 210(c)(9)(A)(i) of the Dodd-Frank Act, which states that, in the context of orderly liquidation, the FDIC may elect to ''transfer to one financial institution, (i) all qualified financial contracts * * * or (ii) transfer none of the qualified financial contracts, claims, property or other credit enhancement referred to in clause (i) (with respect to such person and any affiliate of such person).'' In contrast to this statutory language, the proposed rule uses ''may,'' which suggests that the FDIC has the discretion to transfer less than all qualified financial contracts in contrast to its statutory requirement to transfer all or none. CIEBA also notes that the proposed regulation would remain effective even if the statutory provision it implements is repealed or amended. This could result in parties being forced to waive rights that protect their financial interest in times of market turmoil. In the alternative, CIEBA recommended that the Commission require the documentation to include a written statement in which the counterparties agree that they will comply with the requirements, if any, of section 210(c)(10)(B) of the Dodd-Frank Act and section 11(e)(10)(B) of the Federal Deposit Insurance Act, or instead, require an SD or MSP to include a statement thereof in its risk disclosure documents. At the least, CIEBA requests that the Commission add an additional section to proposed § 23.504(b)(5) to reflect a counterparty's right to suspend payments to the covered party for the period of the stay, as provided in section 210(c)(8)(F)(ii) of the Dodd-Frank Act.

EEI & NRECA also objected to the proposed rule, arguing that a statutory provision intended to encourage cooperation between the FDIC and the Commission does not provide the Commission with authority to unilaterally establish new jurisdiction for itself and that the Commission should allow the FDIC to take the lead as contemplated by Title II of the Dodd-Frank Act. EEI & NRECA stated that energy end users would be particularly harmed by the proposed rule because swaps would be covered by the rule, but not physical transactions, causing energy end users to separately collateralize swaps and physical transactions, eliminating their ability to cost-effectively hedge commercial risks using swaps.

The FHLBs acknowledged the potential applicability of the orderly liquidation provisions of the Dodd-Frank Act, but also objected to the inclusion of the provisions in the swap documentation as the provisions would apply notwithstanding such inclusion and doing so could create legal uncertainty since other liquidation regimes are not listed in the documents.

MetLife objected specifically to the requirement to include consent to FDIC liquidation, arguing that such consent may foreclose a party's right to appeal or challenge the FDIC's actions. MetLife also raised concerns that blanket consent could place the remaining party in a position where it has unwanted excessive credit exposure to the new counterparty, resulting in violation of state law requirements with respect to credit ratings and other credit quality requirements. MetLife requested that the section be removed or that a provision be added to allow a party to object to any proposed transfer.

Hess argued that the provision is not appropriate because the large majority of SDs and MSPs will likely not be ''covered financial companies'' and as of now, the actual application of Title II is unclear. Hess recommended that the rule only require SDs and MSPs to provide notice of the possibility of FDIC liquidation.

Chris Barnard commented that the authority of the FDIC is statutory in nature, and so would automatically apply to the relevant swaps, overriding any current practice. Given this point, Mr. Barnard believes the provision is redundant.

In contrast to the foregoing, Better Markets fully supported the proposed rule, stating that the proposed rule represents a clarification of a fundamental feature of swaps; the consequences of a default by an SD or MSP. Better Markets stated that a basic premise of derivatives in bankruptcy is the exemption from the automatic stay such that the non-defaulting party may immediately terminate and apply collateral post insolvency. Better Markets agreed that the proposed rule documents an important exception to that right newly created in the Dodd-Frank Act. Better Markets believes that clarity, both at inception of a swap and at default, is the foundation of the Dodd-Frank Act, because lack of clarity contributed heavily to the financial crisis and caused much harm.

The Commission has carefully considered each of the comments received on the proposal. At the outset, the Commission believes that, in the context of the proposed rules, it is not possible to track the statutory language of Title II of the Dodd-Frank Act any more closely. Given the imperfectability of reproducing such statutory language and the context in which it appears in the rule, the Commission is sensitive to commenters' concerns that the rule could have a different legal effect in application as compared to application of the statutory language. The Commission is also aware that the statutory provisions will apply to covered financial companies and insured depository institutions placed into FDIC receivership even if not included in this rule. Therefore, the Commission has determined that the best course is to revise the proposed rule to require that swap trading relationship documentation contain only a notice as to whether the SD or MSP or its counterparty is an insured depository institution or financial company and that the orderly liquidation provisions of the Dodd-Frank Act and the FDIA may limit the rights of the parties under their trading relationship documentation in the event either party is deemed a ''covered financial company'' or is otherwise subject to having the FDIC appointed as a receiver.

C. End User Exception Documentation—§ 23.505

1. Overlap With Proposed § 39.6

The proposed regulation required SDs and MSPs, when transacting with market participants claiming the exception to clearing under section 2(h)(7) of the CEA, to obtain documentation sufficient to provide a reasonable basis on which to believe that its counterparty meets the statutory conditions required for the exception. Various requirements for the documentation were listed in the proposed rule.

In response to the proposal, The Working Group and Encana Marketing (USA), Inc. (Encana) argued that because proposed § 39.6 would require SDs and MSPs to collect and report the information relevant to the section 2(h)(7) clearing exception, the proposed rule should be revised to impose no

documentation obligations with regard to this exception. Encana also commented that in the alternative, § 23.505 should only require that SDs and MSPs obtain ''documentation'' that the counterparty qualifies as an end user in the transaction documents, but did not specify what form such documentation should take. COPE also commented that the proposed rule is burdensome and redundant to proposed § 39.6 and believes that the attestation required by proposed § 39.6 should be sufficient.

Michael Greenberger, on the other hand, believes a check-the-box approach is insufficient, and recommended enhanced reporting requirements ensuring that the calculation methodology and the effectiveness of the hedged position are well documented. Better Markets also recommended enhanced reporting, suggesting that end users report their hedging transactions to SDRs as provided in proposed § 39.6. Requiring end users to provide information for each transaction to SDs and MSPs separately is overly burdensome whereas direct reporting to SDRs would amount to only a slight change from current prudent practice at many end users.

Having considered these comments, the Commission is adopting the rule as proposed with one exception. The Commission has permitted entities that qualify for the exception to the clearing requirement under section 2(h)(7) of the Act to report information directly to an SDR regarding how they generally expect to meet their financial obligations associated with non-cleared swaps on an annual basis in anticipation of electing the exception for one or more swaps.[17] Thus, an electing counterparty could be directly reporting the information necessary for SD and MSP compliance with proposed § 23.505(a)(3) through (5). Therefore, the Commission has modified the proposed rule to clarify that SDs and MSPs need not obtain documentation from any counterparty that claims an exception from required clearing if that counterparty is reporting directly to an SDR regarding how it generally expects to meet its financial obligations associated with its non-cleared swaps, and the SD or MSP has confirmed that the counterparty has made its annual submission.

[17] *See* End-User Exception to the Clearing Requirement for Swaps, 77 FR 42560, 42590 (July 19, 2012).

2. Reasonable Basis—§ 23.505(a)

The proposed regulation required that SDs or MSPs have a reasonable basis to believe its counterparty meets the statutory conditions required for an exception from a clearing requirement.

In response to the proposal, ISDA & SIFMA requested that the Commission clarify that the ''reasonable basis to believe'' standard in the proposed rule may be satisfied by reliance on written representations from the counterparty, absent facts that reasonably should have put the swap dealer or major swap participant on notice that its counterparty may be ineligible for the end user exception. ISDA & SIFMA argued that registrants should not have to investigate their counterparty's representations or obtain detailed representations as to the facts underlying the company's qualifications.

The Coalition for Derivatives End-Users supports the ''check-the-box'' approach in proposed § 39.6 for end users to use to qualify for the clearing exception, and is therefore concerned that the ''reasonable basis'' obligation in proposed § 23.505(a) could undermine the simplicity of the check-the-box approach. The Coalition for Derivatives End-Users argues that if SDs and MSPs must verify end user information, they may start to require unnecessary and costly documentation from end users such as legal opinions or other documents, rather than serving as passive conduits of information.

After considering these comments, the Commission has determined to adopt the rule as proposed on this issue. The Commission is of the view that, contrary to commenters' concerns, the ''reasonable basis'' standard in the proposed rule does not require independent investigation of information or documentation provided by a counterparty electing the exception from required clearing. The Commission believes that so long as an SD or MSP has obtained information, documentation, or a representation that on its face provides a reasonable basis to conclude that the counterparty qualifies for the exception under section 2(h)(7), then, in the absence of facts that reasonably should have put the SD or MSP on notice that its counterparty may be ineligible for the exception, no further investigation would be necessary. The Commission does not believe that the rule requires legal certainty on the part of SDs or MSPs.

3. Disclosure of Information by End Users

The proposed regulation required SDs and MSPs to obtain documentation that its counterparty seeking to qualify for the clearing exception generally meets its financial obligations associated with non-cleared swaps.

Better Markets argued that the proposed rule should require documentation in accordance with the Dodd-Frank Act, i.e., documentation as to how the counterparty generally meets its obligations associated with non-cleared swaps, including how it would meet any obligation to immediately fund margin upon the occurrence of a credit trigger.

ISDA & SIFMA commented that the Dodd-Frank Act merely requires a counterparty to notify the Commission as to how it generally meets its financial obligations. ISDA & SIFMA recommended that § 23.505(a)(5) be deleted or clarified such that a registrant can satisfy the requirement by obtaining a representation from its counterparty or by obtaining the documentation only with respect to swap-related obligations to the particular SD or MSP.

In the view of COPE, EEI, and CIEBA, the requirement for the SD/MSP to get information from end users is anti-competitive and inappropriate as it requires an end user to inform its SD or MSP counterparty, a potential competitor, of proprietary details about its business, including its hedging activities. Each recommended that no more than a representation from the end user should be required. COPE also objects to the rule placing the SD or MSP in the role of regulator responsible for determining if the information received is sufficient.

As explained above, the Commission is modifying the proposed rule to clarify that SDs and MSPs need not obtain documentation from any counterparty that claims an exception from required clearing if that counterparty is reporting directly to an SDR under § 39.6(b) regarding how it generally expects to meet its financial obligations associated with its non-cleared swaps, and the SD or MSP has confirmed that the counterparty has made its annual submission. Thus, any entity seeking to claim the exception from clearing may avoid revealing any information it considers sensitive to its SD or MSP counterparty by self-reporting directly to an SDR under § 39.6(b). The Commission notes that protections against release of reported proprietary information are addressed in the SDR rules finalized by the Commission.

D. Swap Confirmation—§ 23.501

Confirmation has been recognized as an important post-trade processing mechanism for reducing risk and improving operational efficiency by both market participants and their regulators. Prudent practice requires that, after coming to an agreement on the terms of a transaction, parties document the transaction in a complete and definitive written record so there is legal certainty about the terms of their agreement.

Over the past several years, OTC derivatives market participants and their regulators have paid particular attention to the timely confirmation of swaps. The Government Accountability Office (GAO) found that the rapid expansion of the trading volume of swaps, such as credit derivatives since 2002, caused stresses on the operational infrastructure of market participants. These stresses in turn caused the participants' back office systems to fail to confirm the increased volume of trades for a period of time.[18] The GAO found that the lack of automation in trade processing and the purported assignment of positions by transferring parties to third parties without notice to their counterparties were factors contributing to this backlog. If transactions, whether newly executed or recently transferred to another party, are left unconfirmed, there is no definitive written record of the contract terms. Thus, in the event of a dispute, the terms of the agreement must be reconstructed from other evidence, such as email trails or recorded trader conversations. This process is cumbersome and may not be wholly accurate. Moreover, if purported transfers of swaps, in whole or in part, are made without giving notice to the remaining parties and obtaining their consent, disputes may arise as to which parties are entitled to the benefits and subject to the burdens of the transaction.

The Commission believes the work of the OTC Derivatives Supervisors Group (ODSG) demonstrates that the industry is capable of swift movement to contemporaneous execution and confirmation. A large back-log of unexecuted confirmations in the credit default swap (CDS) market created by prolonged negotiations and inadequate confirmation procedures were the subject of the first industry commitments made by participating dealers to the ODSG.[19] In October 2005, the participating dealers committed to reduce by 30 percent the number of confirmations outstanding more than 30 days within four months. In March 2006, the dealers committed to reduce the number of outstanding confirmations by 70 percent by June 30, 2006. By September 2006, the industry had reduced the number of all outstanding CDS confirmations by 70 percent, and the number of CDS confirmations outstanding more than 30 days by 85 percent. The industry achieved these targets largely by moving 80 percent of total trade volume in CDS to confirmation on electronic platforms, eliminating backlogs in new trades.

By the end of 2011, the largest dealers were electronically confirming over 95 percent of OTC credit derivative transactions, and 90 percent were confirmed on the same day as execution (T+0). For the same period, the largest dealers were electronically confirming over 70 percent of OTC interest rate derivatives (over 90 percent of trades with each other), and over 80 percent were confirmed T+0. The rate of electronic confirmation of OTC commodity derivatives was somewhat lower—just over 50 percent, but over 90 percent for transactions between the largest dealers.[20]

The Commission further recognizes the ODSG supervisory goal for all transactions to be confirmed as soon as possible after the time of execution. Ideally, this would mean that there would be a written or electronic document executed by the parties to a swap for the purpose of evidencing all of the terms of the swap, including the terms of any termination (prior to its scheduled maturity date), assignment, novation, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations.

The Commission believes that timely and accurate confirmation of swaps is critical for all downstream operational and risk management processes, including the correct calculation of cash flows, margin requirements, and discharge of settlement obligations as well as accurate measurement of counterparty credit exposures. Timely confirmation also allows any rejections, exceptions, and/or discrepancies to be identified and resolved more quickly. To this end, in the Confirmation NPRM, the Commission proposed § 23.501, which prescribed standards for the timely and accurate confirmation of swap transactions. The Commission received approximately 27 comment letters in response to the Confirmation NPRM and considered each in formulating the final rules, as discussed below.

1. Uniform Application of Proposed Rules to All Asset Classes

In the Confirmation NPRM, the Commission solicited comments on whether certain provisions of the proposed regulations should be modified or adjusted to reflect the differences among asset classes.

In response to the request for comments, ISDA noted that the work done by the industry with the ODSG led to customization of documentation and confirmation timeframes to account for the differences between asset classes, and even between products within asset classes, but the proposed confirmation requirements do not allow for this same flexibility. However, ISDA did not suggest specific timeframes for the Commission's rules.

The FHLBs recommended that the Commission exercise caution in applying rules to all swap asset classes equally as procedures that are appropriate for interest rate swaps may be insufficient or unnecessary for other types of swaps.

The Global Foreign Exchange Division of AFME, SIFMA, and ASIFMA (GFED) commented that the Commission should take into account the high volume of transactions and wider universe of participants in the foreign exchange industry when promulgating its final rules.

The Working Group requested that the Commission revise the rules to permit current practice in the energy swap market where one party sends an acknowledgement to the other party and the acknowledgement is deemed a legally binding confirmation if the receiving party does not object within three business days. The Working Group believes this practice is efficient because (i) It eliminates the risk of open confirmations, (ii) dealers need not chase for a physically signed confirmation, and (iii) counterparties need not respond if terms are acceptable.

BG Americas & Global LNG (BGA) commented that energy commodity trading companies typically extract trading data in a batched cycle at the end of the day and generate confirmations the following day. BGA does not believe it is clear that expedited confirmation would enhance

[18] U.S. Government Accountability Office, ''Credit Derivatives: Confirmation Backlogs Increased Dealers' Operational Risks, But Were Successfully Addressed After Joint Regulatory Action,'' GAO–07–716 (2007) at pages 3–4.

[19] *See* October 4, 2005 industry commitment letter to the Federal Reserve Bank of New York, available at *http://www.newyorkfed.org/newsevents/news_archive/markets/2005/an050915.html.*

[20] *See* G15 Industry Confirmation Data dated April 4, 2012 provided by ISDA, available at *www.cftc.gov.*

transparency or reduce systemic risk and is therefore outweighed by the enormous cost for registrants that would have to add resources to perform rolling confirmations and correct errors.

As discussed further below, in section III.B.2, the Commission has made every effort to tailor the confirmation requirements by asset class based on data provided by major market participants. The Commission has achieved such tailoring by modifying the time periods for confirmation by asset class along with a generous compliance phase-in period, but has retained an otherwise uniform rule across asset classes. The Commission believes the uniform standard with appropriate differences in time periods and compliance periods will lead to efficient use of limited regulatory resources, while also reducing implementation costs for affected market participants.

2. Use of ''Enforce'' in Proposed Rules § 23.501(a)(3), § 23.502(b), § 23.502(b)(4), and § 23.503(d)

The proposed regulations require SDs and MSPs to establish, maintain, and enforce written policies and procedures to accomplish a number of requirements, including confirmation with financial entities and non-financial entities; portfolio reconciliation; valuation dispute resolution; and bilateral and multilateral compression and termination of fully offsetting swaps.

In regard to the use of ''enforce'' in these provisions, ABC & CIEBA requested that the Commission delete the term wherever it appears because SDs and MSPs are not ''registered entities'' under section 1(a)(40) of the CEA and therefore Congress did not intend for SDs and MSPs to have the self-regulatory authority to enforce compliance with their internal policies and procedures. Similarly, Freddie Mac commented that the requirement in the proposed rules that SDs enforce policies designed to ensure confirmation with non-SD, non-MSP counterparties within the short deadlines mandated by the proposed rules could result in SDs exerting undue pressure on such counterparties to quickly assent to the terms of a trade as framed by the SD in the form of a condition to execution of a swap, with the risk that the swap could become void or otherwise fail.

The Commission is sensitive to these concerns, and has accordingly modified the proposed rules by replacing each instance of the term ''enforce'' with the term ''follow.'' The Commission observes that the intent of the term ''enforce'' in the proposed rules was to require SDs and MSPs to in fact follow the policies and procedures established to meet the requirements of the proposed rules, rather than to require an SD or MSP to enforce its internal policies and procedures against third parties.

3. Definition of ''Acknowledgement''—§ 23.500(a)

The proposed regulations defined ''acknowledgement'' to mean ''a written or electronic record of all of the terms of a swap signed and sent by one counterparty to the other.''

Commenting on this definition, GFED requested that the Commission clarify whether an ''acknowledgement'' is the same as a ''trade affirmation'' in the FX market, which is matching of economic fields only, and MFA recommended that the Commission revise the definition to provide that an acknowledgement need only specify the primary economic terms of a swap (rather than all terms).

Despite these comments, the Commission is adopting the definition of acknowledgement as proposed. The intent of the definition was to make clear that an SD or MSP must provide its non-SD, non-MSP counterparties with a complete record of all terms of an executed swap transaction. The Commission believes that to achieve the timely confirmation goals of § 23.501, mistaken, misunderstood, or disputed terms must be identified quickly. To do so, a counterparty needs to see documentation reflecting all of the terms of the swap transaction as the SD or MSP understands them. The Commission therefore does not agree with commenters that an acknowledgement need contain only the primary economic terms of a swap transaction. In reaching this conclusion, the Commission recognizes that requiring delivery of an acknowledgement containing all terms may require the parties to agree to more terms at execution than are agreed under some current market practices, but, given the critical role confirmation plays in all downstream operational and risk management processes, the Commission believes that any additional pre-execution burden imposed is justified.

4. Definition of ''Confirmation''—§ 23.500(c)

The proposed regulations defined ''swap confirmation'' to mean ''the consummation (electronically or otherwise) of legally binding documentation (electronic or otherwise) that memorializes the agreement of the parties to all the terms of the swap. A confirmation must be in writing (whether electronic or otherwise) and must legally supersede any previous agreement (electronically or otherwise).''

Reacting to this definition, ABC & CIEBA explained that where a lead fiduciary for a pension fund negotiates ISDA documentation on a relationship basis, there sometimes will be a provision that the master agreement's terms legally supersede the confirmation's terms unless the fiduciary entering the plan into the swap represents that inconsistent terms in the confirmation are more beneficial to the plan. ABC & CIEBA therefore requested that the Commission clarify that the phrase ''legally supersede any previous agreement'' is only intended to apply to prior agreements outside the scope of the package of documentation that makes up the master agreement between the parties (i.e., master agreements, credit support agreements, all confirmations, etc.).

Similarly, the Asset Management Group of SIFMA (AMG) explained that in current practice, some clients to asset managers require that terms in the confirmation of a swap cannot supersede conflicting terms in a client's master agreement. AMG therefore also recommended that the Commission clarify the proposed rule to provide that a confirmation will not legally supersede the contractual arrangements agreed on by the parties.

On a different tack, GFED requested clarification as to whether ''confirmation'' means only actual legal confirmation execution or whether it may also include matching services that do not provide a legally binding confirmation of all terms, but merely affirmation of trade economics, and ISDA requested clarification that confirmation may be accomplished by use of matching services under which some buy-side firms ''affirm'' trades.

Jason Copping offered an alternative definition of ''confirmation'' under which a swap is confirmed when all parties accept the terms and no change to the terms would be legally binding until all parties agree to such changes.

In response to these comments, the Commission reiterates that the intent of the proposed rule was to require the terms of a confirmation to include all of the binding terms of the swap. This definition is the same definition adopted by the Commission in the Swap Data Recordkeeping and Reporting rules in part 45 of the Commission's regulations.[21] In addition, under the Swap Data Recordkeeping and Reporting rules, all terms agreed in a

[21] *See* 17 CFR 45.1.

confirmation must be reported to an SDR.[22] Therefore, in addition to the need for all terms to be confirmed for purposes of downstream operational processing and risk management, the Commission has a strong interest in consistent rules for the swap market. For these reasons, the Commission is adopting the definition of confirmation as proposed.

With respect to the comments of ABC & CIEBA and AMG, the Commission understands the practice explained by these commenters to mean that some confirmations of swaps incorporate by reference certain terms that are delineated in master agreements and that the parties have agreed that such terms trump any inconsistent terms that may appear in a confirmation. The Commission clarifies that the rules adopted herein do not prohibit the practice of incorporation by reference. Therefore, if counterparties want to include certain standard provisions in their master agreements that will control each swap transaction executed, this approach would be acceptable so long as they ensure that their books and records and the confirmation data reported to an SDR reflects the actual terms of each swap transaction. Given the Commission's interest in ensuring the integrity of data reported to an SDR, contradictory or conflicting swap transaction terms in an SD's or MSP's books and records or in data reported to an SDR when reconciled with an SD's or MSP's books and records could indicate non-compliance with the both the confirmation rule adopted herein and the swap data reporting rules under part 45 of the Commission's regulations.

Moreover, the Commission clarifies that any specific agreed-upon collateral requirements in a confirmation, which may go beyond what exists in the collateral support arrangements under the swap trading relationship documentation, would be required to be confirmed according to the timeframes discussed below.

5. Definition of Financial Entity–§ 23.500(e)

The Commission proposed to define ''financial entity'' to have the same meaning as given to the term in section 2(h)(7)(C) of the Act, excepting SDs and MSPs. Subsequent to the proposal, the Commission proposed a number of rules that contained slightly differing definitions of the term.[23] The Commission has therefore determined to revise the definition of ''financial entity'' for purposes of the rules adopted herein to be consistent with its other rules applicable to SDs and MSPs. Thus, ''financial entity'' has been defined in the rule adopted in this release to mean ''a counterparty that is not a swap dealer or a major swap participant and that is one of the following. (1) A commodity pool as defined in section 1a(5) of the Act, (2) A private fund as defined in section 202(a) of the Investment Advisers Act of 1940, (3) An employee benefit plan as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income and Security Act of 1974, (4) A person predominantly engaged in activities that are in the business of banking, or in activities that are financial in nature as defined in section 4(k) of the Bank Holding Company Act of 1956, and (5) a security-based swap dealer or a major security-based swap participant.''

6. Electronic Execution and Processing—§ 23.501(a)(1) & (2); Definition of ''Processed Electronically''—§ 23.500(j)

The proposed regulations prescribed trade acknowledgement delivery and confirmation deadlines for swap transactions that are executed and processed electronically, and different deadlines for swaps that are not executed electronically but are processed electronically. The proposed regulations provided that ''processed electronically'' means ''to be entered into a swap dealer or major swap participant's computerized processing systems to facilitate clearance and settlement.'' In addition, the Commission requested comment on whether the term ''processed electronically'' required more clarification, and, if so, what definition would be effective and flexible enough to accommodate future market innovation.

In response to the proposal, ABC & CIEBA urged the Commission to ensure that the proposed confirmation rule does not indirectly impose on benefit plans processes that will require third-party service providers or new technology by expressly stating that a party to an uncleared swap that is not an SD or MSP has the right to determine whether the confirmation will occur electronically or manually. AMG also recommended that a party to an uncleared swap that is not an SD or MSP should have the right to determine whether the confirmation will occur electronically or manually.

The Working Group and MFA warned that the Commission should not mandate confirmation through an electronic matching platform because electronic matching is unlikely to be able to capture all terms of customized transactions. Chatham Financial Corp. (Chatham) also argued that the Commission should not mandate confirmation through an electronic matching platform, because such a mandate could preclude end-users from entering into swaps not yet available on matching platforms and could increase costs for end-users that do not engage in the volume of swaps necessary to justify the additional costs of connecting to electronic matching platforms.

ISDA commented that electronic execution and processing standards should be phased and aspirational because development by the industry will be required to meet the timelines of the proposed rules. ISDA also argued that the proposed life cycle confirmation requirement will undermine the move to electronic execution and processing, because not all life cycle events are currently supported by electronic platforms across asset classes.

MarkitSERV supports the Commission's goal of having as many transactions as possible be executed on electronic platforms, and recommended that the Commission require all swap transaction information to be communicated electronically if a registrant has the ability to do so, and encourage (but not require in all cases) the use of electronic matching and confirmation platforms.

Many commenters raised questions regarding what would constitute electronic processing. MFA requested that the Commission clarify if ''processed electronically'' only refers to swaps confirmed through electronic confirmation or matching services, or whether ''processed electronically'' could refer to a registrant entering trade information into its trade capture system, the generation of an acknowledgement from such system and the forwarding of such acknowledgement to a counterparty by facsimile, email, or other electronic method, while GFED requested that the Commission clarify whether a SWIFT confirmation would meet the definition of ''processed electronically'' under the proposed rules. The Working Group also questioned whether confirming a swap via email would constitute electronic processing. The FHLBs requested that the Commission clarify if ''processed electronically'' only refers to swaps confirmed through electronic confirmation or matching services, while ISDA recommended that the Commission not define ''processed electronically'' to include all

[22] *See* 17 CFR 45.3.

[23] *See e.g.,* Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 76 FR 23732, 23744 (Apr. 28, 2011).

transactions for which some element of the transaction is captured or processed through electronic means, but define it with reference to a firm or platform's ''middleware,'' which will actually drive the process. Finally, MetLife recommended that the Commission more clearly define the terms ''processed electronically'' and ''executed electronically'' because MetLife needs more information to determine whether the proposed time frames for confirmation are realistic within current market capabilities.

Having considered these comments, the Commission acknowledges the concerns expressed by market participants regarding the coerced use of matching platforms and is accordingly modifying the proposed rule to delete the definition of ''processed electronically'' and delete the provisions of the rule mandating acknowledgement and confirmation deadlines for swaps that are executed or processed electronically. In place of these provisions, the rule has been modified to provide that swap transactions among SDs and MSPs or between such registrants and financial entities should be confirmed as soon as technologically practicable, but in any event by the end of the first business day following the day of execution (as modified for time zone and business day differences, discussed in detail below). The Commission believes this change will eliminate any confusion as to whether a method of swap execution and confirmation qualifies as ''electronic.'' As explained further below, the modified rule would provide a single deadline for confirmation of swap transactions among registrants, a single deadline for confirmation of swap transactions between registrants and financial entities, and a single deadline for confirmation of swap transactions between registrants and all other entities, with appropriate adjustments of the compliance deadlines by swap asset class for implementation of the rule.

7. Delivery of Draft Acknowledgement to Non-SD, Non-MSP Counterparties § 23.501(a)(3)

Proposed § 23.501(a)(3) required SDs and MSPs to establish a procedure such that, prior to execution of any swap with a non-SD or non-MSP, the registrant furnish to a prospective counterparty a draft acknowledgment specifying all terms of the swap transaction other than the applicable pricing and other relevant terms that are to be expressly agreed at execution.

Commenting on the proposal, ISDA argued that the requirement to provide a draft acknowledgement prior to execution may cause loss of timely execution opportunities, and may require end-users to engage significant legal resources for review of all proposed transactions, rather than just executed transactions. ISDA recommended that non-dealer counterparties be permitted to waive the delivery of draft acknowledgements. MFA similarly argued that the proposed rule will (i) Prevent end users from executing promptly when the market is favorable; (ii) cause end users to concede on terms in order to get timely execution; (iii) cause a decrease in the number of transactions, which will decrease liquidity and increase volatility; and (iv) cause wider bid/ask spreads or less market-making because of an increase in risk between pricing and execution. Freddie Mac also believes that the proposed rule would delay prompt execution of hedging transactions because end users will be required to review draft acknowledgements.

MarkitSERV argued that requiring a draft acknowledgement is unnecessarily burdensome because (i) multiple SDs competing for a trade would all be required to furnish a draft acknowledgement, and (ii) many transactions executed through automated electronic systems can complete a confirmation promptly after execution. MarkitSERV recommended that the Commission require draft acknowledgements to contain only terms necessary to determine price (rather than all terms) and only require delivery of draft acknowledgements for swaps that cannot be processed electronically and where confirmation is not reasonably expected to be completed within 24 hours.

On the other hand, ABC & CIEBA agreed with the Commission's proposal to require all terms, except terms related to price, be disclosed in writing prior to the time of execution. AMG also supported the proposed rule, but recommended that the Commission revise the rule to provide an exception for swaps where the parties have previously agreed to non-pricing-related terms.

Finally, MetLife recommended that the Commission revise the proposed rule to specifically indicate which party is responsible for delivery of an acknowledgement and which party is responsible for the return confirmation.

Having considered the commenters' concerns, but cognizant of the support for the proposed rule by some commenters, the Commission is modifying the proposed rule to require delivery of a draft acknowledgement, but only upon request of an SD's or MSPs' non-SD, non-MSP counterparty prior to execution.

With respect to MetLife's comment, the Commission believes the rule as proposed clearly states that it is the SD's or MSP's responsibility to deliver an acknowledgement when trading with a counterparty that is not an SD or MSP. The SD or MSP is required to have policies and procedures reasonably designed to ensure that its counterparty returns a confirmation or otherwise completes the confirmation process. With respect to trades solely among SDs and MSPs, the Commission does not believe it is necessary to prescribe responsibility for delivery of an acknowledgement because both parties would be required to comply with the confirmation deadline set forth in the rule as adopted herein.

8. Time Period for Confirmation—§ 23.501(a)(1) & (3)

Proposed § 23.501 provided time periods for confirmation as set forth at 75 FR 81519, 81531 (Dec. 28, 2010).

The Commission received 27 comments with respect to the proposed rule's time periods for confirmation. Below, the comments are described according to the following categories:

(A) General comments on the proposed time periods;

(B) Comments on proposed time periods for confirmation with non-SDs and non-MSPs;

(C) Comments on time periods for confirmation with financial entities;

(D) Comments on confirmation of swaps between parties in different time zones; and

(E) Comments on confirmation of swaps executed near end of trading day.

(A) Comments on Time Periods Generally

ISDA stated that the proposed rules place an unnecessary burden upon the inception of transactions, may increase risk by leading to needless disputes and operational lapses, and require substantially more than is necessary to create an initial record of a legally binding agreement. ISDA also argued that: (i) The time periods proposed are impractical as certain terms required to be included in a confirmation may not be known on the same calendar day as execution (e.g., initial rates may follow trade commitment by days); and (ii) valuation methodologies required to be agreed prior to execution pursuant to proposed § 23.504(b)(4), may also slow down the confirmation process to the extent such methodologies are required to be reflected in the confirmation. ISDA recommended an alternative framework:

• Execution of a swap on a SEF or DCM or clearing a swap should be deemed to satisfy any confirmation requirements.

• Electronic execution and processing standards should be phased and aspirational as development by the industry will be required.

• The Commission should conduct a study in order to better understand the potential barriers to complying with the proposed timelines for confirmation in each asset class.

• The Commission should institute an approach similar to that utilized by the ODSG; an ongoing dialogue between the Commission and leaders in the industry to obtain a commitment from the industry to tighten confirmation timeframes over an extended period, with existing risk mitigants to address Commission concerns in the interim.

The Working Group also objected to the time periods between execution and confirmation in the proposed rules because: (i) The time periods effectively will require all terms of a swap to be negotiated prior to execution, and that such requirement will disadvantage the party that is most sensitive to timing of market conditions and may force that party to accept less optimal economic terms or reduced negotiating leverage in order to meet the confirmation deadline; and (ii) the Commission has not articulated any benefit from the requirement that non-registrants confirm a swap no later than the day after execution that would outweigh the cost for most non-registrants to comply with the rule.

MarkitSERV commented that the time periods specified in the proposed rules for confirmation are not feasible in many cases and recommended the following alternative:

• The time period within which confirmation is required to be completed should not begin with execution, but only from the point when all relevant data and information to define the swap has been obtained (e.g., allocations).

• Acknowledgements should be sent within a time period after all information has been obtained and confirmation should be completed within a time period after an acknowledgement has been received.

• Non-electronically executed and non-electronically processed transactions should be confirmed within 24 hours of execution, rather than within the same calendar day.

• The confirmation requirement should consist of ''economic tie-out'' of key economic terms rather than confirmation of all terms.

• Electronic processing should be defined to include the capability for electronic communication.

AMG argued that same calendar day or next business day confirmation may not be appropriate for complex or customized uncleared swaps, including swaps entered by asset managers that must allocate block trades among their clients. AMG also recommended that the Commission revise the proposed rules to provide for a delay in confirmation for legitimate disputes between the parties if the parties are seeking to resolve the dispute in a timely fashion.

BGA commented that the 15 minute and 30 minute deadlines for confirmation or acknowledgement in the proposed rules are unworkable and inconsistent with current practice. BGA stated that energy commodity trading companies typically extract trading data in a batched cycle at the end of the day and generate confirmations the following day. BGA does not believe it is clear that expedited confirmation would enhance transparency or reduce systemic risk and is therefore outweighed by the enormous cost for registrants that would have to add resources to perform rolling confirmations and correct errors. BGA also argued that swaps executed on electronic platforms and through broker/dealers as clearing agents should not require a confirmation.

Chatham argued that the proposed timeframes for confirmation could result in decreased accuracy as parties will rush to complete transaction documentation without thorough review.

The FHLBs stated that currently available electronic swap processing systems do not support customized terms in swaps used by the FHLBs and therefore the same business day deadline is not sufficient for swaps that require manual processing. The FHLBs also stated that for some swaps (e.g., forward settling interest rate swaps), all terms may not be known when the swap is executed.

MetLife requested that the Commission extend the timeframe for delivery and return of confirmations for transactions not executed on a SEF or DCM as such are often highly structured and customized and it is unreasonable to expect parties to generate a confirmation within the timeframe set forth in the proposed rules. MetLife recommended that the Commission revise the proposed rules to provide three business days following execution for delivery of an acknowledgement for such transactions and at least two business days following receipt of an acknowledgement to review and return a confirmation.

GFED stated that the various deadlines are significantly too short for many FX swap trades and inappropriately rely on both parties complying with the proposed rules. GFED recommends that the Commission revise the proposed rules, as such are applied to FX swap trades, taking into account: (i) The method of confirmation (electronic/paper); (ii) the complexity of the underlying transaction (e.g., vanilla options vs. basket options); and (iii) the counterparty type.

MFA recommended that the Commission specify no timeframe for confirmation, allowing parties to execute whenever market conditions are favorable with the expectation that they may negotiate non-economic terms later.

(B) Comments on Time Periods for Confirmation With Non-SDs and Non-MSPs

With respect to the proposed confirmation time periods for swaps between an SD or MSP and a non-SD or non-MSP specifically, ISDA commented that the rule lacks clarity on how non-registrant counterparties can be required to comply with the confirmation requirements. The FHLBs echoed ISDA's comment, arguing that the proposed timeframe may lead SDs and MSPs to put undue pressure on end users to execute confirmations before such parties have had an opportunity to fully review such confirmations. To alleviate this concern, the FHLBs argued that the proposed rules should allow SDs and MSPs at least 48 hours to provide end users with an acknowledgement, at least two business days for end users to review acknowledgements and execute confirmations, and provide for an exception from the confirmation deadlines for complex or unique swap transactions (as determined by the parties) upon notice to the Commission detailing the unique or complex aspects of the swap and the date by which a confirmation will be executed.

Chatham recommended an alternative confirmation requirement for swaps with non-SDs and non-MSPs:

• For electronically confirmed swaps, an acknowledgement would be required to be submitted electronically on the same or next business day after execution, and swap terms would be required to be affirmed, matched or otherwise confirmed or a notice of discrepancy provided within three business days; any discrepancy would be required to be resolved and the swap confirmed within five business days

after the discrepancy was communicated.

• For non-electronically confirmed swaps, an acknowledgement would be required to be issued within one business day of execution; a notice of discrepancy provided within five business days; and confirmation required within 30 days.

Dominion commented that the energy industry standard is to achieve confirmation of uncleared swaps not executed on an electronic platform within three business days, and that such standard is often documented in participants' existing master agreements. Dominion thus argued that the proposed next business day confirmation requirement may conflict with end user contractual rights and obligations, and may cause end users to incur costs even though the Commission has not articulated a justifiable benefit to end users or the market.

(C) Comments on Time Periods for Confirmation With Financial Entities

Specifically with respect to confirmation of swap transactions between an SD or MSP and a financial entity, ABC & CIEBA stated that the ''same business day'' confirmation requirement would impose costly increases in operational capacity for pension funds, which may discourage use of swaps or limit trading to earlier parts of the trading day. ABC & CIEBA recommended that the Commission provide for a ''close of next business day'' time limit for benefit plans and other non-SD, non-MSP counterparties. AMG also argued that financial entities should not be subject to shorter time periods for confirmation than non-financial end-users because many may not have the operational resources to meet the demands of the proposed rules. Similarly, Freddie Mac argued that it often takes several business days to correct and execute confirmations, and the proposed rules would not permit sufficient time for correction of draft confirmations or resolution of disputes over trade terms.

While MFA agreed with the proposed longer time period for confirmation for swap transactions between an SD or MSP and counterparties that are not SDs or MSPs, but objected to a shorter time period for financial entity end users as compared to other end users. MFA argued that designation as a financial entity does not necessarily correlate with a large swap portfolio or being highly sophisticated with respect to swaps, and the short time period for confirmation applicable to financial entities under the proposed rules may cause unwarranted disadvantages in negotiation of swap terms with SDs and MSPs.

Finally, the OCC believes that the same calendar day trade confirmation requirement for financial entities would eliminate or significantly reduce customized transactions between registrants and such entities, leading to less effective risk management. The OCC argued that the short confirmation deadline will require the parties to negotiate all terms prior to execution, leading to the unnecessary expenditure of resources for transactions that are never executed. The OCC further argued that negotiation prior to execution will delay execution, which itself can create risks in fast moving markets.

(D) Comments on Confirmation of Swaps Between Parties in Different Time Zones

The Commission received several comments concerned with the proposed time periods for confirmation as applied to swap transactions between parties in different time zones.

Commenting on this aspect of the proposed rule, ISDA stated that cross-border transactions frequently require more than one day to confirm due to business day and time zone differences; Chatham and GFED also commented that the proposed timeframes fail to account for coordination across time zones.

(E) Comments on Confirmation of Swaps Executed at End of Day

The Commission also received several comments concerned with the proposed same day confirmation requirement for swap transactions among SDs and MSPs and between an SD or MSP and a financial entity as applied to swap transactions executed near the end of the trading day.

In this regard, ISDA, Chatham, the FHLBs, AMG, and GFED each commented that the rules should account for transactions executed toward the end of the business day that leave little or no time for same-day confirmation. To account for this issue, AMG recommended that parties should be given no less than 24 hours to confirm trades, while the FHLBs recommended that swap transactions executed after 3:00 p.m. EST should be considered executed on the immediately following business day.

Commission Response

The Commission has considered the many comments with respect to the proposed time periods for confirmation and has decided to revise the proposed rule in a number of ways to better attune the rule to the intention of the Commission's proposal, the concerns raised by commenters, and the needs of the market. The Commission has revised the proposed rule as discussed below.

The proposed time periods for swaps executed or processed electronically have been replaced in their entirety by a requirement that, subject to a compliance phase-in schedule, all swaps among SDs and MSPs or between SDs, MSPs, and financial entities be confirmed ''as soon as technologically practicable,'' but no later than the end of the first business day following the day of execution.[24] The Commission believes this change still requires electronically executed or processed trades to be confirmed quickly, but is responsive to commenters that have provided examples of processing operations that contain some electronic elements but are not ''straight-through'' in the sense intended by the proposed rules and therefore are incapable of meeting the proposed 15 or 30 minute deadlines.

In revising the rule, the Commission also was persuaded by the comments of market participants that are concerned with the possibility of pressure by their dealer counterparties to make costly changes to their operating systems in order to meet the required confirmation deadlines. The Commission notes that these changes also make the confirmation rule consistent with the real-time public reporting rules and the rules mandating deadlines for the reporting of swap data to SDRs, both of which use ''as soon as technologically practicable'' as the applicable standard.[25]

With respect to the proposed time periods for swaps executed between SDs and MSPs and counterparties that are not SDs, MSPs, or financial entities, the Commission has modified the rule to require, subject to a compliance phase-in schedule, policies and procedures reasonably designed to ensure that a confirmation is executed no later than the end of second business day after execution.[26] The Commission believes this change will afford SDs and MSPs an

[24] Compare with ESMA Draft Technical Standards, Article 1 RM, subsection 2, (stating that uncleared OTC derivatives ''shall be confirmed, where available via electronic means, as soon as possible and at the latest by the end of the same business day.'').

[25] *See* 17 CFR 43.2, Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182, 1243–44 (Jan. 9, 2012); 17 CFR 45.3, Swap Data Recordkeeping and Reporting Requirements, 77 FR 2136, 2199–2200 (Jan. 13, 2012).

[26] Compare with ESMA Draft Technical Standards, Article 1 RM, subsection 3, (stating that uncleared OTC derivatives ''shall be confirmed as soon as possible and at the latest by the end of the second business day following the date of execution.'').

extra business day to confirm their swap transactions with non-financial entities and is more consistent with the time periods suggested by commenters.

In response to commenters, as discussed above, the Commission is revising the proposed rule to state explicitly that swaps executed on a SEF or DCM, and swaps cleared by a DCO, will be deemed to have met the confirmation requirements so long as: (i) confirmation of all terms of the transaction takes place at the same time as execution on a SEF or DCM; or (ii) the parties submit the swap for clearing no later than the time that confirmation would otherwise be required and the DCO confirms the terms of the swap upon acceptance for clearing. To ensure that no swap transaction goes unconfirmed, the modified rule also contains a backstop requirement for SDs and MSPs to confirm a swap for which the registrant receives notice that a SEF, DCM, or DCO has failed to provide a confirmation on the same day as it receives such notice.

Based on the comments received, the Commission is also modifying the proposed rule to adjust the confirmation deadline for swaps among SDs and MSPs and between SDs, MSPs, and financial entities whenever the parties (i) execute a swap near the end of the trading day (i.e., after 4 p.m.), or (ii) execute a swap with a counterparty located in a different time zone. The Commission has been persuaded by commenters that registrants should not be required to maintain back-office operations 24 hours a day or 7 days a week in order to meet the proposed confirmation deadlines. The Commission has been particularly sensitive to comments stating that the proposed confirmation deadlines may discourage trade execution late in the day. Specifically, the Commission has made the following changes to the proposed rule:

- To account for time-zone issues, the ''day of execution'' has been defined to be the calendar day of the party to the swap that ends latest, giving the parties the maximum amount of time to confirm the transaction within the deadlines required by the rule.
- To account for end-of-day trading issues, the definition of ''day of execution'' deems such day to be the next succeeding business day if execution occurs after 4:00 p.m. in the place of either counterparty.
- To account for non-business day trading, the ''day of execution'' is also deemed to be the next succeeding business day if execution occurs on a day that is not a business day.[27]

The Commission notes that this approach is consistent with the business day definition in the Swap Data Recordkeeping and Reporting Rules finalized by the Commission in December 2011.[28]

Despite several commenters' concerns, however, the Commission has declined to modify the proposed requirement that SDs and MSPs establish policies and procedures reasonably designed to ensure that swaps with financial entities meet the same confirmation deadlines as swaps among SDs and MSPs. While the Commission recognizes that an SD or MSP may not be able to ensure that a non-registrant financial entity abides by the confirmation deadline in each and every instance, it believes that ''policies and procedures reasonably designed to ensure'' is not the same as requiring a guarantee of compliance. Therefore, the Commission believes that the rule contains sufficient flexibility because it only requires that the SDs and MSPs make reasonable efforts to confirm swaps with financial entities by the stated deadline.

As discussed below in section III.B.2, the Commission is phasing in compliance with each of the time periods required under § 23.501. This compliance schedule is set forth in the rule text and seeks to further address concerns from market participants regarding the timing of compliance.

9. Allocation of Block Trades

The proposed regulations did not address confirmation in the context of block trades that must be allocated prior to confirmation.

With respect to the allocation of block trades, ISDA argued that the proposed confirmation rule will be difficult for asset managers to implement because asset managers often execute block trades and then allocate the block to two or more clients, a process than can take significantly longer than the confirmation time periods because the allocation process hinges on compliance processes or receipt by investment managers of instructions from their clients. In ISDA's view, if finalized as proposed, the rule could force investment managers to execute individual trades for their clients, increasing pricing and operational costs. AMG echoed this point.

Intercontinental Exchange, Inc. (ICE) also pointed out that the confirmation deadlines in the proposed rules may make it impossible for asset managers to make post-execution allocation of trades. ICE stated that its own trade processing service for CDS requires that trades be allocated within two hours of execution and recommended that the Commission adopt a similar standard.

While the Commission acknowledges that allocation of block trades is required to achieve confirmation, it notes that the modifications to the rule outlined above replaces the 15 and 30 minute confirmation deadlines with a requirement that swaps be confirmed ''as soon as technologically practicable, or in any event by the end of the first business day following the day of execution.'' The Commission thus believes that the rule as modified allows registrants and the asset managers for their counterparties the flexibility to work out an efficient and timely allocation process within the deadlines for confirmation as adopted in this release. The Commission also notes that recent amendments to Commission regulation § 1.35 address the allocation issue by requiring that account managers must provide allocation information to the counterparty no later than the end of the calendar day that the swap was executed.[29]

10. Time Period for Delivery of Acknowledgement—§ 23.501(a)(2)

Proposed § 23.501(a)(2) set forth at 75 FR 81519, 81531 (Dec. 28, 2010) required SDs and MSPs to send an acknowledgement containing all of the terms of a swap transaction to each counterparty that is not an SD or MSP.

In response to the proposal, ISDA asserted that the time periods proposed are impractical because: (i) Certain terms required to be included in an acknowledgement may not be known on

[27] Compare with ESMA Draft Technical Standards, Article 1 RM, subsection 3, (stating that where an uncleared OTC derivative transaction ''is concluded after 16.00 local time, or when the transaction is concluded with a counterparty that is located in a different time zone that does not allow for same day confirmation, the confirmation shall take place as soon as possible and at the latest by the end of the next business day.'')

[28] *See* 71 CFR 45.1, Swap Data Recordkeeping and Reporting, 77 FR 2136, 2197 (Jan. 13, 2012).

[29] *See* Customer Clearing Documentation, Timing of Acceptance for Clearing, and Clearing Member Risk Management, 77 FR 21278, 21306 (Apr. 9, 2012) (providing that ''Orders eligible for post-execution allocation must be allocated by an eligible account manager in accordance with the following: (A) Allocations must be made as soon as practicable after the entire transaction is executed, but in any event no later than the following times: For cleared trades, account managers must provide allocation information to futures commission merchants no later than a time sufficiently before the end of the day the order is executed to ensure that clearing records identify the ultimate customer for each trade. For uncleared trades, account managers must provide allocation information to the counterparty no later than the end of the calendar day that the swap was executed.'').

the same calendar day as execution (e.g., initial rates may follow trade commitment by days); and (ii) valuation methodologies required to be agreed prior to execution pursuant to proposed § 23.504(b)(4) may also slow down the acknowledgement process to the extent such methodologies are required to be reflected in the acknowledgement. Similarly, MarkitSERV recommended that acknowledgements be sent within a time period after all information has been obtained (rather than after execution), while AMG argued that the time periods are unnecessarily short and do not bear a reasonable relationship to the systemic risk goals of the Dodd-Frank Act, would be burdensome for uncleared swaps which merit more individualized treatment, and could impose excessive costs on swap market participants.

Based on these comments and other considerations discussed above, the Commission has revised the proposed rule to delete the 15 and 30 minute acknowledgement delivery deadlines and replace them with a requirement, subject to a compliance phase-in schedule, that an acknowledgement be provided ''as soon as technologically practicable, but in any event by the end of the day of execution;'' to state explicitly that the acknowledgement requirement will be deemed satisfied by executing a swap on a DCM or SEF, or clearing the swap through a DCO; and to provide for an adjustment to the ''day of execution'' to account for time-zone differences and end-of-day trading issues. The Commission believes these changes are responsive to the foregoing comments. However, in response to the comments of ISDA and MarkitSERV regarding terms that may not be known until after the acknowledgement delivery deadline has passed, the Commission believes that an acknowledgement could meet the requirement that all terms be included by describing where and when the ''to be determined'' terms will be obtained and provide for incorporation by reference once the terms are known.

As discussed below in section III.B.2, the Commission is phasing in compliance with each of the time periods required under § 23.501, including the acknowledgement requirement.

11. Confirmation Through Execution on a SEF or DCM and/or Clearing on a DCO

The proposed regulations did not contain specific provisions regarding confirmation through execution on a SEF or DCM, or clearing on a DCO. However, in the Confirmation NPRM, the Commission stated: ''It is important to note at the outset, that the Commission expects that swap dealers and major swap participants would be able to comply with each of the proposed rules by executing a swap on a swap execution facility (SEF) or on a designated contract market (DCM), or by clearing the swap through a derivatives clearing organization (DCO). For swaps executed on a SEF or a DCM, the SEF or DCM will provide the counterparties with a definitive written record of the terms of their agreement, which will serve as a confirmation of the swap. Similarly, if a swap is executed bilaterally, but subsequently submitted to a DCO for clearing, the DCO will require a definitive written record of all terms to the counterparties' agreement prior to novation by the DCO; this too would serve as a confirmation of the swap.'' [30]

Commenting on this aspect of the proposal, Chris Barnard supported the idea that SDs and MSPs will be able to comply with the proposed rule by executing a swap on a SEF, a DCM, or by clearing the swap through a DCO, and supported the greater use of these facilities. Each of ISDA, CME, ICE, The Working Group, the FHLBs, MetLife, MFA, and Chatham recommended that the Commission explicitly clarify in the final rules that the confirmation processes of SEFs, DCMs, and DCOs satisfy the requirements of the confirmation rules.

MarkitSERV however asserted that the Commission should not presume that execution on a SEF will automatically result in confirmation of a swap because the execution and confirmation of a swap are separate and distinct activities, and it is possible that SEFs and DCMs may offer execution services without necessarily providing confirmation services. MarkitSERV recommended that the Commission prescribe standards for any confirmation service that may be offered to ensure that SEFs and DCMs produce a complete, legally binding record of each swap based on a recognized legal framework. MarkitSERV also recommended that SEFs and DCMs be permitted to allow qualified third parties to perform the confirmation function after swap execution.

Based on these comments and other considerations discussed above, the Commission has revised the proposed rules to state explicitly that swaps executed on a SEF or DCM, and swaps cleared by a DCO, will be deemed to have met the confirmation requirements so long as: (i) confirmation of all terms of the transaction takes place at the same time as execution on a SEF or DCM; or (ii) the parties submit the swap for clearing no later than the time that confirmation would otherwise be required and the DCO confirms the terms of the swap upon acceptance for clearing. Under § 39.12(b)(8), DCOs are required to provide a confirmation of all the terms of each cleared swap, and this confirmation is required to take place at the same time the swap is accepted for clearing.[31] Under Core Principle 11 for DCMs and § 38.601, DCMs must clear all transactions executed on or through the DCM through a Commission-registered DCO.[32] In essence, confirmation for DCM-executed swaps will occur either at the same time as execution or upon submission to a DCO. The Commission's rules for SEFs, including the proposed confirmation rule, § 37.6(b), have yet to be finalized.[33] However, to the extent that a SEF offers confirmation services upon execution or provides for the timely submission of a swap for clearing, SDs and MSPs would be able to take advantage of the provisions of § 23.501(a)(4).

With respect to MarkitSERV's comments, the Commission notes that if a SEF or DCM does not provide confirmation services, the confirmation deadlines of the rule will control. The standards for confirmation by SEFs and the ability of a SEF to allow a third party to provide the confirmation service are outside the scope of this adopting release.

12. Confirmation of Swap Transaction and Ownership Modifications—§ 23.500(m)

The proposed regulations required SDs and MSPs to comply with the confirmation requirements for all ''swap transactions.'' The proposed regulations defined ''swap transaction'' as any event that results in a new swap or in a change to the terms of a swap, including execution, termination, assignment, novation, exchange, transfer, amendment, conveyance, or

[30] *See* Confirmation NPRM at 81520.

[31] *See* Derivatives Clearing Organization General Provisions and Core Principles, 76 FR 69334, 69438 (Nov. 8, 2011). Under § 39.12(b)(7), DCOs are required to accept or reject for clearing as quickly after execution as would be technologically practicable if fully automated systems were used all contracts that are listed for clearing by the DCO and are executed on or subject to the rules of a DCM or a SEF. *See* Customer Clearing Documentation, Timing of Acceptance for Clearing, and Clearing Member Risk Management, 77 FR 21278, 21309 (April 9, 2012).

[32] *See* Core Principles and Other Requirements for Designated Contract Markets, 77 FR 36612, 36705 (June 19, 2012).

[33] *See* Core Principles and Other Requirements for Swap Execution Facilities, 76 FR 1214, 1240 (Jan. 7, 2011).

extinguishing of rights or obligations of a swap.

In response to this requirement, ISDA stated that some ''market'' life cycle events (e.g., option exercise notices, various notices sent by calculation agent, etc.) captured by the definition of ''swap transaction'' are already described in the original confirmation and sees no benefit to confirming those events. ISDA distinguished ''market'' from ''legal'' life cycle events (e.g., novations and terminations), which currently are confirmed. ISDA stated that industry methodologies have been developed around the confirmation of legal life cycle events at great time and expense and recommends that the Commission defer to industry standards and to allow market participants to bilaterally agree that certain life cycle events do not require subsequent confirmation. ISDA believes that the proposed life cycle confirmation requirement will undermine the move to electronic execution and processing, because not all life cycle events are currently supported by electronic platforms across asset classes.

BGA recommended that the Commission revise the proposed definition of ''swap transaction'' to include only those life-cycle events that impact the economics or settlement of the trade, as current practice of energy commodity trading companies is not to send new confirmations for events like novations.

GFED believes that the Commission should exclude FX swaps from any life-cycle event confirmation requirement. GFED states that efficient processes around trade events already exist (e.g., option exercises confirmed as new trades), and that ISDA has developed a novation protocol in wide use that is moving the industry toward novation without confirmation.

While MFA supports confirmation of life-cycle events, it recommended that the Commission not mandate specific timing requirements for the confirmation of life-cycle events. MFA states that once a life-cycle event occurs, parties to a swap may need to renegotiate certain trade terms and a timing requirement is likely to disadvantage end users in such negotiation with SDs.

The Working Group recommended that confirmation of changes to material economic or legal terms of a swap should be confirmed, but the confirmation should only be required within a reasonable period of time, rather than the time periods imposed for newly executed swaps. The Working Group also argued that events related to the underlying exposure of a swap should not be subject to any confirmation requirement as they are generally addressed in master trading agreements or the applicable confirmation.

Having considered these comments, the Commission has determined not to modify the proposed rule with respect to this issue. In reaching this conclusion, the Commission observes that the definition of ''swap transaction'' would require confirmation of changes to the terms of a swap that have been agreed between the parties or that change the ownership of a swap. However, the definition does not require confirmation of events that may impact the economics of the swap. To the extent that the documented terms of a swap are agreed to in advance and provide for automatic changes to terms upon the occurrence of a defined event, the Commission believes that such change would not require confirmation pursuant to the rule.

13. Legal Uncertainty for Swaps Following Failure to Comply With Swap Confirmation Rules

The proposal did not address the issue of the legal standing or enforceability of a swap transaction that is not confirmed within the time periods mandated by the proposed rules.

In respect of this issue, the FHLBs commented that such failure should not affect the enforceability of the swaps because such an outcome would lead to legal uncertainty in the swap market, and The Working Group recommended that the Commission clearly indicate the regulatory and legal consequences of one or more parties to a swap failing to meet the timing requirements for acknowledgement and confirmation, asserting its view that a swap should not be invalidated for the failure to meet the timing requirements of the proposed rules.

MFA also argued that legal certainty of trade execution is vital for all market participants and the proposed rules may lead to uncertainty as to the enforceability of transactions that fail to be confirmed in compliance with the requirements of the proposed rules. To avoid this result, MFA recommended that the rule be revised to require only that an SD or MSP deliver an acknowledgement specifying the primary economic terms of a swap (rather than all terms), and specify no timeframe for confirmation.

Recognizing the concerns raised by commenters with respect to legal certainty, the Commission notes that it is not the intent of the confirmation rule to provide swap counterparties with a basis for voiding or rescinding a swap transaction based solely on the failure of the parties to confirm the swap transaction in compliance with the proposed rules. In the absence of fraud, the Commission will consider an SD or MSP to be in compliance with the confirmation rule if it has complied in good faith with its policies and procedures reasonably designed to comply with the requirements. However, the Commission notes that it does not have the authority to immunize SDs or MSPs from private rights of action for conduct within the scope of section 22 of the CEA, i.e., violations of the CEA.

14. Recordkeeping Requirements for Acknowledgements and Confirmation—§ 23.501(b)

Proposed § 23.501(b) required SDs and MSPs to keep a record of the date and time of transmission of acknowledgements and confirmations, a record of the length of time between acknowledgement and confirmation, and a record of the length of time between execution and confirmation.

Commenting on the proposal, The Working Group recommended that only a time stamp on acknowledgements and confirmations be required as the remainder of the required records in the proposed rules could be determined from the timestamps on these documents. The Working Group also requested that the Commission clarify how the recordkeeping requirements in the proposed confirmation rule apply to lifecycle events because timestamps for some lifecycle events would not make sense.

MarkitSERV recommended that the Commission clarify that an SD's or MSP's recordkeeping requirements may be delegated to a third-party confirmation platform and the conditions under which such delegation may be done.

BGA argued that energy commodity traders place orders with broker/dealers and may be unaware of the time at which a trade is actually executed, and unable to keep accurate records of the length of time between execution and confirmation of a swap. BGA therefore recommended that the Commission remove the recordkeeping requirements from the proposed rules.

GFED commented that the time stamp requirements of the proposed recordkeeping rules would require significant technology investment as current systems typically do not time stamp at issuance or receipt.

Having considered these comments, the Commission is modifying the recordkeeping requirement. First, the Commission is removing the

requirement that SDs and MSPs keep records of the length of time between the acknowledgment and confirmation of a swap, as well as the time between execution and confirmation, as this information can be readily ascertained by reviewing other records. Second, the cross-reference to § 1.31 has been changed to refer to the record retention rule applicable to SDs and MSPs, § 23.203. Apart from these modifications, the Commission believes the records required to be made and maintained under § 23.501(b) are the minimum necessary to monitor compliance with the rule. In addition, the Commission notes that certain items in the recordkeeping requirement is information that will be required for compliance with other Commission rules, such as the time of execution for real-time public reporting of pricing and transaction data and for reporting to an SDR.

In response to MarkitSERV, the rule does not prohibit SDs and MSPs from relying on third-party service providers to achieve compliance with the rule, although the responsibility for compliance cannot be delegated. Finally, in response to The Working Group's comment, the Commission is not persuaded that it is impossible to keep time-stamped records of key changes in ownership including such significant events as execution, termination, assignment, novation, exchange, transfer, amendment, conveyance, or extinguishing of rights or obligations. The Commission believes that its clarification of the ''swap transaction'' definition above alleviates any concern that the rule imposes an impossible recordkeeping requirement.

E. Portfolio Reconciliation—§ 23.502

Portfolio reconciliation is a post-execution processing and risk management technique that is designed to: (i) Identify and resolve discrepancies between the counterparties with regard to the terms of a swap either immediately after execution or during the life of the swap; (ii) ensure effective confirmation of all the terms of the swap; and (iii) identify and resolve discrepancies between the counterparties regarding the valuation of the swap. In some instances, portfolio reconciliation also may facilitate the identification and resolution of discrepancies between the counterparties with regard to valuations of collateral held as margin. Accordingly, in the Confirmation NPRM, the Commission proposed § 23.502, which required SDs and MSPs to reconcile their swap portfolios with one another and provide counterparties who are not registered as SDs or MSPs with regular opportunities for portfolio reconciliation. In order for the marketplace to realize the full risk reduction benefits of portfolio reconciliation, the Commission also proposed to expand portfolio reconciliation to all transactions, whether collateralized or uncollateralized. For the swap market to operate efficiently and to reduce systemic risk, the Commission believed that portfolio reconciliation should be a proactive process that delivers a consolidated view of counterparty exposure down to the transaction level. By identifying and managing mismatches in key economic terms and valuation for individual transactions across an entire portfolio, the Commission's proposal sought to require a process in which overall risk can be identified and reduced. The Commission received numerous comments to the portfolio reconciliation proposal and considered each in formulating the final rules, as discussed below.

1. Statutory Basis for Portfolio Reconciliation

The proposed portfolio reconciliation regulations were proposed pursuant to section 4s(i) of the CEA, as added by section 731 of the Dodd-Frank Act, which directs the Commission to prescribe regulations for the timely and accurate confirmation, processing, netting, documentation, and valuation of all swaps entered into by SDs and MSPs.

The Working Group commented that the Commission should delete the reconciliation requirements from the proposed rule because section 731 of the Dodd-Frank Act does not require the Commission to issue rules on portfolio reconciliation and the Commission has not fully analyzed the potential effect on the market.

In response to The Working Group's comment, the Commission notes that portfolio reconciliation involves both confirmation and valuation and serves as a mechanism to ensure accurate documentation. Thus, the reconciliation requirements finalized herein are within the scope of section 4s(i) of the CEA. Moreover, the Commission reiterates its statement in the Confirmation NPRM that disputes related to confirming the terms of a swap, as well as swap valuation disputes impacting margin payments, have long been recognized as a significant problem in the OTC derivatives market, and portfolio reconciliation is considered an effective means of identifying and resolving these disputes.

2. General Comments to Portfolio Reconciliation—§ 23.502

Proposed § 23.502 required SDs and MSPs to engage in periodic swap portfolio reconciliation with their swap counterparties. Swap portfolio reconciliation is defined in the proposed rule as a process by which the two parties to one or more swaps: (i) Exchange the terms of all swaps in the portfolio between the parties; (ii) exchange each party's valuation of each swap in a portfolio between the parties as of the close of business on the immediately preceding business day; and (iii) resolve any discrepancy in material terms and valuations.

While Chris Barnard supported the proposed reconciliation requirements, several commenters objected to certain aspects of the rule.

GFED commented that the portfolio reconciliation requirements are likely to be onerous, require significant investment in new infrastructure, and have few benefits for shorter dated FX swaps. GFED therefore recommended that the rules require only: (i) Reconciliation of portfolio valuations (as opposed to differences in valuation or trade specifics at the transaction level) because there is existing market infrastructure in place for this purpose; and (ii) reconciliation on a weekly basis with longer timeframes for resolving discrepancies that reflect the global nature of the FX market.

MFA stated that current market practice is for market participants to engage in portfolio reconciliation at the transactional level only if there are portfolio-level discrepancies that result in margin disputes, and MFA recommended that the Commission only require portfolio reconciliation upon the occurrence of a material dispute regarding margin to avoid unnecessary expense. MFA also believes the Commission should accommodate participants with differing policies, procedures, business models, structures, and types of swaps by providing general principles and guidelines as to what constitutes best practices, but not prescriptive rules.

ISDA stated that current portfolio reconciliation processes in the industry are a means of identifying the source of a material collateral dispute at the portfolio level. ISDA believes the draft 2011 Convention on Portfolio Reconciliation and the Investigation of Disputed Margin Calls and the draft 2011 Formal Market Polling Procedure, developed pursuant to industry commitments to the ODSG, which ISDA believes will be widely adopted by OTC derivatives market participants, should

play a more significant role in shaping the proposed reconciliation rules. Specifically, ISDA believes that portfolio reconciliation should be defined by reference to generally-accepted industry standards, as instituted through the ODSG process, and reflected in data standards and best practices as published by ISDA.

While TriOptima supports the regular reconciliation of all portfolios and believes that this will identify issues that can minimize counterparty credit exposure and operational risk, TriOptima also believes that the Commission should not require registrants to agree on reconciliation procedures, but should encourage the use of industry-wide practices and protocols.

The Commission has not modified the rule based on these comments, but certain elements of the rule have been modified based on specific comments received, as discussed below. The Commission believes that regular portfolio reconciliation will prevent most disputes from arising and therefore does not recommend that portfolio reconciliation be performed only on an ad hoc basis in response to a material margin dispute at the portfolio level. The Commission notes that portfolio reconciliation is not required for cleared swaps where the DCO holds the definitive record of the trade and determines a binding daily valuation for each swap cleared by the DCO. Therefore the Commission believes that portfolio reconciliation will become less burdensome as the bilateral portfolios of SDs and MSPs become significantly smaller over time as a result of required clearing of swaps. In addition, the need for portfolio reconciliation may be obviated at such time as all swaps are reported to SDRs. For example, if an SDR record of a swap is, by agreement of the parties, the legally operative documentation of the swap, the parties need only consult the SDR record to reconcile their portfolios.[34]

3. Reconciliation of Material Terms—§ 23.502(a)(4) & (b)(4)

The proposed regulations required SDs and MSPs to resolve any discrepancy in material terms of swaps in a swap portfolio discovered during the process of portfolio reconciliation.

Commenting on this aspect of the proposal, ISDA stated that current portfolio reconciliation processes in the industry are not meant to resolve swap terms that do not lead to a material collateral dispute and that the proposed rule would cause reconciliation to become a replacement for the confirmation process. Similarly, The Working Group stated that the Commission should not require reconciliation of terms other than valuations to avoid imposing substantial costs on market participants in the absence of any immediate need.

MarkitSERV asserted that the purpose of portfolio reconciliation is the resolution of disputes that materially impact collateralization at the portfolio level, and thus it is unnecessarily burdensome to require any discrepancy in material terms to be resolved. MarkitSERV recommended that the Commission only require reconciliation of terms that could have a material impact on the valuation or collateralization of a swap.

The FHLBs commented that it is not necessary to repeatedly reconcile all terms of swaps that have been reported to a SDR as most if not all such terms will not change from day-to-day or even month-to-month. The FHLBs believe that SDRs will be in the best position to efficiently and effectively detect and manage discrepancies in the material terms of a swap transaction. Likewise, MetLife recommended that the Commission revise the proposed reconciliation rule to require only the reconciliation of variable economic terms, as the repeated review of static terms confirmed during the confirmation process would be an undue burden and expense.

TriOptima, on the other hand, recognized that the Commission's proposal focuses on reconciliation of *material* terms in portfolios. TriOptima believes that this is appropriate because the priority in reconciliation is on completeness of trade population, rather than granularity in trade details.

Having considered these comments, the Commission is not making any change to the proposed requirement that all discrepancies in material terms be resolved. The Commission is not persuaded by commenters that a discrepancy in the terms of individual swaps would not be material to the swap portfolio as a whole unless such discrepancies impact collateralization at the portfolio level. Rather, the Commission believes that a discrepancy in the material terms of a swap indicates a failure in the confirmation process or a failure in a trade input or processing system. As noted in the preamble to the proposed rules, the Commission believes that the requirement that all swaps be reported to an SDR will reduce the burden imposed by the rule by facilitating efficient, electronic reconciliation for SDs, MSPs, and their counterparties. Accordingly, the two requirements are consistent and mutually reinforcing.

4. Frequency of Portfolio Reconciliation—§ 23.502(b)

Proposed § 23.502(b) required SDs and MSPs to reconcile swap portfolios with other SDs or MSPs with the following frequency: Daily for portfolios consisting of 300 or more swaps, at least weekly for portfolios consisting of 50 to 300 swaps, and at least quarterly for portfolios consisting of fewer than 50 swaps. For portfolios with counterparties other than SDs or MSPs, the proposed regulations required SDs and MSPs to establish policies and procedures for reconciling swap portfolios: Daily for swap portfolios consisting of 500 or more swaps, weekly for portfolios consisting of more than 100 but fewer than 500 swaps, and at least quarterly for portfolios consisting of fewer than 100 swaps.

Several commenters supported the frequency of reconciliation required by the proposed rule. Chris Barnard supported the frequency of the proposed reconciliation requirements, while TriOptima stated that a large number of SDs and MSPs already regularly reconcile their portfolios with each other and with other entities and that the increased frequency and inclusion of smaller portfolios as proposed should prove no obstacle to such entities.

However, several commenters recommended alternatives. ISDA recommended that the Commission accept the portfolio size/frequency gradation established by the ODSG process, as that may change over time, which ISDA believes provides an internationally consistent and flexible standard. ISDA does not believe the proposed rule should distinguish between counterparty types for determining frequency of reconciliation because transaction population is an adequate guide. The Working Group argued that the frequency of portfolio reconciliation should be left up to the counterparties because they have the sophistication necessary to determine whether and with what frequency reconciliation is required in their own circumstances, which may be daily, weekly, upon discovery of a dispute, or not at all. In the alternative, The Working Group recommended that portfolio reconciliation be required quarterly with any counterparty with which a registrant has more than 100 swaps, and annually with all other

[34] For example, DTCC's Trade Information Warehouse maintains the centralized global electronic database for virtually all CDS contracts outstanding in the marketplace. The repository maintains the most current credit default swap contract details on the official legal, or gold record, for both cleared and bilateral CDS transactions.

counterparties. Finally, Chatham recommended that the Commission revise the proposed rules to provide that reconciliation with end users is only required for swaps with maturities greater than one year and at the following frequency: Weekly for portfolios of 500 or more swaps; quarterly for portfolios of 100 to 500 swaps; annually for portfolios of 50 to 100 swaps; and optional reconciliation for portfolios of 50 or less swaps.

Still other commenters objected more generally to the required frequency of reconciliation. Dominion argued that the rule should not override any contractual right that end users may have regarding reconciliation, including frequency and the process for resolving disputes, while AMG argued that reconciliation required under the proposed rules is unnecessarily frequent and imposes excessive costs that do not bear a reasonable relationship to the systemic risk goals of the Dodd-Frank Act.

Finally, the OCC stated that many SDs will not be among the G–14 largest OTC derivatives dealers and, given the incremental progression that was necessary for the G–14 OTC derivatives dealers to develop the infrastructure necessary to increase reconciliation amongst themselves from weekly reconciliation for portfolios with 5,000 or more trades in 2008 to the current daily reconciliation for portfolios of 500 or more trades, the Commission should provide sufficient time for all registrants to develop required infrastructure.

Having considered these comments, the Commission is modifying the proposed rule to require daily reconciliation of swap portfolios among SDs and MSPs only for swap portfolios of 500 or more swaps. The Commission continues to believe that the requirement that all swaps be reported to an SDR will lead to efficient, electronic reconciliation for SDs and MSPs, but, at the urging of commenters, has reduced the required frequency of reconciliation to match the frequency of reconciliation currently undertaken by the largest prospective SDs.[35] In addition, the daily reconciliation requirement for swap portfolios among SDs and MSPs of 500 or more swaps brings the rule into conformance with international regulatory efforts.[36]

For portfolios with counterparties other than SDs or MSPs, the Commission is adopting the recommendation proposed by The Working Group—that portfolio reconciliation be required quarterly with any counterparty with which a registrant has more than 100 swaps, and annually with all other counterparties. The Commission believes this approach is largely consistent with that recommended by Chatham, and it responds, in part, to concerns expressed by AMG. The Commission believes it also will serve to lower the costs of the rule. Despite this change in the frequency of reconciliation required for portfolios with non-SD, non-MSP counterparties, the Commission reiterates its belief that periodic reconciliation with all counterparties is a best practice for those using swaps.

In response to Dominion's concern about the rule overriding contractual rights of market participants, the Commission wishes to clarify that parties are free to negotiate and elect whatever dispute resolution mechanisms they so choose. The reconciliation rule merely sets forth the minimum requirements and timing for reconciliation of swap portfolios. The rule is not intended to override contractual rights so long as SDs and MSPs are in compliance with these limited provisions.

5. Exchange of Swap Data for Portfolio Reconciliation—§ 23.500(i) & § 23.502(b)

The preamble to the proposed regulations stated that portfolio reconciliation could consist of one party reviewing the trade details and valuations delivered by the other party and either affirming or objecting to such details and valuations. MarkitSERV recommended that the Commission clarify the circumstances in which both parties would be required to exchange swap data and circumstances in which only one party would be required to send swap data to its counterparty for verification. Consistent with its prior statement, the Commission prefers to permit maximum flexibility and innovation in the process and thus will leave the circumstances of exchange or verification to the discretion of SDs, MSPs, and their counterparties.

6. Portfolio Reconciliation With Non-SDs/MSPs—§ 23.502

The proposed regulation required SDs and MSPs to establish written policies and procedures for engaging in portfolio reconciliation with non-SDs and non-MSPs, which includes the reconciliation of valuations for each swap in the parties' portfolio.

Commenting on the proposal, MarkitSERV stated that buy-side firms view valuation data as private information. To allow for confidentiality, MarkitSERV recommends that the Commission permit non-SDs and non-MSPs to perform portfolio reconciliation via third parties in a process that would only disclose valuation data when a discrepancy exceeds the threshold set forth in the proposed rules.

Dominion asserted that section 4s(i) of the CEA required the Commission to adopt regulations for netting and valuation for SDs and MSPs, but not end users, and objects that the proposed rules require SDs and MSPs to establish policies for reconciliation with end users and for resolution of valuation disputes with end users in a timely fashion. Dominion is concerned that an end user will be required to provide SDs with proprietary market valuations that could be used against the interests of the end user. Dominion therefore recommended that the Commission clarify that an SD's or MSP's written procedures may not require end users to disclose any proprietary market information for purposes of dispute resolution.

The FHLBs argued that end users should not be subject to the same reconciliation requirements as SDs and MSPs because the swap portfolios of end users do not pose a significant risk to the overall financial system and the reconciliation requirements may increase the costs of swaps for end users. Chatham similarly argued that non-SDs and non-MSPs using swaps to hedge risk do not pose systemic risk so daily or weekly reconciliation is not necessary.

As discussed above, the Commission is modifying the proposed rule to change the word ''enforce'' to ''follow.'' Based on commenters' concerns that an SD or MSP cannot force a non-registrant to abide by the portfolio reconciliation requirements, the Commission is further modifying the proposed rule to require

[35] In December 2008, the ODSG's group of 14 major dealers committed to execute daily portfolio reconciliations for collateralized portfolios in excess of 500 trades between participating dealers by June of 2009. *See* June 2, 2009 summary of industry commitments, available at *http://www.isda.org/c_and_a/pdf/060209table.pdf.* As of May 2009, all participating dealers were satisfying this commitment. The ODSG dealers expanded their portfolio reconciliation commitment in March 2010 to include monthly reconciliation of collateralized portfolios in excess of 1,000 trades with any counterparty.

[36] Compare with ESMA Draft Technical Standards, Article 2 RM, subsection 4, (stating that ''In order to identify at an early stage, any discrepancy in a material term of the OTC derivative contract, including its valuation, the portfolio reconciliation shall be performed: * * * each business day when the counterparties have 500 or more OTC derivative contracts outstanding with each other; * * * once per month for a portfolio of fewer than 300 OTC derivative contracts outstanding with a counterparty; * * * once per week for a portfolio between 300 and 499 OTC derivative contracts outstanding with a counterparty.'')

only that SDs and MSPs establish policies and procedures reasonably designed to ensure that they engage in portfolio reconciliation with non-registrants with the modified frequency discussed above. The Commission believes that ''reasonably designed to ensure'' is not the same as requiring a guarantee of compliance. Therefore, the Commission believes that the rule, as modified, would require that the SDs and MSPs make reasonable efforts to engage in portfolio reconciliation with non-registrants, but would not give SDs or MSPs the authority to require it of their non-registrant counterparties.

In addition, the Commission is modifying the proposed rule to clarify that discrepancies in material terms or valuation disputes that become known to the parties before the quarterly or annual reconciliation with non-SDs, non-MSPs, should be resolved in a timely fashion. With this change, the Commission notes that non-SD, non-MSP counterparties may bring a discrepancy or dispute to an SD's or MSP's attention and the SD or MSP counterparty must work to resolve those identified discrepancies and disputes.

7. Portfolio Reconciliation With DCOs for Cleared Swaps—§ 23.502(c)

The proposed regulations stated that the portfolio reconciliation requirements will not apply to swaps cleared by a DCO.

With respect to this provision, MarkitSERV recommended that the Commission require SDs and MSPs to regularly reconcile their positions in cleared swaps against SDRs, DCOs, and clearing brokers to correct discrepancies between the DCO record and a firm's internal records.

The Commission has determined not to follow MarkitSERV's recommendation on this point. DCOs maintain the definitive record of the positions of each of their clearing members (both house and customer) and mark those positions to a settlement price at least once a day.[37] Accordingly, the Commission believes that cleared swaps do not present the same documentation and valuation issues that uncleared swaps do. The Commission notes that reconciliation of swap data between DCOs and SDRs is beyond the scope of this rulemaking, which is adopting regulations with respect to SDs and MSPs only.

[37] Under typical DCO rules, clearing members are bound by the settlement price of the DCO and the product specifications of cleared swaps are set by the DCO.

8. Portfolio Reconciliation by ''Qualified Third Parties''—§ 23.502(b)

The proposed regulations permitted portfolio reconciliation to be performed on behalf of SDs, MSPs, and their counterparties by a qualified third party.

Commenting on this proposal, ABC & CIEBA and AMG separately recommended that the Commission not require use of ''qualified'' third parties for portfolio reconciliation, but, rather should explicitly require that use of any third party service provider must be agreed by both parties and recognize that each party may use a different third party for reconciliation. Specifically, ABC & CIEBA recommended that § 23.502(b)(1) and (2) be revised to read as follows:

''(1) Each swap dealer or major swap participant shall agree in writing with each of its counterparties on the terms of the portfolio reconciliation, including agreement on the selection of any third party.

(2) The portfolio reconciliation may be performed on a bilateral basis by the counterparties or by one or more third parties selected by the counterparties in accordance with § 23.502(b)(1).''

In response to these comments, the Commission is modifying the proposed rule to delete the word ''qualified,'' to require that the use of a third-party service provider be subject to agreement of the parties, and to provide that each party may use a different third party so long as the provisions of the rule are met. Further, per AMG's comments, the Commission expects that parties will determine if the third-party is qualified based on their own policies.

9. Reconciliation Discrepancy Resolution Procedures—§ 23.502(b)(4)

The proposed regulations required that SDs and MSPs establish procedures reasonably designed to resolve any discrepancies in the material terms or valuation of each swap identified in the portfolio reconciliation process.

Commenting on this aspect of the proposal, ABC & CIEBA recommended that the Commission revise § 23.502(b)(4) in order to ensure that reconciliation dispute resolution by SDs and MSPs is fair, impartial, and even-handed.

The Commission agrees that reconciliation dispute resolution should be fair, impartial, and even-handed as recommended by ABC & CIEBA, but believes that the commenter's concern will be addressed by deleting the word ''enforce'' as discussed above. The Commission expects that SDs and MSPs will cooperate with their counterparties and any applicable third-party service provider in resolving discrepancies brought to light through portfolio reconciliation.

10. Time Period for Resolution of Discrepancies in Material Terms—§ 23.502(a)(4) & (b)(4)

With regard to portfolio reconciliation among SDs and MSPs, the proposed regulations required that any discrepancy in material terms be resolved immediately.

Freddie Mac stated that in some cases it may be impossible to resolve a discrepancy in material terms immediately, as required under § 23.502(a)(4). Freddie Mac recommended that the Commission should revise the proposed rules to provide that the timely and accurate processing and valuation requirements of the Dodd-Frank Act will be deemed satisfied whenever swaps are subject to a master netting agreement and collateral pledge agreement under which the parties mark net portfolio value to market and exchange collateral on the basis of such valuation as promptly as commercially reasonable.

Having considered Freddie Mac's comment, the Commission is adopting the rule as proposed with respect to immediate resolution of discrepancies in material terms in swaps among SDs and MSPs. Given the timely confirmation requirements of all terms of a swap as established under § 23.501, the Commission believes an immediate resolution of any material term discrepancy is appropriate. Additionally, the Commission believes that a longer period is not justified because resolution of a discrepancy in a material term will likely require an amendment of the trade record in the relevant SDR, which, for regulatory oversight purposes, should be as accurate as possible.

11. Resolution of Valuation Disputes in Portfolio Reconciliation—§ 23.502(a)(5) & (b)(4)

With regard to portfolio reconciliation among SDs and MSPs, the proposed regulations required that any discrepancy in the valuation of a swap be resolved within one business day. With regard to portfolio reconciliation between SDs or MSPs and non-registrants, the proposed regulations required that SDs and MSPs have policies and procedures reasonably designed to resolve any discrepancy in the valuation of a swap in a timely fashion.

With respect to this aspect of the proposal, ISDA commented that parties to a good-faith dispute should have a commercially reasonable timeframe in which to consult in order to find an

appropriate resolution of the dispute. ISDA believes the draft 2011 Convention on Portfolio Reconciliation and the Investigation of Disputed Margin Calls and the draft 2011 Formal Market Polling Procedure, developed pursuant to industry commitments to the ODSG, which ISDA believes will be widely adopted by OTC derivatives market participants, should play a more significant role in shaping the proposed reconciliation rules. The Working Group, the FHLBs, and AMG also recommended that the Commission support the valuation dispute resolution methodology sponsored by ISDA.

In addition to its general comments, ISDA made specific recommendations:

- Resolution is labor intensive and to avoid undue costs, discrepancies in terms and valuations should only require resolution if such are causing material portfolio-level collateral transfer disputes, rather than on a transaction by transaction basis, as it allows for the possibility that material but offsetting differences may exist in a portfolio.
- Again to avoid undue costs, a materiality standard should apply to any mandated resolution requirement, because, in the absence of a collateralization requirement or a live dispute as to collateralization, discrepancies in valuation may be allowed to subsist as potentially harmless and may disappear through changes in portfolio composition over time. ISDA recommends that the ODSG resolution tolerances be adopted by the Commission, as such tolerances may be amended over time.
- Resolution of a valuation dispute should mean that the discrepancy in a portfolio-level margin dispute is reduced such that it is within the applicable resolution tolerance, rather than requiring exact agreement.
- Resolution of a valuation dispute should not require parties to make adjustments to their books and records.
- Parties should be free to agree to accept that there is a difference in opinion as to value, so long as appropriate capital is held against any potential collateral shortfall.

With respect to the proposal to require valuation disputes to be resolved within one business day, ISDA stated that a one-day timeframe for resolution of valuation discrepancies is infeasible, especially when applied to parties across vastly different global time zones, due to the need to analyze reconciliation results, escalate for trader-to-trader discussion or to senior management. Further, ISDA argued that some disputes prove to be intractable and must be resolved through a market poll, which requires time to build and populate a valuation model, which may take hours or even days. AMG also argued that the time periods are unnecessarily short and do not bear a reasonable relationship to the systemic risk goals of the Dodd-Frank Act, noting that the time periods are not consistent with recent ISDA dispute resolution protocols or other methodologies incorporated in master agreements, and could impose excessive costs on swap market participants.

AMG recommended that the Commission clarify the consequences of failing to resolve a valuation dispute within the mandated timeframe. Freddie Mac stated that in some cases it may be impossible to resolve a discrepancy in valuation within one business day, while BGA does not believe that registrants should be penalized for failing to meet the one business day resolution deadline. BGA argued that (i) SDs and MSPs do not have control over their counterparties so resolution may take more than a day; and (ii) a hard deadline may disadvantage SDs and MSPs in negotiating a resolution with a counterparty that is not subject to a deadline. Finally, The Working Group argued that the proposed requirement that valuation disputes between registrants be resolved within one business day is not workable due to the complex calculations required, involvement of multiple functional groups within a registrant, and possibility that resolution of a dispute may require modifications to a valuation model that could create further discrepancies for other swaps that are valued using the same model. The Working Group believes the Commission should require only that registrants begin the valuation dispute resolution process upon discovery of a dispute, but permit counterparties to resolve the dispute within a reasonable time period.

The FHLBs requested that the Commission specify the meaning of ''in a timely fashion'' as it relates to discrepancy resolution with end users.

The Working Group also had a number of recommendations with respect to the proposed rule:

- The Commission should not adopt valuation dispute resolution rules that may be burdensome for markets where no problem exists, such as swap markets with underlying physical markets that provide an objective basis for swap valuations.
- The proposed reconciliation rules should apply only to valuation disputes on a portfolio basis, and not on a transaction basis, as it would be unnecessarily burdensome to analyze the valuation of individual swaps unless there is a material dispute as to the portfolio level exposure between the parties.
- Parties should have the right to continue to exchange collateral without resolving a discrepancy exceeding 10 percent if they conclude that the discrepancy is not material in their particular circumstances.

With respect to the proposed 10 percent threshold before a dispute would require resolution, Chatham argued that a percentage threshold of 10 percent difference is insufficient because it will impose a significant burden in cases where the absolute value of the swap is small, such as just after a swap is executed and in the period just before maturity. MFA also recommended that the Commission revise the proposed rule to provide that a valuation discrepancy must not only exceed 10 percent, but must also exceed some reasonable dollar threshold, and must result in one party being unwilling to satisfy a collateral call from the other party. On the other hand, MetLife supported the 10 percent buffer for designation of valuation discrepancies, but recommended that the Commission extend the deadline for valuation dispute resolution from 1 to at least 3 business days with respect to highly structured and customized swaps.

TriOptima provided context with respect to valuation dispute resolution in the swaps market. TriOptima commented that swaps are valued using internal models, which use inputs derived from observable sources or internal calculations and reflect a party's view on the market; that for many swaps, there is only sparse or episodic liquidity in similar contracts, which can be used to calibrate internal valuation models; and that there is valuable information for regulators in a spectrum of differing valuations of a swap. As an example, TriOptima hypothesized that regulators could have had an early warning sign in the run up to the 2008 financial crisis when some market participants realized earlier than others that the price of credit risk was too low and raised the price in their internal valuations as opposed to counterparties that did not recognize the change in credit risk. With respect to the proposal, TriOptima argued that forcing convergence on swap valuations between parties could be detrimental to the stability and resilience of the financial system by creating a disincentive for firms to use their own judgment in setting market values, removing a valuable diagnostic tool for regulators. TriOptima further stated that there is a difference between an internal

valuation used for regulatory capital purposes and a valuation agreed with a counterparty for use in calculating margin. If the agreed valuation is lower than the internal valuation, a party must reserve capital for the unsecured exposure. Therefore, TriOptima argued that if the Commission requires the parties to agree on a valuation for internal purposes, the unsecured exposure disappears and less capital will be reserved, reducing stability and resilience in the financial markets. TriOptima recommended that the Commission focus on establishing principles for how to determine the margining amount on a portfolio level, rather than forcing parties to agree on valuation of individual transactions, with a key element in such principles being consistency. For valuation differences that persist after excluding errors and inconsistencies, TriOptima believes the parties should be allowed to agree to disagree and face the credit risk and capital consequences of having unsecured exposures.

The Commission recognizes the view that there is valuable information for market participants and regulators in a spectrum of differing valuations of a swap. The Commission also is cognizant of the ongoing efforts by industry and ISDA to improve the existing valuation dispute resolution process. Based on meetings between Commission staff and ISDA's Collateral Steering Committee, the Commission understands that ISDA's draft 2011 Convention on Portfolio Reconciliation and the Investigation of Disputed Margin Calls and the draft 2011 Formal Market Polling Procedure has reduced valuation dispute resolution to a 30-day process.

Issues related to swap valuations are woven through a number of Commission rule proposals. For instance, § 23.504(e), as adopted in this release, requires SDs and MSPs to report valuation disputes in excess of $20,000,000 lasting longer than three business days to the Commission, while under § 23.504(b)(4) SDs and MSPs are required to agree on valuation methodologies with their counterparties. The Commission believes that by requiring agreement with each counterparty on the methods and inputs for valuation of each swap, it is expected that § 23.504(b)(4) will assist SDs and MSPs to resolve valuation disputes in a timely manner, thereby reducing risk.

Agreement between SDs, MSPs, and their counterparties on the proper daily valuation of the swaps in their swap portfolio also is essential for the Commission's margin proposal. As discussed above, under proposed rule § 23.151, non-bank SDs and MSPs must document the process by which they will arrive at a valuation for each swap for the purpose of collecting initial and variation margin. All non-bank SDs and MSPs must collect variation margin from their non-bank SD, MSP, and financial entity counterparties for uncleared swaps on a daily basis. Variation margin requires a daily valuation for each swap. For swaps between non-bank SDs and MSPs and non-financial entities, no margin is required to be exchanged under Commission regulation, but the non-bank SDs and MSPs must calculate a hypothetical variation margin requirement for each uncleared swap for risk management purposes under proposed § 23.154(b)(6).

Given that arriving at a daily valuation is one of the building blocks for the margin rules and is essential for the mitigation of risk posed by swaps, the Commission expects that SDs and MSPs as a matter of best practice will work to resolve valuation disputes for swaps with other SDs and MSPs within one business day. However, the Commission is modifying this provision to require that valuation disputes be subject to policies and procedures reasonably designed to ensure that such disputes are resolved within five business days, as discussed further below. The Commission has determined to make no change to the requirement that valuation disputes between SDs, MSPs, and non-SDs or non-MSPs be subject to policies and procedures reasonably designed to ensure that such disputes are resolved ''in a timely fashion.''

The Commission is persuaded by commenters that some valuation disputes may be difficult to resolve within the one-day timeframe and is therefore modifying the rule such that it no longer requires resolution, but instead requires that SDs and MSPs establish procedures reasonably designed to ensure that swap valuation disputes are resolved within five business days.[38] Thus SDs and MSPs will not violate the rule if they fail to resolve a particular dispute within five business days, so long as they have followed their reasonably designed procedures. In addition, the rule will require SDs and MSPs to have policies and procedures identifying how they will comply with any variation margin requirements pending resolution of a valuation dispute. The rule already requires SDs and MSPs to establish procedures to resolve valuation disputes with non-SD/MSP counterparties in a timely fashion.

Regarding the safe harbor for valuation differences of less than 10 percent, the Commission believes the 10 percent threshold is appropriate as it provides certainty as to which disputes must be resolved. The Commission believes the efficiency of a bright line rule, as opposed to the formulas and discretion in the alternatives presented by commenters, will better serve the operational processes of SDs and MSPs and the regulatory oversight of the Commission.

12. Reporting of Valuation Disputes to the Commission

The proposed regulations required SDs and MSPs to keep records of valuation disputes and the time to resolution of such disputes, but did not require SDs or MSPs to report such disputes to the Commission. However, as noted by the New York City Bar Committee on Futures and Derivatives (NYCB), proposed § 23.504(e) required valuation disputes among SDs and MSPs outstanding for more than one business day, or five business days for disputes between an SD or MSP and a non-SD, non-MSP counterparty to be reported to the Commission.

In this regard, ISDA recommended that the Commission require monthly reporting of margin disputes outstanding more than 15 days that exceed the applicable tolerances, which is consistent with current ODSG commitments. MetLife recommended a period of 90 days before reporting is required.

As discussed above, the Commission is modifying this provision to require reporting within three business days, and it has added a $20,000,000 threshold for reporting of disputes. The Commission believes the less frequent reporting provided by the threshold will alleviate the concerns of the commenters.[39]

[38] Compare with ESMA Draft Technical Standards, Article 4 RM, subsection 2, (stating that ''counterparties shall, when concluding OTC derivative contracts with each other have agreed detailed procedures and processes in relation to * * * resolution of disputes in a timely manner; * * * resolution of disputes that are not resolved within five business days, including third party arbitration or a market polling mechanism.'')

[39] Compare with ESMA Draft Technical Standards, Article 4 RM, subsection 2, (stating that ''counterparties shall report to the competent authority * * * any disputes between counterparties relating to an OTC derivative contract, its valuation or the exchange of collateral for an amount or a value higher than EUR 15 million and outstanding for at least 15 business days.'')

13. Recordkeeping Requirement for Portfolio Reconciliation—§ 23.502(d)

The proposed regulations required SDs and MSPs to make and retain a record of each portfolio reconciliation, including a record of each discrepancy and the time to resolution of each discrepancy.

ISDA objected to the recordkeeping requirement for portfolio reconciliation, arguing that it should consist only of disputes, and not of the entire process. Specifically, ISDA recommended that records be kept of the date of the initial dispute, the resolution of the dispute, the date of resolution, and the net portfolio valuations of the two parties. Further, ISDA requested an explicit statement that access to third party reconciliation services' records will satisfy the obligation to permit inspection of the records by supervisors. Similarly, The Working Group requested that the Commission clarify that the records required to be kept in relation to valuation dispute resolution pertain only to discrepancies that exceed the 10 percent buffer.

The Commission notes that its recordkeeping rule for SDs and MSPs includes a recordkeeping requirement that SDs and MSPs make and keep a record of each portfolio reconciliation, including the number of portfolio reconciliation discrepancies and the number of swap valuation disputes (including the time-to-resolution of each valuation dispute and the age of outstanding valuation disputes, categorized by transaction and counterparty).[40] In the interests of streamlining regulatory requirements, the Commission is modifying § 23.502(d) to cross reference § 23.202 and delete the substantive requirements. The Commission has also revised the cross-reference to § 1.31 to a cross-reference to the SD and MSP record retention rule, § 23.203.

In response to comments of ISDA and The Working Group, the Commission believes that the level of detail included in portfolio reconciliation records is left to the reasonable discretion of SDs and MSPs so long as the basic requirements of the rule are met.

F. Portfolio Compression—§ 23.503

Section 4s(i) of the CEA directs the Commission to prescribe regulations for the timely and accurate processing and netting of all swaps entered into by swap dealers and major swap participants. Portfolio compression is an important, post-trade processing and netting mechanism that can be an effective and efficient tool for the timely and accurate processing and netting of swaps by market participants. Portfolio compression is a mechanism whereby substantially similar transactions among two or more counterparties are terminated and replaced with a smaller number of transactions of decreased notional value in an effort to reduce the risk, cost, and inefficiency of maintaining unnecessary transactions on the counterparties' books. Because portfolio compression participants are permitted to establish their own credit, market, and cash payment risk tolerances and to establish their own mark-to-market values for the transactions to be compressed, the process does not alter the risk profiles of the individual participants beyond a level acceptable to the participant. The usefulness of portfolio compression as a risk management tool has been acknowledged widely.

In 2008, the PWG identified frequent portfolio compression of outstanding trades as a key policy objective in the effort to strengthen the OTC derivatives market infrastructure.[41] Similarly, the 2010 staff report outlining policy perspectives on OTC derivatives infrastructure issued by the FRBNY identified trade compression as an element of strong risk management and recommended that market participants engage in regular, market-wide portfolio compression exercises.[42]

Based upon these considerations, the Commission proposed § 23.503, which imposed certain portfolio compression requirements upon SDs and MSPs. The Commission received numerous comments to the portfolio compression proposal and considered each in formulating the final rules, as discussed below.

1. Statutory Basis for Portfolio Compression

The proposed portfolio compression regulations were proposed pursuant to section 4s(i) of the CEA, which directs the Commission to prescribe regulations for the timely and accurate confirmation, processing, netting, documentation, and valuation of all swaps entered into by SDs and MSPs.

Commenting on the proposal, ISDA stated that the portfolio compression requirements lack an explicit statutory basis in the Dodd-Frank Act, and should be left to the judgment of market participants. Likewise, The Working Group stated that section 731 of the Dodd-Frank Act does not require the Commission to issue rules on portfolio compression and believes the final rules should not include portfolio compression requirements.

In response to these comments, section 4s(i) of the CEA clearly authorizes the Commission to prescribe standards for the netting of swaps. As explained in the Confirmation NPRM, portfolio compression is a post-trade processing and netting mechanism whereby substantially similar transactions among two or more counterparties are terminated and replaced with a smaller number of transactions of decreased notional value.

2. Definition of ''Multilateral Portfolio Compression Exercise''—§ 23.500(h)

The proposed regulations defined ''multilateral portfolio compression exercise'' as an exercise in which multiple swap counterparties wholly or partially terminate some or all of the swaps outstanding among those counterparties and replace the swaps with a smaller number of swaps whose combined notional value is less than the combined notional value of the original swaps included in the exercise. The replacement swaps may be with the same or different counterparties.

With respect to this definition, TriOptima commented that the proposed definition of ''multilateral portfolio compression exercise'' is too narrow and recommends that the Commission revise the definition to read: ''an exercise in which multiple swap counterparties wholly terminate or change the notional value of some or all of the swaps submitted by the counterparties for inclusion in the portfolio compression and, depending on the methodology employed, replace the terminated swaps with other swaps whose combined notional value (or some other measures of risk) is less than the combined notional value (or some other measure of risk) of the terminated swaps in the compression exercise.'' ISDA recommended the same changes as those recommended by TriOptima for the same reasons.

Based on the explanations of commenters, the Commission is persuaded that the proposed definition was unnecessarily narrow and the Commission has accordingly modified the definition of ''multilateral portfolio compression exercise'' in the manner recommended by commenters. In addition, for the sake of consistency, the

[40] *See* 17 CFR 23.202(a)(3)(iii), Reporting, Recordkeeping, and Daily Trading Records Requirements for Swap Dealers and Major Swap Participants, 77 FR 20128, 20201 (April 3, 2012).

[41] *See* ''Policy Objectives for the OTC Derivatives Markets,'' President's Working Group on Financial Markets (Nov. 14, 2008).

[42] *See* Federal Reserve Bank of New York Staff Report No. 424: ''Policy Perspectives on OTC Derivatives Market Infrastructure,'' Jan. 2010 (revised Mar. 2010).

definition of ''bilateral portfolio compression exercise'' has also been modified in a consistent manner.

3. Mandatory Portfolio Compression—§ 23.503

The proposed regulations required SDs and MSPs to engage in bilateral and multilateral portfolio compression exercises with respect to all swaps in which their counterparty is also an SD or MSP. In contrast, the proposed regulations required SDs and MSPs to establish policies and procedures for engaging in portfolio compression with swap counterparties that are not SDs or MSPs.

On this issue, The Working Group argued that portfolio compression is only beneficial in markets where there is a high degree of transaction standardization and a high volume of redundant trades, and therefore recommended that the Commission only impose mandatory compression exercises on markets where the ratio of gross market value to notional size (which is a rough estimation of the level of redundant trades) shows that the benefits of compression outweigh the substantial cost of engaging in the exercise. The Working Group also recommended that the Commission not impose mandatory compression in markets where compression platforms have not yet been designed, tested, and approved by the Commission.

Markit pointed out that portfolio compression was recently attempted in the commodities and foreign exchange asset classes, but was not pursued further because the trial cycles had limited success, and is concerned that mandatory participation under the proposed rules might lead to compression for a range of uncleared swaps where the potential benefits do not justify the cost of the exercise, particularly for the large number of potential SDs and MSPs that currently do not participate in compression cycles. Costs identified by Markit include changes to participant's risk systems and connectivity enhancements that would allow for the booking and processing of a large volume of swaps (thousands) in as short a period as a single day. Markit recommended an alternative to the proposal in which the Commission would establish thresholds for determining whether a category of non-cleared swaps should be subject to any mandatory compression exercise and the frequency of such exercises. Markit believes such thresholds should be related to the minimum number of swaps, number of participants, number of swaps per participant, amount of ongoing trading activity, degree of standardization in the product, and the notional amount of transactions that must be compressed.

With respect to compression between SDs and MSPs and non-SDs, non-MSPs, Markit believes that there will be no noteworthy benefit from requiring non-dealer counterparties to participate in portfolio compression exercises for uncleared swaps, as such entities have portfolios with a very small number of offsetting transactions and often have complicated arrangements with prime brokers making compression more difficult and costly.

Freddie Mac commented that mandatory portfolio compression should be limited to swaps that match and offset cash flows exactly, and that any compression requirement allow for exceptions for end users relying on swaps for hedging purposes or that otherwise believe the termination of an existing swap would have an adverse effect on remaining trades.

Providing the view of a portfolio compression vendor, TriOptima stated that for many smaller institutions and for larger institutions trading illiquid swaps, the net to gross ratio of a portfolio is sometimes close to 100 percent, meaning that all swaps in the portfolio are in the same market-risk direction. TriOptima argued that it would not be productive for such institutions to take part in multilateral compression as many transactions designated as hedges for accounting purposes must be excluded from compression, and either no transactions could be compressed or the resulting notional reduction would be minimal. TriOptima therefore recommended that the Commission remove any mandatory compression requirement from the proposed rule and instead focus on creating incentives for institutions to take part in portfolio compression. TriOptima noted that most capital requirements are based on net risk positions and therefore recommended that the Commission create capital or other incentives to reduce gross risk positions.

Based on the comments received, the Commission has concluded that it may be premature to require SDs and MSPs to engage in mandatory bilateral and multilateral compression exercises for all asset classes at this time. Although the Commission agrees with Markit's comment that compression opportunities should be based on an analysis of the market, including the number of swaps, number of participants, number of swaps per participant, amount of ongoing trading activity, degree of standardization in the product, and the notional amount of transactions that could be compressed, it does not foresee that it will have the resources to make such a determination or to set thresholds for mandatory compression. In addition, as discussed more fully below, the Commission is modifying the bilateral offset requirement for swaps between SDs and MSPs that are ''fully offsetting.''

Accordingly, the Commission has modified the proposed rules to remove the mandatory bilateral and multilateral compression requirements and has replaced them with a requirement that SDs and MSPs establish policies and procedures for periodically engaging in portfolio compression exercises with counterparties that are also SDs or MSPs and for engaging in portfolio compression with all other counterparties upon request.[43] In this regard, the Commission anticipates that in order to be in compliance with the rule, an SD's or MSP's policies and procedures would include procedures for engaging in periodic evaluation of compression opportunities, written policies establishing when the SD or MSP would consider a compression opportunity to be materially beneficial, and procedures for engaging in those opportunities when such arise. These policies and procedures would also be required to address how the SD and MSP would determine which swaps to include and exclude from compression exercises and what risk tolerances it would accept.

The Commission has also modified the rule to clarify that (1) non-SDs/MSPs are not required to engage in portfolio compression exercises with SDs and MSPs, but (2) that SDs and MSPs must engage in portfolio compression exercises with non-SDs/MSPs upon request.

As further support for the modifications, the Commission notes that in the proposed DCO rules, the Commission proposed that DCOs must offer multilateral compression, but the final DCO rule provided that participation in compression exercises by clearing members and their customers would be voluntary.[44]

[43] Compare with ESMA Draft Technical Standards, Article 3 RM, subsection 2, (stating that ''counterparties with 500 or more OTC derivative contracts outstanding which are not centrally cleared shall have procedures to regularly, and at least twice a year, analyse the possibility to conduct a portfolio compression exercise in order to reduce their counterparty credit risk and engage in such portfolio compression exercise.'')

[44] *See* 17 CFR 39.13(h)(4), Derivatives Clearing Organization General Provisions and Core Principles, 76 FR 69334, 69383 (Nov. 8, 2011).

4. Swaps Eligible for Compression—§ 23.503

Proposed § 23.503 required SDs and MSPs to include all swaps in their compression exercises with other SDs and MSPs and swaps with other counterparties to the extent that the swaps are able to be terminated through a portfolio compression exercise.

With respect to this aspect of the proposal, BlackRock recommended that the Commission revise the proposed compression rules to more fully promote the compression of substantially similar, but not fully offsetting, swaps.

The Commission believes that the concerns underlying BlackRock's comment is addressed by the changes to the proposed rule as discussed above, specifically the modification requiring SDs and MSPs to engage in compression with non-SDs and non-MSPs at the request of such parties. The Commission believes it is prudent to permit the parties to agree on the method and venue of compression, rather than having the Commission prescribe the method and venue.

5. Application of Portfolio Compression to Non-SD/MSPs

In the Confirmation NPRM, the Commission requested comment on whether it should require SDs and MSPs to engage in compression exercises with counterparties that are not SDs or MSPs. The Commission also requested comment on whether financial entities as defined in proposed § 23.500 should be subject to the same compression requirements as SDs and MSPs.

In response to this request for comments, Markit stated that there will be no noteworthy benefit from requiring non-dealer counterparties to participate in portfolio compression exercises for uncleared swaps because such entities have portfolios with a very small number of offsetting transactions and often have complicated arrangements with prime brokers making compression more difficult and costly.

ISDA also identified several issues with the proposal to apply compression requirements to non-SDs:

- Current portfolio compression exercises only achieve successful results by limiting exercises to a single asset-class and a relatively small and homogeneous group of participants (i.e., the G14 dealers), which limits the difficulty and range of attendant risks.
- Multilateral compression cycles are typically managed with automated tools to support tear up and new trade creation that end-users usually do not possess, and the costs of obtaining such tools cannot be justified by the benefits.
- The requirement for bilateral netting of swaps not covered by multilateral or cleared compression processes will impose onerous tasks with only limited benefit for end-users who engage in trades that are typically more bespoke.

ABC & CIEBA commented that benefit plans should not be subject to the proposed portfolio compression rule because every swap of a benefit plan serves a business purpose and benefit plan swap portfolios contain no redundant positions. ABC & CIEBA also argued that benefit plans may have multiple investment advisers with individual mandates and portfolio compression could result in losses if market movements that had been previously hedged are undone by compression. ABC & CIEBA thus urged the Commission to require SDs and MSPs to obtain explicit consent of end user counterparties prior to compression of any swap.

AMG, Dominion, the FHLBs, and Chatham echoed the concerns of ABC & CIEBA, commenting that non-SDs and non-MSPs (including financial entities) should not be subject to mandatory or involuntary portfolio compression due to legitimate reasons for offsetting, but beneficial swap positions, such as hedging specific assets. Thus, AMG, Dominion, and the FHLBs recommended that the Commission revise the proposed rules to require SDs and MSPs to obtain the explicit consent of its end user counterparties prior to compression of any swap. BlackRock recommended that the Commission require SDs and MSPs to engage in bilateral and multilateral compression exercises with counterparties that are not SDs or MSPs, if such parties chose to do so.

MFA similarly recommended that portfolio compression be an option for end users, but not an obligation as portfolio compression is only appropriate for entities with portfolios large enough to yield meaningful benefits that outweigh the expense of a compression exercise. MFA further stated that end users should not be required to engage in multilateral portfolio compression for cleared swaps. GFED believes that portfolio compression is unnecessary for non-dealer end users as volumes are too small.

With respect to compression with financial entities, the FHLBs commented that financial entities should not be subject to the same compression requirements as SDs and MSPs as the swap portfolios of such entities do not, by definition, pose a significant risk to the overall financial system, such requirements could have adverse effects for such entities because their tax and accounting treatment may differ significantly from those of SDs, and such requirements may discourage financial entities from using swaps for hedging or risk mitigation.

Freddie Mac believes that mandatory portfolio compression should be limited to swaps that match and offset cash flows exactly, and that any compression requirement allow for exceptions for end users relying on swaps for hedging purposes or that otherwise believe the termination of an existing swap would have an adverse effect on remaining trades.

With respect to insurers, NAIC stated that state insurance laws require insurers to ''tag'' each swap position to specific hedging, replication, or income generation transactions, giving insurance regulators complete transparency into the swap position carried by insurers. NAIC is concerned that the proposed compression requirements, despite the exception in § 23.503(c)(3)(i), may require SDs and MSPs to terminate fully offsetting swaps that include swaps held by insurers for hedging of specific assets and liabilities, hindering state regulators' ability to regulate insurers. NAIC requested that the Commission modify the rule so that any swap position of an insurer that is specifically designated as a hedge as required by state insurance statutory accounting rules be allowed to remain outstanding and not be subject to portfolio compression rules.

MetLife also strongly opposed any mandated compression of offsetting swap positions. MetLife believes that the safe harbor in the proposed rules for exclusion of swaps ''likely to increase significantly the risk exposure'' of a party is not sufficiently broad to protect a party's essential hedging transactions. MetLife recommended that MSPs and other end users be permitted to opt out of compression for transactions that are bona fide hedges. Specifically, MetLife stated that the compression requirements may conflict with state insurance laws governing allocation of hedging transactions to specific assets and liabilities. MetLife concurred with other commenters in urging the Commission to exclude insurance companies from any mandatory portfolio compression requirement.

On the other hand, Eris Exchange stated that it has clearly heard that the swap trading community welcomes the Commission's proposed compression rule. Eris Exchange believes the end user community is optimistic that financial reform will lead to greater position netting and the ability to more

freely unwind aged swap trades without having to go through a cumbersome novation process involving substantial operational burden and negotiated up-front payments.

Having considered these comments, the Commission notes that, as discussed above, the rule has been modified to require SDs and MSPs to establish policies and procedures for engaging in portfolio compression with non-SDs and non-MSPs when requested by such counterparties. The Commission believes this change addresses the comments of non-SDs and non-MSPs discussed above.

6. Application of Portfolio Compression by Asset Class

Proposed § 23.503 applied uniformly to all swaps, regardless of asset class. The Commission requested comment regarding whether the compression requirement should be restricted to particular asset classes.

ISDA commented that compression in asset classes other than credit and interest rates would be extremely costly and the benefits would be limited. ISDA stated that the industry will need to develop practices for each additional asset class because methods used in one asset class are not portable to other asset classes with distinct characteristics. ISDA specifically recommended that the following asset classes be excluded from any compression requirements:

- Foreign exchange swaps, which achieve compression through daily trade aggregation in CLS and have short tenors;
- Equity derivatives, because they are broadly positional in nature, there is a lack of standardization, and they are broadly hedged; and
- Commodity derivatives, because notional amounts are low and compression may only be worthwhile for oil and precious metals.

GFED also recommended that the Commission exclude foreign exchange swaps from the portfolio compression requirements as most foreign exchange swaps are short dated (i.e., three to six months average, one month for options) and the costs of implementation likely outweigh the limited benefits.

As noted above, Markit stated that portfolio compression was recently attempted in the commodities and foreign exchange asset classes, but was not pursued further because the trial cycles had limited success.

As discussed above, the Commission has modified the rule to remove the mandatory compression requirement and replace it with a requirement that SDs and MSPs establish policies and procedures for the regular evaluation of compression opportunities with other SDs and MSPs, when appropriate, and for engaging in compression with non-SDs and non-MSPs upon request. The Commission believes this change addresses commenters' concerns regarding the inappropriate or inefficient application of portfolio compression to certain asset classes.

7. Bilateral Uncleared Swap Portfolio Compression—§ 23.503(b)

Proposed § 23.503(b) required SDs and MSPs to engage in bilateral portfolio compression exercises at least once every calendar year with their swap counterparties that were also SDs or MSPs, unless the SD or MSP participated in a multilateral compression exercise in which such counterparties also participated.

With respect to this proposal, ISDA commented that the move to clearing will reduce the need for bilateral/uncleared trade compression because most fungible, liquid products in the credit and rates markets will be in DCOs.

The Commission believes that the changes to the proposed rule discussed above will address commenters' concerns regarding the inefficient application of portfolio compression to uncleared swaps. Specifically, the rule as adopted will not require SDs and MSPs to engage in bilateral compression, but only require that registrants establish policies and procedures for periodically engaging in such compression where appropriate.

8. Termination of Fully-Offsetting Bilateral Swaps—§ 23.503(a)

Proposed § 23.503(a) required SDs and MSPs to terminate fully offsetting swaps with other SDs or MSPs no later than the close of business on the business day following the day the fully offsetting swap was executed.

Commenting on this proposal, The Working Group stated that an SD or MSP with a regulatory requirement for functional separation may have legitimate reasons for maintaining offsetting long and short positions, thus the Commission should not mandate termination of fully-offsetting swaps, but only require that registrants have policies and procedures for termination of such swaps in appropriate circumstances. The Working Group also argued that requiring registrants to run and monitor daily systems for the detection of completely offsetting swaps where there are likely to be none is unnecessarily burdensome. Finally, The Working Group believes that the one business day time period for terminating fully-offsetting swaps is unnecessarily burdensome and should be revised to allow for one week.

ISDA believes the requirement for registrants to terminate fully-offsetting swaps between registrants to be unnecessary because such swaps are not sources of material risk. ISDA believes compliance with the rule would be extremely difficult and expensive to implement as compliance will require new processes to identify single offsetting trades. In addition, ISDA stated that perfectly offsetting swaps are not common and recommends the Commission clarify whether only perfect offsets are required to be terminated.

The Commission finds these comments persuasive and is modifying the rule to require only that SDs and MSPs establish policies and procedures to terminate fully offsetting swaps with other SDs and MSPs in a timely fashion, where appropriate. The Commission believes this modification allows SDs and MSPs to design policies and procedures that permit the maintenance of offsetting long and short positions for legitimate business reasons.[45] The Commission has also determined to remove the one-day termination requirement as a cost-saving measure and to replace it with the phrase ''in a timely fashion.''

9. Compression of Cleared Swaps

The proposed regulation did not differentiate between cleared swaps and uncleared swaps.

In this respect, ISDA believes that no compression requirement should attach to cleared trades, but, in the alternative, ISDA recommended the Commission clarify that complying with a DCOs compression requirements will satisfy the compression requirements of the proposed rule. Likewise, MFA stated that end users should not be required to engage in multilateral portfolio compression for cleared swaps.

Having considered these comments, and in light of the portfolio compression requirements under the Commission's regulations for DCOs,[46] the Commission has concluded that it is unnecessary to apply the requirements of this rule to swaps that are cleared by a DCO and has modified the rule accordingly. The Commission notes that this change is parallel to the portfolio reconciliation

[45] Compare with ESMA Draft Technical Standards, Article 3 RM, subsection 3, (stating that ''counterparties shall terminate each of the fully offset OTC derivative contracts not later than when the compression exercise is finalized.'')

[46] *See* 17 CFR 39.13(h)(4), Derivatives Clearing Organization General Provisions and Core Principles, 76 FR 69334, 69383 (Nov. 8, 2011).

rule, which also does not apply to swaps cleared by a DCO.

10. Mandatory Multilateral Compression Offered by a DCO or SRO—§ 23.503(c)(2)

Proposed § 23.503(c)(2) required SDs and MSPs to participate in all multilateral portfolio compression exercises offered by a DCO of which the SD or MSP is a member or an SRO of which the SD or MSP is a member.

Commenting on this aspect of the proposal, both ISDA and TriOptima stated that mandating compression offered by a DCO or SRO will inhibit competition among providers of compression services. ISDA is concerned that members of DCOs and SROs may become bound to compression services with inadequate transparency, insufficient testing and lack of price competition. ISDA recommends that the Commission permit registrants to select the compression service provider, including for DCO or SRO-mandated compression exercises.

As discussed above, the Commission has removed the mandatory compression requirements from the rule as adopted. Nonetheless, in response to these comments, the Commission agrees that the rule should not demonstrate a preference for any type of compression services provider and has accordingly modified the rule to require SDs and MSPs to evaluate multilateral compression exercises initiated, offered, or sponsored by any third party. This change also comports with the decision to change the final DCO rules to provide for voluntary participation in compression exercises.

11. Risk Tolerances in Multilateral Portfolio Compression—§ 23.503(c)(3)(ii)

Proposed § 23.503(c)(3)(ii) permitted SDs and MSPs to establish counterparty, market, cash payment, and other risk tolerances, and to exclude specific potential counterparties for the purposes of multilateral compression exercises.

Commenting on this aspect of the proposal, The Working Group recommended that the Commission grant market participants broad discretion when setting ''risk tolerances'' for multilateral compression exercises, including:

- A broad array of risks for which swaps may be excluded from the exercise (e.g., regulatory risk, financial statement risk);
- The ability to express preference for preserving swaps with one counterparty over another for credit risk management purposes; and
- The ability to require that only identical swaps and not substantially similar swaps can be compressed.

Having removed the mandatory multilateral compression requirement from the rule, the Commission has also removed the portions of the rule related to setting risk tolerances. However, under the revised rule, SDs and MSPs must establish policies and procedures for engaging in multilateral compression exercises, and the Commission expects that these policies and procedures will address how the SD and MSP would determine which swaps to include and exclude from compression exercises and what risk tolerances it would accept. The Commission believes that this change addresses commenters' concerns regarding the discretion to determine risk tolerances in multilateral compression exercises.

12. Portfolio Compression Service Provider Standards

The proposed regulations did not prescribe standards for portfolio compression service providers, and Markit recommended that, due to the complexity of multilateral compression exercises, the Commission establish standards for compression service providers to ensure competency, timely service, and sufficient resources. The process for choosing compression service providers should be fair and open. Freddie Mac urged the Commission to closely scrutinize the necessity and propriety of the terms of business demanded by prospective service providers (including SDRs, SEFs and DCOs) and disapprove overreaching terms such as open-ended indemnification, disclaimer of liability, assertions of ownership over transactional data, and other intellectual property of service users.

Given that the rule as adopted no longer contains a mandatory compression requirement, the Commission believes that these comments regarding standards for service providers and overreaching terms are best addressed by competition in the market for providers of compression services.

13. Recordkeeping Requirement for Portfolio Compression—§ 23.503(e)

Propose § 23.503(e) required SDs and MSPs to maintain records of each bilateral and multilateral compression exercise, including dates, the swaps included in the exercise, the eligible swaps excluded from the exercise and the reason for such exclusion, the counterparty and risk tolerances specified for the exercise, and the results of the exercise. ISDA commented that the recordkeeping requirement for portfolio compression is too prescriptive in its detail. The Commission is modifying the rule to require simply that SDs and MSPs maintain complete and accurate records of all compression exercises. As a matter of good practice, the Commission anticipates that market participants will make and maintain all necessary records of any swaps that are netted down, new swaps entered into, and any swaps that are submitted for compression but not compressed. In addition, the Commission observes that the rule does not prohibit SDs and MSPs from relying on third-party service providers to achieve compliance with the rule, although the responsibility for compliance cannot be delegated.

III. Effective Dates and Compliance Dates

In the Documentation NPRM and Confirmation NPRM, the Commission requested comment on the length of time necessary for registrants to come into compliance with the proposed rules. As discussed further below, the Commission also proposed a compliance schedule, § 23.575, for swap trading relationship documentation, § 23.504, in a separate release in September 2011.

A. Comments Regarding Compliance Dates

1. Documentation NPRM

With respect to § 23.504, The Working Group recommended that the Commission delay promulgating rules on swap documentation until it has finalized all required rules to be issued under the Dodd-Frank Act and can fully analyze the potential effect of documentation rules on the swap markets, or, in the alternative, adopt a general framework with an extended period of time for implementation to allow market participants to design appropriate documentation standards. Further, if the Commission should decide to make the proposed rules applicable to existing transactions, then The Working Group recommended that the Commission provide a short term safe-harbor for existing transactions and give the market 36 months to come into compliance. If the Commission should decide not to make the proposed rules applicable to existing transactions, then The Working Group recommended that the Commission give the market 12 months to come into compliance.

ISDA & SIFMA requested that the Commission defer proposing an implementation timeline until the

Commission's rules and the SEC's rules relating to trading documentation are fully developed and the industry has been given the opportunity to address implementation issues with the Commission at that time.

FSR believes that the renegotiation of existing documentation would take significantly longer than six months and urged the Commission to recognize that negotiation of new credit support arrangements, including third-party custody arrangements, will be particularly time-consuming and thus requested that the Commission provide an appropriately long implementation timeframe. The Coalition of Derivatives End-Users proposed a period of not less than two years for implementation for end users because it is unclear how each SD and MSP would seek to implement changes to comply with swap documentation rules for both existing and new swaps. The Coalition believes this period of time will allow for discussions and negotiations across all swap counterparty relationships.

IECA recommended that a long implementation period be provided. Otherwise, SDs will have an advantage because they have more resources to apply than end users and it is likely that any standard amendment would come from industry groups such as ISDA, which primarily represents the interests of SDs. CIEBA is also concerned that a deadline for SDs and MSPs to bring their documentation into compliance would allow SDs and MSPs to present buy-side participants with a newly standardized set of documentation, and would result in buy-side participants having insufficient input into the substance of the documentation. CIEBA also noted that a number of its members reported that it is not uncommon for SDs to take up to a year to finalize an ISDA agreement with a pension plan fiduciary. If SDs were required to revise all their swap agreements, CIEBA believes that it could take years.

In contrast to the foregoing comments, Michael Greenberger commented that since many dealers already use documentation that will comply with the regulations, allowing a maximum of thirty days to comply with the rules following adoption should suffice.

In addition to the foregoing comments, the Commission received comments with respect to proposed compliance schedules for a number of proposed rules, including § 23.504.[47] In September 2011, the Commission proposed four compliance schedules for four separate provisions of the Dodd-Frank Act, including: (i) The clearing requirement; (ii) the trade execution requirement; (iii) trading documentation under section 4s; and (iv) margining requirements for uncleared swaps.[48] In its proposal, Swap Transaction Compliance and Implementation Schedule: Trading Documentation and Margining Requirements under Section 4s of the CEA, (Implementation Schedule NPRM), the Commission stated that the proposed compliance schedule for § 23.504 was designed to afford affected market participants a reasonable amount of time to bring their transactions into compliance with the requirements of the rule and to provide relief in the form of additional time for compliance. The schedule was intended to facilitate the transition to the new regulatory regime established by the Dodd-Frank Act in an orderly manner that does not unduly disrupt markets and transactions. To this end, the Commission proposed § 23.575, under which an SD or MSP would be afforded ninety (90), one hundred eighty (180), or two hundred and seventy (270) days to bring its swap trading relationship documentation with its various counterparties into compliance with the requirements of § 23.504, depending on the identity of each such counterparty. In the proposal, market participants that are financial entities, as defined in section 2(h)(7)(C) of the CEA, were grouped into the following four categories:

- Category 1 Entities included SDs, security-based swap dealers, MSPs, major security-based swap participants, and active funds (defined as any private fund as defined in section 202(a) of the Investment Advisers Act of 1940), that is not a third-party subaccount and that executes 20 or more swaps per month based on a monthly average over the 12 months preceding this adopting release.
- Category 2 Entities included commodity pools; private funds as defined in section 202(a) of the Investment Advisers Act of 1940 other than active funds; employee benefit plans identified in paragraphs (3) and (32) of section 3 of the Employee Retirement Income and Security Act of 1974; or persons predominantly engaged in activities that are in the business of banking, or in activities that are financial in nature as defined in section 4(k) of the Bank Holding Company Act of 1956, provided that the entity is not a third-party subaccount.
- Category 3 Entities include Category 2 Entities whose positions are held as third-party subaccounts.
- Category 4 Entities includes any person not included in Categories 1, 2, or 3.

Proposed § 23.575 required SDs and MSPs to be in compliance with § 23.504 no later than 90 days after publication of the final rule in the **Federal Register** for swap transactions with a Category 1 Entity, no later than 180 days after publication for swap transactions with a Category 2 Entity, and no later than 270 days after publication for swap transactions with a Category 3 Entity or Category 4 Entity.

The Commission received approximately 19 comments with respect to the compliance phasing proposal, each of which it considered in finalizing the compliance dates for the rule, as discussed below.

a. Definition of ''Active Fund''

The proposal defined ''active fund'' as ''any private fund as defined in section 202(a) of the Investment Advisers Act of 1940, that is a not a third party subaccount and that executes 20 or more swaps per month based on a monthly average over the 12 months preceding * * *.''

Commenting on this definition, the Association of Institutional Investors (AII) stated that basing the definition on an average of 20 swap transactions per month is arbitrary. AII believes that the Commission should collect data under swap transaction reporting rules and then make a determination, but, in the alternative, AII recommended that the threshold be higher and that the definition specify the type of swaps that count towards the threshold. FIA/ISDA/SIFMA and Vanguard also commented that the average monthly threshold should be raised, and recommended that the threshold be raised to include only those funds averaging more than 200 transactions per month.

MFA recommended that the definition be eliminated because it is over-inclusive, difficult to administer, and unnecessarily divides the class of buy-side market participants. Under MFA's view, all private funds should be Category 2 Entities. If the Commission does not delete the definition, MFA

[47] *See* Swap Transaction Compliance and Implementation Schedule: Trading Documentation and Margining Requirements under Section 4s of the CEA, 76 FR 58176 (Sept. 20, 2011) (Implementation Schedule NPRM).

[48] The trading documentation and margining requirements compliance schedules were proposed in one release. *See id.* The clearing requirement and trade execution requirement were proposed in another release, Swap Transaction Compliance and Implementation Schedule: Clearing and Trade Execution Requirements under Section 2(h) of the CEA, 76 FR 58186 (Sept. 20, 2011). The Commission finalized the compliance schedule for the clearing requirement on July 24, 2012. *See* Swap Transaction Compliance and Implementation Schedule: Clearing Requirement Under Section 2(h) of the CEA, 77 FR 44441 (July 30, 2012). The compliance schedules for margin for uncleared swaps and the trade execution requirement will be finalized separately.

requested clarification regarding those swaps that are to be included in the calculation, e.g., novations, amendments, partial tear-ups, etc.

On a different tack, FSR stated that the definition of ''active fund'' is unclear and needs further clarification to distinguish between active fund and ''third-party subaccount.'' FSR represented that its fund manager members believe that most (if not all) entities that would fall into the term ''active fund'' would also constitute ''third-party subaccounts.''

The American Council of Life Insurers (ACLI) commented that the frequency of trading is not an appropriate indicator of experience or available resources for determining which entities can comply most quickly. Similarly CDE recommended a minimum notional amount monthly average threshold to avoid capturing smaller end-users and excluding hedges and inter-affiliate swaps from the monthly average threshold.

On the other hand, Better Markets and Chris Barnard supported the proposal, stating that average monthly trading volume is the appropriate proxy for determining an entity's ability to comply with the proposed implementation schedule and is better than notional volume.

The Alternative Investment Management Association (AIMA) also believes that the average number of swaps executed during the previous 12 months is a good proxy for determining what is an active fund, but recommended that the definition should include private funds regardless of whether they are a third party subaccount or not. Otherwise, private funds that are not subaccounts will be disadvantaged relative to those that are, in terms of the cost of entering into swaps during the course of the implementation schedule. AIMA considered alternatives to the definition but believes that instituting an ''assets under management'' threshold for the definition of active fund may be problematic, as notwithstanding such a threshold, a manager may invest in other types of financial instruments such that they do not in fact have the experience or resources to more quickly comply with the regulations. AIMA also believes that commodity pools that are not private funds, but that execute 20 or more swaps on average per month, should be included in the definition.

Having considered the comments received, the Commission believes that the definition of ''active fund'' appropriately uses a transaction-based trigger to distinguish between funds more active in the swaps market and those that are less so. However, in response to comments that an average of 20 transactions per month may be overly inclusive and may cause some smaller entities, less well-positioned for compliance with shorter implementation timeframes, to fall within the definition. Accordingly, the Commission has determined to raise the threshold to 200 swap transactions on average per month so as to ensure only more active participants in the market are included within the definition. The Commission also agrees with commenters that establishing an appropriate minimum notional amount applicable to all participants in the swap market, or assets under management standard, to be impracticable.

However, the Commission does not believe it is appropriate to create exclusions for the types of swap transactions within the definition given the administrative burdens of monitoring such distinctions for purposes of the proposed implementation schedule. In response to commenters seeking clarification of what types of swap transactions are to be included in the monthly calculation, the Commission notes that the proposed implementation schedule, and the compliance dates adopted in this release, both refer to ''swaps'' and not ''swap transactions.'' ''Swap transaction'' is defined in § 23.500 to include assignments, novations, amendments, and other events that § 23.501 requires to be documented by confirmation. Therefore, in response to commenter's concerns, the Commission confirms that the active fund threshold of 200 swaps per month refers to ''swaps'' as defined in section 1a(47) of the CEA and Commission regulations, but would not include assignments, novations, amendments, or like events that occur with respect to existing swaps.

b. Definition of ''Third-party Subaccount''

The Implementation Schedule NPRM defined ''third-party subaccount'' to mean ''a managed account that requires the specific approval by the beneficial owner of the account to execute documentation necessary for executing, confirming, margining or clearing swaps.'' Third-party subaccounts were designated as Category 3 Entities, whereas other funds were designated Category 1 or Category 2 Entities.

With respect to this definition, AII commented that the definition is too narrow given the administrative work required in managing an account, regardless of the execution authority. Further, AII stated that execution authority is not an industry standard, and thus divides the universe of separate accounts inappropriately. Similarly, the Investment Company Institute (ICI) stated that third party subaccounts, whether subject to the specific execution authority of the beneficiary or not, require managers to work closely with clients when entering into trading agreements on the customer's behalf. As such, no distinction should be made based on specific execution authority or lack thereof, and that all third party accounts should be uniformly classified as Category 3 Entities, allowing for a 270 day compliance period.

FIA/ISDA/SIFMA also recommended that all accounts managed for third parties, regardless of the execution authority, should be in the Category 3 Entity implementation phase. FIA/ISDA/SIFMA recommended that the Commission adopt a definition of ''third-party fund'' that is any fund that is not a private fund and is sub-advised by a subadvisor that is independent of and unaffiliated with the fund sponsor. A ''third-party subaccount'' would be defined as any account that is not a fund and is managed by an asset manager, irrespective of the level of delegation granted by the account owner by the account owner to the asset manager.

Based on the comments received, the Commission is revising the definition of Third-Party Subaccount to mean an account that is managed by an investment manager that (1) is independent of and unaffiliated with the account's beneficial owner or sponsor, and (2) is responsible for the documentation necessary for the account's beneficial owner to document swaps as required under section 4s(i) of the CEA. In modifying this definition, the Commission is taking into account the point made by AII, FIA/ISDA/SIFMA, and ICI that all investment managers will need additional time to comply with the trading documentation requirements regardless of whether they have explicit execution authority. However, the definition retains the nexus between the investment manager and the documentation needed for swaps under section 4s(i) of the CEA. In other words, if the investment manager has no responsibility for documenting the swap trading relationships, then that account would be required to come into compliance with the documentation requirements within 180 days. For those accounts under the revised definition, however, the Commission believes that the 270-day deadline is more appropriate. Given the general notice that investment managers have had

about the Dodd-Frank Act's documentation requirements for SDs and MSPs since the enactment of the statute in July, 2010, managers should have been able to consider and plan the infrastructure and resources that are necessary for all of their accounts, including Third-Party Subaccounts, to comply with the documentation requirements. Thus, the 180- and 270-day deadlines should provide adequate time to accommodate all managed accounts.

c. Definitions of Categories of Entities

The Commission received several comments with respect to the definitions of the categories of entities to which the proposed implementation schedules applied.

Encana and EEI, National Rural Electric Cooperative Association, and Electric Power Supply Association (Joint Associations) believe that the definition of Category 4 Entity under the proposed implementation schedules should expressly include non-financial end users.

The Coalition for Derivatives End-Users argued that financial end-users should be treated identically to non-financial end-users because they do not pose systemic risk, and therefore, should be given the most time to comply with the requirements.

ICI requested clarification that a market participant can determine whether it is an MSP for purposes of the proposed implementation schedules at the same time that it is required to review its status as an MSP under other Commission and SEC rules.

CIEBA requested that in-house ERISA funds should be in the group with the longest compliance time, and not Category 2 Entities, arguing that these funds are not systemically risky, and they typically rely upon third-party managers for some portion of their fund management. Splitting in-house and external accounts (i.e., those accounts meeting the Implementation Schedule NPRM's definition of third-party subaccount and which are therefore Category 3 Entities) of the same ERISA plan will impact risk management given different implementation schedules. The distinction will also cause pension funds to bear the costs of compliance because they will need to comply prior to their third party managers who would be better positioned to provide insight and services in this regard.

The Commission considered the foregoing comments, and has determined to modify the category definitions in certain respects. In response to Encana and the Joint Associations, non-financial entities are clearly included amongst Category 4 Entities and SDs and MSPs are given 270 days to comply with the documentation requirement with respect to such entities.

With respect to issues raised by the Coalition for Derivatives End-Users regarding those financial entities included in Category 2, the Commission believes that those entities have been correctly categorized based upon the distinction between financial and non-financial entities under section 2(h)(7) of the CEA. The Commission believes that, just as Congress has required financial entities to be subject to required clearing due to their importance to the financial system, SDs and MSPs should be required to meet the documentation requirements of § 23.504 with such entities prior to being required to meet such documentation requirements with non-financial entities. However, the definition of Category 2 Entity is modified by removing the reference to ERISA plans. The Commission recognizes the concerns raised by CIEBA regarding splitting in-house and external accounts (i.e., those accounts meeting the definition of Third-Party Subaccount and permitted 270 days) of the same ERISA plan. In response to these concerns, the Commission is removing the reference to employee benefit plans as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income and Security Act of 1974. As a result, these ERISA plans will be afforded the longest compliance period (270 days).

In response to the comment from ICI, the Commission confirms that a potential MSP may be able to review its obligation to register as an MSP at the same time it is reviewing where it fits under the compliance dates adopted in this release depending on the nature and scope of an MSP's swaps activities. The Commission notes that its rule further defining MSP was published on May 23, 2012, and its rule further defining ''swap'' was published on August 13, 2012, so potential MSPs will necessarily have to review their registration obligations ahead of complying with the compliance dates adopted herein. However, if an entity discovers that it has crossed the threshold established under the MSP rules and is required to register during the 90-day period for Category 1 Entities, the Commission would permit that entity to petition for additional time to come into compliance with the § 23.504.[49]

d. Proposed Implementation Schedule

As outlined above, proposed § 23.575 required SDs and MSPs to be in compliance with § 23.504 no later than 90 days after publication of the final rule in the **Federal Register** for swap transactions with a Category 1 Entity, no later than 180 days after publication for swap transactions with a Category 2 Entity, and no later than 270 days after publication for swap transactions with a Category 3 Entity or Category 4 Entity.

With respect to the proposed schedule, FIA/ISDA/SIFMA believes that the proposed implementation schedule should be lengthened because of the significant burden associated with the documentation requirements. FIA/ISDA/SIFMA argued that it would be impossible to begin complying with all of the documentation requirements of § 23.504 at the same time.

AII stated that the proposed implementation schedule does not provide enough time for institutional investment advisors to comply given the volume of document negotiations that will need to occur concurrently, as well as operational changes required by the Commission and other regulators under the Dodd-Frank Act. AII argued that institutional investment advisers also will face special challenges trying to allocate block trades across multiple categories of counterparty, and managing multiple implementation schedules. AII believes that tight timeframes will create an imbalance in negotiations with smaller counterparties at risk of being ''shut out of the market'' if they do not accept terms of the dealer community. AII therefore recommended that all market participants should have 18 months to come into compliance after the rules have been finalized.

Encana believes non-financial end users should get more time to comply with the regulations given less familiarity with Commission regulations and the need to develop and implement policies and procedures.

CDE stated that it is unlikely that end-users and other entities relied on by end-users will be able to meet the requirements § 23.504 if the requirements are imposed on all swaps at the same time.

Chris Bernard generally agreed with the proposed implementation schedule, though he believes that documentation relating to the swap valuation provisions of § 23.504(b)(4) should be prioritized within the compliance schedule.

[49] Similarly, the Commission would consider allowing entities to petition for additional time to comply to the extent that they discover that they have exceeded the *de minimis* threshold under the swap dealer definition and are required to register during the 90-day period for Category 1.

The California Public Employees' Retirement System, the Colorado PERA, the Missouri State Employees' Retirement System, the Teacher Retirement System of Texas, and the State of Wisconsin Investment Board recommended a one year phase-in for pension funds because the strict procedures that exist to protect their participants may hamper their ability to more quickly make the required changes to documents and procedures.

FSR commented that compliance periods should be substantially longer, with Category 2 lasting at least a year, and not starting until a significantly longer Category 1 has completed. As smaller market participants face the risk of accepting unsuitable terms or being shut out of the market given the tight timeframes and lack of resources, additional time should be granted to entities hedging in the ordinary course of business.

ICI stated that implementation should be longer, such as 18–24 months to accommodate all of the changes that are necessary in the market, arguing that too short a deadline will disadvantage smaller market participants who may be shut out of the market. ICI also recommended that the proposed implementation schedules should only begin after all related rules are finalized.

ACLI stated that 180 days for Category 2 Entities is insufficient for insurance companies that will need to work with state regulators on changes to operations, to negotiate documents of first impression, especially given the scope of the documentation to be negotiated or changed.

The Commission acknowledges the concerns of commenters regarding negotiation imbalances if the scope of documentation to be changed is large, but believes that, with the modifications to the rules outlined above, most market participants will have documentation already in place that either meets the requirements of the rule or could meet such requirements with relatively modest amendments. Thus, the Commission believes that these changes plus the staggered timeframes of the compliance dates adopted in this release adequately address the concerns of commenters regarding the time and effort necessary to complete the necessary documentation.

2. Confirmation NPRM

With respect to §§ 23.501, 23.502, and 23.503 generally, GFED argued that the Commission should not implement the proposed rules prior to Treasury determining which foreign exchange products are subject to the proposed rules to avoid unnecessary costs and burdens, while MFA believes that the Commission should evaluate the notable differences in experience and resources of market participants related to post-trade processes prior to publishing final rules. MFA believes that the Commission's goals would be best served, and market disruption avoided, by providing market participants with additional time to design, test, and implement processes required to comply with the proposed rules.

Specifically with respect to § 23.501, MarkitSERV believes that the rules should be phased in based on a product-by-product analysis of complexity and average time to confirm similar transactions, while Chatham believes the confirmation requirements should be phased-in over 6 to 12 months and that non-SDs and non-MSPs should be the last participants required to comply with the rules. In addition, ISDA provided the Commission with details of the current percentage of transactions electronically traded and confirmed, voice traded and electronically confirmed, voice traded and manually confirmed, and electronically traded and manually confirmed by eight large dealers in the five major swap asset classes (credit, rates, commodities, foreign exchange, and equity derivatives). ISDA provided the Commission with a break-down of this data showing time to confirmation by asset class, and the differences between electronic confirmation in dealer-to-dealer transactions versus transactions with other counterparty types.

Specifically with respect to § 23.502, Chatham recommended that the Commission provide end-users with at least six months to one year to comply with the proposed reconciliation rules, while the OCC stated that many SDs will not be among the G–14 largest OTC derivatives dealers and, given the incremental progression that was necessary for the G–14 OTC derivatives dealers to develop the infrastructure necessary to increase reconciliation amongst themselves from weekly reconciliation for portfolios with 5,000 or more trades in 2008 to the current daily reconciliation for portfolios of 500 or more trades, the Commission must provide sufficient time for all registrants to develop the required infrastructure.

With respect to § 23.503, ISDA urged the Commission to consider a long phase-in period for any compression requirement due to significant administrative and logistical issues.

B. Compliance Dates

Having considered the comments received, the Commission is adopting the effective and compliance dates as set forth below.

1. Swap Trading Relationship Documentation—§ 23.504

The effective date of § 23.504 will be the date that is 60 days after publication of the final rules in the **Federal Register**.

The Commission proposed a compliance schedule, § 23.575, but has determined not to finalize its schedule in the form of a rule. Rather, compliance periods are outlined below. With respect to swap transactions with SDs, security-based swap dealers, MSPs, major security-based swap participants, or any private fund, as defined in section 202(a) of the Investment Advisers Act of 1940, that is not a third-party subaccount (defined below) and that executes 200 or more swaps per month based on a monthly average over the 12 months preceding this adopting release (active funds), SDs and MSPs must comply with § 23.504 by January 1, 2013.

With respect to swap transactions with commodity pools; private funds as defined in section 202(a) of the Investment Advisers Act of 1940 other than active funds; or persons predominantly engaged in activities that are in the business of banking, or in activities that are financial in nature as defined in section 4(k) of the Bank Holding Company Act of 1956, provided that the entity is not an account that is managed by an investment manager that (1) is independent of and unaffiliated with the account's beneficial owner or sponsor, and (2) is responsible for the documentation necessary for the account's beneficial owner to document swaps as required under section 4s(i) of the CEA (third-party subaccounts), SDs and MSPs must comply with § 23.504 by April 1, 2013.

With respect to swap transactions with any other counterparty, SDs and MSPs must comply with § 23.504 by July 1, 2013.

2. Swap Confirmation—§ 23.501

The effective date of §§ 23.500 and 23.501 will be the date that is 60 days after publication of the final rules in the **Federal Register**.

With respect to confirmation, the Commission is establishing an implementation schedule in the rule, differentiated by swap asset class. For credit swaps and interest rate swaps (including cross-currency swaps), SDs and MSPs will be required to confirm swap transactions with other SDs and MSPs as soon as technologically practicable, but in any event by the end of the second day after the day of execution until February 28, 2014. After

February 28, 2014, SDs and MSPs must comply with the requirements of paragraph (a)(1).

For equity swaps, foreign exchange swaps, and other commodity swaps, SDs and MSPs will be required to confirm swap transactions with other SDs and MSPs as soon as technologically practicable, but in any event by the end of the third day after the day of execution until August 31, 2013. For the period between September 1, 2013 and August 31, 2014, SDs and MSPs will be required to confirm equity, foreign exchange, and other commodity swap transactions with other SDs and MSPs as soon as technologically practicable, but in any event by the end of the second day after the day of execution. After August 31, 2014, SDs and MSPs must comply with the requirements of paragraph (a)(1).

For credit and interest rate swap transactions (including cross-currency swaps) with counterparties that are not SDs or MSPs, SDs and MSPs will be required to send an acknowledgement of swap transactions as soon as technologically practicable, but in any event by the end of the first day after the day of execution until February 28, 2014. After February 28, 2014, SDs and MSPs must comply with the requirements of paragraph (a)(2).

For equity, foreign exchange, and other commodity swap transactions with counterparties that are not SDs or MSPs, SDs and MSPs will be required to send an acknowledgement of swap transactions as soon as technologically practicable, but in any event by the end of the second day after the day of execution until August 31, 2013. For the period between September 1, 2013 and August 31, 2014, SDs and MSPs will be required to send an acknowledgement of equity, foreign exchange, and other commodity swap transactions with counterparties that are not SDs or MSPs as soon as technologically practicable, but in any event by the end of the first day after the day of execution. After August 31, 2014, SDs and MSPs must comply with the requirements of paragraph (a)(2).

For credit and interest rate swap transactions (including cross-currency swaps) with financial entities, SDs and MSPs will be required to establish policies and procedures reasonably designed to ensure that they confirm swap transactions as soon as technologically practicable, but in any event by the end of the second day after the day of execution until February 28, 2014. After February 28, 2014, SDs and MSPs must comply with the requirements of paragraph (a)(3)(i).

For equity, foreign exchange, and other commodity swap transactions with financial entities, SDs and MSPs will be required to establish policies and procedures reasonably designed to ensure that they confirm swap transactions as soon as technologically practicable, but in any event by the end of the third day after the day of execution until August 31, 2013. For the period between September 1, 2013 and August 31, 2014, SDs and MSPs will be required to establish policies and procedures reasonably designed to ensure that they confirm equity, foreign exchange, and other commodity swap transactions with financial entities as soon as technologically practicable, but in any event by the end of the second day after the day of execution. After August 31, 2014, SDs and MSPs must comply with the requirements of paragraph (a)(3)(i).

For credit and interest rate swap transactions (including cross-currency swaps) with counterparties that are not SDs, MSPs, or financial entities, SDs and MSPs will be required to establish policies and procedures reasonably designed to ensure that they confirm swap transactions as soon as technologically practicable, but in any event by the end of the fifth day after the day of execution until August 31, 2013. For the period between September 1, 2013 and August 31, 2014, SDs and MSPs will be required to establish policies and procedures reasonably designed to ensure that they confirm credit and interest rate swap transactions with counterparties that are not SDs, MSPs, or financial entities as soon as technologically practicable, but in any event by the end of the third day after the day of execution. After August 31, 2014, SDs and MSPs must comply with the requirements of paragraph (a)(3)(ii).

For equity, foreign exchange, and other commodity swap transactions with counterparties that are not SDs, MSPs, or financial entities, SDs and MSPs will be required to establish policies and procedures reasonably designed to ensure that they confirm swap transactions as soon as technologically practicable, but in any event by the end of the seventh day after the day of execution until August 31, 2013. For the period between September 1, 2013 and August 31, 2014, SDs and MSPs will be required to establish policies and procedures reasonably designed to ensure that they confirm equity, foreign exchange, and other commodity swap transactions with counterparties that are not SDs, MSPs, or financial entities as soon as technologically practicable, but in any event by the end of the fourth day after the day of execution. After August 31, 2014, SDs and MSPs must comply with the requirements of paragraph (a)(3)(ii).

Solely for purposes of the implementation schedule applicable to § 23.501, swaps are divided into the following asset classes:

Credit swap means any swap that is primarily based on instruments of indebtedness, including, without limitation: Any swap primarily based on one or more broad-based indices related to instruments of indebtedness; and any swap that is an index credit swap or total return swap on one or more indices of debt instruments.

Equity swap means any swap that is primarily based on equity securities, including, without limitation: Any swap primarily based on one or more broad-based indices of equity securities; and any total return swap on one or more equity indices.

Foreign exchange swap has the meaning set forth in section 1a(25) of the CEA. It does not include swaps primarily based on rates of exchange between different currencies, changes in such rates, or other aspects of such rates (sometimes known as ''cross-currency swaps'').

Interest rate swap means any swap which is primarily based on one or more interest rates, such as swaps of payments determined by fixed and floating interest rates; or any swap which is primarily based on rates of exchange between different currencies, changes in such rates, or other aspects of such rates (sometimes known as ''cross-currency swaps'').

Other commodity swap means any swap not included in the credit, equity, foreign exchange, or interest rate asset classes, including, without limitation, any swap for which the primary underlying item is a physical commodity or the price or any other aspect of a physical commodity.

3. Portfolio Reconciliation & Portfolio Compression

The effective date of §§ 23.502 and 23.503 will be the date that is 60 days after publication of the final rules in the **Federal Register**.

With respect to § 23.502 (Portfolio Reconciliation) and § 23.503 (Portfolio Compression), SDs and MSPs that are currently regulated by a U.S. prudential regulator or are registrants of the SEC must comply with §§ 23.502 and 23.503 by the date that is 90 days after publication of this final rule in the **Federal Register**. SDs and MSPs that are not currently regulated by a U.S. prudential regulator and are not registrants of the SEC must comply with

§§ 23.502 and 23.503 by the date that is 180 days after publication of this final rule in the **Federal Register**.

C. Compliance Date Extension for Certain Business Conduct Standards With Counterparties

ISDA members have requested that the Commission align the compliance dates for the provisions of subpart H of part 23 that involve documentation [50] with the trading relationship documentation rules in this release. ISDA members have represented that industry-led efforts are underway to facilitate compliance with new Dodd-Frank Act documentation requirements and an alignment of compliance dates would allow the most efficient transition to compliance with part 23's documentation requirements.[51]

The Commission has decided to defer the compliance dates for certain provisions of subpart H until January 1, 2013. Compliance with the following provisions will be deferred until January 1, 2013: §§ 23.402; 23.410(c); 23.430; 23.431(a)–(c); 23.432; 23.434(a)(2), (b), and (c); 23.440; and 23.450.[52] Compliance with all other provisions will continue to be required by October 15, 2012.

IV. Cost Benefit Considerations

Section 15(a) of the CEA [53] requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; [54] (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the Section 15(a) factors.

Under section 731 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Congress directed the Commission to ''adopt rules governing documentation standards for swap dealers and major swap participants.'' The statutory provision in question, section 4(s)(i)(1) of the CEA, laid out a broad and general directive relating to ''timely and accurate confirmation, processing, netting, documentation, and valuation of all swaps.'' In promulgating the final rules subject to this release, the Commission has taken its direction from the statutory text, but is exercising its discretion with regard to the specific requirements set forth in the rules—namely, to require SDs and MSPs to meet certain confirmation deadlines for their swap transactions with other SDs and MSPs, to have policies and procedures for confirming swap transactions with financial entities and non-financial entities within certain time periods, to engage in regular portfolio reconciliation and portfolio compression, and to ensure that their swaps are governed by appropriate trading relationship documentation.

In exercising its discretion, the Commission has taken into account a series of voluntary industry initiatives, including efforts to improve the confirmation, reconciliation, compression, documentation, and valuation of swaps, as well as the overarching goals of the Dodd-Frank Act: reducing systemic risk, increasing transparency, and promoting integrity within the financial system. As discussed below, these industry efforts provide a useful reference point for considering the Commission's action.

In the context of the relevant statutory provision and ongoing industry initiatives, in the sections that follow, the Commission discusses each requirement individually in light of cost-benefit issues raised by commenters and suggested alternatives. The Commission also summarizes and considers costs and benefits collectively for the set of confirmation, portfolio reconciliation, and portfolio compression rules, and separately for the swap trading relationship documentation rules.

A. Background

In the fall of 2008, an economic crisis threatened to freeze U.S. and global credit markets. The federal government intervened to buttress the stability of the U.S. financial system.[55] The crisis revealed the vulnerability of the U.S. financial system and economy to wide-spread systemic risk resulting from, among other things, poor risk management practices of financial firms and the lack of supervisory oversight for certain financial institutions as a whole.[56] More specifically, the crisis and the attendant failure of a series of large financial institutions demonstrated the need for direct regulation of the OTC derivatives markets.[57]

American International Group (AIG) is an example of how the stability of a large financial institution could be undermined by certain failures in risk management, internal controls with respect to trading positions, documentation, and valuation, AIG was a regulated U.S. insurance company nearly undone by its collateral posting obligations under swaps entered into by its subsidiary, AIG Financial Products (AIGFP). AIGFP suffered enormous losses from credit default swaps that it issued on certain underlying securities, which, because AIGFP's performance on such credit default swaps had been guaranteed by its parent, caused credit agencies to downgrade the credit rating of the entire AIG corporation. The downgrade triggered collateral calls and induced a liquidity crisis at AIG, which

[50] Subpart H of Part 23 of the Commission's Regulations, Business Conduct Standards for Swap Dealers and Major Swap Participants with Counterparties, 77 FR 9734, 9824 (Feb. 17, 2012).

[51] ISDA is partnering with Markit to launch a technology-based solution enabling counterparties to amend their OTC derivatives documentation quickly and efficiently to comply with Dodd-Frank regulatory requirements. *See http://www2.isda.org/dodd-frank-documentation-initiative/.*

[52] The Commission's decision to defer compliance does not reflect an endorsement of the industry-led effort, nor does it imply that the Commission has reviewed the documentation protocol for compliance with Commission rules. All market participants are subject to the new compliance dates regardless of whether they participate in the protocol.

[53] 7 U.S.C. 19(a).

[54] Although by its terms section 15(a)(2)(B) of the CEA applies to futures markets only, the Commission finds this factor useful in analyzing regulations pertaining to swap markets as well.

[55] On October 3, 2008, President Bush signed the Emergency Economic Stabilization Act of 2008, which was principally designed to allow the U.S. Treasury and other government agencies to take action to restore liquidity and stability to the U.S. financial system (e.g., the Troubled Asset Relief Program—also known as TARP—under which the U.S. Treasury was authorized to purchase up to $700 billion of troubled assets that weighed down the balance sheets of U.S. financial institutions). *See* Pub. L. 110–343, 122 Stat. 3765 (2008).

[56] *See* Financial Crisis Inquiry Commission, ''The Financial Crisis Inquiry Report: Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States,'' Jan. 2011, at xxvii, available at *http://www.gpo.gov/fdsys/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf* [hereinafter the FCIC Report].

[57] *See id.* at 25 (concluding that ''enactment of * * * [the Commodity Futures Modernization Act of 2000 (''CFMA'')] to ban the regulation by both the federal and state governments of over-the-counter (OTC) derivatives was a key turning point in the march toward the financial crisis.''). *See also id.* at 343 (''Lehman, like other large OTC derivatives dealers, experienced runs on its derivatives operations that played a role in its failure. Its massive derivatives positions greatly complicated its bankruptcy, and the impact of its bankruptcy through interconnections with derivatives counterparties and other financial institutions contributed significantly to the severity and depth of the financial crisis.'') and *id.* at 353 (''AIG's failure was possible because of the sweeping deregulation of [OTC] derivatives, [* * *] including capital and margin requirements that would have lessened the likelihood of AIG's failure. The OTC derivatives market's lack of transparency and of effective price discovery exacerbated the collateral disputes of AIG and Goldman Sachs and similar disputes between other derivatives counterparties.'').

resulted in over $85 billion of indirect assistance from the Federal Reserve Bank of New York to prevent AIG's default.[58]

The inability to value its portfolio accurately and agree on valuations with its counterparties posed a serious problem for AIG during the financial crisis.[59] Swap valuation disputes were common, because, among other things, there was widespread market opacity for many of the inputs needed to properly value many swaps.[60] As reported during the fall of 2008, ''the methods that A.I.G. used to value its derivatives portfolio began to come under fire from trading partners.'' [61] As explained by a Congressional panel, ''the threats within [AIG's] businesses emanated from outsized exposure to the deteriorating mortgage markets, *owing to grossly inadequate valuation and risk controls,* including insufficient capital buffers as losses and collateral calls mounted'' (emphasis added).[62]

The financial crisis also highlighted the significance of substandard or missing legal documentation. For example, the Lehman Brothers Holding Inc. (LBHI) bankruptcy offers another stark lesson on how failures in risk management, documentation, and valuation can contribute to the ultimate collapse of an entire financial institution. During the days leading up the LBHI's bankruptcy, potential buyers were stymied by the state of Lehman's books.[63] As recognized by PriceWaterhouseCoopers in a lessons learned document put together after the Lehman bankruptcy, effective risk management requires the existence of sound documentation, daily reconciliation of portfolios, rigorously tested valuation methodologies, and sound collateralization practices.[64]

More broadly, the President's Working Group (PWG) on Financial Policy noted shortcomings in the OTC derivative markets as a whole during the crisis. The PWG identified the need for an improved integrated operational structure supporting OTC derivatives, specifically highlighting the need for an enhanced ability to manage counterparty risk through ''netting and collateral agreements by promoting portfolio reconciliation and accurate valuation of trades.'' [65]

Congress sought to address the deficiencies in the regulatory system that contributed to the financial crisis through the enactment of the Dodd-Frank Act, which was signed by President Obama on July 21, 2010.[66] Title VII of the Dodd-Frank Act amended the CEA [67] to overhaul the structure and oversight of the OTC market that previously had been subject to little or no oversight.[68] One of the cornerstones of this legislation is the establishment of a new statutory framework for comprehensive regulation of financial institutions that participate in the swaps market as SDs or MSPs, which must register and are subject to greater oversight and regulation.[69] This new framework for SDs and MSPs seeks to reduce the potential for the recurrence of the type of financial and operational stresses that contributed to the 2008 crisis.

Efforts to regulate the swaps market are underway not only in the United States but also abroad in the wake of the 2008 financial crisis. In 2009, leaders of the Group of 20 (G–20)—whose membership includes the European Union (EU), the United States, and 18 other countries—agreed that: (i) OTC derivatives contracts should be reported to trade repositories; (ii) all standardized OTC derivatives contracts should be cleared through central counterparties and traded on exchanges or electronic trading platforms, where appropriate, by the end of 2012; and (iii) non-centrally cleared contracts should be subject to higher capital requirements. In line with the G–20 commitment, much progress has been made to coordinate and harmonize international reform efforts, but the pace of reform varies among jurisdictions and disparities in regulations remain due to differences in cultures, legal and political traditions, and financial systems.[70]

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[58] The Federal Reserve Bank of New York explained its intervention as a means of preventing contagion concerns resulting from an AIG default from spreading financial losses to other firms. The FCIC argued and Gretchen Morgenson reported that the entire U.S. financial system might have been threatened by such a large default. *See* FCIC Report at 200–02 and 344–52 and Gretchen Morgenson, ''Behind Insurer's Crisis, Blind Eye to a Web of Risk,'' N.Y. Times, Sept. 27, 2008 [hereinafter Morgenson Article]. Corrected version published Sept. 30, 2008, available at *http://www.nytimes.com/2008/09/28/business/28melt.html?pagewanted=all.*

[59] *See* Testimony Before the Financial Crisis Inquiry Commission, including AIG/Goldman Sachs Collateral Call Timeline, available at *http://fcic-static.law.stanford.edu/cdn_media/fcic-testimony/2010-0701-AIG-Goldman-supporting-docs.pdf* (timeline documenting valuation disputes and collateral calls); Testimony of Joseph Cassano, available at *http://fcic-static.law.stanford.edu/cdn_media/fcic-testimony/2010-0630-Cassano.pdf;* and AIG Statement Summary, available at *http://fcic-static.law.stanford.edu/cdn_media/fcic-testimony/2010-0630-AIG-Statement-Summary.pdf.*

[60] The failure of the market to set a price for mortgage-backed securities led to wide disparities in the valuation of CDS referencing mortgage-backed securities (especially collateralized debt obligations). ''The illiquid market for some structured credit products, auction rate securities, and other products backed by opaque portfolios led to major write-downs across the industry in 2008. The resulting depletion of capital led to credit downgrades, which in turn drove counterparty collateral calls and sales of illiquid assets. This further depleted capital balances. Widening CDS spreads have become widely viewed as a leading indicator of a bank's financial health and viability.'' PriceWaterhouseCoopers, ''Lehman Brothers' Bankruptcy: Lessons learned for the survivors,'' Informational presentation for clients, August 2009, at 12, available at *http://www.pwc.com/en_JG/jg/events/Lessons-learned-for-the-survivors.pdf.* In addition, such wide disparities led to large collateral calls from dealers on AIG, hastening its downfall. *See* CBS News, ''Calling AIG? Internal Docs Reveal Company Silent About Dozens Of Collateral Calls,'' Jun. 23, 2009, available at: *http://www.cbsnews.com/stories/2009/06/23/cbsnews_investigates/main5106672.shtml.*

[61] *See* Morgenson Article.

[62] Congressional Oversight Panel, June Oversight Report: The AIG Rescue, Its Impact on Markets, and the Government's Exit Strategy, June 10, 2010, at 24, available at *http://cybercemetery.unt.edu/archive/cop/20110402010341/cop.senate.gov/documents/cop-061010-report.pdf.*

[63] *See* In re Lehman Brothers Holdings Inc., 08–13555, and *Giddens* v. *Barclays Capital Inc.,* 09–01732, U.S. Bankruptcy Court, Southern District of New York; *see also* Linda Sandler, ''Lehman Derivatives Records a 'Mess,' Barclays Executive Says,'' Bloomberg, Aug. 30, 2010, available at *http://www.bloomberg.com/news/2010-08-30/lehman-derivatives-records-a-mess-barclays-executive-says.html* (reporting on testimony provided in previously cited Lehman bankruptcy proceeding).

[64] *See* PriceWaterhouseCoopers, ''Lehman Brothers' Bankruptcy: Lessons learned for the survivors,'' Informational presentation for clients, August 2009, at 12–24, available at *http://www.pwc.com/en_JG/jg/events/Lessons-learned-for-the-survivors.pdf.*

[65] The President's Working Group on Financial Markets, ''Policy Statements on Financial Market Developments,'' Mar. 2008, available at *http://www.treasury.gov/resource-center/fin-mkts/Documents/pwgpolicystatemktturmoil_03122008.pdf.*

[66] Pub. L. 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act is available at *http://www.cftc.gov/ucm/groups/public/@swaps/documents/file/hr4173_enrolledbill.pdf.*

[67] 7 U.S.C. 1, *et seq.*

[68] Prior to the adoption of Title VII, swaps and security-based swaps were by and large unregulated. The CFMA excluded financial OTC swaps from regulation under the CEA, provided that trading occurred only among ''eligible contract participants.'' Swaps based on exempt commodities—including energy and metals—could be traded among eligible contract participants without CFTC regulation, but certain CEA provisions against fraud and manipulation continued to apply to these markets. No statutory exclusions were provided for swaps on agricultural commodities by the CFMA, although they could be traded under certain regulatory exemptions provided by the CFTC prior to its enactment. Swaps based on securities were subject to certain SEC enforcement authorities, but the SEC was prohibited from prophylactic regulation of such swaps.

[69] The provisions of the CEA relating to swaps that were enacted by Title VII of the Dodd-Frank Act are also referred to herein as ''the Dodd-Frank requirements.''

[70] Legislatures and regulators in a number of foreign jurisdictions are undertaking significant regulatory reforms over the swaps market and its participants. *See* CFTC and SEC, Joint Report on International Swap Regulation Required by Section

Continued

Even before the passage of the Dodd-Frank Act, market participants and regulators had been paying particular attention to the post-trade processing of swaps. For example, operational issues associated with the OTC derivatives market have been the focus of reports and recommendations by the PWG.[71] In response to the financial crisis in 2008, the PWG called on the industry to improve trade matching and confirmation and to promote portfolio reconciliation.

Significantly, beginning in 2005, the Federal Reserve Bank of New York (FRBNY) undertook a targeted, supervisory effort to enhance operational efficiency and performance in the OTC derivatives market, by increasing automation in processing and by promoting the timely confirmation of trades. Known as the OTC Derivatives Supervisors' Group (ODSG), the FRBNY led an effort with OTC derivatives dealers' primary supervisors, trade associations, industry utilities, and private vendors, through which market participants (including buy-side participants) regularly set goals and commitments to bring infrastructure, market design, and risk management improvements to all OTC derivatives asset classes. Over the years, the ODSG expanded its focus from credit derivatives to include interest rate derivatives, equity derivatives, foreign exchange derivatives, and commodity derivatives. Along with this expanded focus came increased engagement with market participants on cross-asset class issues. Specifically, the ODSG encouraged the industry to commit itself to a number of reforms, including improved operational performance with respect to the OTC derivatives confirmation process, portfolio reconciliation, and portfolio compression. The regulations being adopted by the Commission in this adopting release build upon the ODSG's work.[72] The specific operational performance enhancements upon which each of the Commission's rules included in this adopting release expressly build, the comments to the rule proposals related to the costs and benefits of such rules, and the Commission's consideration of the costs and benefits of such rules are discussed below.

This final rule implements Dodd-Frank Act section 731, which is an important component of the comprehensive set of reforms passed by Congress to protect the American public and ''promote the financial stability of the United States'' in the wake of a financial crisis and the resulting recession that was caused in part by the lack of adequate regulation of financial markets.[73] The damage to the American public has been tremendous. According to the U.S. Department of the Treasury, over $19 trillion in household wealth and over 8.8 million jobs were lost during the recession that began in late 2008.[74] Between September 2008 and May 2012 there have been approximately 3.6 million completed home foreclosures across the country.[75] The U.S. Census Bureau estimates that the number of households living below the poverty level rose 2.6 percent from 2007 to 2010.[76] The overarching purpose and benefit of this final rule, together with the other rules the Commission is implementing under Title VII of the Dodd-Frank Act is to identify and fix the structural weaknesses that contributed to the financial crisis in an effort to avoid a repeat of the same.

B. Swap Confirmation

The Government Accountability Office (GAO) found that the rapid expansion of the trading volume of swaps, such as credit derivatives, since 2002, caused stresses on the operational infrastructure of market participants. These stresses, in turn, caused the participants' back office systems to fail to confirm the increased volume of trades for a period of time.[77] The GAO found that the lack of automation in trade processing and the purported assignment of positions by transferring parties to third parties without notice to their counterparties were factors contributing to this backlog. If transactions, whether newly executed or recently transferred to another party, are left unconfirmed, there is no definitive written record of the contract terms. Thus, in the event of a dispute, the terms of the agreement must be reconstructed from other evidence, such as email trails or recorded trader conversations. This process is cumbersome and may not be wholly accurate. Moreover, if purported transfers of swaps, in whole or in part, are made without giving notice to the remaining parties and obtaining their consent, disputes may arise as to which parties are entitled to the benefits and subject to the burdens of the transaction.

As the work of the ODSG demonstrates, the industry is capable of swift movement to contemporaneous execution and confirmation. A large back-log of unexecuted confirmations in the CDS market created by prolonged negotiations and inadequate confirmation procedures were the subject of the first industry commitments made by participating dealers to ODSG.[78] In October 2005, the participating dealers committed to reduce by 30 percent the number of confirmations outstanding more than 30 days within four months. In March 2006, the dealers committed to reduce the number of outstanding confirmations by 70 percent by June 30, 2006. By September 2006, the industry had reduced the number of all outstanding CDS confirmations by 70 percent, and the number of CDS confirmations outstanding more than 30 days by 85 percent. The industry achieved these targets largely by moving 80 percent of total trade volume in CDS to confirmation on electronic platforms, eliminating backlogs in new trades.

By the end of 2011, the largest dealers were electronically confirming over 95

719(c) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Jan. 31, 2012, at 23, available at *http://www.cftc.gov/ucm/groups/public/@swaps/documents/file/dfstudy_isr_013112.pdf.* For example, the European Parliament adopted the substance of the European Market Infrastructure Regulation (''EMIR'') on March 29, 2012. As discussed below, ESMA has proposed regulations that are very similar to those being adopted by the Commission in this release.

[71] *See, e.g.,* Press Release, ''President's Working Group on Financial Markets, Progress Summary on OTC Derivatives Operational Improvements'' (Nov. 2008).

[72] ''No more Fed letter commitments expected, says Dudley,'' Risk Magazine, May 16, 2012, available at *http://www.risk.net/risk-magazine/news/2174981/fed-letter-commitments-expected-dudley* (William Dudley, president of the Federal Reserve Bank of New York, stated ''Now we're moving to a new regime, where the OTC derivatives market is being regulated for the first time. As we do that, and the SEC and CFTC stand up in terms of regulation, it's completely appropriate for us to stand down.'').

[73] Dodd-Frank Act, Preamble.

[74] *See* U.S. Department of the Treasury, ''The Financial Crisis Response—In Charts,'' April 2012, available at *http://www.treasury.gov/resource-center/data-chart-center/Documents/20120413_FinancialCrisisResponse.pdf. See also* Congressional Budget Office, The Budge and Economic Outlook: Fiscal Years 2012–2022, at 26 (Jan. 2012) (explaining gross domestic product (GDP) has fallen dramatically and it is not expected to return to normal levels until at least 2018. At that time, the cumulative shortfall in GDP relative to potential GDP is expected to reach $5.7 trillion).

[75] *See* CoreLogic, ''CoreLogic Reports 66,000 Completed Foreclosures Nationally,'' May 2012, available at *http://www.corelogic.com/about-us/news/corelogic-reports-66,000-completed-foreclosures-nationally-in-april.aspx.*

[76] *See* U.S. Census Bureau, ''Income, Poverty, and Health Insurance Coverage in the United States: 2010,'' at 14 (Sept. 2010), available at *http://www.census.gov/prod/2011pubs/p60-239.pdf.*

[77] U.S. Government Accountability Office, ''Credit Derivatives: Confirmation Backlogs Increased Dealers' Operational Risks, But Were Successfully Addressed After Joint Regulatory Action,'' GAO–07–716 (2007) at 3–4.

[78] *See* October 4, 2005 industry commitment letter to the Federal Reserve Bank of New York, available at *http://www.newyorkfed.org/newsevents/news_archive/markets/2005/an050915.html.*

percent of OTC credit derivative transactions, and 90 percent were confirmed on the same day as execution (T+0). For the same period, the largest dealers were electronically confirming over 70 percent of OTC interest rate derivatives (over 90 percent of trades with each other), and over 80 percent were confirmed T+0. The rate of electronic confirmation of OTC commodity derivatives was somewhat lower—just over 50 percent, but over 90 percent for transactions between the largest dealers.[79] These statistics provide some confidence that, over time, timely confirmation rates will continue to improve.

The primary benefit of timely and accurate confirmation is that the parties to a swap know what their deal is. In other words, a confirmation definitively memorializes all of the terms of the swap transaction, which is critical for all downstream operational and risk management processes. If transactions, whether newly executed or recently transferred to another party, are left unconfirmed, there is no definitive written record of the contract terms. Risk management processes dependent on the trade terms (such as collateral management, and payment and settlement systems) may be inaccurate, and, in the event of a dispute, the terms of the agreement must be reconstructed from other evidence, such as email trails or recorded trader conversations.

Recognizing the laudable gains in electronic confirmation processing by the industry and the risk reduction in the shortening of time periods between execution and confirmation, the Commission proposed a confirmation rule that would have required SDs and MSPs trading with each other to confirm their swap transactions within 15 minutes if the swap transaction was executed and processed electronically, within 30 minutes if the swap transaction was only processed electronically, and within the same calendar day if the swap transaction could not be processed electronically. Similarly, the Commission proposed that SDs and MSPs have policies and procedures for confirming swap transactions with financial entities within the same calendar day, and with counterparties that are not SDs, MSPs, or financial entities not later than the next business day.

Several commenters recognized the benefits of the Commission's confirmation proposal and wrote in support of the approach. Chris Barnard wrote that the proposal would increase transparency and promote legal certainty for swaps. CME stated that it supported the goals of improving the post-trade processing of swaps and ensuring timely and accurate confirmation of such data among counterparties. CME agreed with the overall approach taken by the Commission on this subject and with the goal of promulgating confirmation requirements that are effective, not duplicative and cost and time efficient to the industry. CME noted the cost-savings to market participants of confirming their swaps through DCOs, which is explicitly permitted under the swap confirmation rule.

On the other hand, multiple commenters objected to the Commission's proposal on cost grounds. Some read the proposal as detrimentally mandating electronic confirmation.[80] Other commenters argued that the short time periods permitted for confirmation would effectively require all terms of a swap to be negotiated prior to execution, increasing costs for the party that is most sensitive to timing of market conditions and increasing risk by leading to needless disputes and operational lapses.[81] Still others argued that financial entities should not be subject to shorter confirmation deadlines than non-financial entities.[82] Finally, some commenters stated that the rule would require changes in current market practice and it was unclear that the cost of additional resources to meet the requirements of the rule was outweighed by any enhanced transparency or reduction in systemic risk.[83] No commenter provided quantitative data on the comprehensive compliance costs of the rule as proposed, but ISDA and The Working Group enumerated costs related to adopting electronic confirmation procedures. ISDA stated that each asset class uses different electronic confirmation platforms, so a trader conducting trades in multiple asset classes would need to build the infrastructure necessary to integrate multiple platforms. Such expenditures are routine for dealers, says ISDA, but for smaller entities, the operational costs may impede their ability to hedge risk. The Working Group estimated that electronic confirmation could cost an SD or MSP in excess of $1,000,000 annually, citing that one third-party confirmation service charges $6.00 per trade. However, The Working Group cited no source for the proposition that potential SDs or MSPs currently execute the more than 166,000 trades annually that would be required to reach a $1,000,000 annual confirmation cost at $6.00 per trade.

The Commission carefully considered each of these comments in formulating the final rule and has responded to the cost concerns of commenters where doing so was in keeping with the benefit of timely and accurate memorialization of all the terms of a swap transaction between an SD or MSP and its counterparties. First, the final rule does not apply to swap transactions that are executed on a SEF or DCM or that are submitted for clearing to a DCO by the required confirmation deadline, so market participants that mostly transact in standardized swaps may not be affected by the rule, or will have their costs greatly reduced. This fact was highlighted by both CME and ICE in their comments to the proposed rule.

Second, the Commission notes that the final rule affirmatively does not mandate electronic confirmation. Instead, the final rule sets an ultimate deadline for confirmation of swap transactions among SDs and MSPs, while also requiring that if technologically practicable, such swap transactions be confirmed sooner. The deadline of ''the end of the first business day following the day of execution'' is modified to allow for more time if registrants are trading near the end of the trading day or if such registrants are in different time zones. With respect to swap transactions with non-SDs and non-MSPs, SDs and MSPs are only required to have policies and procedures in place that are reasonably designed to ensure confirmation by the end of the first business day following the day of execution (modified for end of day trading and time zone differences) for financial entities, or by

[79] *See* G15 Industry Confirmation Data dated April 4, 2012 provided by ISDA, available at *www.cftc.gov.*

[80] Chatham argued that the Commission should not mandate confirmation through an electronic matching platform, because such a mandate could preclude end-users from entering into swaps not yet available on matching platforms and could increase costs for end-users that do not engage in the volume of swaps necessary to justify the additional costs of connecting to electronic matching platforms. ABC & CIEBA also argued that the proposed rule could impose processes that require third-party service providers or new technology.

[81] The Working Group; ISDA; Chatham.

[82] CIEBA stated that the rule would impose costly increases in operational capacity for pension funds and recommended that the Commission provide for a ''close of next business day'' time limit for benefit plans, along with a requirement that SDs and MSPs provide an acknowledgement at the time of execution as well as a draft acknowledgement prior to execution. AMG argued that financial entities should not be subject to shorter time periods for confirmation because many may not have the operational resources to meet the deadlines. MFA stated that designation as a financial entity does not necessarily correlate with a large swap portfolio or being highly sophisticated, and thus the short time period for confirmation in the proposed rules may cause unwarranted economic disadvantages.

[83] BGA; MetLife; MFA; GFED; the FHLBs; AMG.

the end of the second business day following the day of execution for non-financial entities, rather than the next business day as proposed. The Commission would expect an SD's or MSP's policies and procedures to require sufficient pre-trade agreement on repetitive terms such that non-SD, non-MSP counterparties are able to execute in a timely manner without protracted pre-trade negotiations that may prove costly for market participants sensitive to execution timing. The requirement for policies and procedures (as opposed to hard deadlines) recognizes that SDs and MSPs cannot force their non-SD, non-MSP counterparties to adopt particular electronic confirmation processes, but must accommodate the needs of their counterparties while ensuring, to the extent possible, that confirmation is achieved within the rule's time periods.

In addition, to further reduce the burden of the rule on those market participants that are least able to quickly adapt to the rule's requirements, the Commission notes that compliance with the rule is implemented on a staggered basis. As discussed above under section III.B.2, compliance is required first for swaps in the credit and interest rate asset class, and, within that asset class, first for swaps among SDs, MSPs, and financial entities with a longer compliance period for swaps between SDs or MSPs and non-financial entities. Compliance is staggered similarly with respect to all other swaps, but with longer compliance periods.

The Commission understands that, for certain asset classes, the low number of transactions does not seem to justify increased expenditure on faster confirmations; however, the Commission is committed to decreasing the length of time between execution and confirmation in order to improve the efficiency of bilateral markets and decrease overall systemic risk resulting from outstanding unconfirmed trades among many participants. The Commission maintains that such benefits are significant and important regardless of asset class. Thus, the Commission has applied the same general timeframes to all asset classes, but has extended the compliance deadlines for commodity, equity, and foreign exchange asset classes in order to allow participants in those asset classes sufficient time to integrate faster confirmations without an immediate and potentially overwhelming burden.

Finally, the Commission notes that ESMA has proposed confirmation requirements that are substantially similar to those adopted by the Commission in this release.[84] By closely aligning confirmation requirements through consultation with ESMA, the Commission believes that SDs and MSPs will benefit from a largely unitary regulatory regime that does not require separate compliance and operational policies and procedures.

C. Portfolio Reconciliation

Disputes related to confirming the terms of a swap, as well as swap valuation disputes, have long been recognized as a significant problem in the OTC derivatives market.[85] Portfolio reconciliation is considered an effective means of identifying and resolving these disputes. The Commission recognizes that the industry has made significant progress in adopting the use of portfolio reconciliation to decrease the number of swap disputes.[86] In December 2008, the ODSG's group of 14 major dealers committed to execute daily portfolio reconciliations for collateralized portfolios in excess of 500 trades between participating dealers by June of 2009.[87] As of May 2009, all participating dealers were satisfying this commitment. In October 2009, the ODSG committed to publishing a feasibility study on market-wide portfolio reconciliation that would set forth how regular portfolio reconciliation could be extend beyond the ODSG dealers to include smaller banks, buy-side participants, and derivative end users. Consistent with this publication, the ODSG dealers expanded their portfolio reconciliation commitment in March 2010 to include monthly reconciliation of collateralized portfolios in excess of 1,000 trades with any counterparty. Most recently, the industry has been preparing a new ''Convention on the Investigation of Disputed Margin Calls'' and a new ''Formal Market Polling Procedure'' that are intended to ''create a consistent and predictable process * * * that eliminates present uncertainties and delays.'' [88]

In light of these efforts the Commission proposed § 23.502, which required SDs and MSPs to reconcile their swap portfolios with one another and provide counterparties that are not registered as SDs or MSPs with regular opportunities for portfolio reconciliation. Specifically, proposed § 23.502 required SDs and MSPs to reconcile swap portfolios with other SDs or MSPs with the following frequency: daily for portfolios consisting of 300 or more swaps, at least weekly for portfolios consisting of 50 to 300 swaps, and at least quarterly for portfolios consisting of fewer than 50 swaps. For portfolios with counterparties other than SDs or MSPs, the proposed regulations required SDs and MSPs to establish policies and procedures for reconciling swap portfolios: daily for swap portfolios consisting of 500 or more swaps, weekly for portfolios consisting of more than 100 but fewer than 500 swaps, and at least quarterly for portfolios consisting of fewer than 100 swaps. In order for the marketplace to realize the full risk reduction benefits of portfolio reconciliation, the Commission also proposed to expand portfolio reconciliation to all transactions, whether collateralized or uncollateralized. For the swap market to operate efficiently and to reduce systemic risk, the Commission believes that portfolio reconciliation should be a proactive process that delivers a consolidated view of counterparty exposure down to the transaction level. By identifying and managing mismatches in key economic terms and valuation for individual transactions across an entire portfolio, the Commission proposal sought to require a process in which overall risk can be identified and reduced.

Agreement between SDs, MSPs, and their counterparties on the proper daily valuation of the swaps in their swap portfolio also is essential for the Commission's margin proposal. Under proposed rule § 23.151, non-bank SDs and MSPs must document the process by which they will arrive at a valuation for each swap for the purpose of collecting initial and variation margin.[89]

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[84] *See* ESMA Draft Technical Standards, Article 1 RM, subsection 2 (stating that uncleared OTC derivatives ''shall be confirmed, where available via electronic means, as soon as possible and at the latest by the end of the same business day.''), and ESMA Draft Technical Standards, Article 1 RM, subsection 3 (stating that uncleared OTC derivatives ''shall be confirmed as soon as possible and at the latest by the end of the second business day following the date of execution'').

[85] *See* ISDA Collateral Committee, ''Commentary to the Outline of the 2009 ISDA Protocol for Resolution of Disputed Collateral Calls,'' June 2, 2009 (stating ''Disputed margin calls have increased significantly since late 2007, and especially during 2008 have been the driver of large (sometimes > $1 billion) un-collateralized exposures between professional firms.'').

[86] The Commission also recognizes and encourages the industry practice of immediately transferring undisputed collateral amounts.

[87] *See* June 2, 2009 summary of industry commitments, available at *http://www.isda.org/c_and_a/pdf/060209table.pdf.*

[88] *See* ''ISDA 2010 Convention on the Investigation of Disputed Margin Calls'' and ''ISDA 2010 Formal Market Polling Procedure.''

[89] *See* Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 76 FR 23732, 23744 (April 28, 2011). Bank SDs and MSPs will also be required to document the process by which they will arrive at a valuation for each swap for the purpose of collecting margin under the

All non-bank SDs and MSPs must collect variation margin from their non-bank SD, MSP, and financial entity counterparties for uncleared swaps on a daily basis. Variation margin requires a daily valuation for each swap. For swaps between non-bank SDs and MSPs and non-financial entities, no margin is required to be exchanged under Commission regulation, but the non-bank SDs and MSPs must calculate a hypothetical variation margin requirement for each uncleared swap for risk management purposes under proposed § 23.154(b)(6).

Several commenters articulated the benefits of portfolio reconciliation and supported the Commission's proposal. TriOptima supported the regular reconciliation of all portfolios as a process that will identify issues that can minimize counterparty credit exposure and operational risk. Chris Barnard also supported the rule, stating that the rule should increase transparency, promote market integrity and reduce risk by establishing procedures that will promote legal certainty concerning swap transactions, assist with the early resolution of valuation disputes, reduce operational risk, and increase operational efficiency.

Conversely, multiple commenters objected to proposed § 23.502 on cost grounds. Some commenters argued that the rule would require significant investment in new infrastructure and some argued that the rule would have few benefits for SDs and MSPs that trade in shorter dated swaps.[90] Others asserted that portfolio reconciliation at the transactional level was only necessary if there are portfolio level discrepancies that result in margin disputes, and argued that routine reconciliation at the proposed frequency was unnecessarily costly.[91] Some argued that the swap portfolios of non-SDs, non-MSPs do not pose significant risk to the financial system and the rule may increase the costs of swaps for such entities.[92] Still others argued that the Commission must provide sufficient time for all registrants to develop the infrastructure required to meet the frequency of reconciliation required by the rule.

In relation to the one business day valuation dispute resolution requirement, many commenters stated that parties to a good-faith dispute should have a commercially reasonable timeframe in which to consult in order to find an appropriate resolution of the dispute. These commenters supported ISDA's 2011 Convention on Portfolio Reconciliation and the Investigation of Disputed Margin Calls and the 2011 Formal Market Polling Procedure, developed pursuant to industry commitments to the ODSG, which ISDA believes will be widely adopted by OTC derivatives market participants, and believed these industry efforts should play a more significant role in shaping the proposed reconciliation rules.[93] Other commenters argued that SDs and MSPs should not have to expend resources to resolve valuation disputes exceeding the proposed 10 percent threshold if they conclude that the discrepancy is not material in their particular circumstances.[94]

The Commission carefully considered each of the foregoing comments in formulating the final rule.

It should be noted that the Confirmation NPRM stated that the Commission anticipated that SDs and MSPs will be able to efficiently reconcile their internal records with their counterparties by reference to data in SDRs. The Commission received no comments disputing this assertion, and one commenter noted that SDRs would be in the best position to detect and manage discrepancies in the material terms of a swap transaction both efficiently and effectively.[95] The Commission has thus determined to adopt the portion of the rule that requires SDs and MSPs to reconcile the material terms of each swap in their swap portfolios in addition to reconciling the valuation of each swap but, at the urging of commenters, has reduced the required frequency of reconciliation to match the frequency of reconciliation currently undertaken by the largest prospective SDs.[96] The final rules require SDs and MSPs to reconcile portfolios with other SDs and MSPs at the following frequencies: daily for portfolios comprising 500 or more swaps; weekly for portfolios comprising 51 to 499 swaps; and quarterly for portfolios comprising one to 50 swaps. The Commission believes that the frequency of reconciliation of material terms and valuations of each swap required by the rule as modified will ensure the risk-reducing benefits of reconciliation by presenting a consolidated view of counterparty exposure down to the transaction level, and that these benefits are especially noteworthy when considered in light of the efficiencies possible through use of SDR data in the reconciliation process.

Having considered comments that the frequency of reconciliation with non-SD, non-MSP counterparties required by the rule was unnecessary to achieve the benefits of portfolio reconciliation outlined above, the Commission is also reducing the frequency of reconciliation required for non-registrant counterparties and is modifying the final rule to require reconciliation with such counterparties quarterly for swap portfolios of more than 100 swaps, and annually for all other swap portfolios. This level was recommended by commenters, including The Working Group.

With respect to the proposed rule's one business day deadline for valuation dispute resolution among SDs and MSPs, the Commission observes that daily valuation is critical for the appropriate operation of the Commission's proposed rules on margin, which is itself essential for the mitigation of risk posed by swaps. Issues related to swap valuations are woven through a number of Commission rule proposals. For instance, § 23.504(e), as adopted in this release, requires SDs and MSPs to report valuation disputes with SD or MSP counterparties in excess of $20,000,000 and lasting longer than three business days to the Commission, while under § 23.504(b)(4) SDs and MSPs are required to agree on valuation methodologies with their counterparties.

However, the Commission recognizes that valuation dispute resolution may be labor intensive and therefore costly. For this reason, the Commission modified the rule to provide for a five-day resolution process. In addition to this change, the Commission notes that, the costs of valuation dispute resolution are mitigated by the operation of several other parts of the new regulatory regime for swaps. First, the reconciliation requirements, and thus the valuation dispute resolution requirement, does not apply to cleared swaps, because DCOs establish settlement prices for each cleared swap every business day. It is likely that a large part of the swap

margin rules proposed by the OCC, the Federal Reserve Board, and the FDIC. *See* Margin and Capital Requirements for Covered Swap Entities, 76 FR 27564, 27589 (May 11, 2011).

[90] GFED.

[91] MFA; ISDA; The Working Group; MarkitSERV; AMG.

[92] Dominion; FHLBs; Chatham.

[93] ISDA; The Working Group; FHLBs; AMG.

[94] Chatham; The Working Group; MFA; ISDA.

[95] FHLBs.

[96] In December 2008, the ODSG's group of 14 major dealers committed to execute daily portfolio reconciliations for collateralized portfolios in excess of 500 trades between participating dealers by June of 2009. *See* June 2, 2009 summary of industry commitments, available at *http://www.isda.org/c_and_a/pdf/060209table.pdf.* As of May 2009, all participating dealers were satisfying this commitment. The ODSG dealers expanded their portfolio reconciliation commitment in March 2010 to include monthly reconciliation of collateralized portfolios in excess of 1,000 trades with any counterparty.

portfolios of SDs and MSPs will consist of cleared swaps [97] to which the reconciliation requirements will not apply; valuation disputes will therefore only arise in bilateral, uncleared portfolios. Second, the reconciliation requirements of § 23.503 are expected to avoid disputes from arising in the first instance through the regular comparison of material terms and valuations. Third, the Commission expects that § 23.504(b)(4), by requiring agreement with each counterparty on the methods and inputs for valuation of each swap, will assist SDs and MSPs to resolve valuation disputes within five business days.

SDs and MSPs need not resolve every valuation dispute, but only those where the difference in valuation is 10 percent or more. The Commission believes the 10 percent threshold is appropriate as it provides certainty as to which disputes must be resolved. The Commission believes the efficiency of a bright line rule, as opposed to the formulas and discretion in the alternatives suggested by commenters, will better serve the operational processes of SDs and MSPs and the regulatory oversight of the Commission. Thus, to maintain the risk mitigation benefits of the rule outlined above, the Commission has determined to retain the requirement that swap valuation disputes among SDs and MSPs be resolved within five business days.

As a further cost reduction measure, the Commission notes that it has extended the compliance dates for those SDs and MSPs that have not been previously regulated by a prudential regulator, and thus are least likely to have the infrastructure in place to begin regular reconciliation with their counterparties. As stated in section III.B.3 above, SDs and MSPs that have been previously regulated need not comply with the rule for three months after publication of the final rule in the **Federal Register**. SDs and MSPs that have not been previously regulated need not comply for six months after publication.

Finally, the Commission notes that ESMA has proposed portfolio reconciliation requirements that are substantially similar to those adopted by the Commission in this release.[98] By closely aligning portfolio reconciliation requirements through consultation with ESMA, the Commission believes that SDs and MSPs will benefit from a largely unitary regulatory regime that does not require separate compliance and operational policies and procedures.

D. Portfolio Compression

Portfolio compression is a mechanism whereby substantially similar transactions among two or more counterparties are terminated and replaced with a smaller number of transactions of decreased notional value in an effort to reduce the risk, cost, and inefficiency of maintaining unnecessary transactions on the counterparties' books. In many cases, these redundant or economically-equivalent positions serve no useful business purpose, but can create unnecessary risk,[99] as well as operational and capital inefficiencies.

The usefulness of portfolio compression as a risk management tool has been acknowledged widely. In 2008, the PWG identified frequent portfolio compression of outstanding trades as a key policy objective in the effort to strengthen the OTC derivatives market infrastructure.[100] Similarly, the 2010 staff report outlining policy perspectives on OTC derivatives infrastructure issued by the FRBNY identified trade compression as an element of strong risk management and recommended that market participants engage in regular, market-wide portfolio compression exercises.[101]

The value of portfolio compression also is illustrated by existing market participation in compression exercises. In March 2010, the Depository Trust and Clearing Corporation (DTCC) explicitly attributed the reduction in the gross notional value of the credit derivatives in its warehouse to industry supported portfolio compression.[102] TriOptima, which offers the TriReduce portfolio compression service, estimates that it terminated $106.3 trillion gross notional of interest rate swaps and $66.9 trillion gross notional of credit swaps between 2003 and 2010.[103] Similarly, Creditex and Markit, which offer portfolio compression exercises in single name credit default swaps, enabled participating institutions to eliminate $4.5 trillion in notional between late 2008 through 2009.[104]

In light of the recognized benefits of portfolio compression in reducing the risk, cost, and inefficiency of maintaining unnecessary transactions, the Commission proposed § 23.503, which required SDs and MSPs to participate in multilateral compression exercises that are offered by those DCOs or self-regulatory organizations of which the SD or MSP is a member, or as required by Commission regulation or order. The Commission also proposed that SDs and MSPs be required to terminate bilaterally all fully offsetting swaps between them by the close of business on the business day following the day the parties entered into the offsetting swap transaction and to engage annually in bilateral portfolio compression exercises with counterparties that are also SDs and MSPs to the extent that they have not participated in a multilateral compression exercise. Proposed § 23.503 did not require portfolio compression exercises for swaps outstanding between an SD or MSP and counterparties that are neither SDs nor MSPs. Instead, SDs and MSPs were required to establish written policies and procedures for periodically terminating all fully offsetting swaps and periodically engaging in compression exercises with such counterparties.

Several commenters supported the Commission's proposal and outlined the benefits of the approach. For instance,

[97] ''It is expected that the standardized, plain vanilla, high volume swaps contracts—which according to the Treasury Department are about 90 percent of the $600 trillion swaps market—will be subject to mandatory clearing.'' 156 Cong. Rec. S5921 (daily ed. Jul. 15, 2010) (statement of Sen. Lincoln). The Tabb group estimates that 60–80 percent of the swaps market measured by notional amount will be cleared within five years of the time that the Dodd-Frank Act is implemented. *See* Tabb Group, ''Technology and Financial Reform: Data, Derivatives and Decision Making.''

[98] *See* ESMA Draft Technical Standards, Article 2 RM, subsection 4, (stating that ''In order to identify at an early stage, any discrepancy in a material term of the OTC derivative contract, including its valuation, the portfolio reconciliation shall be performed: * * * each business day when the counterparties have 500 or more OTC derivative contracts outstanding with each other; * * * once per month for a portfolio of fewer than 300 OTC derivative contracts outstanding with a counterparty; * * * once per week for a portfolio between 300 and 499 OTC derivative contracts outstanding with a counterparty.'').

[99] Federal Reserve Bank of New York Staff Report No. 424: ''Policy Perspectives on OTC Derivatives Market Infrastructure,'' Jan. 2010 (revised Mar. 2010).

[100] ''Policy Objectives for the OTC Derivatives Markets,'' President's Working Group on Financial Markets (Nov. 14, 2008).

[101] Federal Reserve Bank of New York Staff Report No. 424: ''Policy Perspectives on OTC Derivatives Market Infrastructure,'' Jan. 2010 (revised Mar. 2010).

[102] DTCC Press Release, ''DTCC Trade Information Warehouse Completes Record Year Processing OTC Credit Derivatives'' (Mar. 11, 2010). Notably, beginning in August 2008, ISDA encouraged compression exercises for credit default swaps by selecting the service provider and defining the terms of service.

[103] *See www.trioptima.com.* Between 2007 and 2008, TriOptima reduced $54.7 trillion gross notional of interest rate swaps and $49.1 trillion gross notional of credit swaps. In March of 2010, the staff of the Federal Reserve Bank of New York estimated that since 2008 nearly $50 trillion gross notional of credit default swap positions has been eliminated through portfolio compression. Federal Reserve Bank of New York Staff Report No. 424: ''Policy Perspectives on OTC Derivatives Market Infrastructure,'' Jan. 2010 (revised Mar. 2010).

[104] *See www.isdacdsmarketplace.com.*

Blackrock wrote in support of the Commission's proposal and encouraged the Commission to expand the proposal in order to achieve what Blackrock believes to be the essential benefits of compression. In addition, Eris Exchange wrote in support of compression and noted that it should lead to greater position netting and the ability to more freely unwind aged swap trades without having to go through a cumbersome novation process involving substantial operational burden and negotiated up-front payments.

On the other hand, multiple commenters objected to proposed § 23.503 on cost grounds. Some commenters argued that resource-intensive compression exercises should not be required in asset classes where there is not a high degree of transaction standardization and a high volume of redundant trades because the benefits would not outweigh the costs.[105] Similarly, many commenters argued that non-SD counterparties should not be included in any mandatory compression because such entities have portfolios with a very small number of offsetting transactions (i.e., almost all swaps are in the same market direction) and the cost of the exercise is not justified by the small benefit derived.[106] Other commenters noted that it is not cost effective to establish and run daily systems to monitor for fully offsetting swaps where there are likely to be none.[107] On another tack, some commenters argued against requiring participation in compression exercises offered by DCOs and SROs to avoid lack of competition and higher costs.

The Commission carefully reviewed the comments received with respect to proposed § 23.503 and considered each in formulating the final rule. Partly in response to the comments received regarding the costs imposed by the proposed rule, the Commission has revised the rule to reduce the cost burden on market participants. First, the Commission has determined to exclude swaps cleared by a DCO from the rule. As noted above, each DCO is required to establish portfolio compression procedures, but participation in such compression exercises by clearing members is voluntary. Accordingly, the revisions to § 23.503 are consistent with the revised DCO final rules with respect to cleared swaps. Second, the Commission was persuaded that the benefits of the rule could be maintained without requiring SDs and MSPs to incur the costs of mandatory compression. Thus, as discussed in more detail above, the Commission is electing to adopt the alternative suggested by commenters and is modifying the rule to replace the mandatory compression requirement with a requirement that SDs and MSPs establish policies and procedures for periodically engaging in portfolio compression exercises with counterparties that are also SDs or MSPs and for engaging in portfolio compression with all other counterparties upon request. The Commission is qualifying the requirement that SDs and MSPs terminate fully offsetting swaps by requiring instead that SDs and MSPs establish policies and procedures for terminating fully offsetting swaps in a timely fashion, but allowing SDs and MSPs to determine where it is appropriate to do so. The Commission believes that these modifications retain the benefits of portfolio compression while reducing the compliance costs to SDs and MSPs and costs that otherwise may have been incurred by other market participants.

Finally, the Commission notes that ESMA has proposed portfolio compression requirements that are substantially similar to those adopted by the Commission in this release.[108] By closely aligning portfolio compression requirements through consultation with ESMA, the Commission believes that SDs and MSPs will benefit from a largely unitary regulatory regime that does not require separate compliance and operational policies and procedures.

E. Swap Trading Relationship Documentation

The OTC derivatives markets traditionally have been characterized by privately negotiated transactions entered into by two counterparties, in which each party assumes and manages the credit risk of the other. While OTC derivatives are traded by a diverse set of market participants, such as banks, hedge funds, pension funds, and other institutional investors, as well as corporate, governmental, and other end-users, a relatively few number of dealers are, by far, the most significantly active participants. As such, the default of a dealer may result in significant losses for the counterparties of that dealer, either from the counterparty exposure to the defaulting dealer or from the cost of replacing the defaulted trades in times of market stress.[109]

OTC derivatives market participants typically have relied on the use of industry standard legal documentation, including master netting agreements, definitions, schedules, and confirmations, to document their swap trading relationships. This industry standard documentation, such as the widely used ISDA Master Agreement and related definitions, schedules, and confirmations specific to particular asset classes, offers a framework for documenting the transactions between counterparties for OTC derivatives products.[110] The standard documentation is designed to set forth the legal, trading, and credit relationship between the parties and to facilitate cross-product netting of transactions in the event that parties have to close-out their position with one another.

One important method of addressing the credit risk that arises from OTC derivatives transactions is the use of bilateral close-out netting. Parties seek to achieve enforceable bilateral netting by documenting all of their transactions under master netting agreements.[111] Following the occurrence of a default by one of the counterparties (such as bankruptcy or insolvency), the exposures from individual transactions between the two parties are netted and consolidated into a single net ''lump sum'' obligation. A party's overall exposure is therefore limited to this net sum. That exposure then may be offset by the available collateral previously provided being applied against the net exposure. As such, it is critical that the netting provisions between the parties are documented and legally enforceable and that the collateral may be used to meet the net exposure. In recognition of the risk-reducing benefits of close-out netting, many jurisdictions provide favorable treatment of netting

[105] ISDA; The Working Group; Markit.

[106] TriOptima; Markit; ISDA; ABC & CIEBA; AMG; Chatham; Dominion; FHLBs; Freddie Mac; MetLife; MFA; NAIC; GFED.

[107] The Working Group.

[108] *See* ESMA Draft Technical Standards, Article 3 RM, subsection 2, (stating that ''counterparties with 500 or more OTC derivative contracts outstanding which are not centrally cleared shall have procedures to regularly, and at least twice a year, analyse the possibility to conduct a portfolio compression exercise in order to reduce their counterparty credit risk and engage in such portfolio compression exercise.'').

[109] *See* Financial Stability Board, ''Implementing OTC Derivatives Market Reforms: Report of the OTC Derivatives Working Group,'' (Oct. 10, 2010), available at *http://www.financialstabilityboard.org/publications/r_101025.pdf.*

[110] The International Swaps and Derivatives Association (ISDA) is a trade association for the OTC derivatives industry (*http://www.isda.org*).

[111] Enforceable bilateral netting arrangements are a common commercial practice and are an important part of risk management and minimization of capital costs.

arrangements in bankruptcy,[112] and favorable capital and accounting treatment to parties that have enforceable netting agreements in place.[113]

There is also a risk that inadequate documentation of open swap transactions could result in collateral and legal disputes, thereby exposing counterparties to significant counterparty credit risk. By way of contrast, adequate documentation between counterparties offers a framework for establishing the trading relationship between the parties.

To ensure the risk-reducing benefits of adequate swap trading relationship documentation, the Commission proposed § 23.504. Proposed § 23.504 required SDs and MSPs to establish, maintain, and enforce written policies and procedures reasonably designed to ensure that each SD and MSP and its counterparties have agreed in writing to all of the terms governing their swap trading relationship and have executed all agreements required by proposed § 23.504. These included agreement on terms related to payment obligations, netting of payments, events of default or other termination events, netting of obligations upon termination, transfer of rights and obligations, governing law, valuation, and dispute resolution procedures, as well as credit support arrangements, including margin and segregation. Agreement on valuation methodologies pursuant to § 23.504(b)(4) is discussed separately below. In addition, proposed § 23.504 required each SD and MSP to have an independent internal or external auditor examine annually at least 5 percent of the swap trading relationship documentation created during the year to ensure compliance with Commission regulations and the SD's or MSP's policies and procedures established pursuant to § 23.504.

Several commenters supported the rule. One stated that clear and thorough standards for documentation are essential to avoid the situation that became apparent when AIG and Lehman Brothers failed: A hopelessly tangled web of poorly documented transactions, with the effort to sort it all out emerging as a separate threat to the financial system.[114] Others supported the goal of the rule to ensure that the parties to a trade have in fact agreed on its economic and legal terms prior to or contemporaneously with entering into a swap, and are communicating and maintaining appropriate records memorializing that agreement.[115] However, many commenters also objected to the proposed rule on cost grounds.

Several commenters strongly urged the Commission not to make § 23.504 retroactively applicable to existing swaps because the need to make amendments to existing documentation would be time consuming and costly.[116] Having considered these comments, the Commission is adopting the alternative presented by commenters and is modifying § 23.504 to make clear that the rule does not apply to swaps executed prior to the date on which SDs and MSPs are required to be in compliance with § 23.504. The Commission notes, however, that the rule does not prohibit SDs and MSPs from agreeing with their counterparties to amend existing swap trading relationship documentation to bring such documentation into compliance with § 23.504 (or any other Commission regulation) and ensure that netting arrangements will apply to swaps executed prior to and after promulgation of § 23.504. The ability to combine netting sets in this manner may reduce costs of collateralization for many SDs and MSPs.

Several commenters were concerned that proposed § 23.504 may require market participants to incur the burden and expense of negotiating master agreements even if a stand-alone agreement or ''long-form'' confirmation that incorporates terms of a standard master agreement by reference would sufficiently address legal risks.[117] The Commission notes, however, that nothing in the rule prohibits incorporation by reference so long as the terms so incorporated are in written form, and therefore confirms that so long as a ''long-form'' confirmation includes all terms of the trading relationship and is executed prior to or contemporaneously with entering into a swap transaction, such would be in compliance with § 23.504.

A number of comments reflected a concern regarding the requirement that SDs and MSPs audit no less than 5 percent of their trading relationship documentation annually, arguing that the requirement is burdensome and recommending that the Commission adopt an alternative, principles-based approach requiring SDs and MSPs to conduct audits sufficient to identify material weaknesses in their documentation policies and procedures. The Commission was persuaded that the audit requirement need not prescribe the percentage of agreements to be audited to maintain the benefits of the rule, and has modified the rule in accordance with the recommendations of commenters.

In addition, several commenters recommended that valuation dispute reporting under § 23.504(e) should be subject to a materiality standard to avoid an overly-burdensome reporting requirement that will result in substantial informational noise. The Commission agreed with these commenters and reduced the burden of the reporting requirement by revising the proposed rule to add a $20,000,000 threshold on the reporting of valuation disputes.

Finally, the Commission recognizes that requiring implementation of the documentation requirements of § 23.504 immediately or within a very compressed timeframe creates certain costs for industry participants. Consequently, reducing these costs—enumerated below—by extending the compliance schedule represents a benefit.

First, to meet timelines some firms will need to contract additional staff or hire vendors to handle some necessary tasks or projects. Additional staff hired or vendors contracted in order to meet more pressing timelines represent an additional cost for market participants. Moreover, as pointed out by commenters, a tightly compressed timeframe raises the likelihood that more firms will be competing to procure services at the same time; this could put firms that conduct fewer swaps at a competitive disadvantage in obtaining those services, making it more difficult for them to meet required timelines.[118] In addition, it could enable service providers to command a pricing premium when compared to times of ''normal'' or lesser competition for similar services. That premium represents an additional cost when compared to a longer compliance timeline.

Second, if entities are not able to comply with the documentation requirements by a certain date, they may avoid transacting swaps requiring compliance until such a time as they are able to comply. In this event, liquidity

[112] *See e.g.,* 11 U.S.C. 561 (protecting contractual right to terminate, liquidate, accelerate, or offset under a master netting agreement and across contracts).

[113] *See* 12 CFR part 3, Appendix C; 12 CFR part 208, Appendix F; 12 CFR part 225, Appendix G; and 12 CFR part 325, Appendix D (banking regulations regarding qualifying master netting agreements).

[114] Better Markets.

[115] ISDA & SIFMA.

[116] The Working Group; ISDA & SIFMA; FSR; MFA; FHLBs; The Coalition for Derivative End-Users.

[117] OCC; IECA.

[118] *See* letter from CIEBA.

that otherwise would result from those foregone swaps would be reduced, making the swaps more expensive for market participants taking the other side. Moreover, firms compelled to withdraw from the market pending compliance with required documentation measures will either leave certain positions un-hedged—potentially increasing the firm's own default risk, and therefore the risk to their counterparties and the public. Alternatively, firms compelled to withdraw from the market for a period of time could attempt to approximate their foregone swap hedges using other, likely more expensive, instruments. Further, to the extent the withdrawing entities are market makers, they will forsake the revenue potential that otherwise would exist for the period of their market absence.

Third, firms may have to implement technological solutions, sign contracts, and establish new operational procedures before industry standards have emerged that address new problems effectively. To the extent that this occurs, it is likely to create costs. Firms may have to incur additional costs later to modify their technology platforms and operational procedures further, and to renegotiate contracts—direct costs that a more protracted implementation schedule would have avoided.[119] Moreover, costs created by the adoption of standards that fail to address certain problems, or attributable to undesired competitive dynamics resulting from such standards, may be longstanding.

The Commission, informed by its consideration of comments and alternatives, discussed in the sections above and below, believes that the approach contained in this adopting release is reasonable and appropriate in light of the tradeoffs described above. The compliance dates discussed above give the Commission the opportunity to provide additional time to entities in ways that generally align with: (1) Their resources and expertise, and therefore their ability to comply more quickly; and (2) their level of activity in the swap markets, and therefore the possible impact of their swap activities on the stability of the financial system. Entities with the most expertise in, and systems capable to transact, swaps also are likely to be those whose transactions represent a significant portion of all transactions in the swap markets. They are more likely to be able to comply quickly, and the benefits of requiring them to do so are greater than would be the case for less active entities. On the other hand, entities with less system capability and in-house swap expertise may need more time to comply with documentation requirements, but it is also likely that their activities represent a smaller proportion of the overall market, and therefore are less likely to create or exacerbate shocks to the financial system.[120] The Commission believes that SDs, security-based swap dealers, MSPs, major security-based swap participants, and active funds (as defined above) are entities likely possessing more advanced systems and expertise, and whose swap activities constitute a significant portion of overall swap market transactions. On the other hand, other market participants may be less likely to have highly developed infrastructure and likely have swap activities that constitute a less significant proportion of the market. Therefore, the Commission has determined to stagger the compliance dates for § 23.504, providing 90, 180, or 270 days for SDs and MSPs to bring their swap trading relationship documentation into compliance with the rules, depending on the identity of the counterparty as discussed more fully in section III.B.1 above.

F. Swap Valuation Methodologies

Swap valuation disputes have long been recognized as a significant problem in the OTC derivatives market.[121] The ability to determine definitively the value of a swap at any given time lies at the center of many of the OTC derivatives market reforms contained in the Dodd-Frank Act and is a cornerstone of risk management. Swap valuation is also crucial for determining capital and margin requirements applicable to SDs and MSPs and therefore plays a primary role in risk mitigation for uncleared swaps.

The Commission recognizes that swap valuation is not always an easy task. In some instances, there is widespread agreement on valuation methodologies and the source of formula inputs for frequently traded swaps. Many of these swaps have been accepted for clearing for a number of years (i.e., commonly traded interest rate swaps and CDS). However, parties often dispute valuations of thinly traded swaps where there is not widespread agreement on valuation methodologies or the source for formula inputs. Many of these swaps are thinly traded either because of their limited use as risk management tools or because they are simply too customized to have comparable counterparts in the market. As many of these swaps are valued by dealers internally by ''marking-to-model,'' their counterparties may dispute the inputs and methodologies used in the model. As uncleared swaps are bilateral, privately negotiated contracts, on-going swap valuation for purposes of initial and variation margin calculation and swap terminations or novations, has also been largely a process of on-going negotiation between the parties. The inability to agree on the value of a swap became especially acute during the 2007–2009 financial crisis when there was widespread failure of the market inputs needed to value many swaps.[122]

In light of these concerns, the Commission proposed § 23.504(b)(4), which required SDs and MSPs to include in their swap trading relationship documentation an agreement with their counterparties on the methods, procedures, rules, and inputs for determining the value of each swap at any time from execution to the termination, maturity, or expiration of such swap. The Commission believes that by requiring agreement between counterparties on the methods and inputs for valuation of each swap, § 23.504(b)(4) will assist SDs and MSPs and their counterparties to arrive at valuations necessary for margining and internal risk management, and to resolve valuation disputes in a timely manner, thereby reducing risk.

[119] *See* e.g., ACLI letter.

[120] OCC data demonstrates that among insured US commercial banks, ''the five banks with the most derivatives activity hold 96 percent of all derivatives, while the largest 25 banks account for nearly 100 percent of all contracts.'' The report is limited to insured US commercial banks, and also includes derivatives that are not swaps. However, swap contracts are included among the derivatives in the report, constituting approximately 63 percent of the total notional value of all derivatives. These statistics suggest that a relatively small number of banks hold the majority of swap positions that could create or contribute to distress in the financial system. Data is insufficient, however, to generalize the conclusions to non-banking institutions. *See* ''OCC's Quarterly Report on Bank Trading and Derivatives Activities: Fourth Quarter 2011'' p. 11. *http://www.occ.treas.gov/topics/capital-markets/financial-markets/trading/derivatives/dq411.pdf.*

[121] *See* ISDA Collateral Committee, ''Commentary to the Outline of the 2009 ISDA Protocol for Resolution of Disputed Collateral Calls,'' June 2, 2009 (stating ''Disputed margin calls have increased significantly since late 2007, and especially during 2008 have been the driver of large (sometimes > $1 billion) un-collateralized exposures between professional firms.'').

[122] The failure of the market to set a price for mortgage-backed securities led to wide disparities in the valuation of CDS referencing mortgage-backed securities (especially collateralized debt obligations). Such wide disparities led to large collateral calls from dealers on AIG, hastening its downfall. *See* CBS News, ''Calling AIG? Internal Docs Reveal Company Silent About Dozens Of Collateral Calls,'' Jun. 23, 2009, available at: *http://www.cbsnews.com/stories/2009/06/23/cbsnews_investigates/main5106672.shtml.*

Commenters supported the valuation proposal in light of the benefits to risk management and adequate collateralization.[123] Indeed, some commenters argued that the Commission should have been more prescriptive in its approach to valuation.

Multiple commenters, however, objected to § 23.504(b)(4) on cost grounds. Specifically, commenters stated that the rule will significantly increase the pre-execution swap negotiation burden on SDs, MSPs, and their counterparties without an offsetting benefit.[124] Some commenters also objected that the rule may discourage the development of more refined, dynamic swap valuation models that are more accurate, and therefore more efficient, than less sophisticated or vanilla models.[125]

Other commenters offered alternatives to requiring SDs and MSPs to agree on valuation methodologies with their counterparties. Many recommended that the Commission focus its rules on the valuation dispute resolution process, rather than valuation methodologies.[126] One recommended that the rule include an explicit authorization for parties to use the services of independent third parties to provide any or all of the elements required to agree upon the valuation of swaps, and not include any preferable inputs or pricing sources for the valuation of swaps.[127] Another recommended that the rule be deleted and replaced with a requirement that SDs and MSPs provide information to substantiate their valuations upon the request of a counterparty.[128]

As discussed above, the Commission is substantially modifying the rule in response to concerns raised and alternatives suggested by commenters. Many of the changes being made in the rule adopted by this release address the cost concerns and alternatives outlined above. First, the rule has been focused on the valuation needed to meet the margin requirements under section 4s(e) of the CEA and the Commission's regulations under part 23, and to meet the risk management requirements under section 4s(j) of the Act and the Commission's regulations under part 23. The Commission believes that this change, by focusing the use of the agreed-upon valuation methodologies, will ease pre-execution negotiation and improve internal risk management processes. In addition, the Commission responded to concerns from market participants who feared they would have to agree on precise models, by clarifying that they had to agree on a process, which includes things such as methods, procedures, rules and inputs. Parties are free to agree on a model, agree to use one party's confidential proprietary model, rely on third-party vendors, or a host of other possibilities.

Second, the rule has been modified such that SDs and MSPs need not agree on swap valuation methodologies with counterparties that are not SDs, MSPs, or financial entities, unless such counterparties request such agreements. The Commission believes that this change will alleviate the pre-execution negotiation burden on SDs, MSPs, and their non-financial entity counterparties by limiting such negotiations to counterparties that are more likely to use sophisticated valuation methodologies akin to those in use by the SD or MSP itself.

Third, in response to commenters that objected that the rule may discourage the development of more refined, dynamic swap valuation models that are more accurate, and therefore more efficient, than less sophisticated or vanilla models, the Commission is modifying the rule to explicitly permit parties to agree on changes or procedures to modify their valuation agreements at any time. This change allows counterparties to determine an efficient means of changing the agreement for each contract to allow for evolution of valuation methodologies while maintaining the benefits of agreed-upon valuation methodologies.

Fourth, in response to commenters' concerns regarding the protection of proprietary information used in valuation, the Commission is modifying the rules to make explicit that SDs and MSPs are not required to disclose to the counterparty confidential, proprietary information about any model it may use to value a swap. The Commission believes this clarification will alleviate concerns that proprietary information would have to be disclosed as a result of the valuation agreement process.

Finally, the rule has been modified to allow for use of a valuation dispute resolution process in place of the proposed requirement that the documentation include alternative methods for determining the value of a swap in the event of the unavailability or failure of any input required to value the swap. The Commission believes this change lessens the negotiation and operational burden on SDs and MSPs.

The Commission believes that the changes outlined above substantially reduce the burden of the rule on SDs, MSPs, and their counterparties without sacrificing the benefits of the rule. The rule will serve to assist SDs and MSPs and their counterparties in arriving at valuations necessary for margining and internal risk management, and in resolving valuation disputes in a timely manner, thereby reducing risk.

G. Summary of Cost and Benefit Considerations: Confirmation, Portfolio Reconciliation, and Portfolio Compression

In the Confirmation NPRM, the Commission specifically requested comment on its consideration of costs and benefits. The Commission received a number of comments in addition to those discussed above.

ISDA commented that registrants will incur substantial initial one-time costs to develop, test, and implement new procedures and technology that are required in order to be compliant with the proposed rules. With regard to confirmation costs, ISDA asserted that market participants will have to invest in electronic platforms for confirmation for each asset class in order to meet the expedited timeframes for confirmation, which may be prohibitively expensive, particularly for non-SDs and non-MSPs. However, ISDA did not provide any quantitative data in support of this assertion despite multiple requests from Commission staff.[129]

ISDA also argued that given the marked improvement in post-trade processing, as well as continued industry efforts and commitments to enhance post-trade processing in a targeted, efficient and safe manner, it is unclear whether the incremental benefits of the Commission's proposed standards applicable to all swap confirmations will outweigh the significant compliance costs that the confirmation requirements will entail.

To comply with the portfolio reconciliation requirement promptly, ISDA believes firms that do not currently use an electronic platform or vendor service will need to expend significant time and resources, and even those firms that do use electronic platforms or vendor services to reconcile their portfolios will need to make significant adjustments to comply with the reconciliation requirement. ISDA believes that initial compliance

[123] Better Markets; Michael Greenberger; Chris Barnard.

[124] The Working Group; ISDA & SIFMA; FSR; Markit; Freddie Mac; COPE; MFA; FHLBs; CIEBA; EEI; Coalition of Derivatives End-Users. Several of these commenters stated that such pre-execution negotiations could take months to complete, if possible at all.

[125] OCC; Hess.

[126] The Working Group; Morgan Stanley; MFA; IECA; FHLBs; CIEBA; MetLife.

[127] Markit.

[128] Coalition of Derivatives End-Users.

[129] *See* cftc.gov for information regarding staff meetings with ISDA pertaining to these final rules.

with the proposed rules will cost each entity approximately $5–10 million and annual portfolio reconciliation expenses for a party with a large portfolio may rival and perhaps even exceed this upfront cost.

The Working Group requested that the Commission address any requirement for electronic matching of all or certain types of swaps in a separate rulemaking that includes a careful study of the potential costs imposed by such a rule. The Working Group estimated, based on the $6.00 per trade fee of the ICE eConfirm service, that implementation of an electronic matching requirement would cost each registrant in excess of $1,000,000 annually. In addition, The Working Group asserted that there would be additional opportunity costs associated with no longer being able to enter into customized transactions.

The Working Group requested that the Commission evaluate the proposed rules in light of its various recordkeeping and reporting proposals, as such may cause firms to incur tremendous administrative obligations to record changes to their swap portfolios, their accounting records, treasury arrangements and capital allocations, as well as incurring reporting obligations to SDRs on a swap-by-swap basis. The Working Group also presented a report prepared by NERA estimating that compliance with the proposed rules for some entities in this category would entail annual incremental costs of $1,400,000.[130]

The FHLBs cautioned that SD compliance with the proposed rules could adversely impact end users in a number of ways, including (i) SD unwillingness to offer swaps important to end user risk management if the SD cannot comply with the rules in an economic manner; (ii) passing on of SD compliance costs to end user counterparties, discouraging some end users from using cost-effective risk management tools and raising overall system risk; and (iii) introduction of legal uncertainty as to the enforceability of swaps that fail to meet the confirmation deadlines of the proposed rules. The FHLBs also argued that certain swap documentation requires review by legal staff and the short deadline for confirmation would require pre-execution review by legal staff, even for swaps that are discussed but never actually executed, entailing costly and unnecessary legal expenditures.

As discussed in the above sections, the Commission has modified many aspects of the proposed rules in order to mitigate the burden placed on market participants as identified by commenters while still achieving the important policy goals outlined above. The Commission has:

- Provided for a phased implementation plan, providing longer periods for compliance with the rule for those entities for which the rules will be most burdensome, with particularly long phasing of confirmation deadlines; [131]
- Expanded the definition of ''multilateral portfolio compression exercise'' which increases flexibility of the rule;
- Removed the 15 and 30 minute acknowledgement and confirmation deadlines for swap transactions that are ''processed electronically'';
- Required draft trade acknowledgements only to be delivered upon request of a counterparty prior to execution;
- Adjusted confirmation deadlines for time zone differences and end of day trading, providing relief from more stringent deadlines;
- Provided a safe harbor from confirmation requirements for swaps executed on a SEF or DCM, or cleared by a DCO;
- Clarified which swap transactions require confirmation;
- Reduced the frequency of required portfolio reconciliation with non-SDs and MSPs;
- Changed the valuation dispute resolution requirement from ''one business day'' to ''policies and procedures reasonably designed to ensure that valuation disputes are resolved within five business days;''
- Required portfolio compression with non-SDs and non-MSPs only upon request of the non-SD or non-MSP counterparty;
- Changed the mandatory portfolio compression requirement among SDs and MSPs to a requirement for policies and procedures for engaging in regular portfolio compression, where appropriate;
- Required fully-offsetting swaps to be terminated in a timely fashion (rather than within one business day) and only where appropriate; and
- Clarified that the compression rule does not apply to cleared swaps; compression of cleared swaps will be in accordance with the rules of the DCO.

Through these changes, the Commission anticipates that many of the concerns raised by commenters regarding the costs of the rules will be mitigated.

Confirmation. The Commission anticipates that there will be a significant adjustment for market participants to move to the faster timeframes required by the confirmation rules, particularly in those asset classes where the majority of transactions are manually confirmed. SDs and MSPs will have to design, compose, and implement policies and procedures reasonably designed to meet the confirmation timeframes; SDs and MSPs must also compile and maintain any applicable records. Participants may invest in electronic platforms for confirmation for each asset class in order to meet the expedited timeframes for confirmation. The Commission notes, however, that such investment is not necessarily required by the rules as market participants are able to confirm in any manner that meets the rule's deadline of the first business day after the day of execution (or two-business day timeframe, for swap transactions with non-financial non-registrants).

With regard to confirmation, the historical context reveals that market participants, including all major swap dealers, have been working on achieving timely confirmation across all asset classes for the past 5–7 years. Consequently, additional costs related to confirmation technology for these entities would be minimal for those SDs and MSPs already achieving timely confirmation of their swap transactions. In addition, costs will be further minimized through a significant phase-in period. For example, SDs and MSPs will have up to two years to achieve compliance with the rules.

Moreover, the Commission has sought to gather additional information about the costs of confirmation services from both ISDA and major third party service providers of confirmation services. Commission staff meetings with third party service providers have revealed that per trade or event confirmations can cost anywhere from $3 to $10 per transaction. It should be noted, however, that confirmation fee schedules can be complex and dependent on a host of idiosyncratic factors.

[130] NERA, Cost-Benefit Analysis of the CFTC's Proposed Swap Dealer Definition Prepared for the Working Group of Commercial Energy Firms, December 20, 2011. In the late-filed comment supplement, NERA estimates these costs for entities ''engaged in production, physical distribution or marketing of natural gas, power, or oil that also engage in active trading of energy derivatives''—termed ''nonfinancial energy companies'' in the report. The figure cited includes costs to comply with the proposed confirmation, portfolio reconciliation, and portfolio compression requirements and is based on the survey response of only one member of The Working Group. Elsewhere in the same report, NERA estimates the costs of compliance with the confirmation requirements alone at $235,000 for initial set-up and annual operating costs of $307,000.

[131] This alternative was suggested by both ISDA and The Working Group, and the Commission has adopted it for these final rules.

The Commission notes The Working Group's estimate of approximately $1,000,000 per entity to implement an electronic matching requirement, but observes that the deletion of the phrase ''processed electronically'' from the rules should make clear to market participants that there is no requirement to confirm electronically. However, this estimate may be useful for individual entities to use as a reference figure for investment in electronic platforms.[132]

The Commission is unable to provide more specific quantification of the costs of confirmation given the unique characteristics of the swap portfolios of SDs, MSPs, and their counterparties, as well as the parties' discretion in choosing how to comply with the confirmation timeframe.

As noted above, the Commission does not believe the rules requiring SDs and MSPs to have policies and procedures to achieve confirmation with their non-registrant counterparties should pose an unreasonable burden on end users. The Commission extended the confirmation deadline for non-financial, non-registrant counterparties to two business days after execution, lessening the rush to review and approve acknowledgements and/or confirmations while maintaining a relatively quick turn-around for these market participants. In addition, the Commission anticipates that the changed provisions regarding draft acknowledgements and compression—which give the non-SD or MSP counterparty the option as opposed to obligation—should ensure that such entities are protected from unfair practices without overburdening the operations of these entities.

The benefits associated with quicker confirmation, as noted in sections III.C and IV.B of this release, include improvement of post-execution operational and risk management processes, including the correct calculation of cash flows and discharge of settlement obligations as well as accurate measurement of counterparty credit exposure. Timely confirmation also allows any discrepancies, exceptions, and/or rejections of terms to be identified and resolved more quickly, lessening the risk of a dispute that could disrupt orderly market operations. In general, the rules regarding expedited confirmation should improve the efficient and orderly operations of bilateral markets through more effective risk management and dispute resolution. The extended compliance timeframes should allow for a smooth transition to the new rules as market participants prepare not only to meet these standards, but others imposed by new regulations under the Dodd-Frank Act.

Reconciliation. In response to ISDA's concern that the reconciliation rules would require significant investment in electronic platforms for reconciliation, especially for those entities with large portfolios, the Commission reiterates its view that the advent of SDRs will eventually ease some of those costs by providing a central data location for most (if not all) the material terms that are required to be reconciled.

Importantly, the Commission has not determined which processes for reconciliation are the most appropriate, which means that each market participant can choose the method for reconciliation that best fits its own internal structure and cost-benefit analysis, provided such method comports with the Commission's requirements. In addition, the changes listed above—including the reduced frequency of reconciliation for portfolios between SDs or MSPs and their non-SD or non-MSP counterparties—should ease the burden of reconciling portfolios. While the Commission has been unable to independently verify the $5–10 million estimate for portfolio reconciliation provided by ISDA, the Commission expects that the changes herein as well as the increased use of SDRs will lessen the estimated cost considerably.

In the Confirmation NPRM, the Commission asserted that the costs of the proposed rules would be minimized by the fact that most SDs and MSPs reconcile their swap portfolios as part of a prudent operational processing regime that many, if not most, SDs and MSPs already undertake as part of their ordinary course of business. In response to these assertions, at least one commenter agreed that a large number of SDs and MSPs already regularly reconcile their portfolios with each other and with other entities and that the increased frequency and inclusion of smaller portfolios as proposed should prove no obstacle to such entities.[133] Consequently, additional costs of the Commission's final rule would be minimal for those SDs and MSPs already engaged in regular portfolio reconciliation. In addition, the Commission's decision to extend the valuation dispute resolution requirement from one day responds to concerns from market participants about cost.

Given the widespread benefits of portfolio reconciliation, including increased risk management and fewer disputes to resolve, the Commission believes its final rules regarding reconciliation are appropriate notwithstanding the increased costs for some participants. The Commission recognizes that certain costs will still arise despite the changes the Commission has made. Such costs include (i) Increased costs to include all material terms rather than some subset of terms; (ii) the additional resources to design, compose, and implement the required policies and procedures; (iii) the additional resources needed to comply with the dispute resolution timeframes; and (iv) the compilation and maintenance of applicable records. These costs, however, are by nature specific to each entity's internal operations; absent specific cost estimates from commenters (which were not provided), the Commission cannot accurately provide estimations regarding the resources needed to comply. As stated above and in the NPRM, portfolio reconciliation is widely recognized as an effective means of identifying and resolving disputes regarding terms, valuation, and collateral. Reconciliation is beneficial not only to the parties involved but also to the markets as a whole. By identifying and managing disputed key economic terms or valuation for each transaction across a portfolio, overall risk can be diminished. Registrants will be able to identify and correct problems in their post-execution processes (including confirmation) in order to reduce the number of disputes and improve the integrity and efficiency of their internal processes. Expanding the universe of participants subject to reconciliation, therefore, can help to reduce the risk bilateral markets may pose to the broader financial system.

Compression. Finally, the Commission believes its final rules regarding portfolio compression dramatically reduce costs as compared to the proposed rule; however, the Commission recognizes that costs will necessarily increase from the current state of the market. Participants will necessarily have to design, compose, and implement policies and procedures to regularly evaluate compression opportunities with their counterparties as well as those opportunities offered by third parties. However, given the large risk management benefits available from the regular compression of offsetting trades—benefits including reduced risk

[132] The Commission also notes the estimates provided by NERA, but observes that NERA did not provide sufficient information for the Commission to determine which portion of such estimates assumed implementation of an electronic matching requirement. Thus the Commission could not independently verify the estimates.

[133] TriOptima letter.

and enhanced operational efficiency—the Commission believes the final rules are appropriate to ensure the fair and orderly operation of bilateral derivatives markets.

In terms of quantification of the costs of compression, the Commission notes that in its Confirmation NPRM, it stated that there are a number of third-party vendors that provide compression, and some of these providers charge fees based on results achieved (such as number of swaps compressed). No commenter refuted this statement or provided alternative information regarding quantification.

H. Section 15(a) Considerations: Confirmation, Portfolio Reconciliation, and Portfolio Compression

1. Protection of Market Participants and the Public

The final rules relating to confirmation, portfolio reconciliation, and portfolio compression protect market participants by improving operational efficiency and mitigating legal risk. In turn, the reduction of risk in bilateral markets can reduce risk across the interconnected financial system, protecting the public from costly market disruptions.

Timely confirmation protects market participants by providing certainty as to obligations between SDs, MSPs, and their counterparties while allowing a more efficient processing of disputed terms that may become apparent during the confirmation process. Disputes regarding terms and conditions, when left unresolved, can expose market participants to significant counterparty credit risk. By diminishing the number of these disputes that occur and by decreasing the length of time in which they are resolved, the Commission believes these rules protect participants from such unnecessary risk.

2. Efficiency, Competitiveness, and Financial Integrity of Derivatives Markets

The final rules improve the efficiency of the market by decreasing the amount of time trades remain outstanding, improving the processes by which trades are confirmed, and requiring participants to eliminate unnecessary trades. Trades that remain unconfirmed for extended periods of time create inefficient backlogs that inhibit the orderliness of the market. Proper confirmation, compression, and reconciliation policies improve transparency in the market and increase efficiency by promoting the exchange of important market information. Requirements regarding confirmations and draft acknowledgements, as discussed above, provide non-financial entities with information necessary for confirming promptly. In addition, such draft acknowledgements may serve counterparties insofar as they might compare and assess counterparties, which should improve competition among SDs and MSPs.

3. Price Discovery

The timeliness of confirmations, as required under these rules, should ensure that all terms including prices of transactions are agreed upon quickly and efficiently. This linking of price terms with all other swap terms should improve the information provided to the public and regulators through SDRs and other means, thereby improving the overall price discovery process. Periodic reconciliation and compression also aid in ensuring that unnecessary and/or offsetting trades are netted and that, should disputes arise, those disputes are promptly and effectively resolved. In this way, the pricing information communicated regarding trades conducted under these rules should be accurate and timely, improving the price discovery function of bilateral derivatives markets.

4. Sound Risk Management

As described throughout this release, the rules promulgated herein are designed to mitigate the risk in bilateral derivatives markets by ensuring the timely and accurate confirmation of trades, reconciliation of portfolios, and compression of portfolios. The final rules require actions, policies, and procedures on the part of SDs and MSPs to diminish operational risk, legal risk, and counterparty credit risk. The Commission believes these requirements will encourage sound risk management on the part of SDs and MSPs; given the systemically important nature of these entities, sound risk management by SDs and MSPs should improve the risk management of the financial system as a whole, lessening the risks associated with a major market crisis.

5. Other Public Interest Considerations

The Commission has not identified other public interest considerations as a result of these rules.

I. Summary of Cost and Benefit Considerations: Swap Trading Relationship Documentation

The Commission requested comment on its consideration of costs and benefits under section 15(a) of the CEA. The Commission received a number of responsive comments in addition to those discussed above.

The Working Group stated that the Commission should articulate the public policy benefit of the proposed rule and present analysis that demonstrates such benefit exceeds the cost imposed on market participants and the Commission. IECA stated that the proposed regulations would impose administrative and regulatory costs in excess of any benefit gained. The Coalition for Derivatives End Users was concerned that the valuation provision will increase costs without a proportionate benefit. Markit stated that the proposed rule will make the process of transaction documentation very expensive and time consuming, and will lead to extremely technical and verbose swap documentation, noting that the need to negotiate such terms may impede effective trading. Markit thus believes the costs outweigh the benefits, and urges the Commission to impose more realistic requirements regarding valuation methodologies.

IECA believes the Commission's cost-benefit analysis did not consider the legal review and management time expense for end users, which could be significant for small entities. IECA focuses on the Commission's estimates under the Paperwork Reduction Act, and challenges the Commission's use of $125 per hour for legal fees. IECA believes that $500 an hour is more appropriate for legal fees. IECA also believes that the Commission's estimate of an average of 10 hours per counterparty to negotiate the new documentation under § 23.504(b) is low, as the time needed must include not only negotiation, but also time for determining price points and inputs, decision-making time, and senior management time.

The Working Group believes the Commission's implementation costs substantially underestimate the potential impact because: (i) Margin requirements have yet to be proposed and negotiation of credit support arrangements currently can take months; (ii) market participants are unlikely to agree to standardized valuation methodologies; (iii) the Commission does not specifically discuss the potentially substantial costs associated with the audit requirement under § 23.504(e); [134] and (iv) the

[134] The Working Group presented a report prepared by NERA estimating that compliance with the audit requirements in these and other proposed rules for some nonfinancial energy companies would entail annual incremental costs of $224,000. NERA, Cost-Benefit Analysis of the CFTC's Proposed Swap Dealer Definition Prepared for the

Continued

proposed rules would significantly alter the process by which parties enter into swaps, and such costs have not been considered.

As discussed in the above sections, the Commission has modified many provisions of the final rules in response to comments received and in order to mitigate the burden imposed on market participants while accomplishing the goals as laid out in the NPRM. The Commission has:

- Provided for a phased implementation plan, providing longer periods for compliance with the rule for those entities for which the rules will be most burdensome;
- Clarified that the rules will be applicable only to swaps that are entered into after the rules become effective, and therefore not requiring retroactive application to existing swaps;
- Clarified that the rules do not apply to swaps executed on a SEF or DCM and cleared by a DCO, subject to certain minimum requirements;
- Imposed no additional requirements regarding documentation of events of default, termination events, or payment obligations;
- Permitted parties to agree on either alternative methods for determining the value of a swap or a valuation dispute resolution process;
- Reduced recordkeeping requirements under § 23.504(b)(6);
- Removed the 5 percent annual documentation audit requirement in favor of a more general audit standard; and
- Modified the swap valuation dispute reporting requirement to reduce the number of disputes that must be reported to the Commission, the SEC, and any applicable prudential regulator, and replaced the one-day reporting requirement with a three-day requirement for SDs and MSPs.

The Commission believes that these changes will reduce or eliminate many of the burden concerns raised by commenters.

Still, the Commission anticipates that significant costs will be incurred as a result of these documentation rules. Although the rules do not apply retroactively—that is, concerns regarding the need to re-negotiate already agreed-upon contracts are null—there will be costs going forward for market participants. Registrants will have to (i) Negotiate and document all terms of each trading relationship; (ii) design, compose, and implement policies and procedures reasonably designed to ensure the execution of swap trading relationship documentation, including valuation documentation; (iii) obtain documentation from counterparties who are claiming the end user exception to clearing; (iv) periodically audit documentation; and (v) keep records and/or make reports as required under §§ 23.504(d)–(e) and 23.505(b).

In its Documentation NPRM, the Commission considered the costs of its proposal and noted that memorializing the specific terms of the swap trading relationship and swap transactions between counterparties is prudent business practice and, in fact, many market participants already use standardized documentation. Accordingly, it is believed that many, if not most, SDs and MSPs currently execute and maintain trading relationship documentation of the type required by proposed § 23.504 in the ordinary course of their businesses, including documentation that contains several of the terms that would be required by the proposed rules. Thus, the hour and dollar burdens associated with the swap trading relationship documentation requirements may be limited to amending existing documentation to expressly include any additional terms required by the proposed rules.

The Commission also explained its belief that, to the extent any substantial amendments or additions to existing documentation would be needed, such revisions would likely apply to multiple counterparties, thereby reducing the per counterparty burden imposed upon SDs and MSPs. In addition, in its proposal, the Commission anticipated that standardized swap trading relationship documentation will develop quickly and progressively within the industry, dramatically reducing the cost to individual participants.

Indeed, the Commission is aware of industry-led efforts already underway to bring trading relationship documentation into compliance with new Dodd-Frank Act requirements.[135] These types of initiatives are likely to lower overall costs to market participants.

The Commission further expects the per hour and dollar burdens to be incurred predominantly in the first year or two after the effective date of the final regulations. Once an SD or MSP has changed its pre-existing documentation with each of its counterparties to comply with the proposed rules, there likely will be little need to further modify such documentation on an ongoing basis.

In terms of quantification, the Commission recognizes IECA's comments indicating that the primary costs of the documentation and valuation rules will be legal costs. In terms of a per hour fee, the Commission has previously cited Bureau of Labor Statistics findings that the mean hourly wage of an employee under occupation code 23–1011, ''Lawyers,'' that is employed by the ''Securities and Commodity Contracts Intermediation and Brokerage Industry'' is $82.22.[136] The Commission has adjusted this amount upward to $100 per hour because SDs and MSPs include large financial institutions whose employees' salaries may exceed the mean wage provided. To account for the possibility that the services of outside counsel may be required to satisfy the requirements associated with negotiating, drafting, and maintaining the required trading relationship documentation, the Commission used an average salary of $125 per hour. In response to comments that the hourly rate should be increased further, the Commission notes that any determination to use outside counsel is at the discretion of the registrant. Accordingly, the per-hour estimate for legal costs associated with these rules is $125–500 per hour. In terms of the number of hours required to amend documentation, whether the requirement be ten hours or substantially more, the Commission notes that industry-wide efforts could reduce this amount significantly.

The Commission also notes the NERA report regarding the costs of an annual audit. Given the alternative audit requirement finalized in these rules, the Commission expects that the audit costs would be reduced, perhaps significantly.

In conclusion, the Commission believes the final rules for documentation of swap trading relationships are appropriate to ensure the efficient and orderly operation of bilateral derivatives markets and to

Working Group of Commercial Energy Firms, December 20, 2011. In the late-filed comment supplement, NERA estimates these costs for entities ''engaged in production, physical distribution or marketing of natural gas, power, or oil that also engage in active trading of energy derivatives''—termed ''nonfinancial energy companies'' in the report. The figure cited includes costs to maintain a risk management program, quarterly audits of the program, and annual audits of swap trading relationship documentation, the first two of which are required under a separate rulemaking previously adopted by the Commission.

[135] ISDA is partnering with Markit to launch a technology-based solution enabling counterparties to amend their OTC derivatives documentation quickly and efficiently to comply with Dodd-Frank regulatory requirements. *See http://www2.isda.org/dodd-frank-documentation-initiative/.*

[136] *http.www.bls.gov/oes/2099/mayowe23.1011.htm.*

reduce the legal, operational, counterparty credit, and market risk that can arise from undocumented terms. The final rules promote an appropriate level of standardization; while the Commission does not believe the rules prohibit customized terms, the manner in which they are documented (i.e. written, pre-arranged terms that must include certain types of agreements as applicable) will become standardized. SDs, MSPs, and their counterparties alike will have certainty regarding what their documentation must include, though the actual terms are still readily negotiable. The Commission agrees with the Financial Stability Oversight Board OTC Derivatives Working Group that increased documentation standardization should improve the market in a number of ways, including (i) Facilitating automated processing of transactions; (ii) increasing the fungibility of contracts, which enables greater market liquidity; (iii) improving valuation and risk management; (iv) increasing the reliability of price information; (v) reducing the number of problems in matching trades; and (vi) facilitating reporting to SDRs.

J. Section 15(a) Considerations: Swap Trading Relationship Documentation

1. Protection of Market Participants and the Public

The final documentation rules will protect market participants by ensuring that every trading relationship and every transaction is properly documented. Full and transparent documentation diminishes the risk of unfair practices like valuing a swap to advantage one party at the expense of the other. As such, documentation protects particularly those parties most susceptible to being taken advantage of, such as non-financial entities. In addition, the legal and credit certainty provided by proper documentation provides protection to both sides of a relationship by ensuring a clear understanding of options and obligations, particularly in case of dispute or market crisis.

The provisions in the final rules related to valuation also provide protection to market participants from costly disputes over the collateralization of a swap; such disputes exacerbated the financial crisis as proper collateralization for risk management purposes could not be determined.

2. Efficiency, Competitiveness, and Financial Integrity of Derivatives Markets

As proper documentation encourages orderly operations and diminishes risk, the Commission believes the final rules improve the efficiency of markets. Increased standardization should allow for increased competition among SDs and MSPs, whose counterparties will be better able to compare between swap trading relationships to determine which relationships with which dealers best suit their needs. The transparency and certainty provided by proper documentation, in addition to the diminished risk of predatory trading practices, should improve the integrity of bilateral derivatives markets. Overall, then, the Commission considers the final rules to have a net positive impact on the efficiency, competitiveness, and financial integrity of derivatives markets.

3. Price Discovery

To the extent the final rules improve the process of valuing swap transactions between counterparties, they should also increase the reliability of pricing information; this increase in pricing reliability should improve the price discovery function of bilateral markets.

4. Sound Risk Management

Proper documentation of trading relationships and transactions is essential to sound risk management; simply put, if a dealer is unaware or unsure of agreed-upon terms and policies, it cannot be managing risk as efficiently as possible. The final rules, because they require full documentation of all facets of the relationship between counterparties, mitigate (i) The legal risk inherent in poorly documented or oral contracts; (ii) the counterparty credit risk that stems from improper documentation of credit terms and the counterparty credit risk that could occur based on false or misleading representations by either counterparty; and (iii) the operational risk that arises when internal operations personnel and systems do not have full or identical information regarding a particular transaction or counterparty.

The final valuation rules also provide support for sound risk management practices because they strive to ensure that two counterparties are not disputing the value of a transaction where margin or other cash flows are being exchanged. Limiting the risk that unresolved disputes can create in the marketplace as a whole—again considering the role valuation disputes played in the 2008 financial crisis—should allow systemic risk management as well as improving the risk management processes of individual market participants.

5. Other Public Interest Considerations

The Commission has not identified other public interest considerations as a result of these rules.

V. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) [137] requires that agencies consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis respecting the impact. The Commission has already established certain definitions of ''small entities'' to be used in evaluating the impact of its rules on such small entities in accordance with the RFA.[138] SDs and MSPs are new categories of registrant. Accordingly, the Commission noted in the proposals that it had not previously addressed the question of whether such persons were, in fact, small entities for purposes of the RFA.

In this regard, the Commission explained that it previously had determined that FCMs should not be considered to be small entities for purposes of the RFA, based, in part, upon FCMs' obligation to meet the minimum financial requirements established by the Commission to enhance the protection of customers' segregated funds and protect the financial condition of FCMs generally. Like FCMs, SDs will be subject to minimum capital and margin requirements, and are expected to comprise the largest global financial firms—and the Commission is required to exempt from designation as an SD entities that engage in a de minimis level of swaps dealing in connection with transactions with or on behalf of customers. Accordingly, for purposes of the RFA for the proposals and future rulemakings, the Commission proposed that SDs not be considered ''small entities'' for essentially the same reasons that it had previously determined FCMs not to be small entities.

The Commission further explained that it had also previously determined that large traders are not ''small entities'' for RFA purposes, with the Commission considering the size of a trader's position to be the only appropriate test for the purpose of large trader reporting. The Commission then noted that MSPs maintain substantial positions in swaps, creating substantial counterparty exposure that could have serious adverse effects on the financial

[137] 5 U.S.C. 601 *et seq.*

[138] 47 FR 18618 (Apr. 30, 1982).

stability of the United States banking system or financial markets. Accordingly, for purposes of the RFA for the proposals and future rulemakings, the Commission proposed that MSPs not be considered ''small entities'' for essentially the same reasons that it previously had determined large traders not to be small entities.

The Commission concluded its RFA analysis applicable to SDs and MSPs as follows: ''The Commission is carrying out Congressional mandates by proposing these rules. The Commission is incorporating registration of SDs and MSPs into the existing registration structure applicable to other registrants. In so doing, the Commission has attempted to accomplish registration of SDs and MSPs in the manner that is least disruptive to ongoing business and most efficient and expeditious, consistent with the public interest, and accordingly believes that these registration rules will not present a significant economic burden on any entity subject thereto.''

The Commission did not receive any comments on its analysis of the application of the RFA to SDs and MSPs. Moreover, during the time period since the rule proposals were published in the **Federal Register**, the Commission has issued final rules in which it determined that the registration and regulation of SDs and MSPs would not have a significant economic impact on a substantial number of small entities.[139] Accordingly, pursuant to Section 605(b) of the RFA, 5 U.S.C. 605(b), the Chairman, on behalf of the Commission, certifies that these rules will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Commission may not conduct or sponsor, and a registrant 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 Commission's adoption of §§ 23.500 through 23.505 (Swap Confirmation, Portfolio Reconciliation, Portfolio Compression, Swap Trading Relationship Documentation, and End User Exception Documentation) imposes new information collection requirements on registrants within the meaning of the Paperwork Reduction Act.[140]

Accordingly, the Commission requested and OMB assigned control numbers for the required collections of information. The Commission has submitted this notice of final rulemaking along with supporting documentation for OMB's review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for these collections of information are ''Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants, OMB control number 3038–0088,'' ''Confirmation, Portfolio Reconciliation, and Portfolio Compression Requirements for Swap Dealers and Major Swap Participants, OMB control number 3038–0068,'' and ''Orderly Liquidation Termination Provision in Swap Trading Relationship Documentation for Swap Dealers and Major Swap Participants, OMB control number 3038–0083.'' [141] Many of the responses to this new collection of information are mandatory.

The Commission protects proprietary information according to the Freedom of Information Act and 17 CFR part 145, ''Commission Records and Information.'' In addition, Section 8(a)(1) of the CEA strictly prohibits the Commission, unless specifically authorized by the Act, from making public ''data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers.'' The Commission also is required to protect certain information contained in a government system of records according to the Privacy Act of 1974, 5 U.S.C. 552a.

The regulations require each respondent to furnish certain information to the Commission and to maintain certain records. The Commission invited the public and other Federal agencies to comment on any aspect of the information collection requirements discussed in the Documentation NPRM, the Confirmation NPRM, and the Orderly Liquidation NPRM. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicited comments in order to: (i) Evaluate whether the proposed collections of information were necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimates of the burden of the proposed collections of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

It is not currently known how many SDs and MSPs will become subject to these rules, and this will not be known to the Commission until the registration requirements for these entities become effective. In its rule proposals, the Commission took ''a conservative approach'' to calculating the burden hours of this information collection by estimating that as many as 300 SDs and MSPs would register.[142] Since publication of the proposals in late 2010 and early 2011, the Commission has met with industry participants and trade groups, discussed extensively the universe of potential registrants with NFA, and reviewed public information about SDs active in the market and certain trade groups. Over time, and as the Commission has gathered more information on the swaps market and its participants, the estimate of the number of SDs and MSPs has decreased. In its FY 2012 budget drafted in February 2011, the Commission estimated that 140 SDs might register with the Commission.[143] After recently receiving additional specific information from NFA on the regulatory program it is developing for SDs and MSPs,[144] however, the Commission believes that approximately 125 SDs and MSPs, including only a handful of MSPs, will register. While the Commission originally estimated there might be approximately 300 SDs and MSPs, based on new estimates provided by NFA, the Commission now estimates

[139] *See, e.g.,* Registration of Swap Dealers and Major Swap Participants, 77 FR 2613 (Jan. 19, 2012); Swap Dealer and Major Swap Participant Recordkeeping, Reporting, and Duties Rules; Futures Commission Merchant and Introducing Broker Conflicts of Interest Rules; and Chief Compliance Officer Rules for Swap Dealers, Major Swap Participants, and Futures Commission Merchants, 77 FR 20128 (Apr. 3, 2012).

[140] 44 U.S.C. 3501 *et seq.*

[141] These collections include certain collections required under the Business Conduct Standards with Counterparties rulemaking, as stated in that rulemaking. *See* Business Conduct Standards for Swap Dealers and Major Swap Participants with Counterparties, 77 FR 9734 (Feb. 17, 2012).

[142] See 75 FR at 81528; 76 FR at 6713; 76 FR at 6723.

[143] CFTC, President's Budget and Performance Plan Fiscal Year 2010, p. 13–14 (Feb. 2011), *available at http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/cftcbudget2012.pdf.* The estimated 140 SDs includes ''[a]pproximately 80 global and regional banks currently known to offer swaps in the United States;'' ''[a]pproximately 40 non-bank swap dealers currently offering commodity and other swaps;'' and ''[a]pproximately 20 new potential market makers that wish to become swap dealers.'' *Id.*

[144] Letter from Thomas W. Sexton, Senior Vice President and General Counsel, NFA to Gary Barnett, Director, Division of Swap Dealer and Intermediary Oversight, CFTC (Oct. 20, 2011) (NFA Cost Estimates Letter).

that there will be a combined number of 125 SDs and MSPs that will be subject to new information collection requirements under these rules.[145]

For purposes of the PRA, the term ''burden'' means the ''time, effort, or financial resources expended by persons to generate, maintain, or provide information to or for a Federal Agency.''

For most of the provisions set forth in the NPRMs, the Commission estimated the cost burden of the proposed regulations based upon an average salary for Financial Managers of $100 per hour. In addition, for certain provisions in the Documentation NPRM, the Commission estimated the cost burden of the proposed regulations based upon an average salary for Lawyers of $125 per hour. In response to these estimates, The Working Group commented that, inclusive of benefit costs and allocated overhead, the per-hour average salary estimate for compliance and risk management personnel should be significantly higher than $120. FIA and SIFMA stated that some of the compliance policies required by the proposed regulations will be drafted by both in-house lawyers and outside counsel, so the blended hourly rate should be roughly $400.

The Commission notes that its wage estimates were based on recent Bureau of Labor Statistics findings, including the mean hourly wage of an employee under occupation code 23–1011, ''Lawyers,'' that is employed by the ''Securities and Commodity Contracts Intermediation and Brokerage Industry,'' which is $82.22. The mean hourly wage of an employee under occupation code 11–3031, ''Financial Managers,'' (which includes operations managers) in the same industry is $74.41.[146] Taking these data, the Commission then increased its hourly wage estimates in recognition of the fact that some registrants may be large financial institutions whose employees' salaries may exceed the mean wage. The Commission also observes that SIFMA's ''Report on Management & Professional Earnings in the Securities Industry—2010'' estimates the average wage of a compliance attorney and a compliance staffer in the U.S. at only $46.31 per hour.

The Commission recognizes that some registrants may hire outside counsel with expertise in the various regulatory areas covered by the regulations discussed herein. While the Commission is uncertain about the billing rates that registrants may pay for outside counsel, the Commission believes that such counsel may bill at a rate of several hundred dollars per hour. Outside counsel may be able to leverage its expertise to reduce substantially the number of hours needed to fulfill a requested assignment, but a registrant that uses outside counsel may incur higher costs than a registrant that does not use outside counsel. Any determination to use outside counsel is at the discretion of the registrant. Having considered the comments received and having reviewed the available data, the Commission has determined that $100 per hour for Financial Managers, and $125 for Lawyers, remain reasonable estimates of the per-hour average salary for purposes of its PRA analysis. The Commission also notes that this determination is consistent with the Commission's estimate for the hourly wage for CCOs under the recently adopted final rules establishing certain internal business conduct standards for SDs and MSPs.[147]

The Commission received comments related to the PRA in response to its notices of proposed rulemaking. Notably, none of these commenters suggested specific revised calculations with regard to the Commission's burden estimate.

IECA commented that if all confirmations must be in writing, the additional employee time cost for each market participant would be substantial and is not included in the annual cost analysis. IECA also commented that the estimate of 10 hours per counterparty to negotiate new documentation is too low. Because the rule requires transaction-by-transaction valuation methodologies that will need to be newly negotiated for many transactions, IECA believes the Commission should calculate an aggregate amount based on the number of transactions. Also, the time needed must include not only negotiation, but also time for determining pricing points and inputs, executive decision-maker time, and also senior management and board time for reviewing forms and material modifications. Time will also be needed to reevaluate the ISDA documentation if the Commission does not state that such are acceptable.

The Working Group requested that the Commission evaluate the proposed rules in light of its various recordkeeping and reporting proposals, as such may cause firms to incur tremendous administrative obligations to record changes to its swap portfolio, its accounting records, treasury arrangements and capital allocations (including loss of cash flow hedging treatment under hedge accounting rules), as well as incurring reporting obligations to swap data repositories on a swap-by-swap basis.

The Commission has considered the comments received concerning the PRA-related burden estimates set forth in the notices of proposed rulemaking. However, because none of the commenters suggested specific revised calculations on the estimates, the only change that the Commission is making to its estimation of annual burdens associated with the rules is the change to reflect the new estimate of the number of SDs and MSPs.

With respect to the rules proposed in the Documentation NPRM, the Commission now estimates the initial burden to be 6,168 hours per year, at an initial annual cost of $684,300, for each SD and MSP, and the initial aggregate burden cost for all registrants is $85,537,500.[148] With respect to the rules proposed in the Confirmation NPRM, the Commission now estimates the burden to be 1,282.5 hours, at an annual cost of $128,250 for each SD and MSP, and the aggregate burden cost for all registrants is 160,312.5 burden hours and $16,031,250. With respect to the rules set forth in the Orderly Liquidation NPRM, the Commission now estimates the initial burden to be 270 hours per year, at an initial annual cost of $27,000 for each SD and MSP, and the initial aggregate burden cost for all registrants is 33,750 burden hours and $3,375,000.[149]

In total, the Commission estimates that the rules set forth in this Adopting Release will impose a burden of 7,720.5 hours per year, at an initial annual cost of $839,550, for each SD and MSP, and

[145] NFA Letter (Oct. 20, 2011) (estimating that there will be 125 SDs and MSPs required to register with NFA).

[146] *See http://www.bls.gov/oes/2099/mayowe23.1011.htm* and *http://www.bls.gov/oes/current/oes113031.htm.*

[147] *See* Swap Dealer and Major Swap Participant Recordkeeping, Reporting, and Duties Rules; Futures Commission Merchant and Introducing Broker Conflicts of Interest Rules; and Chief Compliance Officer Rules for Swap Dealers, Major Swap Participants, and Futures Commission Merchants, 77 FR 20128, 20196 (Apr. 3, 2012).

[148] As noted in the Documentation NPRM, the Commission has characterized the annual costs as initial annual costs, since the Commission anticipates that the cost burdens will be reduced dramatically over time as the agreements and other records required by the proposed regulations become increasingly standardized within the industry. 76 FR at 6722.

[149] *See id.* (discussing the characterization of the annual costs as initial annual costs). The Commission notes that the substantive requirements under the Orderly Liquidation rule have been reduced significantly. While the proposal required the parties to negotiate and agree on documentation provisions, the final rules requires only a simple notice. The Commission has elected not to alter its PRA burden estimate, but observes that such estimates are likely to overstate the actual burden significantly.

the aggregate burden cost for all registrants is $104,943,750.

In addition to the burden hours discussed above, the Commission anticipates that SDs and MSPs may incur certain start-up costs in connection with the proposed recordkeeping obligations. Such costs would include the expenditures related to developing and installing new technology and systems, or reprogramming or updating existing recordkeeping technology and systems, to enable the SD or MSP to collect, capture, process, maintain, and re-produce any newly required records. The Commission received no comments with respect to the estimated number of burden hours for these start-up costs, or with respect to the programming wage estimate of $60 per hour. Accordingly, the Commission estimates that the start-up costs would require 40 burden hours for the rules proposed in the Documentation NPRM and 40 hours for the rules proposed in the Confirmation NPRM.[150] Thus, the estimated start-up burden associated with the required technological improvements would be $4,800 [$60 × 80 hours per affected registrant] or $600,000 in the aggregate.[151]

List of Subjects in 17 CFR Part 23

Antitrust, Commodity futures, Conduct standards, Conflict of Interests, Major swap participants, Reporting and recordkeeping, Swap dealers, Swaps.

For the reasons stated in this release, the Commission amends 17 CFR part 23 as follows:

PART 23—SWAP DEALERS AND MAJOR SWAP PARTICIPANTS

■ 1. The authority citation for part 23 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 6, 6a, 6b, 6b-1, 6c, 6p, 6r, 6s, 6t, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21.

■ 2. Subpart I (consisting of §§ 23.500, 23.501, 23.502, 23.503, 23.504, and 23.505) is added to read as follows:

[150] The Commission does not anticipate that SDs and MSPs will incur any start-up costs in connection with the proposed recordkeeping obligations in the rules proposed in the Orderly Liquidation NPRM, other than those previously noted and accounted for in the Documentation NPRM and Confirmation NPRM.

[151] According to recent Bureau of Labor Statistics findings, the mean hourly wages of computer programmers under occupation code 15–1021 and computer software engineers under program codes 15–1031 and 1032 are between $34.10 and $44.94. *See http://www.bls.gov/oes/current/oes113031.htm.* Because SDs and MSPs generally will be large entities that may engage employees with wages above the mean, the Commission has conservatively chosen to use a mean hourly programming wage of $60 per hour.

Subpart I—Swap Documentation

Sec.

23.500 Definitions.
23.501 Swap confirmation.
23.502 Portfolio reconciliation.
23.503 Portfolio compression.
23.504 Swap trading relationship documentation.
23.505 End user exception documentation.

Subpart I—Swap Documentation

§ 23.500 Definitions.

For purposes of this subpart I, the following terms shall be defined as provided.

(a) *Acknowledgment* means a written or electronic record of all of the terms of a swap signed and sent by one counterparty to the other.

(b) *Bilateral portfolio compression exercise* means an exercise in which two swap counterparties wholly terminate or change the notional value of some or all of the swaps submitted by the counterparties for inclusion in the portfolio compression exercise and, depending on the methodology employed, replace the terminated swaps with other swaps whose combined notional value (or some other measure of risk) is less than the combined notional value (or some other measure of risk) of the terminated swaps in the exercise.

(c) *Confirmation* means the consummation (electronically or otherwise) of legally binding documentation (electronic or otherwise) that memorializes the agreement of the counterparties to all of the terms of a swap transaction. A confirmation must be in writing (whether electronic or otherwise) and must legally supersede any previous agreement (electronically or otherwise). A confirmation is created when an acknowledgment is manually, electronically, or by some other legally equivalent means, signed by the receiving counterparty.

(d) *Execution* means, with respect to a swap transaction, an agreement by the counterparties (whether orally, in writing, electronically, or otherwise) to the terms of the swap transaction that legally binds the counterparties to such terms under applicable law.

(e) *Financial entity* means a counterparty that is not a swap dealer or a major swap participant and that is one of the following:

(1) A commodity pool as defined in Section 1a(5) of the Act;

(2) A private fund as defined in Section 202(a) of the Investment Advisors Act of 1940;

(3) An employee benefit plan as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income and Security Act of 1974;

(4) A person predominantly engaged in activities that are in the business of banking, or in activities that are financial in nature as defined in Section 4(k) of the Bank Holding Company Act of 1956; and

(5) A security-based swap dealer or a major security-based swap participant.

(f) *Fully offsetting swaps* means swaps of equivalent terms where no net cash flow would be owed to either counterparty after the offset of payment obligations thereunder.

(g) *Material terms* means all terms of a swap required to be reported in accordance with part 45 of this chapter.

(h) *Multilateral portfolio compression exercise* means an exercise in which multiple swap counterparties wholly terminate or change the notional value of some or all of the swaps submitted by the counterparties for inclusion in the portfolio compression exercise and, depending on the methodology employed, replace the terminated swaps with other swaps whose combined notional value (or some other measure of risk) is less than the combined notional value (or some other measure of risk) of the terminated swaps in the compression exercise.

(i) *Portfolio reconciliation* means any process by which the two parties to one or more swaps:

(1) Exchange the terms of all swaps in the swap portfolio between the counterparties;

(2) Exchange each counterparty's valuation of each swap in the swap portfolio between the counterparties as of the close of business on the immediately preceding business day; and

(3) Resolve any discrepancy in material terms and valuations.

(j) *Prudential regulator* has the meaning given to the term in section 1a(39) of the Commodity Exchange Act and includes the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Farm Credit Association, and the Federal Housing Finance Agency, as applicable to the swap dealer or major swap participant.

(k) *Swap portfolio* means all swaps currently in effect between a particular swap dealer or major swap participant and a particular counterparty.

(l) *Swap transaction* means any event that results in a new swap or in a change to the terms of a swap, including execution, termination, assignment, novation, exchange, transfer, amendment, conveyance, or extinguishing of rights or obligations of a swap.

(m) *Valuation* means the current market value or net present value of a swap.

§ 23.501 Swap confirmation.

(a) *Confirmation.* Subject to the compliance schedule in paragraph (c) of this section:

(1) Each swap dealer and major swap participant entering into a swap transaction with a counterparty that is a swap dealer or major swap participant shall execute a confirmation for the swap transaction as soon as technologically practicable, but in any event by the end of first business day following the day of execution.

(2) Each swap dealer and major swap participant entering into a swap transaction with a counterparty that is not a swap dealer or a major swap participant shall send an acknowledgment of such swap transaction as soon as technologically practicable, but in any event by the end of the first business day following the day of execution.

(3) (i) Each swap dealer and major swap participant shall establish, maintain, and follow written policies and procedures reasonably designed to ensure that it executes a confirmation for each swap transaction that it enters into with a counterparty that is a financial entity as soon as technologically practicable, but in any event by the end of the first business day following the day of execution.

(ii) Each swap dealer and major swap participant shall establish, maintain, and follow written policies and procedures reasonably designed to ensure that it executes a confirmation for each swap transaction that it enters into with a counterparty that is not a swap dealer, major swap participant, or a financial entity not later than the end of the second business day following the day of execution.

(iii) Such procedures shall include a requirement that, upon a request by a prospective counterparty prior to execution of any such swap, the swap dealer or major swap participant furnish to the prospective counterparty prior to execution a draft acknowledgment specifying all terms of the swap transaction other than the applicable pricing and other relevant terms that are to be expressly agreed at execution.

(4) Swaps executed on a swap execution facility, designated contract market, or submitted for clearing by a derivatives clearing organization.

(i) Any swap transaction executed on a swap execution facility or designated contract market shall be deemed to satisfy the requirements of this section, provided that the rules of the swap execution facility or designated contract market establish that confirmation of all terms of the transaction shall take place at the same time as execution.

(ii) Any swap transaction submitted for clearing by a derivatives clearing organization shall be deemed to satisfy the requirements of this section, provided that:

(A) The swap transaction is submitted for clearing as soon as technologically practicable, but in any event no later than the times established for confirmation under paragraphs (a)(1) or (3) of this section, and

(B) Confirmation of all terms of the transaction takes place at the same time as the swap transaction is accepted for clearing pursuant to the rules of the derivatives clearing organization.

(iii) If a swap dealer or major swap participant receives notice that a swap transaction has not been confirmed by a swap execution facility or a designated contract market, or accepted for clearing by a derivatives clearing organization, the swap dealer or major swap participant shall execute a confirmation for such swap transaction as soon as technologically practicable, but in any event no later than the times established for confirmation under paragraphs (a)(1) or (3) of this section as if such swap transaction were executed at the time the swap dealer or major swap participant receives such notice.

(5) For purposes of this section:

(i) ''Day of execution'' means the calendar day of the party to the swap transaction that ends latest, provided that if a swap transaction is—

(A) Entered into after 4:00 p.m. in the place of a party; or

(B) Entered into on a day that is not a business day in the place of a party, then such swap transaction shall be deemed to have been entered into by that party on the immediately succeeding business day of that party, and the day of execution shall be determined with reference to such business day; and

(ii) ''Business day'' means any day other than a Saturday, Sunday, or legal holiday.

(b) *Recordkeeping.* (1) Each swap dealer and major swap participant shall make and retain a record of:

(i) The date and time of transmission to, or receipt from, a counterparty of any acknowledgment; and

(ii) The date and time of transmission to, or receipt from, a counterparty of any confirmation.

(2) All records required to be maintained pursuant to this section shall be maintained in accordance with § 23.203 and shall be made available promptly upon request to any representative of the Commission or any applicable prudential regulator, or with regard to swaps defined in section 1a(47)(A)(v), to any representative of the Commission, the Securities and Exchange Commission, or any applicable prudential regulator.

(c) *Compliance schedule.* The requirements of paragraph (a) of this section are subject to the following compliance schedule:

(1) For purposes of paragraph (a)(1) of this section, each swap dealer and major swap participant entering into a swap transaction that is or involves a credit swap or interest rate swap with a counterparty that is a swap dealer or major swap participant shall execute a confirmation for the swap transaction as soon as technologically practicable, but in any event by:

(i) The end of the second business day following the day of execution for the period from the effective date of this section to February 28, 2014; and

(ii) The end of the first business day following the day of execution from and after March 1, 2014.

(2) For purposes of paragraph (a)(1) of this section, each swap dealer and major swap participant entering into a swap transaction that is or involves an equity swap, foreign exchange swap, or other commodity swap with a counterparty that is a swap dealer or major swap participant shall execute a confirmation for the swap transaction as soon as technologically practicable, but in any event by:

(i) The end of the third business day following the day of execution for the period from the effective date of this section to August 31, 2013;

(ii) The end of the second business day following the day of execution for the period from September 1, 2013 to August 31, 2014; and

(iii) The end of the first business day following the day of execution from and after September 1, 2014.

(3) For purposes of paragraph (a)(2) of this section, each swap dealer and major swap participant entering into a swap transaction that is or involves a credit swap or interest rate swap with a counterparty that is not a swap dealer or a major swap participant shall send an acknowledgment of such swap transaction as soon as technologically practicable, but in any event by:

(i) The end of the second business day following the day of execution for the period from the effective date of this section to February 28, 2014; and

(ii) The end of the first business day following the day of execution from and after March 1, 2014.

(4) For purposes of paragraph (a)(2) of this section, each swap dealer and major

swap participant entering into a swap transaction that is or involves an equity swap, foreign exchange swap, or other commodity swap with a counterparty that is not a swap dealer or a major swap participant shall send an acknowledgment of such swap transaction as soon as technologically practicable, but in any event by:

(i) The end of the third business day following the day of execution for the period from the effective date of this section to August 31, 2013;

(ii) The end of the second business day following the day of execution for the period from September 1, 2013 to August 31, 2014; and

(iii) The end of the first business day following the day of execution from and after September 1, 2014.

(5) For purposes of paragraph (a)(3)(i) of this section, each swap dealer and major swap participant shall establish, maintain, and follow written policies and procedures reasonably designed to ensure that it executes a confirmation for each swap transaction that is or involves a credit swap or interest rate swap that it enters into with a counterparty that is a financial entity as soon as technologically practicable, but in any event by:

(i) The end of the second business day following the day of execution for the period from the effective date of this section to February 28, 2014; and

(ii) The end of the first business day following the day of execution from and after March 1, 2014.

(6) For purposes of paragraph (a)(3)(i) of this section, each swap dealer and major swap participant shall establish, maintain, and follow written policies and procedures reasonably designed to ensure that it executes a confirmation for each swap transaction that is or involves an equity swap, foreign exchange swap, or other commodity swap that it enters into with a counterparty that is a financial entity as soon as technologically practicable, but in any event by:

(i) The end of the third business day following the day of execution for the period from the effective date of this section to August 31, 2013;

(ii) The end of the second business day following the day of execution for the period from September 1, 2013 to August 31, 2014; and

(iii) The end of the first business day following the day of execution from and after September 1, 2014.

(7) For purposes of paragraph (a)(3)(ii) of this section, each swap dealer and major swap participant shall establish, maintain, and follow written policies and procedures reasonably designed to ensure that it executes a confirmation for each swap transaction that is or involves a credit swap or interest rate swap that it enters into with a counterparty that is not a swap dealer, major swap participant, or a financial entity not later than:

(i) The end of the fifth business day following the day of execution for the period from the effective date of this section to August 31, 2013;

(ii) The end of the third business day following the day of execution for the period from September 1, 2013 to August 31, 2014; and

(iii) The end of the second business day following the day of execution from and after September 1, 2014.

(8) For purposes of paragraph (a)(3)(ii) of this section, each swap dealer and major swap participant shall establish, maintain, and follow written policies and procedures reasonably designed to ensure that it executes a confirmation for each swap transaction that is or involves an equity swap, foreign exchange swap, or other commodity swap that it enters into with a counterparty that is not a swap dealer, major swap participant, or a financial entity not later than:

(i) The end of the seventh business day following the day of execution for the period from the effective date of this section to August 31, 2013;

(ii) The end of the fourth business day following the day of execution for the period from September 1, 2013 to August 31, 2014; and

(iii) The end of the second business following the day of execution from and after September 1, 2014.

(9) For purposes of paragraph (c) of this section:

(i) ''Credit swap'' means any swap that is primarily based on instruments of indebtedness, including, without limitation: Any swap primarily based on one or more broad-based indices related to instruments of indebtedness; and any swap that is an index credit swap or total return swap on one or more indices of debt instruments;

(ii) ''Equity swap'' means any swap that is primarily based on equity securities, including, without limitation: Any swap primarily based on one or more broad-based indices of equity securities; and any total return swap on one or more equity indices;

(iii) ''Foreign exchange swap'' has the meaning set forth in section 1a(25) of the CEA. It does not include swaps primarily based on rates of exchange between different currencies, changes in such rates, or other aspects of such rates (sometimes known as ''cross-currency swaps'');

(iv) ''Interest rate swap'' means any swap which is primarily based on one or more interest rates, such as swaps of payments determined by fixed and floating interest rates; or any swap which is primarily based on rates of exchange between different currencies, changes in such rates, or other aspects of such rates (sometimes known as ''cross-currency swaps''); and

(v) ''Other commodity swap'' means any swap not included in the credit, equity, foreign exchange, or interest rate asset classes, including, without limitation, any swap for which the primary underlying item is a physical commodity or the price or any other aspect of a physical commodity.

§ 23.502 Portfolio reconciliation.

(a) *Swaps with swap dealers or major swap participants.* Each swap dealer and major swap participant shall engage in portfolio reconciliation as follows for all swaps in which its counterparty is also a swap dealer or major swap participant.

(1) Each swap dealer or major swap participant shall agree in writing with each of its counterparties on the terms of the portfolio reconciliation.

(2) The portfolio reconciliation may be performed on a bilateral basis by the counterparties or by a qualified third party.

(3) The portfolio reconciliation shall be performed no less frequently than:

(i) Once each business day for each swap portfolio that includes 500 or more swaps;

(ii) Once each week for each swap portfolio that includes more than 50 but fewer than 500 swaps on any business day during any week; and

(iii) Once each calendar quarter for each swap portfolio that includes no more than 50 swaps at any time during the calendar quarter.

(4) Each swap dealer and major swap participant shall resolve immediately any discrepancy in a material term of a swap identified as part of a portfolio reconciliation or otherwise.

(5) Each swap dealer and major swap participant shall establish, maintain, and follow written policies and procedures reasonably designed to resolve any discrepancy in a valuation identified as part of a portfolio reconciliation or otherwise as soon as possible, but in any event within five business days, provided that the swap dealer and major swap participant establishes, maintains, and follows written policies and procedures reasonably designed to identify how the swap dealer or major swap participant will comply with any variation margin requirements under section 4s(e) of the Act and regulations under this part pending resolution of the discrepancy in

valuation. A difference between the lower valuation and the higher valuation of less than 10 percent of the higher valuation need not be deemed a discrepancy.

(b) *Swaps with entities other than swap dealers or major swap participants.* Each swap dealer and major swap participant shall establish, maintain, and follow written policies and procedures reasonably designed to ensure that it engages in portfolio reconciliation as follows for all swaps in which its counterparty is neither a swap dealer nor a major swap participant.

(1) Each swap dealer or major swap participant shall agree in writing with each of its counterparties on the terms of the portfolio reconciliation, including agreement on the selection of any third-party service provider.

(2) The portfolio reconciliation may be performed on a bilateral basis by the counterparties or by one or more third parties selected by the counterparties in accordance with paragraph (b)(1) of this section.

(3) The required policies and procedures shall provide that portfolio reconciliation will be performed no less frequently than:

(i) Once each calendar quarter for each swap portfolio that includes more than 100 swaps at any time during the calendar quarter; and

(ii) Once annually for each swap portfolio that includes no more than 100 swaps at any time during the calendar year.

(4) Each swap dealer or major swap participant shall establish, maintain, and follow written procedures reasonably designed to resolve any discrepancies in the material terms or valuation of each swap identified as part of a portfolio reconciliation or otherwise with a counterparty that is neither a swap dealer nor major swap participant in a timely fashion. A difference between the lower valuation and the higher valuation of less than 10 percent of the higher valuation need not be deemed a discrepancy.

(c) *Reporting.* Each swap dealer and major swap participant shall promptly notify the Commission and any applicable prudential regulator, or with regard to swaps defined in section 1a(47)(A)(v) of the Act, the Commission, the Securities and Exchange Commission, and any applicable prudential regulator, of any swap valuation dispute in excess of $20,000,000 (or its equivalent in any other currency) if not resolved within:

(1) Three (3) business days, if the dispute is with a counterparty that is a swap dealer or major swap participant; or

(2) Five (5) business days, if the dispute is with a counterparty that is not a swap dealer or major swap participant.

(d) *Reconciliation of cleared swaps.* Nothing in this section shall apply to a swap that is cleared by a derivatives clearing organization.

(e) *Recordkeeping.* A record of each swap portfolio reconciliation consistent with § 23.202(a)(3)(iii) shall be maintained in accordance with § 23.203.

§ 23.503 Portfolio compression.

(a) *Portfolio compression with swap dealers and major swap participants.*

(1) *Bilateral offset.* Each swap dealer and major swap participant shall establish, maintain, and follow written policies and procedures for terminating each fully offsetting swap between a swap dealer or major swap participant and another swap dealer or major swap participant in a timely fashion, when appropriate.

(2) *Bilateral compression.* Each swap dealer and major swap participant shall establish, maintain, and follow written policies and procedures for periodically engaging in bilateral portfolio compression exercises, when appropriate, with each counterparty that is also a swap dealer or major swap participant.

(3) *Multilateral compression.* Each swap dealer and major swap participant shall establish, maintain, and follow written policies and procedures for periodically engaging in multilateral portfolio compression exercises, when appropriate, with each counterparty that is also a swap dealer or major swap participant. Such policies and procedures shall include:

(i) Policies and procedures for participation in all multilateral portfolio compression exercises required by Commission regulation or order; and

(ii) Evaluation of multilateral portfolio compression exercises that are initiated, offered, or sponsored by any third party.

(b) *Portfolio compression with counterparties other than swap dealers and major swap participants.* Each swap dealer and major swap participant shall establish, maintain, and follow written policies and procedures for periodically terminating fully offsetting swaps and for engaging in portfolio compression exercises with respect to swaps in which its counterparty is an entity other than a swap dealer or major swap participant, to the extent requested by any such counterparty.

(c) *Portfolio compression of cleared swaps.* Nothing in this section shall apply to a swap that is cleared by a derivatives clearing organization.

(d) *Recordkeeping.* (1) Each swap dealer and major swap participant shall make and maintain a complete and accurate record of each bilateral offset and each bilateral or multilateral portfolio compression exercise in which it participates.

(2) All records required to be maintained pursuant to this section shall be maintained in accordance with § 23.203 and shall be made available promptly upon request to any representative of the Commission or any applicable prudential regulator, or with regard to swaps defined in section 1a(47)(A)(v) of the Act, to any representative of the Commission, the Securities and Exchange Commission, or any applicable prudential regulator.

§ 23.504 Swap trading relationship documentation.

(a) (1) *Applicability.* The requirements of this section shall not apply to:

(i) Swaps executed prior to the date on which a swap dealer or major swap participant is required to be in compliance with this section;

(ii) Swaps executed on a board of trade designated as a contract market under section 5 of the Act or to swaps executed anonymously on a swap execution facility under section 5h of the Act, *provided that* such swaps are cleared by a derivatives clearing organization and all terms of the swaps conform to the rules of the derivatives clearing organization and § 39.12(b)(6) of this chapter; and

(iii) Swaps cleared by a derivatives clearing organization.

(2) *Policies and procedures.* Each swap dealer and major swap participant shall establish, maintain, and follow written policies and procedures reasonably designed to ensure that the swap dealer or major swap participant executes written swap trading relationship documentation with its counterparty that complies with the requirements of this section. The policies and procedures shall be approved in writing by senior management of the swap dealer and major swap participant, and a record of the approval shall be retained. Other than confirmations of swap transactions under § 23.501, the swap trading relationship documentation shall be executed prior to or contemporaneously with entering into a swap transaction with any counterparty.

(b) *Swap trading relationship documentation.* (1) The swap trading relationship documentation shall be in writing and shall include all terms governing the trading relationship between the swap dealer or major swap participant and its counterparty,

including, without limitation, terms addressing payment obligations, netting of payments, events of default or other termination events, calculation and netting of obligations upon termination, transfer of rights and obligations, governing law, valuation, and dispute resolution.

(2) The swap trading relationship documentation shall include all confirmations of swap transactions under § 23.501.

(3) The swap trading relationship documentation shall include credit support arrangements, which shall contain, in accordance with applicable requirements under Commission regulations or regulations adopted by prudential regulators and without limitation, the following:

(i) Initial and variation margin requirements, if any;

(ii) Types of assets that may be used as margin and asset valuation haircuts, if any;

(iii) Investment and rehypothecation terms for assets used as margin for uncleared swaps, if any; and

(iv) Custodial arrangements for margin assets, including whether margin assets are to be segregated with an independent third party, in accordance with § 23.701(e), if any.

(4) (i) The swap trading relationship documentation between swap dealers, between major swap participants, between a swap dealer and major swap participant, between a swap dealer or major swap participant and a financial entity, and, if requested by any other counterparty, between a swap dealer or major swap participant and such counterparty, shall include written documentation in which the parties agree on the process, which may include any agreed upon methods, procedures, rules, and inputs, for determining the value of each swap at any time from execution to the termination, maturity, or expiration of such swap for the purposes of complying with the margin requirements under section 4s(e) of the Act and regulations under this part, and the risk management requirements under section 4s(j) of the Act and regulations under this part. To the maximum extent practicable, the valuation of each swap shall be based on recently-executed transactions, valuations provided by independent third parties, or other objective criteria.

(ii) Such documentation shall include either:

(A) Alternative methods for determining the value of the swap for the purposes of complying with this paragraph in the event of the unavailability or other failure of any input required to value the swap for such purposes; or

(B) A valuation dispute resolution process by which the value of the swap shall be determined for the purposes of complying with this paragraph (b)(4).

(iii) A swap dealer or major swap participant is not required to disclose to the counterparty confidential, proprietary information about any model it may use to value a swap.

(iv) The parties may agree on changes or procedures for modifying or amending the documentation required by this paragraph at any time.

(5) The swap trading relationship documentation of a swap dealer or major swap participant shall include the following:

(i) A statement of whether the swap dealer or major swap participant is an insured depository institution (as defined in 12 U.S.C. 1813) or a financial company (as defined in section 201(a)(11) of the Dodd-Frank Act, 12 U.S.C. 5381(a)(11));

(ii) A statement of whether the counterparty is an insured depository institution or financial company;

(iii) A statement that in the event either the swap dealer or major swap participant or its counterparty is a covered financial company (as defined in section 201(a)(8) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. 5381(a)(8)) or an insured depository institution for which the Federal Deposit Insurance Corporation (FDIC) has been appointed as a receiver (the ''covered party''), certain limitations under Title II of the Dodd-Frank Act or the Federal Deposit Insurance Act may apply to the right of the non-covered party to terminate, liquidate, or net any swap by reason of the appointment of the FDIC as receiver, notwithstanding the agreement of the parties in the swap trading relationship documentation, and that the FDIC may have certain rights to transfer swaps of the covered party under section 210(c)(9)(A) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. 5390(c)(9)(A), or 12 U.S.C. 1821(e)(9)(A); and

(iv) An agreement between the swap dealer or major swap participant and its counterparty to provide notice if either it or its counterparty becomes or ceases to be an insured depository institution or a financial company.

(6) The swap trading relationship documentation of each swap dealer and major swap participant shall contain a notice that, upon acceptance of a swap by a derivatives clearing organization:

(i) The original swap is extinguished;

(ii) The original swap is replaced by equal and opposite swaps with the derivatives clearing organization; and

(iii) All terms of the swap shall conform to the product specifications of the cleared swap established under the derivatives clearing organization's rules.

(c) *Audit of swap trading relationship documentation.* Each swap dealer and major swap participant shall have an independent internal or external auditor conduct periodic audits sufficient to identify any material weakness in its documentation policies and procedures required by this section and Commission regulations. A record of the results of each audit shall be retained.

(d) *Recordkeeping.* Each swap dealer and major swap participant shall maintain all documents required to be created pursuant to this section in accordance with § 23.203 and shall make them available promptly upon request to any representative of the Commission or any applicable prudential regulator, or with regard to swaps defined in section 1a(47)(A)(v) of the Act, to any representative of the Commission, the Securities and Exchange Commission, or any applicable prudential regulator.

§ 23.505 End user exception documentation.

(a) *For swaps excepted from a mandatory clearing requirement.* Each swap dealer and major swap participant shall obtain documentation sufficient to provide a reasonable basis on which to believe that its counterparty meets the statutory conditions required for an exception from a mandatory clearing requirement, as defined in section 2h(7) of the Act and § 39.6 of this chapter. Such documentation shall include:

(1) The identity of the counterparty;

(2) That the counterparty has elected not to clear a particular swap under section 2h(7) of the Act and § 39.6 of this chapter;

(3) That the counterparty is a non-financial entity, as defined in section 2h(7)(C) of the Act;

(4) That the counterparty is hedging or mitigating a commercial risk; and

(5) That the counterparty generally meets its financial obligations associated with non-cleared swaps. *Provided,* that a swap dealer or major swap participant need not obtain documentation of paragraphs (a)(3), (4), or (5) of this section if it obtains documentation that its counterparty has reported the information listed in § 39.6(b)(3) in accordance with § 39.6(b)(4) of this chapter.

(b) *Recordkeeping.* Each swap dealer and major swap participant shall maintain all documents required to be

obtained pursuant to this section in accordance with § 23.203 and shall make them available promptly upon request to any representative of the Commission or any applicable prudential regulator, or with regard to swaps defined in section 1a(47)(A)(v) of the Act, to any representative of the Commission, the Securities and Exchange Commission, or any applicable prudential regulator.

Issued in Washington, DC, on August 24, 2012, by the Commission.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

Appendices to Confirmation, Portfolio Reconciliation, Portfolio Compression, and Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants—Commission Voting Summary and Statements of Commissioners

NOTE: The following appendices will not appear in the Code of Federal Regulations.

Appendix 1—Commission Voting Summary

On this matter, Chairman Gensler and Commissioners Sommers, Chilton, O'Malia and Wetjen voted in the affirmative; no Commissioner voted in the negative.

Appendix 2—Statement of Chairman Gary Gensler

I support the final rule implementing Congress' direction that the Commission adopt rules for ''timely and accurate confirmation, processing, netting, documentation, and valuation of all swaps.'' This direction was included in the swaps market reform provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).

Each of these requirements promotes crucial back office standards that will reduce risk and increase efficiency in the swaps market. These final rules are critical to the risk management of swap dealers and major swap participants and lowering their risk to the public.

The rules establish procedures to promote legal certainty by requiring timely confirmation of all swap transactions, setting forth documentation requirements for bilateral swap transactions, and requiring timely resolutions of valuation disputes. In addition, the rules enhance understanding of one counterparty's risk exposure to another, and promote sound risk management through regular reconciliation and compression of swap portfolios.

The 2008 financial crisis brought to light how large financial institutions, including AIG, had valuation disputes and other problems regarding documentation standards. These rules will directly address many of those issues, highlighting issues for senior management and regulators at an earlier stage.

The final rule builds upon extensive work by the Federal Reserve Bank of New York (FRBNY) to improve standards in the back offices of large financial institutions dealing in swaps. Beginning in 2005, the FRBNY, along with U.S. and global prudential authorities, undertook a supervisory effort to enhance operational efficiency and lower risk in the swaps market by increasing automation in swaps processing, improving documentation, and promoting the timely confirmation of trades.

CFTC staff also consulted with other U.S. and foreign financial regulators, and participated in numerous meetings with market participants. CFTC staff worked to address the more than 60 public comment letters responding to the three proposed rules comprising this final rule.

Appendix 3—Statement of Commissioner Bart Chilton

I support this second package of internal business conduct standard final rules. These rules establish a set of prudent documentation standards for registered swap dealers (SDs) and major swap participants (MSPs) while aiming to minimize the burdens on non-SDs and non-MSPs. Vibrant and liquid financial markets are necessary for economic prosperity. As shown by the 2007–2009 financial crisis, that prosperity itself is gravely threatened when the rules governing financial markets fail to curb the build-up of systemic risk. I am pleased that the preamble introducing these rules appropriately refers to the tremendous cost of the financial crisis; it is obvious that not implementing strong regulations effectuating the intent of the Dodd-Frank Act, including these final rules, would result in social costs to the American taxpayer and consumer.[152] In addition, I note that there are enormous and ongoing social costs that taxed our economy as a result of the reckless practices that became prevalent in the years before the financial crisis.

The documentation and conduct standards set forth in this release are designed to, most importantly in my opinion, reduce valuation disputes: Disputes between parties about the value of a swap or portfolio of swaps. Valuation disputes can delay the exchange of collateral. The failure to exchange collateral in a timely manner can have disastrous impacts on a firm's ability to manage its risk and allocate capital efficiently. A large, interconnected firm's inability to manage its risk and to properly allocate capital can contribute to the generation of systemic risk. All of these steps were vividly illustrated during the recent financial crisis.

American International Group's (AIG) inability to value its portfolio accurately and agree on valuations and collateral exchanges with its counterparties posed a serious problem for AIG and its counterparties during the financial crisis.[153] According to the Financial Crisis Inquiry Commission Report:

The OTC derivatives market's lack of transparency and of effective price discovery exacerbated the collateral disputes of AIG and Goldman Sachs and similar disputes between other derivatives counterparties.[154]

It is with the financial crisis in mind that I interpret the Commission's authority generally and more specifically here, under section 731 of the Dodd-Frank Act which added new section 4s(i) to the Commodity Exchange Act (CEA).[155] The portfolio reconciliation rules in section 23.502 will ensure that SDs/MSPs have portfolio valuations consistent with those of their counterparties. The portfolio compression rules in section 23.503 will reduce operational risks. The swap trading relationship documentation requirements will 23.504 will ensure that documentation practices in the swaps market cover a number of key terms. The documentation of these terms will give counterparties greater certainty as to their legal rights and responsibilities. These final rules, taken in conjunction with the Commission's other Dodd-Frank Act-related regulations, including part 43 regulations on real-time reporting and subpart H of part 23 on Business Conduct Standards for Swap Dealers and Major Swap Participants with Counterparties [156] will contribute substantially to encouraging early and effective dispute resolution and will ensure the ''timely and accurate confirmation, processing, netting, documentation, and valuation of all swaps.'' [157]

While these rules represent considerable progress, I believe it should not be viewed in a vacuum and that the Commission should respond nimbly in responses to changes in the market that could frustrate the underlying purpose of these final rules (and all other Commission rules for that matter). Notwithstanding the progress the Commission has made, I remain concerned that are still a number of areas that this final rule touches upon that remain areas of potential future concern:

1. *Dispute resolution and the requirement to document alternative methods for determining the value of a swap or a dispute resolution process* under regulation 23.504(b)(4)(iii).

This provision, combined with the provision in regulation 23.503(c) to report

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[152] *See* infra above.

[153] *See* Testimony Before the Financial Crisis Inquiry Commission, including AIG/Goldman Sachs Collateral Call Timeline, available at *http://fcic-static.law.stanford.edu/cdn_media/fcic-testimony/2010-0701-AIG-Goldman-supporting-docs.pdf* (timeline documenting valuation disputes and collateral calls); Testimony of Joseph Cassano, available at *http://fcic-static.law.stanford.edu/cdn_media/fcic-testimony/2010-0630-Cassano.pdf;* and AIG Statement Summary, available at *http://fcic-static.law.stanford.edu/cdn_media/fcic-testimony/2010-0630-AIG-Statement-Summary.pdf.*

[154] Financial Crisis Inquiry Commission, ''The Financial Crisis Inquiry Report: Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States,'' Jan. 2011, at 353, available at *http://www.gpo.gov/fdsys/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf* [hereinafter the FCIC Report.

[155] Pub. L. 111 (2010). CEA section 4s(i) states that each registered swap dealer and major swap participant shall conform with such standards as may be prescribed by the Commission by rule or regulation that relate to timely and accurate confirmation, processing, netting, documentation, and valuation of all swaps.

[156] *See,* specifically 17 CFR 23.431(a)(3)(i) requiring SDs and MSPs to disclose ''the price of the swap and the mid-market mark of the swap.''

[157] CEA section 4s(i).

''any valuation dispute in excess of $20,000,000'' within one business day if the dispute is with another SD/MSP or five business days for non-SDs/MSPs, should encourage the resolution of disputes. These regulations are buttressed by efforts being made by certain industry organizations. I encourage the Commission to remain vigilant in this area and to monitor the disputes reported to the Commission and to engage with the public to determine whether these regulations have their intended effect.

2. *The implied cost of credit and the requirement to document credit support arrangements* under regulation 23.504(b)(3).

I am concerned that these rules do not expressly require SDs and MSPs to document the cost of credit if such costs are a factor in the price a SD or MSP charges a counterparty. While this issue has been discussed since the earliest days of the negotiations and planning surrounding the drafting of the Dodd-Frank Act—and many market participants acknowledged that added costs would be attendant to engaging in non-cleared transactions—the Commission could provide, in this rulemaking, an additional level of transparency to transactions involving creditworthiness considerations.[158] I believe that requiring the documentation of the embedded cost of credit as a transaction fee or credit premium would have deter the practice of charging customers a price on a swap that depends on creditworthiness. My concern is mitigated somewhat by regulation 23.431(d)(2) (a provision finalized in a previous rulemaking) which requires that SDs and MSPs provide their non-SD/MSP counterparties ''with a daily mark, which shall be the mid-market mark of the swap.'' [159] Such a provision would assist an end-user to infer the embedded cost of credit they were charged by their SD or MSP counterparty. Armed with this information, I encourage market participants to seek documentation of the embedded cost of credit as a transaction fee or credit premium. As the Commission's regulations become effective, I invite the public to alert the Commission if the practice of charging a credit fee in the price (i.e., an embedded cost of credit) for a swap becomes problematic by, for example, diminishing the price discovery utility of real-time data published to the public under part 43 of the Commission's rules.

3. *Rehypothecation of uncleared swaps collateral and the requirement to document rehypothecation terms for assets used as margin for uncleared swaps* under regulation 23.504(b)(3)(iii).

This requirement is consistent with section 724(c) of the Dodd-Frank Act (adding section 4s(l)(1)(A) to the CEA) and is a welcome inclusion in these rules.[160] Rehypothecation occurs when a person uses assets held as collateral for one counterparty in transactions with another counterparty. This practice contributed to the financial crisis in a number of ways, including: (1) Rehypothecated collateral was particularly difficult to recover in bankruptcy [161] and (2) rehypothecation increases leverage in the financial system.[162] While many buy-side firms are learning from the financial crisis and requesting their collateral to be held in segregated accounts, the potential for a dealer default that could affect rehypothecated collateral still exists. In light of recent events, the Commission and the public should keep a watchful eye on the risks in this area.

[FR Doc. 2012–21414 Filed 9–10–12; 8:45 am]

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[158] *See* Better Markets comment letter.

[159] 77 FR 9733 (Feb. 17, 2012).

[160] ''A swap dealer or major swap participant shall be required to notify the counterparty of the swap dealer or major swap participant at the beginning of a swap transaction that the counterparty has the right to require segregation of the funds or other property.''

[161] This is because once the collateral is rehypothecated, then the posting party could lose their proprietary interest in the collateral and as a result in bankruptcy, such a party could fall into the category of unsecured creditors. This can delay or prevent recovery of collateral from a bankrupt counterparty.

[162] IMF researchers recently estimated that off-balance sheet funding for dealers from rehypothecation amounted to $4.5 trillion during November 2007 and that it contributed substantially to the size of the shadow banking system. *See, The (sizeable) Role of Rehypothecation in the Shadow Banking System,* Manmohan Singh and James Aitken, IMF Working Paper, July 2010, available at *http://www.imf.org/external/pubs/ft/wp/2010/wp10172.pdf.*



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Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Status for Texas Golden Gladecress and Neches River Rose-mallow and Designation of Critical Habitat; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2012–0064; 4500030113]

RIN 1018–AX74

Endangered and Threatened Wildlife and Plants; Determination of Status for Texas Golden Gladecress and Neches River Rose-mallow and Designation of Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose to list two Texas plants, *Leavenworthia texana* (Texas golden gladecress) as an endangered species and *Hibiscus dasycalyx* (Neches River rose-mallow) as a threatened species under the Endangered Species Act of 1973, as amended (Act) and propose to designate critical habitat for both species. These are proposed regulations, and if finalized the effect of these regulations will be to conserve the species and protect their habitat under the Endangered Species Act.

DATES: We will accept comments received or postmarked on or before November 13, 2012. We must receive requests for public hearings, in writing, at the address shown in the **ADDRESSES** section by October 26, 2012.

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

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Keyword box, enter Docket No. FWS–R2–ES–2012–0064, which is the docket number for this rulemaking. Then, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on ''Send a Comment or Submission.''

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R2–ES–2012–0064; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

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

The coordinates or plot points or both from which the critical habitat maps are generated are included in the administrative record for this rulemaking and are available at *http://www.fws.gov/southwest/es/ElectronicLibrary/ElectronicLibrary_Main.cfm, http://www.regulations.gov* at Docket No. FWS–R2–ES–2012–0064, and at the Corpus Christi Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). Any additional tools or supporting information that we may develop for this rulemaking will also be available at the Fish and Wildlife Service Web site and Field Office set out above, and may also be included in the preamble and/or at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Allan Strand, Field Supervisor, U.S. Fish and Wildlife Service, Corpus Christi Ecological Services Field Office, 6300 Ocean Drive, Unit 5837, Corpus Christi, Texas, 78412–5837, by telephone 361–994–9005 or by facsimile 361–994–8262. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Endangered Species Act (Act), a species may warrant protection through listing if it is determined to be an endangered or threatened species throughout all or a significant portion of its range. *Leavenworthia texana* (Texas golden gladecress) and *Hibiscus dasycalyx* (Neches River rose-mallow) have been candidates for listing since 1997, but action has been precluded by higher priority listings. As part of a court-approved settlement, we agreed to reevaluate the status of both species and after conducting a thorough review of the current status and level of threats to both species and their habitats between fall 2011 and winter 2012, we concluded that listing, and designation of critical habitat, for both species is warranted.

This rule proposes to add both species to the Federal Lists of Threatened and Endangered Animals and Plants and proposes to designate critical habitat for both species.

- We propose to list the Texas golden gladecress and the Neches River rose-mallow as an endangered and threatened species, respectively, under the Act.

We propose to designate approximately 1,353 acres (ac) (539 hectares (ha)) of critical habitat for the gladecress in Sabine and San Augustine Counties, and approximately 187.8 ac (76.0 ha) of critical habitat for the rose-mallow in Cherokee, Houston, Trinity, Harrison, and Nacogdoches Counties, Texas.

The basis for our action. Under the Act, we can determine that a species is an endangered or threatened species based on any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence.

We have determined that both species are negatively affected by the following:

- Habitat loss and degradation of herbaceous glade plant communities supporting the gladecress, and of open habitats on hydric alluvial soils along sloughs, oxbows, terraces, and wetlands of the Neches River or Mud and Tantabogue Creeks that support the rose-mallow. Activities or factors negatively impacting the habitat of the gladecress include: Glauconite quarrying; natural gas and oil exploration and production; invasion of open glades by nonnative and native shrubs, trees, and vines, and other weedy species; pine tree plantings in close proximity to occupied glades; and herbicide applications that have potential to kill emerging seedlings. The rose-mallow's habitat is being lost and degraded by encroachment of nonnative and native plant species, particularly trees, herbicide use, livestock trampling, and alteration of natural hydrology of seasonal flooding to conditions where habitat has been drained or has become permanently flooded. Prolonged or frequent droughts can exacerbate habitat degradation for both species.
- Lack of existing regulatory mechanisms to protect either species or their habitats.
- Other natural or manmade factors, including low numbers of individual plants and few remaining populations. The species' natural variability that is associated with climatic conditions can be negatively affected by the effects of drought.

Also under the Act, upon making a determination that a species warrants listing as an endangered or threatened species, we are required to designate critical habitat to the maximum extent prudent and determinable. We are required to base the designation on the best available scientific data after taking into consideration economic and other impacts. We can exclude an area from critical habitat if the benefits of

exclusion outweigh the benefits of designation, unless the exclusion will result in the extinction of the species.

This rule proposes to designate critical habitat for each species.

We are proposing to designate critical habitat for both species in East Texas as follows:

- Approximately 1,353 acres (ac) (539 hectares (ha)) are designated as critical habitat for Texas golden gladecress.
- Approximately 178 ac (76 ha) are designated as critical habitat for Neches River rose-mallow.

We are planning to prepare an economic analysis. To ensure that we consider the economic impacts, we will prepare an economic analysis of the proposed critical habitat designations. We will use the data from the economic analysis to inform the final rule.

We will seek peer review. We are seeking comments from independent specialists to ensure that our assessment of threats and their impacts on these species, as well as our critical habitat designations, are based on the best available scientifically sound data, assumptions, and analyses. We have invited these peer reviewers to comment on our proposed listing of the gladecress and the rose-mallow and our critical habitat designations. Because we will consider all comments and information received during the comment period, our final determinations may differ from this proposal.

This document consists of: (1) One proposed rule to list the *Leavenworthia texana* as an endangered species; (2) one proposed rule to list the *Hibiscus dasycalyx* as a threatened species; and (3) proposed critical habitat designations for each species. For the purposes of this document, we will refer to *Leavenworthia texana* as Texas golden gladecress or gladecress and *Hibiscus dasycalyx* as Neches River rose-mallow or rose-mallow.

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from the public, other concerned governmental agencies, Native American tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) These species' biology, range, and population trends, including:

(a) Habitat requirements for pollination, reproduction, and dispersal;

(b) Genetics and taxonomy;

(c) Historical and current range including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for these species, their habitat or both.

(2) The factors that are the basis for making a listing determination for a species under section 4(a) of the Act (16 U.S.C. 1531 *et seq.*), which are:

(a) The present or threatened destruction, modification, or curtailment of their habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting their continued existence.

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

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

(5) Any information on the biological or ecological requirements of the species, and ongoing conservation measures for the species and their habitat;

(6) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to these species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threats outweighs the benefit of designation such that the designation of critical habitat is not prudent.

(7) Specific information on:

(a) The amount and distribution of the Texas golden gladecress and Neches River rose-mallow and their habitat;

(b) What may constitute ''physical or biological features essential to the conservation of these species,'' within the geographical range currently occupied by these species;

(c) Where these features are currently found;

(d) Whether any of these features may require special management considerations or protection;

(e) What areas, that were occupied at the time of listing (or are currently occupied) and that contain features essential to the conservation of these species, should be included in the designation and why;

(f) What areas not occupied at the time of listing are essential for the conservation of these species and why;

(8) Land use designations and current or planned activities in the areas occupied by these species or proposed to be designated as critical habitat, and possible impacts of these activities on these species and proposed critical habitat;

(9) Information on the projected and reasonably likely impacts of climate change on these species and proposed critical habitat;

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

(11) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments;

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

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is a threatened or endangered species must be made ''solely on the basis of the best scientific and commercial data available.''

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

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document

that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.* Please include sufficient information with your comments to allow us to verify any scientific or commercial information you include.

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, Corpus Christi Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**, above).

Previous Federal Actions

We first identified the Texas golden gladecress and Neches River rose-mallow as candidates for listing in the September 19, 1997, Notice of Review of Plant and Animal Taxa that are Candidates or Proposed for Listing as Endangered or Threatened Species (62 FR 49397). Candidates are those fish, wildlife, and plants for which we have on file sufficient information on biological vulnerability and threats to support preparation of a listing proposal, but for which development of a listing regulation is precluded by other higher priority listing activities. The Texas golden gladecress and the Neches River rose-mallow were included in subsequent annual Candidate Notices of Reviews through 2004 (64 FR 57533, October 25, 1999; 66 FR 54808, October 30, 2001; 67 FR 40657, June 13, 2002; and 69 FR 24876, May 4, 2004). A petition to list Texas golden gladecress and the Neches River rose-mallow was received on May 11, 2004, but contained no new information, and we continued to include both species in all annual Candidate Notices of Review between 2005 and 2011 (70 FR 24870, May 11, 2005; 71 FR 53756, September 12, 2006; 72 FR 69034, December 6, 2007; 73 FR 75176, December 10, 2008; 74 FR 57804, November 9, 2009; 75 FR 69222, November 10, 2010; and 76 FR 66370, October 26, 2011). In 2000, Texas golden gladecress' listing priority number was increased from 5 to 2 in accordance with our priority guidance published on September 21, 1983 (48 FR 43098). A listing priority of 2 reflects a species with threats that are both imminent and high in magnitude. In 2010, Neches River rose-mallow's listing priority number was also increased from 5 to 2. It is our intent to discuss below only those topics directly relevant to the proposed listing of the Texas golden gladecress as an endangered species and Neches River rose-mallow as a threatened species in this section of the proposed rule.

Background

This document contains proposed rules to list Texas golden gladecress as an endangered species and Neches River rose-mallow as a threatened species and to propose critical habitat for each species. The document is structured to address the taxa separately under each of the sectional headings that follow.

Species Information

Texas Golden Gladecress

Taxonomy and Description

Texas golden gladecress is a small, annual, herbaceous plant belonging to the mustard family (Brassicaceae). Dr. M.C. Leavenworth, an Army physician, first collected the taxon in Choctaw County, Oklahoma, in 1835, and the specimens were later described as a new species, *Leavenworthia aurea,* by Torrey (Mahler 1981, pp. 76–77). From 1836 to 1837, Leavenworth collected similar specimens near the present-day town of San Augustine, San Augustine County, Texas, and these were also identified as *L. aurea.* Later collections of the plant in the San Augustine area were made by E.J. Palmer (1915 and 1918), D.S. and H.B. Correll (1961 to 1962) as cited by Mahler (1981, pp. 83), and populations in this area were studied and mapped by George and Nixon (1990, pp. 117–127) between 1979 to 1980. W.H. Mahler studied the collected specimens and their habitat, and described the Texas plants as a new species, *Leavenworthia texana* (Mahler 1987, pp. 239–242), based on differences in morphological characteristics of flowers and leaves, and in chromosome number, between the Oklahoma and Texas plants (Mahler 1987, pp. 239–242).

According to Mahler (1987, p. 240), Texas golden gladecress flower petals were a brighter, deeper yellow than those of *L. aurea;* and the petals were egg-shaped and flat instead of being broad and notched. The *L. texana* had wider-than-long terminal leaf segments that were usually distinctly lobed while *L. aurea*'s terminal leaves were essentially unlobed, flat, and more circular. Texas plants had a chromosome number of 2n = 22 (E.S. Nixon, pers. comm. in Mahler 1987, pp. 239, 241) while the Oklahoma *L. aurea* had 2n = 48 (Rollins 1963, pp. 9–11; Beck *et al.* 2006, p. 156). We are aware that a recently completed monograph of the genus may have taxonomic implications for the Texas and Oklahoma *Leavenworthia* species in the future, but several questions, including the differences in chromosome number, remain unresolved and no supporting information that would change the current status of Texas golden gladecress has been published to date (Poole 2011a, pers. comm.).

Texas golden gladecress is a weakly rooted, glabrous (smooth, glossy), winter annual (completes its life cycle in 1 year). Texas golden gladecress is small in stature, less than 3.9 inches (in) (10 centimeters (cm)) in height, making it difficult to find except during flowering or when it bears fruit. The leaves are 0.8–3.1 in (2–8 cm) long and 0.4–0.6 in (1–1.5 millimeters (mm)) wide, forming rosettes at the base of the plant. Terminal leaf segments are wider-than-long, and usually distinctly lobed, with angular teeth. Flowers are bright yellow and borne on scapes (leafless flowering stems or stalks arising from the ground) that are 1.2–3.5 in (3–9 cm) long early in the flowering season. Later in the season, the flowers occur on unbranched flower clusters that come off a single central stem from which the individual flowers grow on small stalks, at intervals. The four petals are bright golden-yellow with a slightly darker base, narrowly obovate (tongue-shaped), 0.3–0.4 in (7–10 mm) long and 0.1–0.2 (3.5–5 mm) wide. The fruit is a slender seed capsule, known as a silique, with a length (0.6–1.2 in (15–30 mm)) that is more than twice its width (0.08–0.22 in (2–5.5 mm)) and that contains 5–11 flattened, circular or spherically shaped seeds. The description above was drawn from Poole *et al.* (2007, p. 286), who adapted it from others.

Habitat

Texas golden gladecress occurs within the Pineywoods natural region of easternmost Texas, within the Gulf Coastal Plain Physiographic Region. The region is defined by pine-dominated forests or woodlands interspersed with bottomland, mesic slope and bald cypress-tupelo swamp forests. Many of the rare plants of the Pineywoods region, including the gladecress and the federally endangered *Physaria pallida* (white bladderpod) are found in small-scale plant communities tied to ''geologic and hydrologic conditions that are themselves rather rare on the landscape'' (Poole *et al.* 2007, p. 6).

The Texas golden gladecress is endemic to glade habitats in northern San Augustine and northwest Sabine Counties, Texas, and is a habitat specialist, occurring only on outcrops of the Weches Geologic Formation (Mahler 1987, p. 240; George and Nixon 1990, p. 120; Poole *et al.* 2007, pp. 286–287). The gladecress grows only in glades on shallow, calcium-rich soils that are wet

in winter and spring. These occur on ironstone (glauconite or green-stone) outcrops (Poole *et al.* 2007, p. 286).

All species within the small genus *Leavenworthia* share an adaptation to glade habitats that have unique physical characteristics, the most important being a combination of shallow soil depth and high calcium content (dolomitic limestone or otherwise calcareous soils) where the soil layers have been deposited in such a manner that they maintain temporary high-moisture content at or very near the surface (Rollins 1963, pp. 4–6). Typically, only a few inches of soil overlie the bedrock, or, in spots, the soil may be almost lacking and the surface barren. The glade habitats that support all *Leavenworthia* species are extremely wet during the late winter and early spring and then dry to the point of being parched in summer (Rollins 1963, p. 5). These glades can vary in size from as small as a few meters to larger than 0.37 miles^2 (mi^2) (1 kilometer^2 (km^2)) and are characterized as having an open, sunny aspect (lacking canopy) (Quarterman 1950, p. 1; Rollins 1963, p. 5). The landscape position of the glades may also play a role in assuring the cyclic moisture regime required by glade vegetation communities.

The Weches Geologic Formation consists of bands of ancient marine sediments deposited in a line roughly parallel to the Gulf of Mexico, running from Sabine to Frio Counties, Texas. A layer of glauconite clay is either exposed at the surface or covered by a thin layer of calcareous (calcium-containing) sediment measuring as deep as 20 in (50 cm) (George and Nixon 1990, pp. 117–118). Glauconite is a characteristic mineral of marine depositional environments, presenting a greenish color when initially exposed to the atmosphere, and later turning red (Davis 1966, pp. 17–18; Nemec 1996, p. 7). The area of the Weches outcrops in San Augustine County is referred to as the ''redlands'' (Ritter 2011b, pers. comm.). The glauconite is very friable (crumbly) and has low resistance to weathering (Geocaching.com 2010, p. 5). The soils overlying the clay layer are typically rocky and shallow (George 1987, p. 3) and at all Texas golden gladecress sites are classified within the Nacogdoches, Trawick, or Bub soils series (USDA 2009, entire).

Weches outcrops occur in a band averaging 5 miles (mi) (8 kilometers (km)) in width that parallels Texas State Highway (SH) 21 through northern San Augustine and northwestern Sabine Counties (Sellards *et al.* 1932 in Diggs *et al.* 2006, p. 56). It has been deeply dissected by erosion that created islands of thin, loamy, alkaline soils (pH 7–8), within the normally deep, sandy, acidic soils (pH 4–5) of the Pineywoods region. The glauconite layer of the Weches Formation is fairly impermeable to water, producing saturated, thin upper soils in late fall through spring, that dry out and harden during summer months (George 1987, pp. 2–4; Bezanson 2000 in Diggs *et al.* 2006, p. 56). Down-slope seepage across the Weches terraces may also be important to maintain the hydrology required by the gladecress (Singhurst 2003, pers. comm.). The cyclic moisture regime and the alkalinity of the soils produce conditions unique to the Weches outcrops. Certain plants, such as the Texas golden gladecress, have evolved to live within these specialized geologic formations (Mahler 1987, p. 240; George and Nixon 1990, pp. 120–122).

Biology

The Texas golden gladecress occurs in open, sunny, herbaceous-dominated plant communities in Weches glades, in some areas that also support the white bladderpod (Bridges 1988, p. II–7, II–35, and II–35 supplement). Unlike the white bladderpod, which can grow throughout the glade, the gladecress is restricted to the outcrop rock faces within the glades where it occurs (Nemec 1996, p. 8).

As is true of other *Leavenworthia* species (Rollins 1963, p. 6), Texas golden gladecress seeds germinate during fall rains and the plants overwinter as small, tap-rooted rosettes. Flowering begins in February and continues into March, and sometimes as late as April, depending on annual weather conditions. Rollins (1963, p. 6) noted that the blooming period of *Leavenworthia* varied according to the temperature, moisture, and severity of winter freezes. Fruit production is generally seen from March into April. The plants respond to drying of the soil by dropping seed and withering away, usually in April and May (Singhurst 2011b, pers. comm.). By summer months, gladecress plants are dead, replaced by other low-growing species such as *Sedum pulchellum* (stonecrop), *Portulaca oleracea* (common purslane), *Phemeranthus parviflorus* (sunbright), and *Elocharis occulata* (limestone spikerush) (Singhurst 2012e, pers. comm.). Although seed dispersal has not been studied in Texas golden gladecress, observations indicate that seeds fall within 6–8 in (15–20 cm) of the parent plant (Singhurst 2011c, pers. comm.).

Little is known about the gladecress' seed bank as this aspect of life history has not been researched. The species did reappear at two sites where it was believed lost due to habitat degradation. A population location, the Geneva Site in Sabine County (see Table 1), was bulldozed in late March 1999, one week after flowering plants were counted—the site was subsequently described by the surveyor as ''lost or destroyed'' (Turner 1999, pers. comm.). However, plants were found again at this site in 2003 and continued to emerge in succeeding years. At a second site in San Augustine County (Chapel Hill Site, see Table 1), a thick growth of the invasive, nonnative shrub, *Rosa bracteata* (Macartney rose) was removed in 1995. Post-brush removal, the gladecress reappeared after not having been seen for the previous 10 years (Nemec 1996, p. 1). The species' reappearance after these habitat alterations suggests a persistent seed bank, although there have been no formal studies to verify this hypothesis.

Rare plants often have adaptations such as early blooming, extended flowering, or mixed-mating systems that allow them to persist in small populations (Brigham 2003, p. 61). The Texas golden gladecress is believed to be self-compatible and able to self-fertilize (Rollins 1963, p. 19; Beck *et al.* 2006, p. 153). The species may have evolved for self-fertilization when conditions are not favorable for insect-vectored pollination, lessening the species' dependence on pollinators for cross-pollination and survival and potentially making the species more resilient under conditions of small, geographically separated populations. Rollins (1963, pp. 41–47) speculated that species in the genus *Leavenworthia* evolved from a self-incompatible original ancestor to self-compatibility in some species to persist with a diminishing overlap in seasonality of adequate moisture in glade habitats versus availability of insect pollinators (e.g., as the southeastern part of the U.S. warmed, the required moisture levels for germination and flowering became more restricted to winter months when insect availability was lower). This could help to enhance the species' persistence, at least in the short term, in a fragmented landscape where habitat patches may be so distant from one another as to preclude pollinators' movements between them. The presence of other flowering plants at gladecress sites could help to attract and maintain a reservoir of pollinators, thereby increasing the chances for the gladecress to be cross-pollinated. This would benefit the species by potentially providing a higher level of genetic diversity.

Distribution and Status

Texas golden gladecress is known from eight locations, including one introduced population, all within a narrow zone that parallels SH 21 in San Augustine, Sabine, and Nacogdoches Counties (Texas Natural Diversity Database (TXNDD) 2012b). Table 1 (below) summarizes the location information for Texas golden gladecress populations (taken from the TXNDD 2012b). Based on known population locations, taken from the TXNDD element occurrence records from 1974–1988, the Weches Glades of San Augustine County appear to be the center of the species' distribution; to date all but one of the naturally occurring populations were found in this area, with the other naturally occurring population in Sabine County. One population was successfully introduced into Nacogdoches County. All locations (historic and extant) occur primarily on privately owned land, although the plants do extend onto the Texas Department of Transportation (TxDOT) right-of-way (ROW) at two sites: Geneva Site and Caney Creek Glades Site 1 (CCG 1).

TABLE 1—LOCATION AND STATUS OF TEXAS GOLDEN GLADECRESS POPULATIONS

County	Population designation	Status	Historic site description	Land owner
San Augustine	Caney Creek Glade Site 1.	Extant	Described by The Nature Conservancy as approx. 1 ac (0.4 ha) site; by 2001 was less than 100 ft^2 (9 m^2).	Private & State ROW.
San Augustine	Chapel Hill (aka Tiger Creek).	Extant	Tract on which gladecress was found was less than 0.25 ac (0.1 ha).	Private.
Sabine	Geneva	Extant	Size of site was approx. 100 ft^2 (9 m^2).	Private & State ROW.
Nacogdoches	Simpson Farms (Introduced Population).	Extant through 2009. Site was eradicated by pipeline in 2011.	Population approx. 200 ft^2 (18 m^2) in size.	Private.
San Augustine	Caney Creek Glade Site 7.	Status unknown. Possibly extant—not accessible in last 24 years.	Small population; locally abundant in very small area.	Private.
San Augustine	Caney Creek Glade Site 2.	Site is now excavated pits	Site was approx. 3 ac (1.21ha)	Private.
San Augustine	Caney Creek Glade Site 6.	Site is now excavated pits. Possibility that some habitat and plants remain on adjacent, unquarried land.	Multiple tracts totaling ~ 10 ac. Sites 6, 7 and 8 in different areas on these tracts. Site 6 was the largest known population—thousands of plants.	Private.
San Augustine	Caney Creek Glade Site 8.	Site lost to excavated pits	Very small population on a degraded outcrop.	Private.

Four Texas golden gladecress populations (CCG 1, Chapel Hill, Geneva, and Simpson Farms) were present through 2009—the last year that the plants were surveyed (Singhurst 2011a, pers. comm.). In October 2011, Service and TPWD biologists visited all four known locations and found that the plants and habitat at the introduced site in Nacogdoches County (Simpson Farms) had been removed by a recent pipeline installation. The habitat was still intact at the other three locations (Cobb 2011, pers. comm.), and we assume that plants still occupy these sites.

Three San Augustine County occurrences (CCG Sites 2, 6, and 8) were believed extirpated, at least in large part, by construction of glauconite mines (open pits) beginning in the late 1990's. These occurrences may have been part of a much larger glade complex, referred to as the Caney Creek Glade Complex, that included the Caney Creek Glade Sites 1, 2, 6, 7, and 8. These five occurrences were located within an area extending out to 1.5 mi (2.41 km) to the east of the town of San Augustine (TXNDD 2012b, unpaginated). In 1987, the CCG Site 6 was described as having Texas golden gladecress plants ''in the thousands'' (TXNDD 2012b, unpaginated). Access to these three privately owned sites is prohibited; therefore, we cannot ascertain whether any plants or their habitat are still present on the peripheries of the mined areas.

The CCG Site 7 was last visited in 1988 (TXNDD 2012b, unpaginated). There were no further site visits due to lack of access to the privately owned land. Satellite images taken as recently as 2008 show this population site has not been altered by construction or quarrying (mining), but the open glade appearance at this site has changed to one of dense growth of woody vegetation, so it is unknown whether the plants still occur at the site.

Table 2 presents estimates for extant Texas golden gladecress populations between 1999 and 2009 (USFWS 2012, p. 4). The total number of plants seen in 2009 was 1,108. The largest population, consisting of 721 plants, was at the introduced site in Nacogdoches County, a site that was lost in 2011 when a pipeline route was constructed directly through it. This represents a loss of 65 percent of the known plants. After 2009, approximately 400 plants in 3 populations were all that remained of this species. The number of gladecress plants fluctuated widely from year to year, likely due to differences in precipitation levels between years. The gladecress is dependent on fall and winter rain to saturate the sediment and produce the seeps and pooling it requires, and drought conditions were noted to have a significant negative effect on reproduction, (Turner 2000, p. 1) as seen in the drought years of 1999–2000 (Texas Water Resources Institute 2011, unpaginated) when the Chapel Hill site decreased from 91 to 67 plants and the CCG Site 1 decreased from 490 to 96 plants (USFWS 2010, p. 5).

TABLE 2—POPULATION ESTIMATES FOR TEXAS GOLDEN GLADECRESS AT MONITORED SITES

Year	Chapel Hill	CCG #1	Geneva	Simpson Farms
1999	91	490	319	*NS
2000	67	96	NS	NS

TABLE 2—POPULATION ESTIMATES FOR TEXAS GOLDEN GLADECRESS AT MONITORED SITES—Continued

Year	Chapel Hill	CCG #1	Geneva	Simpson Farms
2001	96	520	NS	270
2002	NS	NS	NS	NS
2003	42	NS	57	57
2004	NS	NS	NS	NS
2005	40–50	0	54	2,873
2006	NS	NS	200	NS
2007	200	NS	1,000	1,000
2008	9	NS	49	NS
2009	98	29	260	721

* NS—Not surveyed.

Singhurst (2011a, pers. comm.) referred to the difficulty of trying to determine population trends for the Texas golden gladecress due to the lack of comprehensive numbers for the species. He attributed this data gap to variation in surveyors and their techniques, the inability to see gladecress plants under invasive brush, lack of access to multiple sites, and the fluctuation in plant numbers associated with moisture conditions. Nevertheless, despite these limitations, it is evident that there are few remaining populations and that the overall numbers of existing plants are fluctuating. For example, a decrease in plant numbers in 2009 was likely due to drought; however, following significant rains in late fall 2011 and early winter 2012, Singhurst (2012f, pers. comm.) noted higher numbers of plants than the 2009 counts at Geneva, Chapel Hill, and CCG Site 1.

Most of the known populations, historic and extant, were and are restricted to small areas (see Table 1). For example, in San Augustine County, the Chapel Hill site is less than 0.2 acres (ac) (0.1 hectare (ha)) in size and lies between a pasture fence and gravel road southwest of SH 21. The area of the plants at the CCG Site 1 is less than 100 ft^2 (9 m^2) in size, on the side of Sunrise Road south of SH 21. In Sabine County, the plants at the Geneva site occupy approximately 100 ft^2 (9 m^2) adjacent to, and west of, SH 21, south of Geneva. The total area occupied by the plants at the remaining three sites covers less than 1.2 ac (0.5 ha). Area sizes for gladecress occurrences were taken from the TXNDD element of occurrence records.

Although no new populations of Texas golden gladecress have been found since the late 1980s, there is potential for more gladecress to exist across the Weches Glades Region. Known populations all occur close to roads suggesting that most searches for the species were nearby to public road access. All known occurrences are on private property, as is all remaining habitat; therefore, surveys cannot be conducted without landowner permission. Effective identification of suitable habitat is needed to survey for new populations. Even in areas of potential Weches Glades, as identified using Geographic Systems Information (GIS) data, including aerial, geologic, and hydrologic data sources, the habitat may not contain Texas golden gladecress populations. Between 1999 and 2003, The Nature Conservancy (TNC) used these tools to identify 44 potential sites of gladecress and white bladderpod occurrence in the San Augustine Glades. The TNC was granted access to 14 of the 44 sites, but found little Weches habitat, and no new gladecress or bladderpod sites (Turner 2003 in USFWS 2010b, p. 3).

Neches River rose-mallow

Taxonomy and Description

Hibiscus dasycalyx (the rose-mallow) (Blake) is a nonwoody perennial (plant that grows year after year) in the Malvaceae (mallow) family that grows 1.9–7.5 feet (ft) (0.6–2.3 meters (m)) tall (Correll and Johnston 1979, p. 1030). Leaves are alternate and simple, generally t-shaped and deeply three-lobed with petioles (leaf stalks) 1.1–1.9 in (3–5 cm) long (Correll and Johnston 1979, p. 1030). This rose-mallow generally produces six or seven creamy white flowers (rarely pink) singularly on branches flowering between June and August (Poole *et al.* 2007, p. 265), sometimes into late October depending on water availability during springtime inundations (Warnock 1995, p. 20; Center for Plant Conservation 2011, *http://www.centerforplant conservation.org/*). Large and numerous stamens are monodelphous, forming a tube that is united with the base of the petals (Klips 1999, p. 270).

The rose-mallow was first collected by Ivan Shiller on June 23, 1955, at the type locality at Hwy 204 (also referred to as Apple Springs), Trinity County, Texas, and was later identified as a distinct species (Correll and Johnston 1979, pp. 1030–1031). Blake (1958, p. 277) determined that the rose-mallow was different from the closely related *Hibiscus laevis* (halberdleaf rose-mallow) by examining specimens from the type locality. Gould (1975), Nixon (1985), Hatch *et al.* (1990), Johnston (1990), and Fryxell (Warnock 1995, pp. 1–2; Poole 2002, pers. comm.) all recognized the rose-mallow as a distinct species.

Two similar-looking *Hibiscus* species, *H. laevis* and *H. moscheutos* (crimsoneyed rose-mallow) are aquatic species documented in areas where the rose-mallow occurs. A morphological distinction between these *Hibiscus* species of East Texas and the rose-mallow is the species' notably hairy calyx (Warnock 1995, p. 5). All three of these species have a similar general appearance, but can be separated based on a comparison of external characteristics including leaf structure, and degree of pubescence (fine hairs) on the calyx, leaves, capsule (dry fruit), or seeds (Correll and Correll 1975, p. 1118; Blanchard 1976, p. 5; Warnock 1995, p. 4). Geographically, these three species can be found within similar habitats, but the halberdleaf and the crimsoneyed rose-mallows prefer deeper water and are found along edges of major rivers and streams (Blanchard 1976, pp. 10–14; Poole 2011b, pers. comm.), compared with the rose-mallow, which is found in side channels and floodplains of major river drainages. Based on the available information on the species morphology, biology, and habitat-specific needs, we conclude that the rose-mallow is a valid taxon.

Habitat

The rose-mallow is endemic to relatively open habitat (Kennedy and Poole 1990, p. 11) of the Pineywoods (or Timber belt) of East Texas (Gould 1975, p. 1; Correll and Johnston 1979, p. 1030), within Cherokee, Houston, and Trinity Counties and has been introduced into Nacogdoches and Harrison Counties. Shortleaf/loblolly pine-hardwood forests dominate the habitat with portions of suitable habitat extending into longleaf pine (*Pinus palustrus*) and loblolly pine forest (*Pinus taeda*) (Telfair 1983, p. 28; Diggs *et al.* 2006, p. 95). The common native woody and herbaceous plant associates are listed in Table 3 (Warnock 1995, pp. 14–15; Poole *et. al* 2007, pp. 264–265).

TABLE 3—NATIVE PLANT ASSOCIATES OF NECHES RIVER ROSE-MALLOW

Scientific name	Common name
Native Woody Plant Associates	
Carya aquatic	water hickory.
Cephalanthus occidentalis	common buttonbush.
Celtis laevigata var. *laevigata*	sugar berry.
Fraxinus sp.	ash.
Quercus lyrata	overcup oak.
Q. nigra	waterоak.
Liquidambar styraciflua	sweetgum.
Salix nigra	black willow.
Native Herbaceous Plant Associates	
Boehmeria cylindrica	smallspike false nettle.
Brunnichia ovate	buckwheat vine.
Carex lupulina	common hop sedge.
Chasmanthium sessilifolium	longleaf woodoats.
Diodia virginiana	Virginia buttonweed.
Eichhornia crassipes	water hyacinth.
Heliotropium indicum	Indian heliotrope.
H. moscheutos	crimsoneyed rose-mallow.
H. laevis	halberdleaf rose-mallow.
Hydrolea ovate	ovate false fiddleleaf.
Hydrocotyle ranunculoides	floating pennywort.
Juncus effuses	common rush.
Ludwigia leptocarpa	anglestem primrose-willow.
Nuphar lutea	yellow pond-lily.
Phanopyrum gymnocarpon	Savannah-panicgrass.
Panicum ridgulum	redtop panicgrass.
Pluchea foetida	stinking camphorweed.
Polygonum hydropiperoides	swamp smartweed.
Pontederia cordata	pickerelweed.
Rhynchospora corniculata	shortbristle horned beaksedge.
Scirpus cyperinus	woolgrass.
Thalia dealbata	powdery alligator-flag.
Trachelospermum difforme	climbing dogbane.

Sites where the rose mallow have been found have been described as sloughs, oxbows, terraces, and sand bars. Sites include low areas (Warnock 1995, p. 13) within the Neches River basin and Mud and Tantabogue Creek basins, with soils that are classified generically as hydric alluvials, or water-saturated soils, of the Inceptisol or Entisol orders (Diggs *et al.* 2006, pp. 46, 79) that remain flooded or frequently flood. The U.S. Department of Agriculture's (USDA) Natural Resource Conservation Service (NRCS) completed soils surveys for all counties with known occurrences of the rose-mallow, and the associated soils are frequently flooded clay loams. Sites are both perennial and intermittent wetlands with water levels between sites varying due to their proximity to water, amount of rainfall, and floodwaters. Intermittent wetlands are inundated during the winter months but become dry during the summer months (Warnock 1995, p. 11). Flowing water is required for seed dispersal downstream (Warnock 1995, p. 20; Scott 1997, p. 8; Reeves 2008, p. 3). Rivers of East Texas tend to overflow onto banks and floodplains (Diggs *et al.* 2006, p. 78), especially during the rainy season, thereby dispersing seed. Research has not been done to identify methods of seed dispersal upstream; however, avian species may facilitate this process.

Biology

The rose-mallow is a perennial that dies back to the ground every year and resprouts from the base; however, still maintaining aboveground stems. Longevity of the species is unknown but it may be long-lived. Cross-pollination occurs (Blanchard 1976, p. 38) within the rose-mallow populations and the species has high reproductive potential (fecundity). The number of flowers and fruits per plant were documented during the TPWD's annual monitoring of the rose-mallow along State Highway (SH) ROWs. The species produced an average of 50 fruits per plant, but seed viability and survivorship are not known (Poole 2012a, pers. comm.). An open canopy (Warnock 1995, pp. 11, 13) and sunlight are needed for flowers to bloom, and the blooming period may only last 1 day (Snow and Spira 1993, p. 160).

Potential pollinators of the rose-mallow may include but are not limited to, the common bumblebee (*Bombus pensylvanicus*), Hibiscus bee (*Ptilothrix bombiformis*), moths, and the scentless plant bug *Niesthrea louisianica* (Klips 1995, p. 1471; Warnock 1995, p. 20; Warriner 2011, pers. comm.). Both *H. laevis* and *H. moscheutos* are pollinated by common bumblebees and the Hibiscus bee (Snow and Spira 1993, p. 160; Klips 1999, p. 270). The solitary Hibiscus bee prefers gently sloping or flat areas with sandy or sandy-loam soils for nesting areas (Vaughan *et al.* 2007, pp. 25–26; Black *et al.* 2009, p. 12), and female bees will excavate nest cavities in elevated, hard packed, dirt roadways or levees near stands of *Hibiscus* (in this case *H. palustris*) and standing water (Rust 1980, p. 427). Members of the genus *Bombus* (family Apidae) are social bees, predominantly found in temperate zones, nesting underground (Evans *et al.,* 2008, p. 6) in sandy soils (Cane 1991, p. 407). Bumblebees nest in small cavities, often underground in abandoned rodent nests, grass (Black *et al.* 2009, p. 12), or in open, grassy habitat (Warriner 2012a,

pers. comm.). Other aboveground-nesting bees that may potentially pollinate the rose-mallow may include carpenter, mason, and leaf cutter bees that nest in dead snags or twigs or standing dead wood (Warriner 2012a, pers. comm.). Maximum foraging distances of solitary and social bee species are 492 to 1,968 ft (150 to 600 m) (Gathrmann and Tscharntke 2002, p. 762) and 263 to 5,413 ft (80 to 1,650 m) (Walther-Hellwig and Frankl 2000, p. 244), respectively. The scentless plant bug is a member of the *Rhopalidae* family found specifically in association with various members of the Malvaceae family. This species is known to deposit eggs on both the vegetative and reproductive parts of mallow plants (Spencer 1988, p. 421). Holes have been eaten in floral parts of rose-mallow plants suggesting that the scentless plant bug may be a pollinator as well as a consumer of the rose-mallow.

Natural fires occur every 1 to 3 years in East Texas (Landers *et al.* 1990, p. 136; Landers 1991, p. 73) and control the overgrowth of longleaf and loblolly pine, as well as nonnative species; humans later used fire to suppress overgrowth. Fire suppression allows for sweetgum (*Liquidambar styraciflua*), oaks (*Quercus* sp.), hickories (*Carya* sp.), common persimmon (*Diospyros virginiana*), and southern magnolia (*Magnolia grandiflora*) to invade the natural pine forests (Daubenmire 1990, p. 341; Gilliam and Platt 1999, p. 22), and reduce the open canopy needed by the rose-mallow. Lack of fire increases the opportunity for nonnative species, such as chinese tallow (*Triadica sebifera*), to invade these sites.

Distribution and Status

The natural geographic range of the rose-mallow is within Trinity, Houston, Harrison, and Cherokee Counties, Texas, on State highway (SH) ROWs and on private and Federal lands. However, the species has been introduced outside of the known geographic range in Nacogdoches County on private land (Mill Creek). In addition, populations of rose-mallow have been introduced within their natural geographic range on Federal lands. In total, there are 12 occurrences of rose-mallow (see Table 4). Eleven of these are within the known geographic range, and, as of October 2011, are occupied by the rose-mallow. The rose-mallow plants within the SH 230 ROW have not been seen since 2002, and the site is considered extirpated.

TABLE 4—POPULATION ESTIMATES FOR KNOWN ROSE-MALLOW OCCURRENCES

Site	County	First and last observation	Plant estimates
1. Compartment 55, Davy Crockett National Forest (NF).	Houston	2000; 2011	1000 in 2000, 750 in 2002, 750 in 2010, 400–500 in Oct. 2011.
2. Compartment 16, Davy Crockett NF (introduced).	Houston	2000; 2011	450 in 2000, 115 in 2002, 78 in 2003, 50 in 2006, 90 in 2010, 43 in 2011.
3. Compartment 11, Davy Crockett NF (introduced).	Houston	2004; 2011	200 in 2004, 10 in 2006, 7 in 2010, 10 in 2011.
4. Compartment 20, Davy Crockett NF (introduced).	Houston	2000; 2011	200–250 in 2000, 70 in 2002, 182 in 2002, 350 in 2006, 120 in 2010, 101 in 2011.
5. SH 94 ROW/Boggy Slough	Trinity	1955; 2011	100+ in 1968, 50 in 1986, 50 in 1987, 13 in 1988, 7–9 in 1991, 2 in 1992, 27 in 1993, 38 in 1994, 41 in 1995, 16 in 1996, 15 and 20 on private land in 1997, 13 in 1998, 49 in 1999, 17 in 2000, 15 and 300+ on private land in 2001, 20 in 2002, 20 and 0 on private land in 2005, 35 along powerline in 2007, 128 along ROW in 2011.
6. SH 204 ROW/Mud Creek	Cherokee	1992; 2011	1 in 1992, 1 in 1993–1996, 75 in 1997, 1 in 1998, 2 in 1999, 1 in 2000, 5 in 2001, 1 in 2002, 7, 6, 3, and 30 respectively at four new subpopulations in 2010, 20 in 2011.
7. SH 230 ROW	Houston	1978; 2002	50 in 1991, 58 in 1993, 38 in 1994, 1 in 1995, 2 in 1996, 6 in 1997, 8–13 in 1998, 14 in 1999, 8 in 2000, 4 in 2001, 12 in Sept. 2002, none in Oct. 2002, none in 2003, 2004, 2005, and 2011.
8. Lovelady	Houston	2011	50–70 in 1991, 7 in 1992, 58 in 1993, several hundred in 2001, 400 in 2002, 539 in 2011.
9. Mill Creek Gardens (introduced)	Nacogdoches	1995; 2011	96 in 1995, hundreds in Oct. 2011.
10. Harrison site	Harrison	Not observed after 1980.	Herbarium specimen was recently confirmed as *H. dasycalyx,* but site has not been observed since 1980.
11. Champion site	Trinity	1996; 2001	Hundreds in 1997, 300–400 in 2001.
12. Camp Olympia	Trinity	1977; 1992	No estimates.

Populations along SH ROWs include Hwy 94 in Trinity County, collected in 1955 (Blake 1958, p. 277); Hwy 204 in Cherokee County, first observed in 1992; and Hwy 230 in Houston County, first observed in 1978. The TPWD performed annual SH ROW monitoring along Hwy 94 from 1993 thru 2001 (Poole, 2001, p. 1); along Hwy 204 from 1993 thru 2003 (Poole 2001, p. 1; TXNDD 2012a, pp. 20–28); and along Hwy 230 from 1993 thru 2001 (Poole 2001, p. 1). These three ROW populations are separated from one another and are considered distinct. However, the Boggy Slough site consists of several scattered rose-mallow subpopulations that are located in close proximity to one another. Boggy Slough subpopulations and the SH 94 ROW population are separated by no more than a distance of 1.0 km (3, 280 ft), and these two sites likely constitute a single, larger population, sharing pollinators, and exchanging genetic material (NatureServe 2004, p. 6; Poole 2011c, p. 2). Therefore, in Table 4, they are combined and represented as a single location.

Adjacent lands to the SH 230 ROW were purchased by the Texas Land Conservancy (TLC) in 2004 (TLC 2011, *http://www.texaslandconservancy.org).* The rose-mallow plants in this site, referred to as Lovelady, are part of a population that included the rose-mallow plants in the SH 230 ROW. The rose-mallow plants within the SH 230 ROW have not been observed since 2002, and the site is considered

extirpated (TXNDD 2012a, pp. 61–67). The Lovelady site was recently surveyed in 2011, and although 539 plants were found, most were in notably poor condition, being much shorter in stature because of the drought and herbivory (Poole 2012b, pers. comm.; TXNDD 2012a, pp. 14–19). The estimates of rose-mallow displayed in Table 4 show wide variations in plant numbers. Some of this variation is due to incomplete counts at the sites, in other words, only a portion of the population was counted. Meaningful trends cannot be derived from these population estimates.

Although annual monitoring of the ROW sites was discontinued in the early 2000s, TPWD visited all of the ROW sites in October 2011. In the past, along SH 204, several subpopulations existed along multiple portions of the ROW; however, several of these subpopulations were gone in 2011. The recent drought conditions have allowed surveyors to count rose-mallow plants in parts of sites that were not accessible in the past because the sites were too wet. The increase in numbers of plants at some of the ROW sites may be partially attributed to this.

The Davy Crockett National Forest (NF), Houston County, Texas, contains four extant sites of the rose-mallow, three introduced and one natural. The one natural population is found in compartment 55 located west of the Neches River. This site is considered the most robust of all known extant populations (Poole 2011c, p. 3) and is almost entirely unaltered from its originally observed state as a seasonally wet flatwood pond, with vegetation being distinctly zoned (TXNDD 2012a, p. 29). The three introduced populations are located in compartment 16, which started with 450 plants (Davis 2000, pers. comm.; McCormick 2002, p. 1; USFWS 2000, p. 3), compartment 20 with 200–250 plants (Davis 2000, pers. comm.; McCormick 2002, p. 2; USFWS 2000, p. 3), and compartment 11 with about 200 plants (Nemec 2005, pers. comm.). The populations in compartments 16 and 20 were introduced in 2000, while the population in compartment 11 was introduced in 2004 (USFWS 2007, p. 6). All four of the Davy Crockett NF sites were censused in October 2011 by the Service and TPWD, and all of the introduced sites on the Davy Crockett National Forest have declined dramatically.

The four remaining rose-mallow sites have had sporadic monitoring or have not been visited in recent years. In 1995, Stephen F. Austin State University (SFASU) Mast Arboretum planted 96 rose-mallow plants into a site at Mill Creek Gardens, Nacogdoches County (Scott 1997, pp. 6–7). A conservation easement was placed on this land, and now the site is managed by the Arboretum. Rose-mallow plants at this site were observed in 1997, 1998, 2001, 2009, and in 2011 (Creech 2011a, pers. comm.). The introduced plants appear to be doing well; however, nonnatives and native species are becoming more prevalent, and may compete with the rose-mallow (Creech 2011c, pers. comm.). A rose-mallow specimen collected on private lands in 1980 from Harrison County, Texas, was presumed to be a halberdleaf rose-mallow specimen; however, it has been recently confirmed (2011) to be the rose-mallow (Birnbaum 2011, pers. comm.; TXNDD 2012a, pp. 12–13). The Harrison County site has not been visited since 1980, but we presume that rose-mallow is extant at this site since we have no evidence that the species is extirpated. Two additional populations occur on private lands in Trinity County; the Camp Olympia and Champion sites, discovered in 1977 and 1996, respectively. The current status of rose-mallow on the Camp Olympia site is unknown since access has been denied. We consider this site to be extant because we have no evidence that it has been extirpated. The population on the Champion site was observed in 2011; plants were seen, but no plants counts were done.

Summary of Factors Affecting the Species

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

Texas Golden Gladecress

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

Habitat loss and degradation have been the primary cause of decline in Texas golden gladecress during the last two decades. Permanent removal or destruction of habitat by quarrying and pipeline installation projects has eradicated several populations. Other habitat alterations that are occurring across the species' range, with potential to destroy or negatively alter gladecress' habitat, include construction of well pads, buildings, roads, and poultry production facilities. A historic and ongoing major threat to Texas golden gladecress' habitat is the invasion by nonnative and native shrubs and trees into the formerly open-sun, herbaceous, glade vegetation communities. Grazing has been implicated as a habitat threat because it is often associated with the encroachment of undesirable vegetation into the outcrop habitat, and may lead to trampling of plants. Agricultural herbicide use has some potential to damage emerging gladecress seedlings. Severe and extended periods of drought, anticipated to increase with projected changes in the climate, may negatively affect a given year's reproductive effort by Texas golden gladecress. These factors will be discussed in more detail below.

Glauconite Quarrying (Mining)

Glauconite, often called ''blue rock'' or ''green rock'' is used in San Augustine and Sabine Counties for road construction and maintenance by county road departments, the USDA Forest Service, and Louisiana Parishes (McGee 2011, pers. comm.). Glauconite has also been used by the oil and natural gas industry for roads and well pads, and demand by the oil and gas industry is high (McGee 2011, pers. comm.). Glauconite is also used as a component of fertilizer. A number of commercial glauconite quarries or mines were in production by 1997, and subsequent interest in its use grew because traditional pavement base materials historically used in this region (iron ore and limestone) were becoming harder to obtain and more expensive (Button and Little 1997, p. 14). A representative of one mining company with four quarries in the San Augustine and Sabine County area expressed an opinion that their mines were sustainable for 15 to 20 years at the current level of demand (McGee 2011, pers. comm.). We do not have a more quantified prediction regarding demand and existing supply; therefore, we

cannot accurately predict future quarry development. Selection of locations for glauconite quarries may target areas ''where the glauconite can be seen on the surface'' (outcrops), although quarries have also been dug on sites where the glauconite was not visible at the surface (McGee 2011, pers. comm.).

The Nature Conservancy (TNC) (2003, p. 9) noted that glauconite quarrying (mining) in glades destroys habitat and is a significant threat to the Texas golden gladecress. The majority of known habitat was excavated at three of the eight historical populations (CCG Sites 2, 6, and 8) between 1996 and 2011, resulting in open pits at the former habitat sites. The excavations removed all surface features required by the gladecress, as well as killing individual plants. Access to the Service has been denied at these sites, and we cannot determine if any habitat or plants remain on the periphery of the excavated quarries. The last recorded survey of plants at CCG Site 2 was on March 18, 1988, when the gladecress plants were described as growing on the sloping Weches outcrop that was brush-hogged and burned in 1988. Using available high-altitude photography taken between 1995 and 2009, supplemented with aerial photography from August 2010, it appears that the glade was still intact as of 1995–1996, but that a much larger area than the original population site was excavated by 2005. As of 2010, the entire population site and surrounding area looks to be two large, side-by-side pits or ponds. We assume that the populations are extirpated at this location.

The last information on plant numbers and conditions at the CCG Sites 6 and 8 was collected on March 19 and April 24, 1987. At that time, CCG Site 6 was recognized as the largest known viable population of Texas golden gladecress. At this site, the gladecress grew in a former pasture with thousands of fruiting plants in association with other native glade plants in shallow bedrock pockets. The CCG Site 8 consisted of a very small population on a degraded Weches outcrop, with scattered plants in fruit. Both elements of occurrence appeared to be eliminated by a large, open-pit quarry in which digging started after 1996, with the entire area being one large pit by 2009.

The outcrops may actually attract glauconite quarrying interests since the presence of an outcrop indicates that glauconite is close to the surface. Glauconite mining can occur throughout the range of Texas golden gladecress and has the potential to eradicate populations at sites where quarries are dug. There is no requirement for permits, no review of projects, and locations of future quarries are unknown. Based on our review of the scientific information, we conclude that excavation of pits for removal of glauconite, and associated glauconite quarrying activities, pose a threat to the gladecress across the species' range.

Natural Gas and Oil Exploration and Production

A principal threat to the habitat of Texas golden gladecress is the removal or destruction of habitat (outcrops and immediate surrounding land) by pipeline construction or from construction of buildings, well pads, or roads to access drilling sites directly over habitat. Natural gas pipeline installation requires trenching and clearing that can destroy all gladecress habitat and plants within the pipeline ROW. In addition to the destruction of habitat, excavation could conceivably alter the hydrology of gladecress sites if the lowered elevation of the excavation, or conversely, the increased ground elevation of a well pad or other structure, diminishes the amount of water that can move downslope over ground or through seeps. Adversely affecting the amount and timing of water delivery could render outcrop ledges uninhabitable for the species by interfering with the seeping or pooling action of water on which the species depends.

The loss of habitat and plants in the footprint of well pads and roads built for natural gas or oil exploration and production is a continuing threat because there is high potential to affect remaining glade habitat throughout the species' range. Numerous wells can be seen from SH 21 between the cities of Nacogdoches and San Augustine, with at least 30 wells visible along a 20-mile stretch of this road (Loos 2011, pers. comm.; Rodewald 2011, pers. comm.). The materials brought in to construct well pads and roads can directly cover habitat and plants, causing partial or total loss of populations. Excavations, as well as construction activities, that occur upslope of gladecress populations may act to impede movement of water downslope, thereby interfering with seeping and pooling of water needed by Texas golden gladecress. Concern about the extent of this threat is elevated due to our lack of information about potential gladecress populations across the Weches Glades where surveys for the species have not been undertaken, but where natural gas exploration and production is rapidly proceeding.

The entire known distribution of Texas golden gladecress is underlain by the Haynesville Shale formation (also known as the Haynesville/Bossier), recently recognized as a major natural gas source for the United States. The Haynesville Shale, located at a depth exceeding 11,000 ft (3,353 m), straddles the Texas-Louisiana border and almost 70 percent of its production is from wells located in Texas (Brathwaite 2009, p. 16). The Haynesville shale covers an area of approximately 9,000 square miles (23,310 square km). A June 2010 map shows the Haynesville Shale underlying the northwestern quarter of Sabine County, the entire northern half of San Augustine County, and the southeastern third of Nacogdoches County (Haynesville Shale Map 2010). Estimates of the natural gas contained in this formation's reserves indicate that it could sustain anticipated energy needs for well beyond the next several decades (*http://www.haynesvilleshalelandowners.org;* Brathwaite 2009, p. 16). Technological improvements in exploration (3-dimensional seismic surveys), drilling (horizontal wells), and well completion and stimulation (hydrologic fracturing) have enhanced the productive capability of natural gas shales throughout the United States, including the Haynesville Shale.

Natural gas exploration and production has been rapidly expanding within the Haynesville Shale, from the first significant production in 2005 to major development of the formation in 2009 (Brathwaite 2009, p. 16). Drilling activity over the entire Haynesville Shale peaked around 2009 or 2010 when approximately 200 drilling rigs were active. As of September 18, 2011, approximately 130 rigs were actively drilling; the slowdown being attributed to depressed natural gas prices (Murphy 2011a, p. 3). Even with natural gas prices down, most companies continue to drill one well per gas unit on the Haynesville Shale in order to maintain their leases (Murphy 2011a, p. 3). By September 2011, as many as 1,500 wells had been drilled with many more anticipated, along with perhaps another 10 years of active drilling on this formation (Murphyb 2011, pp. 2–3).

The Texas Railroad Commission's (RRCs) online maps (available at (*http://gis2.rrc.state.tx.us/public/startit.htm*) indicate that natural gas (and some crude oil) gathering and transmission pipelines are found throughout Nacogdoches County. In San Augustine County, the majority of existing pipelines are located in the area north of SH 21 and west of the town of San Augustine, an area of high glade

occurrence. To the east of San Augustine, there are fewer pipelines, but, of those that are located in this area, several are large gas transmission lines. One of these big transmission lines lies directly adjacent to the historic CCG Site 7. Sabine County has several major interstate pipelines, but fewer gathering and other transmission lines than the other two counties, and no pipelines near the Sabine County gladecress site (Texas Railroad Commission 2011).

The RRC regulates the oil and natural gas industry in the state of Texas. The RRC has detailed information on all existing pipelines, but the agency has no way to predict future routes for new pipelines or wells; they are limited to location data found within permit applications (Nunley 2011, pers. comm.). New pipelines, as well as ones for which routes are being determined, do not display on the RRC Web site, so although we are aware of the impact that pipeline excavations can have on Texas golden gladecress, we cannot tell where future pipelines may affect existing populations or suitable habitat.

Loss of gladecress habitat and plants is inevitable if pipelines are routed directly through population sites. Pipeline installation requires clearing of a path for the pipeline, cutting a trench in which to lay the pipe, recovering of the trench, and restoring the ground's surface. Clearing pipeline pathways eliminates obstacles to construction (NaturalGas.Org., p. 2), which may include the rocky outcrops supporting the Texas golden gladecress. Bulldozing the pipeline path likely permanently removes these rocky ledges and other features, along with the gladecress plants and seedbed. After the pipe is put into the ground and the trench covered with soil, elevations are restored and the surface is revegetated, generally using *Cynodon dactylon* (coastal bermudagrass) in this region (Rodewald 2011, pers. comm.). The Simpson Farms population, located 6 mi (9.7 km) east of the city of Nacogdoches, was eliminated by a natural gas pipeline that was installed sometime between August 2010 and October 2011 (date of installation determined from comparison of successive years of aerial photography). At this site, the pipeline ROW was approximately 75 ft (23 m) wide and the entire area formerly occupied by the gladecress was covered with deposited sediment or piles of cleared brush (Cobb 2011, pers. comm.). Given the degree of clearing of the ROW and the adjacent dirt work, the known extent of habitat is now gone and the entire population has likely been extirpated (Cobb 2011, pers. comm.). The Chapel Hill population may also be affected by future pipeline construction; the route for a future pipeline was being surveyed in October 2011 (Cobb 2011, pers. comm.). Although this pipeline does not directly cross the very small population site between the pasture fence and the road, it does lie parallel to, and just inside of, the fence line in a pasture where gladecress habitat does exist (Singhurst 2012c, pers. comm., Singhurst 2012f, pers. comm.).

The current trend over most natural gas shale formations is to drill multiple wells, when possible, and well pad sizes can vary accordingly. Well pad sizes in the San Augustine County area range from several acres to as large as 14 ac (5.67 ha), depending on the number of wells (Loos 2011, pers. comm.; Allen 2011b, pers. comm.). Although most oil and gas companies use existing roads, occasionally the companies need to build new roads, and in these cases the new routes may go through outcrop areas. The fill for pads and roads could cover portions of, or potentially entire, glade sites since some of the glades are so small. Placement of pads or roads upslope of gladecress sites may have the potential to affect downslope movement of water to outcrop sites (Ritter 2011b, pers. comm.).

In summary, the remaining populations of Texas golden gladecress and suitable habitat are within areas that are actively being drilled for natural gas. Plants and habitat have been destroyed by the construction of pipelines. The three remaining populations as well as suitable habitat are at risk of being destroyed by construction of natural gas and oil infrastructure (pipelines, well pads, metering stations, and roads) that continue to be constructed throughout the species' range. Exploration and production of natural gas and oil is anticipated to continue in this area for at least the next decade. Texas golden gladecress and its habitat may be directly impacted by the construction of pipelines and other infrastructure, and indirectly by altering the hydrology near occupied sites and suitable habitat. Based on our review of the scientific information, we conclude that natural gas and oil development is a threat to Texas golden gladecress.

Residential and Commercial Construction

Although residential and commercial construction was listed in the species' candidate assessments as a potential threat, there is no evidence that this type of disturbance has affected Texas golden gladecress populations. Historically, site selection for building homes and businesses in the town of San Augustine may have taken advantage of the open aspect of the glades—Leavenworth described the area in which he originally collected the species (vicinity of the town of San Augustine) as ''prairies'' (Bridges 1988, p. II–5). However, information about former glades in the area is lacking, as is documentation that the gladecress was present where buildings are currently located. Neither San Augustine nor Sabine Counties are experiencing rapid human population growth—San Augustine County saw a 0.9 percent decline in population from 8,946 to 8,865 between 2000 and 2010 while Sabine County had a modest increase of 3.5 percent (10,469 to 10,834) (U.S. Census Bureau 2010a,b), suggesting that residential and associated commercial development does not constitute a high level of threat to habitat throughout the species' range.

Proliferation of poultry farms was also listed as a potential threat to Texas golden gladecress habitat. Building poultry production houses and associated facilities would cover gladecress habitat in the same manner as would residential or other types of commercial construction. Aerial photography from November 2011 (Google Earth, November 17, 2011) shows 21 poultry farms within the gladecress' range (the approximate zone of the Weches Formation) in Sabine and San Augustine Counties. Of the 21 total, 18 are located on the San Augustine County Weches Formation. None of the existing farms is adjacent to any of the known population locations, and we are unable to determine if any gladecress habitat or plants were lost when these production facilities were built. Among the characteristics in East Texas that make a site desirable for poultry production are long, flat stretches of ground with a good, solid hardpan as opposed to rocky outcrops on slopes, the tops of ridges, or in low-lying areas (Ritter 2012, pers. comm.), such as those occupied by the gladecress. This site-selection preference means that poultry producers would most likely avoid gladecress habitat. In the last 2 years, most of the poultry farm construction has taken place in counties north of San Augustine and Sabine, and the only activity in the Weches Formation zone has been renovations to existing farms (Ritter 2012, pers. comm.). The construction of poultry farms is not considered a threat to Texas golden gladecress because poultry farm site selection does not appear to have significant overlap with gladecress habitat.

Roads

The portion of the CCG Site 1 population that occurred in the SH ROW was impacted when Sunrise Road was widened and straightened in the 1990's (Singhurst 2012g, pers. comm.); however, not all plants were destroyed. A 2011 list of TxDOT planned projects does not show any future road improvements or expansions near known gladecress population sites. Based on the best available information, we conclude that new road construction or improvements to the existing roads does not pose a threat to the gladecress at the three extant sites.

Invasive Species

A major stressor to the habitat of Texas golden gladecress is the ongoing invasion of nonnative and native shrubs and trees into the formerly open-sun, herbaceous, glade vegetation communities. This woody, weedy plant invasion is occurring on at least a portion of all three remaining population sites. Additionally, the historic CCG Site 7 appears, from 2010 aerial photography, to be almost 100 percent overgrown with woody vegetation.

Glades in most parts of the United States are declining due to grazing, fire suppression, and the subsequent invasion by woody vegetation. In presettlement times, glades were maintained by periodic fires and browsing of woody vegetation by white-tailed deer (*Odocoileus virginianus*) and elk (*Cervus canadensis*). This natural disturbance regime changed over the last century due to active fire suppression and diminished numbers of browsers reduced by hunting pressure (Rossiter 1995, p. 2). Although the harsh environment of glades helps to preclude tree establishment, without disturbance such as fire, woody plants will invade (Hartman 2005, p. 4). The exclusion of fire has allowed encroachment of trees, shrubs, vines, and other woody plants into glade communities (Borland 2008, p. 3).

As woody plants mature, they produce canopies that reduce the amount of sunlight reaching the ground. Sun-loving plants like Texas golden gladecress that are adapted to hot, dry sites do not tolerate shade well. Research conducted in Missouri's cedar glades showed that herbaceous plant production rapidly declined when red cedar cover exceeded more than one third of a glade's area (Rossiter 1995, p. 3). A combination of reduced sunlight (shading) and increased leaf litter can act to suppress herbaceous species (Hartman 2005, p. 2). These types of changes in glades that were historically hot and dry can contribute to cooling of the ground and enhancing of moisture content. Wetter, cooler conditions during traditionally hot, dry summer months may be counter-productive for sun-loving glade species by encouraging invasion by cool season vegetation and exotic species. Buildup of a deeper organic layer can also facilitate the establishment of woody plants that results in further shading of the ground (Hartman 2005, p. 2).

Invading species can also compete directly with Texas golden gladecress for water and nutrients. Interspecific competition has been noted as potentially causing reduction in the extent of the root system in several small outcrop plant species, thereby reducing their nutrient uptake (Baskin and Baskin 1988, p. 836). Shading further stresses the herbaceous layer, including the gladecress. In Missouri, stressed glade communities were more prone to invasion from invasive species like *Schedonorus phoenix* (tall fescue), *Sericea lespedeza* (Chinese bushclover), and *Rosa multiflora* (multiflora rose) (Hartman 2005, p. 4). On Texas' Weches Glades, Carr (2005) reported tall fescue at the Chapel Hill site, and Macartney rose was listed as a major invading species in pastures throughout the range of Texas golden gladecress. The Weches outcrops that parallel SH 21 appear to support the heaviest Macartney rose infestation in San Augustine County (Ritter 2011a, pers. comm.). A 1995 report by the Service's Clear Lake Ecological Services' Field Office described known white bladderpod sites, including several with gladecress, all of which needed active management to preclude invasion by woody shrubs (Nemec 1996, p. 1).

Texas golden gladecress habitat has been documented since the 1980's to be affected by an accelerated succession from open herbaceous Weches outcrops to dense shrub thickets and closed canopy woodlands (USFWS 1992, p. 7; Carr 2005, p. 2; Nemec 1996, p. 4). The most serious invaders are included in Table 5. Encroachment of these species is thought to suppress the less competitive components of the community like Texas golden gladecress and white bladderpod (TNC 2003, p. 4). Some of these invasive species can grow on the shallow outcrop soils, while others can invade open space around the edges of the outcrop ledges (USFWS 1992, p. 7). Some of the native invading species are likely controlled by occasional wildfire under natural conditions. More serious are the introduced invaders, including the small hop clover that can cover Weches outcrops and eliminate other vegetation. The introduced shrubs, including Macartney rose and Japanese honeysuckle, will invade open space, including gladecress habitat (USFWS 1992, p. 7).

TABLE 5—PRIMARY INVASIVE SPECIES FOUND IN TEXAS GOLDEN GLADECRESS HABITAT

Scientific name	Common name
Nonnative Species	
Rosa bracteata	Macartney rose
Lonicera japonica	Japanese honeysuckle
Stellaria media	chick-weed
Bromus japonicus	Japanese brome
Kummerowia striata	Japanese bush-clover
Ligustrum japonicum	Japanese privet
Meliotus indicus	sour clover
Cynodon dactylon	coastal bermudagrass
Trifolium dubium	small hop clover
Native Species	
Andropogon virginicus	broomsedge
Plantago virginica	pale-seeded plantain
Euphorbia sp.	spurge
Frangula caroliniana	Carolina buckthorn
Rhamnus lanceolata	lanceleaf buckthorn
Crataegus monogyna	hawthorn
Prunus mexicana	Mexican plum

TABLE 5—PRIMARY INVASIVE SPECIES FOUND IN TEXAS GOLDEN GLADECRESS HABITAT—Continued

Scientific name	Common name
Viburnum prunifolium	blackhaw viburnum
Rhus glabra	smooth sumac
Ulmus alata	winged elm
Berchemia scandens	Alabama supplejack
Cissus incisa	ivy treebine

The three extant Texas golden gladecress sites have shrubs and trees encroaching into formerly open glade habitat. At the Chapel Hill site, Carr (2005, p. 2) noted that 13 scattered pines within a 6,000-square-foot (557-square-meter) area produced a total canopy coverage of less than 10 percent of site, but indicated that future shading effects when the pine trees reach maturity, might prove detrimental. At this same site, other woody plants were controlled, but not eliminated, by regular shredding (Carr 2005, p. 2).

Texas golden gladecress does show some ability to persist at sites that have been overrun by woody vegetation. At the Geneva site, the area with the gladecress was bulldozed, and although the site was reported as destroyed, the species reappeared within several years. At the Chapel Hill site, brush removal actions to benefit white bladderpod also resulted in the reappearance of the gladecress after its apparent absence for 10 years. This suggests that the gladecress' seed bank may be able to remain viable over extended time periods even though the habitat is overgrown by woody species.

Nonnative and native woody species, including woody shrubs, vines, and trees, continue to degrade Texas golden gladecress' habitat across the species' entire range. This threat is significant for the species because it is ubiquitous and has led to declines, or disappearance as in the Chapel Hill site, in the gladecress populations, along with altering its habitat. Based on our review of the scientific information, we conclude that invasion of woody and weedy nonnative and native plants into gladecress habitat is a threat across its range.

Habitat Damage Associated With Grazing

Grazing has been implicated as a habitat threat because it can facilitate the encroachment of undesirable vegetation into the outcrop habitat, and because it may lead to trampling of plants and soil compaction. Historically, the introduction of grazing livestock into East Texas, coupled with heavy grazing pressure, adversely impacted glade sites by facilitating the spread of invasive woody plants, and potentially trampling native plants. Acting in concert with fire suppression, heavy grazing pressure may have accelerated conversion of the grassy prairies and herbaceous glades to the dense, thorny masses of vegetation seen at many sites today (Nemec 1996, p. 4; USFWS 1992, p. 7). Overgrazing of Texas golden gladecress' habitat can promote invasion by woody species and enhance competition on the glade from herbaceous weeds like pale-seeded plantain, Japanese brome, and spurge (USFWS 1992, p. 7). Grazing livestock serve as a source of introduced species' seeds as well as supplying nutrients for competitive native weedy species. Grazing animals can also encourage unpalatable invasive species like Macartney rose to move into areas where more preferred natives have been grazed out (Bridges 1988, p. II–35). The negative impacts to gladecress habitat from woody plant invasion are detailed in the ''Invasive Species'' section.

There is no documentation of gladecress plants being lost due to trampling. Potential does exist for this to happen, for example, at the Geneva Site, where gladecress plants have been observed growing directly adjacent to and inside the fence where a cow trail is evident. Loss of plants in this small area has not been confirmed and the larger part of this population grows in the SH 21 ROW where no grazing takes place, so it is unlikely that trampling at this site truly constitutes a threat. Grazing also occurs within the fenced private portions of the other two remaining gladecress population sites (CCG Site 1 and Chapel Hill), where individual plants may be subject to trampling if they are growing directly in cattle trails.

Grazing does occur on portions of the three extant population sites, but we do not have information to show that grazing has destroyed Texas golden gladecress habitat or plants. Based on our review of the scientific information, we conclude that the direct effects of grazing are not a threat to Texas golden gladecress.

Land Conversion for Agriculture and Silviculture

Another potential habitat threat is conversion of Weches Glade outcrops to nonnative grass pastures or conversion of existing pasture lands that may contain viable outcrops to pine tree plantations. Over the last 200 years, most of the native vegetation communities of East Texas were dramatically altered by human activities as the region was logged and extensively cultivated (Diggs *et al.* 2006, p. 76). Due to widespread land use changes throughout the entire range of the gladecress, and the fact that the glade areas were always somewhat small and surrounded by forest, there is a high likelihood that some glades were negatively affected by past agricultural and silvicultural land cover conversions (USFWS 1992, p. 7). At least one gladecress population was described as being lost to this type of land use change during the 1980's (Turner unpubl. data in TNC 2003, p. 2).

Conversion of native vegetation communities to pasture or row crop in the region is much less common now. The Weches outcrops are not considered desirable substrate for planting to pasture as landowners are not interested in deep plowing, breaking up, or dragging out rocks (Ritter 2011a, pers. comm.). The ''Redland'' soils that are exposed in the Weches outcrops are thin and rocky. The Natural Resource Conservation Service (NRCS) recommends avoiding these soils because there are not practical conservation practices for these types of sites (Ritter 2011a, pers. comm.). The more prevalent land use change now is from pasture to tree plantation (Ritter 2011a, pers. comm.). Within the last few years, many Sabine and San Augustine County landowners have shifted from grazing to timber planting (Ritter 2011a, pers. comm.). Most timber planting consists of *Pinus taeda* (loblolly pine) and *Pinus palustris* (longleaf pine); planted on 8–10 ft (2.4–3 m) centers. Although landowners will likely avoid planting directly onto Weches outcrops because these rocky soils will not support trees, it is conceivable that the spacing between plantings would allow

trees to be planted near the edges of outcrops (Ritter 2011a, pers. comm., Ritter 2012, pers. comm.). As these trees mature, their canopies may potentially cause shading problems on glade areas (see Invasive Species Section for explanation of negative effects of shading). For example, it appears that former habitat adjacent to the Chapel Hill site may be planted, in part, to rows of trees.

In addition to shading, pine tree plantings may also result in production of large amounts of pine needle litter that could accumulate in small glade openings near the trees. Where a mid-story of trees develops, light may be blocked from reaching the ground level by upper-canopy and mid-story shading; with a subsequent build-up of leaf litter, the herbaceous species can be suppressed. In the face of fire suppression, Missouri glades became choked with litter that kept the ground more moist and cool, leading to replacement of the sun-loving natives by invading cool-season vegetation and exotic species (Hartman (2005, pp. 2–4).

Based on our review of the scientific information, we conclude that planting of pine tree plantations, if in close proximity to occupied glade openings, can constitute a threat to Texas golden gladecress.

Herbicide Use

The candidate assessments for Texas golden gladecress list herbicide use in highway ROWs and for agricultural purposes as a potential threat to the species because of the plant's occurrence within highway ROW's and in pastures. Herbicide use to maintain highway and county road ROW's has the potential to destroy the small subpopulations that exist in the TxDOT ROW's at the Geneva and CCG 1 sites. If timing of the herbicide application coincides with the growing and reproductive period of the year for the gladecress, all individuals that are growing in the ROW might potentially be extirpated if the herbicide contacts all gladecress individuals in these small sites. Herbicide exposure from highway and county road maintenance would affect only a small portion of two extant sites, and recent information suggests that use of herbicides for state and county roads in this area is not a widespread practice (Adams 2011b, pers. comm.; Hunter 2011, pers. comm.). We do not have documentation of negative impacts to the species from herbicide applications for road maintenance. The TxDOT uses herbicides only on an ''as needed'' basis to eliminate encroaching woody plants or along the edges of the road pavement (Adams 2011b, pers. comm.). San Augustine County does not use herbicides for county roadside maintenance due to costs (Hunter 2011, pers. comm.).

With regard to agricultural herbicide use in San Augustine and Sabine Counties, the NRCS has a program to assist landowners with Macartney rose control using Grazon® P+D herbicide. This program involves a 3-year approach—broadcast spraying from a tractor during the first 2 years, followed by individual plant treatments in the third year. Grazon® P+D has active ingredients of picloram and 2,4–D (dichlor) and can persist in some soils for months and act as a preemergent, killing germinating seedlings. In an appendix to TNC's Conservation Area Plan for the San Augustine Glades (TNC 2003, pp. 30–31), it is one of several herbicides identified as potentially harmful to the gladecress and white bladderpod if used near their habitats. Management recommendations included avoiding use of this herbicide within 200 yards (yd) (183 m) of areas described as habitat within the region, along with limiting timing of use to spot treatments only July 1–August 30. Because Macartney rose is infesting the region of the Weches outcrops, and since this exotic invader is capable of establishing itself in Weches Glades and has been noted as occurring at gladecress population sites, it is reasonable to assume that some areas of glade habitat are included in these treatment programs. So although control of Macartney rose would likely benefit the gladecress in the long term, application of a preemergent herbicide has the potential to eliminate the gladecress altogether if it stays in the soil long enough to kill emerging seedlings. We have no evidence that this type of application has affected Texas golden gladecress populations to date.

Based on our review of the scientific information, we conclude that using preemergent herbicides such as Grazon P+D that persist in the soil for brush control could constitute a threat to Texas golden gladecress emerging seedlings.

Climate Change

Our analyses under the Endangered Species Act include consideration of ongoing and projected changes in climate. The terms ''climate'' and ''climate change'' are defined by the Intergovernmental Panel on Climate Change (IPCC). The term ''climate'' refers to the mean and variability of different types of weather conditions over time, with 30 years being a typical period for such measurements, although shorter or longer periods also may be used (IPCC 2007a, p. 78). The term ''climate change'' thus refers to a change in the mean or variability of one or more measures of climate (e.g., temperature or precipitation) that persists for an extended period, typically decades or longer, whether the change is due to natural variability, human activity, or both (IPCC 2007a, p. 78).

Scientific measurements spanning several decades demonstrate that changes in climate are occurring, and that the rate of change has been faster since the 1950s. Examples include warming of the global climate system, and substantial increases in precipitation in some regions of the world and decreases in other regions. For these and other examples, see IPCC 2007a, p. 30 and Solomon *et al.* 2007, pp. 35–54, 82–85. Results of scientific analyses presented by the IPCC show that most of the observed increase in global average temperature since the mid-20th century cannot be explained by natural variability in climate, and is ''very likely'' (defined by the IPCC as 90 percent or higher probability) due to the observed increase in greenhouse gas (GHG) concentrations in the atmosphere as a result of human activities, particularly carbon dioxide emissions from use of fossil fuels (IPCC 2007a, pp. 5–6 and figures SPM.3 and SPM.4; Solomon *et al.* 2007, pp. 21–35). Further confirmation of the role of GHGs comes from analyses by Huber and Knutti (2011, p. 4), who concluded it is extremely likely that approximately 75 percent of global warming since 1950 has been caused by human activities.

Scientists use a variety of climate models, which include consideration of natural processes and variability, as well as various scenarios of potential levels and timing of GHG emissions, to evaluate the causes of changes already observed and to project future changes in temperature and other climate conditions (e.g., Meehl *et al.* 2007, entire; Ganguly *et al.* 2009, pp. 11555, 15558; Prinn *et al.* 2011, pp. 527, 529). All combinations of models and emissions scenarios yield very similar projections of increases in the most common measure of climate change, average global surface temperature (commonly known as global warming), until about 2030. Although projections of the magnitude and rate of warming differ after about 2030, the overall trajectory of all the projections is one of increased global warming through the end of this century, even for the projections based on scenarios that assume that GHG emissions will stabilize or decline. Thus, there is strong scientific support for projections that

warming will continue through the 21st century, and that the magnitude and rate of change will be influenced substantially by the extent of GHG emissions (IPCC 2007a, pp. 44–45; Meehl *et al.* 2007, pp. 760–764 and 797–811; Ganguly *et al.* 2009, pp. 15555–15558; Prinn *et al.* 2011, pp. 527, 529). (See IPCC 2007b, p. 8, for a summary of other global projections of climate-related changes, such as frequency of heat waves and changes in precipitation. Also see IPCC 2011 (entire) for a summary of observations and projections of extreme climate events.)

Various changes in climate may have direct or indirect effects on species. These effects may be positive, neutral, or negative, and they may change over time, depending on the species and other relevant considerations, such as interactions of climate with other variables (e.g., habitat fragmentation) (IPCC 2007a, pp. 8–14, 18–19). Identifying likely effects often involves aspects of climate change vulnerability analysis. Vulnerability refers to the degree to which a species (or system) is susceptible to, and unable to cope with, adverse effects of climate change, including climate variability and extremes. Vulnerability is a function of the type, magnitude, and rate of climate change and variation to which a species is exposed, its sensitivity, and its adaptive capacity (IPCC 2007a, p. 89; see also Glick *et al.* 2011, pp. 19–22). There is no single method for conducting such analyses that applies to all situations (Glick *et al.* 2011, p. 3). We use our expert judgment and appropriate analytical approaches to weigh relevant information, including uncertainty, in our consideration of various aspects of climate change.

As is the case with all stressors that we assess, even if we conclude that a species is currently affected or is likely to be affected in a negative way by one or more climate-related impacts, it does not necessarily follow that the species meets the definition of an ''endangered species'' or a ''threatened species'' under the Act. If a species is listed as endangered or threatened, knowledge regarding the vulnerability of the species to, and known or anticipated impacts from, climate-associated changes in environmental conditions can be used to help devise appropriate strategies for its recovery.

The climate in Texas has shown a long-term gradual warming trend—pollen, plant macrofossils (fossils large enough to be seen without a microscope), packrat middens (ancient ''garbage piles'' left by rodents in the genus *Neotoma*), and other evidence show substantial climate changes in Texas over the past 15,000 years (end of the last glacial period) when the mean annual air temperature was 9 °Farenheit (F) (5 °Centigrade (°C)) cooler than present (Diggs *et al.* 2006, p. 73). The Texas climate is considered highly variable with seasonal precipitation patterns that dramatically increase from west to east, and temperatures that increase from north to south (Nielsen-Gammon 2008, p.1). Climate models predict increased temperatures, and concurrent increased evapotranspiration, and decreased regular precipitation and soil moisture in Texas (Diggs *et al.* 2006, p. 73.), all of which would have negative implications for Texas golden gladecress. Based on a climate model developed by the United Kingdom Hadley Center (HadCM2), temperatures in Texas could increase by 3 °F (1.7 °C) in spring (range of 1–6 °F (0.6–3.3 °C)) and about 4 °F (2.2 °C) in other seasons (with range of 1–9 °F (0.6–5 °C)).

Droughts are not uncommon in Texas (Texas Water Resources Institute 2011, pp. 1–13). The most severe drought recorded in Texas occurred in the 1950's, and in the last 15 years there have been widespread droughts: In 1996, 1999–2000, 2005–2006, 2007, 2010–2011 (Texas Water Resources Institute 2011, pp. 10–12). Projections are for winter precipitation to decrease by 5–30 percent although it may increase by 10 percent in other seasons (Environmental Protection Agency 1997, p. 2).

East Texas is subtropical with a wide range of extremes in weather (Diggs *et al* 2006, p. 65). Mean annual temperatures range from 70 °F (21 °C) in the south to approximately 64 °F (18 °C) in the north, although extremes like 0 °F (−18 °C) and 110 °F (43 °C) are observed occasionally. The highest reported eastern Texas temperature was 118 °F (48 °C) in Collin County in 1936 (Bomar 1995 in Diggs *et al.* 2006, p. 65). Average rainfall ranges from 60 in (152 cm) at the State's southeastern border to 40 in (98 c) at the western edge. These rainfall differences are related to proximity to the warm, moist air supplied by the Gulf of Mexico. The native vegetation of this region evolved with, and is adapted to, recurrent extremes (Diggs *et al.* 2006, p. 67). That said, the Pineywoods region is vulnerable to even small climatic shifts because it is ''balanced'' on the eastern edge of a dramatic precipitation gradient. Temperature increases that are projected in climate change scenarios will likely be associated with increases in transpiration and more frequent summer droughts. Decreased rainfall may result in an eastward shift in the forest boundary and replacement of the Pineywoods forest with scrubland (Diggs *et al.* 2006, p. 80). There is potential for loss of species that are limited to mesic conditions of deep East Texas, such as the hardwood forests surrounding the Weches Glades. There may also be a northerly shift of southerly species based on climate models that predict increasing temperatures and, therefore, increasing evapotranspiration and decreasing regional precipitation and soil moisture (Diggs *et al.* 2006, p. 73).

Although East Texas has typically received a greater amount of precipitation during December through March than other regions (Neilsen-Gammon, p. 24), future precipitation trends indicate a decrease in precipitation toward the middle of the 21st century (Nielsen-Gammon, p. 28). The timing of this precipitation is crucial for the Texas golden gladecress, which is dependent on late-fall-through-spring moisture to generate the seeps and pooling that it requires for germination, growth, and reproduction. Reproduction is known to be negatively impacted by drought as evidenced by declines of 91 to 67 plants at the Chapel Hill site and 490 to 96 plants at the CCG Site 1 during the 1999–2000 droughts (USFWS 2010b, p. 5; Singhurst 2011a, pers. comm.). It is unknown how the gladecress will respond to continued years of drought, especially when combined with other threats.

A warmer climate with more frequent droughts, but also extreme precipitation events, may adversely affect Texas golden gladecress by altering the glade habitat the species is known to occupy. It may also improve habitat conditions for invasive plant species and other plants (USFWS 2010b, p. 5). Climate extremes, especially drought and low temperatures, probably play a bigger role in excluding nonadapted species than average conditions will (Diggs *et al.* 2006, p. 80). Because the gladecress is a habitat specialist, being closely tied to the geology and soils on the Weches outcrops, it seems unlikely that this species will be flexible in terms of shifting to new habitats if the glades become unsuitable due to lack of winter-spring moisture. Also, if conditions shift in favor of nonnatives, the gladecress will likely be negatively affected. Although the gladecress has survived cycles of drought in the past, as well as some years with extraordinary temperature shifts, it may have done so in a landscape where it was more abundant and with populations distributed in closer proximity to one another. Based on our review, the best

scientific and commercial information did not provide us with information regarding the species' seedbank so we do not know how many consecutive years of poor conditions (in terms of low rainfall and high temperatures) the species can survive.

We lack firm predictions for future patterns of precipitation and temperature that are specific to East Texas. While it appears reasonable to assume that climate change will occur within the range of Texas golden gladecress, at this time we do not have information to indicate specifically how climate change may affect the species or its habitat. However, we do know from recent records that frequent and sustained droughts have resulted in declines, at least in the short term, in the remaining populations.

Other Conservation Efforts

Texas golden gladecress has benefitted to a limited degree from its co-occurrence at some sites with the federally listed white bladderpod. Management activities (brush clearing) carried out in 1995 at the Chapel Hill site for the white bladderpod resulted in a return of the gladecress after a 10-year absence (Nemec 1996, p. 5). However, nonnative shrubs quickly reinvaded the site, and repeated maintenance was needed. The landowner at this site has continued to mow at least once per year, keeping the habitat relatively open (Singhurst 2012f, pers. comm.), and the gladecress and bladderpod continue to occupy this site. A Partners for Fish and Wildlife Program project involving restoration of habitat (brush clearing) and planting of white bladderpod was planned to benefit both species although the gladecress has not been detected at the site to date.

The Service funded several projects with TNC, including one that provided for 3 years of status surveys for gladecress and bladderpod. These were completed in 2006 and were the sole source of population numbers for these species for several years. The TNC also identified a total of 44 potential sites for both plant species using GIS data (aerial, geology, and hydrology sources) and obtained permission to visit 14 of them, but found little Weches habitat and no new gladecress populations (Turner 2003, p. 4).

In the early 2000's, the Service collaborated with Mercer Arboretum and other partners, including TNC and the Pineywoods Native Plant Center at Stephen F. Austin State University in Nacogdoches, Texas, to collect gladecress seeds for cultivation, research, and long-term storage, and as seed sources for reintroduction work. Seeds were kept by Mercer Arboretum for long-term storage as well as germination and cultivation work. Nothing has been done recently with gladecress research or reintroduction efforts. The species was successfully introduced into apparently appropriate habitat in Nacogdoches County at a site located approximately 30 mi (48 km) west of its historic range in the late 1980's, where it grew and reproduced through 2011 when it was eradicated by construction of a pipeline. The success of this reintroduction project may bode well for future efforts to increase the numbers of populations by reintroductions or introductions to new sites.

Summary of Factor A

The highest levels of threat to Texas golden gladecress are the loss and degradation of habitat. Specifically, surface quarrying of glauconite and the exploration and development of oil and natural gas wells and associated roads and pipelines have destroyed 50 percent of the known populations between the mid 1990's and 2011. These threats are likely to continue since glauconite is currently in demand for road bed, well pad construction, and for fertilizer, and development of the natural gas-bearing Haynesville Shale, which underlies the entire range of Texas golden gladecress, has been very rapid during the last several years. Portions of two extant populations extend into SH ROW's where TxDOT has the ability to provide some protections. Nevertheless, much of the species' potential habitat throughout the range occurs on private lands that, due to lack of access, have not been surveyed; therefore, the current level of threats across these lands cannot be assessed. Surface quarrying of glauconite and oil and gas development pose significant threats to the known extant populations and associated habitats of the gladecress.

Texas golden gladecress also faces threats throughout its range from competition for light and nutrients from both native and nonnative invasive woody plants, including the nonnative Macartney rose. We have determined that the extant populations will decline or become extirpated unless they are periodically maintained to remove invading trees and shrubs. Additionally, herbicides used to control Macartney rose may be a threat to the gladecress if applied or persisting in the soil during the species' period of growth, from fall through early summer.

A recent, ongoing trend in local land use is the conversion of open pasture to pine plantations. We found no evidence that grazing and trampling by livestock may be a threat to the species, and we believe that pastures provide suitable habitat for the sun-loving gladecress. However, densely planted pine trees may degrade the species' habitat due to competition for light and nutrients, and by contributing masses of leaf litter onto formerly sparsely vegetated glades.

Finally, the information regarding climate change is not yet specific enough for us to determine the potential long-term effects to the gladecress habitat. However, long-term drought has negatively affected and will likely continue to negatively affect the reproduction and germination of gladecress seeds. Therefore, we conclude that Texas golden gladecress faces significant threats from habitat loss, destruction, modification, or curtailment of the species' habitat or range.

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

Limited collection of gladecress has occurred for scientific purposes; only voucher specimens and several seed collection events are documented. Dr. Elray Nixon collected seed in 1987 and successfully created a new population when he introduced the seed onto an outcrop in Nacogdoches County. The Mercer Arboretum, a participating institution in the Center for Plant Conservation, collected seed in 2001—maintaining some in long-term storage and planting some in germination trials. There are no records of any collections of seeds or other plant materials in the last few years. Because these collections were limited, we do not believe that this activity constituted a threat to the species. There is no information to suggest that Texas golden gladecress is collected for commercial, recreational, or educational purposes, and we have no reason to believe that this factor will become a threat to the species in the future. Therefore, based on our review of the best available scientific and commercial information, we conclude that collection or overutilization of Texas golden gladecress is not a threat to the species.

C. Disease or Predation

There is no available information regarding disease in Texas golden gladecress. There is no information regarding predation by wildlife on the species. Grazing is ongoing across the range of the gladecress and occurs on portions of all extant population sites; however, there is no information to document that cattle eat gladecress. No studies have been conducted to investigate the effect of grazing or

herbivory specifically on Texas golden gladecress. George (1987, p. 17) studied the herbaceous flora of three Weches outcrops in San Augustine County and saw little grazing within his study plots although cattle were present at all three sites. Therefore, based on our review of the best available scientific and commercial information, we conclude that disease and predation on Texas golden gladecress, including predation associated with grazing, are not threats to the species.

D. The Inadequacy of Existing Regulatory Mechanisms

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

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

The greatest threats to the gladecress include loss of habitat and the plants themselves due to actions that remove the substrate under the populations or that cover them up. These types of actions have been associated with quarrying of glauconite; construction related to natural gas and oil exploration and production; conversion of native glades or pastures with glades and outcrops to other land uses, most recently planting to pine plantations; and potentially herbicide applications for purposes of controlling the invasive Macartney rose. State and Federal regulations that might help conserve rare species on State highway ROWs, including avoidance or minimization of habitat destruction, as well as regulations that would protect plants from herbicide applications, are requirements only for already listed species; therefore, these regulations do not apply to gladecress. Likewise, no existing regulations protect the species on privately owned land, where most of the remnant gladecress is found.

Currently, Texas golden gladecress is not protected by State or Federal laws. All of the populations occur on private property, and portions of those populations extend onto SH ROWs. As such, there are no regulatory mechanisms in place to address the threats to the species.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Small Population Size

The Texas golden gladecress remains in only three small populations. Small populations can be prone to extirpation, especially if a series of drought years greatly reduces seed production and depletes the soil seed bank. The Service (1992, p. 8) noted that for a species like the white bladderpod, with only small populations and wide natural annual fluctuations in plant numbers, as well as fragmented habitat across its range, recolonization after a population loss would require long-distance seed dispersal. Although we have no information regarding the gladecress' seed dispersal patterns or distances, we do know that the gladecress' habitat is exceedingly fragmented, with fewer and smaller known populations than the bladderpod, and further distances between populations. This makes the prospects for recolonization after a potential loss of a gladecress population very remote.

Small populations can also be prone to extirpation from a single adverse natural or manmade event. The population at the Chapel Hill site is a good example of this vulnerability. Carr (2005, p. 2) reported that Texas golden gladecress habitat was extremely limited at Chapel Hill and that the numbers of gladecress plants would also always be restricted by the small size of the available habitat. He concluded that the population was so small that a single adverse event could extirpate the species from this location. The small population size and the small number of extant populations of gladecress increases each population's vulnerability to the significant threats listed in Factor A. Low numbers of plants, confined to very small areas, can be totally eradicated by actions such as installation of pipelines, excavation of mines, or construction of well pads, roads, or other types of construction. The remaining gladecress occurrences are so small that they can fall completely within the footprint of one well pad, or even within the width of a pipeline excavation. Small population size also increases the risk of total loss of populations due to contact with herbicides or shading and leaf litter accumulation from pine tree plantings because these threats are likely to affect the entirety of any given occurrence. Sustained drought may reduce the reproductive effort of a population, and this can lead to an overall decrease in fitness for the remaining populations. Reduced reproductive effort affects the seed bank, which represents the reproductive capacity of each gladecress population. The combined effects of drought, impacts from oil and gas development, herbicide treatment, shading, and competition place the remaining three populations at a high extinction risk, exacerbated by their small population size and narrow distribution.

In addition to increasing vulnerability to direct threats such as pipeline construction, small population size can result in a decrease in genetic diversity due to genetic drift (the random change in genetic variation in each generation) and inbreeding (mating of related individuals) (Antonovics 1976, p. 238; Ellstram and Elam 1993, pp. 218–219). Genetic drift can decrease genetic variation within a population by favoring certain characteristics and, thereby, increasing differences between populations (Ellstram and Elam 1993, pp. 218–219). This increased difference between populations can diminish a species' ability to adapt to the selective pressures of a changing environment (Newman and Pilson 1997, p. 360; Ellstrand 1992, p. 77). Self-fertilization and low dispersal rates can cause low genetic diversity due to inbreeding (Antonovics 1976, p. 238; Barrett and Kohn 1991, p. 21).

Although we do know that Texas golden gladecress exists in small populations in a fragmented landscape, no information is available regarding the genetic diversity exhibited by the species.

Summary of Factor E

Texas golden gladecress is a historically rare species with some adaptations, such as a mixed mating system, that help to alleviate part of the

inherent risks of small population size. The continued existence of Texas golden gladecress is negatively impacted by natural factors including being limited to only a few remaining populations that contain very small numbers of individual plants with a distribution restricted to extremely small areas of outcrop. The species' current, reduced occurrences across a range that has been highly fragmented by past and ongoing human activities increases its vulnerability. With only three remaining populations, loss of an entire population could be catastrophic for this species' long-term viability. Therefore, based on our review of the best available scientific and commercial information, we conclude that the small number of remaining populations, all of which are small in size, in conjunction with the threats described in Factor A, constitutes a threat to the species.

Proposed Determination

We have carefully assessed the best scientific and commercial available information regarding the past, present, and future threats to Texas golden gladecress and have determined that the species warrants listing as an endangered species throughout its range. Significant factors that support this determination include the following: (1) Loss of five of eight known populations and their associated habitat (Factor A); (2) the ongoing threat of loss or severe degradation of habitat on portions of the three remaining population sites from glauconite quarrying activities, oil and gas development, pipelines, wells, and brush encroachment (Factor A); (3) the threat of loss of emerging seedlings from herbicides used to control brush across the entire range of the species (Factor A); and (4) the impact of extreme or successive years of drought (Factor A). These factors place this species at high risk of extinction. Limited distribution and small population size of these remnant populations (Factor E) significantly heightens the danger of extinction due to threats from Factor A. The threats are ongoing and occur throughout the range of the species. Therefore, we find that a proposed determination as an endangered species, rather than a threatened species, is appropriate.

The Act defines an endangered species as ''any species which is in danger of extinction throughout all or a significant portion of its range.'' A major part of the analysis of ''significant portion of the range'' requires considering whether the threats to the species are geographically concentrated in any way. If the threats are essentially uniform throughout the species' range, then no portion is likely to warrant further consideration. Based on the threats to Texas golden gladecress throughout its entire known range (northern San Augustine County, into the northwest quarter of Sabine County, in a roughly 3-mi (5-km) wide band paralleling SH 21), we find that the species is currently in danger of extinction throughout all of its range, based on the severity and scope of the threats described above. The species is proposed as an endangered species, rather than a threatened species, because the threats are occurring now or will in the near term, and their potential impacts to the species would be severe given the limited known distribution of the species, the small population sizes at all three sites, and the tiny area occupied by these small populations, putting this species at risk of extinction at the present time. Since these threats extend throughout its entire range, it is unnecessary to determine if it is in danger of extinction throughout a significant portion of its range. Therefore, on the basis of the best available scientific and commercial information, we propose listing the Texas golden gladecress as an endangered species throughout its range in accordance with sections 3(6) and 4(a)(1) of the Act.

Neches River Rose-mallow

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

The principal threats affecting the habitat of the rose-mallow include habitat loss and modification through the encroachment of nonnative and native plant species, hydrological changes, and construction and development projects. These threats may be intensified by the restriction of the species' known range to the Neches River basin and the Mud and Tantabogue Creeks of five counties within East Texas. Other stressors, including silviculture, herbicide use, trampling, natural gas activities, and climate change effects were reviewed for their impacts to the rose-mallow.

Nonnative Plants

Nonnative plant species are a constant threat to native flora throughout the Gulf coast prairies of Texas and Louisiana (McCormick 2005, p. 23). We consider the potential threat from two nonnative species, chinese tallow and coastal bermudagrass, that occur in rose-mallow habitat (Miller 2011, pers. comm.). Chinese tallow was introduced to the United States in the 1700's from China (McCormick 2005, pp. 7, 8). This species reproduces quickly, reaches reproductive maturity in as little as 3 years, and can remain reproductive for at least 60 years (United States Geological Survey (USGS), 2000, p. 2), producing an abundance of seed annually (Potts 1946, p. 375; Conway *et al.* 2000, pp. 268–269). Chinese tallow tolerates a range of habitat conditions including full sunlight and shade, flooding, and drought (USGS 2000, p. 1). The rose-mallow occurs in perennially and intermittently wet habitats. Butterfield *et al.* (2004, p. 338) found that chinese tallow grew faster than native species, such as loblolly pine, water tupelo (*Nyssa aquatic*), blackgum (*N. sylvatica*), and sweetgum in both perennially and intermittently wet habitats. Chinese tallow occurs at all rose-mallow sites (Miller 2011, pers. comm.) at varying densities, limiting the growth and reproduction of the rose-mallow through competition for light, space, and nutrients.

Burning, mechanical, and chemical (herbicide) means can be used to control chinese tallow. However, prescribed fire has produced complex and highly variable results in chinese tallow and may not be an effective management tool (Grace 1998, entire; Grace 2011, pers. comm.). The Davy Crockett NF is establishing a regular burn cycle of 3–4 years for all compartments containing the rose-mallow to control chinese tallow and to mimic the historical fire regimes of the Coastal Plain (Landers *et al.* 1990, p. 136). The Davy Crockett NF Resource and Land Management Plan (specific to the streamside Management Area 4) allows for mechanical means and prescribed fire to maintain the native plant community but prohibits the use of chemical agents (herbicides) unless applied by hand or through nonaqueous form within 100 ft (30.5 m) of the rose-mallow (USDA 1996, p. 154). Current mowing activities along ROWs may abate some growth of chinese tallow, but management actions on these sites should also be evaluated. Chemical methods are not being used to control chinese tallow.

Coastal bermudagrass is an introduced bermudagrass cultivar that has been widely planted in the southern United States for livestock forage. It is adapted to a wide range of soil types and climates and tolerates both drought and periodic inundation (Burton and Hanna 1985, p. 247). In dry climates, this cultivar will thrive along irrigation ditches and streambeds, agricultural fields, and roadside areas (Burton and Hanna 1985, p. 247). Due to its hybrid origin, coastal bermudagrass produces very few viable seeds and is established

by planting sprigs (rhizomes and stolons) (Stichler and Bade 2012, p. 1). Once established, coastal bermudagrass tends to produce dense monocultures where native species cannot persist. However, coastal bermudagrass has only been seen on one extant site of the rose-mallow. This is a secluded portion of the privately owned land of Boggy Slough, where coastal bermudagrass appeared to be planted (Allen 2011a, pers. comm.) and had not spread to any other sites on the property or the adjacent SH 94 ROW population. Since coastal bermudagrass is not present at most rose-mallow populations, and has a low rate of spread, we believe it is not a significant threat. However, coastal bermudagrass could become a threat if introduced into rose-mallow habitats.

In summary, all populations of the rose-mallow are negatively affected by chinese tallow, a nonnative tree species that competes with the rose-mallow for available soil nutrients, space, and light. Coastal bermudagrass is not a current threat to the rose-mallow.

Native Species

Sweetgum and green ash (*Fraxinus pennsylvanica*) are native, deciduous trees of East Texas found at all rose-mallow sites (Miller 2011, pers. comm.). Sweetgum is found on a variety of soils but grows best on moist, alluvial clay and sandy loams of river bottoms (Kormanik 2004, p. 790, in Burns and Honkala 1990). Green ash also tolerates a range of soils and in Texas is abundant in clay or silty loams of floodplains (Johnson 1980, in Gucker 2005, p. 15). Both species also grow in full sun to partially shaded habitats. Therefore, both the sweetgum and green ash are well adapted to the hydric alluvial soils and open canopies that the rose-mallow needs. In the absence of other competing species, sweetgum and green ash can attain large sizes (50–100 ft (15–30 m)) (Dickerson 2002, p. 1) and can reduce the open canopy needed by the rose-mallow (Kirkman 1995, pp. 12, 15). Although naturally occurring wildfires or prescribed fire limit the abundance of these tree species, prescribed fire is not a widely accepted method of ROW maintenance. Four rose-mallow populations that were monitored in 2011 were overgrown with sweetgum and green ash (Miller 2011, pers. comm.; TXNDD 2012a, pp. 1–11, 20–28). Two of these sites were on ROWs, and prescribed burning had not been used at the other two sites. Consequently, about 27 percent of the rose-mallow's populations are impacted by competition and shading from native sweetgum and green ash trees. Therefore, native species that compete with rose-mallow for light and nutrients are a moderate threat to the species, and may become a significant threat if maintenance is not continued at occupied sites.

Hydrological Changes

The rose-mallow can be found in both intermittent and perennial wetlands along oxbows, sloughs, terraces, ponds, and other low-lying areas in habitats with minimal standing water. Wetlands are ecological communities with hydric (flooded or saturated) soils. Many aquatic species, including the rose-mallow, are adapted to highly variable rates of water flow, including seasonal high and low flows and occasional floods and droughts. For example, the rose-mallow may require high precipitation and flowing water or floods to disperse seed (Warnock 1995, p. 20; Scott 1997, p. 8; Reeves 2008, p. 3).

Channelization, drainage, dredging, ditching, stream diversion, impoundments, ground water withdrawals, and levees have historically caused wetland loss (North Carolina State University Water Quality Group 2012, *http://www.water.ncsu.edu/watershedss/info/wetlands/wetloss.html*). Some degree of hydrological change is seen at all of the rose-mallow sites. At Boggy Slough, shifts of river and creek beds have left meandering scars and remnant oxbows. Several levees have been built that have changed the natural landscape and flow patterns at this site to make ponds available for duck hunting, thereby converting seasonally inundated wetlands to permanently flooded wetlands (Miller 2011, pers. comm.). On TLC land, rose-mallow plants once lined the perimeter of a flatwoods pond. After 2003, a stock pond was built there (TXNDD 2012a, p. 18) in what was likely part of an overflow channel from Tantabogue Creek. The constructed stock pond altered the natural surface hydrology by retaining overflow from Tantabogue Creek, preventing it from draining south to the rose-mallow site. During the 2011 survey conducted by the Service and TPWD, we observed only 539 rose-mallow stems, most of which were in relatively poor condition. The hydrologic alteration of the site combined with drought conditions reduced the height of rose-mallow stems, thus increasing their vulnerability to browsing by cattle. During 2011, drought also led to increased grazing pressure in rose-mallow habitats. Once normal rainfall has resumed and preferred forage sources become available, grazing pressure is expected to diminish.

All four of the Davy Crockett NF sites may also be affected by hydrological changes. A pine-oak forest on adjacent private land regulates the amount, timing, and possibly the rate of water flow westward into compartment 55. Removal or alteration of the pine-oak forest could change the hydrology of compartment 55, thereby also changing the rose-mallow seed dispersal range; however, the likelihood of these tree removal or habitat alteration activities are unknown but likely minimal. All NF sites censused in 2011 were completely dry except for compartment 20, where a small pond to the south drains into the compartment (Miller 2011, pers. comm.). We found no records of hydrologic alterations in compartments 20 and 11. In 2000, when the rose-mallow was introduced into a wetland on compartment 16, a beaver dam was present. When the dam broke in 2002, water infiltrated the site and the original hydrology was altered (TXNDD 2012a, p. 44). Water depth at the site was likely altered, but rose-mallow plants were still observed as recently as 2011. Additional beaver activity, such as selective cutting and damage to certain tree species, was evident only at Boggy Slough. These activities along with dam building by beavers were not evident and are not considered a threat to the rose-mallow. Although beaver dams could impact the site's hydrology and vegetation, beavers are not currently a threat nor are anticipated to become a threat to the rose-mallow.

Some of the rose-mallow populations occur on private lands where modification of a Federal jurisdictional wetland could require a Clean Water Act permit. However, not all actions affecting wetlands require Federal agency review. These privately owned sites may be affected by wetland and hydrological changes through anthropogenic and natural causes and could cause a loss of a few individuals or a population. Therefore, hydrological changes are a threat to the rose-mallow and its habitat.

Development and Construction Projects

In 1978, the Angelina and Neches River Authority (ANRA) proposed the construction of a reservoir known as Lake Columbia (previously known as Eastex), in Cherokee and Smith Counties, Texas (ANRA 2012, *http://www.anra.org/divisions/reservoirs/columbia/history.html*), to supply water for five surrounding counties (U.S. Army Corps of Engineers (USACE), 2010, pp. 2–4, 3–43). The dam for this reservoir would be constructed on Mud Creek and would impound approximately 195,500 acre-feet (ac-ft)

(241 million cubic meters, mcm) of water in a reservoir reaching 14 mi (22.5 km) upstream (USACE 2010, p. 1–1). Up to 85,507 ac-ft (1105 mcm) of water would be diverted from the downstream flow of Mud Creek (USACE 2010, p. 1–1). An extant rose-mallow population is found at the intersection of Hwy 204 and Mud Creek but is not within the permitted project area reviewed in the draft Environmental Impact Statement. A Habitat Evaluation Procedures analysis of the permitted project area did not document any rose-mallow plants (Walker 2011, pers. comm.). We are also unaware of any rose-mallows inside the proposed project area. The Hwy 204 ROW site is a perennial wetland where plants remain inundated year round; therefore, a change in the water levels at this site could make it unsuitable for rose-mallow or could restrict seed dispersal downstream. Drought conditions could also exacerbate these impacts, and the reduced downstream water flows could completely extirpate the Hwy 204 site (USACE 2010, p. 4–154; Heger 2012, pers. comm.).

Only the Hwy 204 rose-mallow population of Mud Creek will be impacted from this project, constituting nine percent of the total extant population. Consequently, we consider development and construction projects to be a minor threat to the rose-mallow.

Upgrades and Construction for ROWs, Roads, Bridges, and Other Structures

Three rose-mallow populations are located on or near SH ROWs in Houston, Trinity, and Cherokee Counties. These ROW populations are vulnerable to impacts from bridge and road expansion and upgrades, including hydrologic changes, soil movement, and altered wetland or riparian vegetation. For example, in 2005, a proposed bridge replacement on SH 230 would have altered approximately 4.91 ac (2 ha) of rose-mallow habitat south of the ROW and 0.07 ac (0.03 ha) north of the ROW (Adams 2005, p. 1). To mitigate for these impacts, TxDOT proposed to acquire an additional 5 ac (2.02 ha) of rose-mallow habitat located north of the TLC property; unfortunately, the proposed mitigation plans fell through (Adams 2011a, pers. comm.). Bridge replacement is continuing along SH 94, but as of 2011 had not progressed into rose-mallow habitats (Adams 2011c, pers. comm.). Although the human population has increased in Houston, Trinity, and Cherokee Counties in East Texas (U.S. Census Bureau 2012)), no large road expansion projects are anticipated for the two additional ROW sites (Adams 2011c, pers. comm.). Although road projects are mainly restricted to ROW easements, they may potentially impact three populations representing 27 percent of the total known population. Therefore, SH ROW maintenance and bridge and other structural projects will continue to be a threat to the species.

Silviculture

Pine plantations in East Texas are established mainly on uplands that are managed to mimic old fields or grassy savannas (Fox *et al.* 2007, p. 340). Site preparation may include anchor chaining, chopping, burning, root raking, shearing, and disking (Balmer and Little 1978, p. 60). One rose-mallow population on private property south of Hwy 230 was extirpated when the site was converted to a pine plantation sometime after 2003 (Poole 2011b, pers. comm.; TXNDD 2012a, pp. 61–67). Three additional sites in or near rose-mallow populations have evidence of clearing, including: adjacent land south of the Davy Crockett NF compartment 55; an extirpated site located south of the extant Lovelady site, Houston County; and the privately owned site at Champion, Trinity County. Rose-mallow populations may also be potentially impacted by herbicides applied to pine plantations that drift into the rose-mallow habitat (see discussion below). Herbicide treatments are increasingly popular because they remove unwanted plant growth without causing soil erosion from the site; however, herbicide use increases incidents of water pollution and aerial drift to nontarget sites (Balmer and Little 1978, p. 63). Herbicide damage was evident along the Hwy 230 ROW, south of the extant rose-mallow site on TLC property, but whether this damage was the result of herbicide use by the landowner at the pine plantation is unknown. The perennial or intermittent wetlands that the rose-mallow inhabits are usually not suitable habitats for pine plantations. Therefore, we conclude that silviculture currently is not a threat to the rose-mallow.

Herbicide Use

Several incidents have been documented of herbicide impacts to rose-mallow plants on ROWs and on privately owned lands. A subpopulation with approximately 50 plants, on private property in Trinity County south of Hwy 230, was extirpated by herbicide use (USFWS 2010a, p. 7). Herbicide drift along the SH 230 ROW (Gordon 2009, pp. 3–4) caused the rose-mallow population to decline from 14 plants in 1999 (Poole 2001, p. 2) to zero plants in 2002 (Miller 2011, pers. comm.). The Land and Resource Management Plan of Davy Crockett NF restricts the use of nonaquatic herbicides unless hand-applied (USDA 1996, p. 153); there have been no documented herbicide impacts to rose-mallow in any of its four compartments. The TxDOT uses herbicides to remove woody vegetation from ROWs (Miller 2005, pers. comm., in USFWS 2006, p. 7; Adams 2011c, pers. comm.), but mechanical clearing methods have largely replaced the use of herbicides in these ROW areas. Although herbicides can be an effective management tool for the control of some nonnative species, dispersal downstream and unexpected rainfall could impact individual plants or whole populations, depending on the nature of the herbicide. Therefore, we conclude that herbicides are a threat that could impact 7 of 11 (64 percent) total rose-mallow populations.

Trampling by Feral Hog and Cattle

Feral hogs (*Sus scrofa*) were first introduced to the mainland of North America (Wood and Barrett 1979, pp. 237, 238) in Texas in 1542, although large-scale introductions did not occur until the 1930's (Isle and Hellgren 1995, p. 793). Feral hogs are omnivores that dig up the soil in search of roots, tubers, and invertebrates. Feral hogs use their snouts to turn over soil, creating mounds and depressions (Arrington *et al.* 1999, p. 535). Hogs transition from foraging in oak stands during winter months, moving in summer to swamp and marsh edges to feed on grasses, sedges, tubers, and roots (Wood and Roark 1980, pp. 507–509). Feral hogs are able to travel long distances to feed, and often uproot vast areas of habitat. Feral hogs reach sexual maturity at 6–8 months (Wood and Barrett 1979, p. 242) and have large litter sizes. Hogs can inadvertently incur severe damage to other food resources and habitat during their regular foraging activity. Feral hog damage has historically been recorded at Mill Creek Gardens, but uprooting of rose-mallow taproots was not observed (Creech 2011a, pers. comm.; Miller 2011, pers. comm.). Feral hog tracks were observed on all four NF sites; however, plants were not damaged by herbivory or trampling (Miller 2011, pers. comm.). Feral hogs generally do not affect rose-mallow populations because the habitat is permanently or temporarily flooded, limiting their access. However, drought may enhance accessibility to rose-mallow sites, thus increasing their susceptibility to trampling. Growth of the feral hog populations could also lead to increased soil disturbance and impacts to the native vegetative community, which

could create prime conditions for nonnative species to invade. Feral hog tracks have been limited to a few rose-mallow sites with minimal damage to habitat. However, no direct impacts to rose-mallow plants have been observed. Therefore, we determine that feral hogs are not a stressor to the species.

It is estimated that livestock grazing has damaged 80 percent of stream and riparian ecosystems in the southern United States (Belsky *et al.* 1999, p. 419). The damage includes increased sedimentation, decreased water quality, and trampling and overgrazed stream banks where succulent (high water content) forage exists (Armour *et al.* 1994, p. 10; Fleischner 1994, p. 631; Belsky *et al.* 1999, p. 419). Trampling causes soil compaction and damage to both above- and below-ground vegetative plant structures and increases soil erosion (Warren *et al.* 1986, p. 491). Livestock owned by a neighboring landowner were present on TLC's property at Lovelady. TLC has attempted to exclude these livestock, and has proposed constructing an exclusion fence around the current location of the rose-mallow population; however, funding has not been secured (Dietz 2011, pers. comm.). The rose-mallow at Lovelady is concentrated along a low area leading into a stock pond (Miller 2011, pers. comm.). We have not observed damage to rose-mallow from cattle trampling at Lovelady (Miller 2011, pers. comm.), and are not aware of other rose-mallow sites being trampled by livestock. In summary, cattle are present at only one rose-mallow site (9 percent of the total known population), and the effects are small and may be remedied through exclusion devices. Therefore, we conclude that livestock grazing is not a threat to the rose-mallow.

Natural Gas Pipelines and Well Activity

The Haynesville/Bossier and Eagle Ford Shale formations in East Texas are currently being developed for oil and natural gas production. In Harrison County, Texas, there is a single record of rose-mallow at a privately owned site that has not been seen since 1980 (Birnbaum 2011, pers. comm.; TXNDD 2012a, pp. 12–13); we do not know if the site has been affected by ongoing natural gas exploration in that county. The RRC regulates the oil and natural gas industry in the state of Texas and maintains a database with proposed activities. Several of the counties with known populations of rose-mallow, including Houston, Trinity, Nacogdoches, and Cherokee Counties, may be subject to increased oil and natural gas exploration in the future (RRC 2012). However, oil and gas exploration was not observed on or directly adjacent to any of the rose-mallow populations that the Service observed in 2011, and currently there are no proposals near extant rose-mallow populations. Therefore, we determine that oil and natural gas exploration activities are not currently a threat to the rose-mallow.

Climate Change

We discuss the topic of climate change in greater detail in the Factor A Threats Analysis for the Texas golden gladecress, which is also found in East Texas. In summary, the consensus of climate models predicts that the climate in East Texas will become warmer and will experience both more frequent droughts and more extreme precipitation events. Diggs *et al.* (2006, p. 80) states that climate extremes, particularly drought and low temperatures, have greater influence than average conditions do on excluding nonadapted species. Extreme precipitation events (such as tropical storms) may adversely affect the rose-mallow by altering flow regimes and by temporarily increasing the depth of its aquatic habitat to a level it cannot survive. A warmer climate with more precipitation extremes may also increase competition from native and nonnative invasive plant species (USFWS 2010a, p. 8). The timing of precipitation is also crucial for the rose-mallow, since seed dispersal is dependent on flowing water.

In October 2011, all rose-mallow populations and habitats showed evidence of damage from the previous 3 years of drought, including changes in leaf morphology, increased herbivory by livestock, dead plants at specific sites, and lower water levels in perennial wetlands. The survival of rose-mallow populations during previous drought cycles may have been aided by its greater abundance and by greater habitat contiguity; habitat fragmentation and isolation impede the recolonization of sites, following a catastrophic loss, from neighboring seed sources. Plant populations may also recover from the soil seed bank (viable seeds that remain dormant in the soil until conditions become favorable). We do not have information on the abundance or distribution of the rose-mallow seed bank or how long its seeds may remain in a dormant yet viable condition.

Nevertheless, climate change models have less precision at the fine geographic scale of the rose-mallow's range, and we lack specific information on the species' ability to withstand extreme conditions. We conclude that the effects of climate change may be a threat to the rose-mallow in the future, but are not currently a threat to its survival. However, drought conditions, which may worsen with changing climates in the region, may have significant effects on the rose-mallow populations, especially in combination with other threats discussed in this section.

Other Conservation Efforts

Three populations of the rose-mallow exist along SH ROWs in Houston, Trinity, and Cherokee Counties. TxDOT and TPWD currently operate under a revised 1988 Memorandum of Understanding (MOU) that governs management actions targeting conservation of listed species and key habitats on SH ROWs that may potentially affect natural resources within facilities owned or managed by TPWD. Since the rose-mallow is not a listed species, the MOU relates to protection of rose-mallow habitat if the proposed projects include the following: Contains 1.0 ac (0.54 ha) of new ROW within floodplains or creek drainages; requires channel modifications to streams, rivers, or water bodies; and requires realignment of channels with mature woody vegetation; or projects that may impact mature woody or native vegetation (Texas Administrative Code 1999, p. 4). Although a formal mechanism via the MOU has been established to review projects and alleviate or eliminate threats to Federal and State-listed species and key resources, there have not been any projects that fit these standards that have been recently reviewed under the MOU.

The five remaining populations, including a portion of the Hwy 94 site, are located on private lands. Historically, two Candidate Conservation Agreements (CCAs) were formed between the Service and Champion International (Champion) in 1998 and with Temple-Inland Forest Products (Temple-Inland) in 2002 to conserve the rose-mallow on both sites. CCA's are not legally binding and private landowners are not restricted by guidelines outlined in the CCA. Champion's 5-year CCA, included 40 ac (16.2 ha) of wetland and was located east of White Rock Creek in Trinity County (Champion site in Table 4). Management guidelines included: Maintain 100-ft (30-m) buffer around occupied and dispersal habitat, free from timber harvesting, site preparation, and reforestation activities; minimize hydrological alterations; inhibit filling or pilling debris or material on populations; and apply herbicides only

by hand and at times of little or no wind (USFWS 1998, p. 4). The Champion property was sold to Temple-Inland in 2001 and in 2004, the CCA expired (USFWS 2010a, p. 9). The Temple-Inland CCA covered an area that has a 20-ac (8.1-ha) wetland with rose-mallow (Boggy slough site in Table 4); the plants declined due to drought and alteration of an onsite wetland. A smaller wetland with rose-mallow plants was drained in order to regulate water levels of the larger wetland, which was to be used by Temple-Inland for recreational hunting (USFWS 2002, p. 3; USFWS 2010a, p. 9). The Temple-Inland CCA was valid 2002–2004. Contact was made with the owners and the Service and TPWD visited the site in October 2011 where plants appeared healthy, but nonnative and native species encroachment into rose-mallow habitat was observed (Miller 2011, pers. comm.).

Lovelady was once owned by the Natural Area Preservation Association and is now owned by TLC. Thirty acres (12 ha) of land were purchased in 2004, located north of Hwy 230 (TLC 2011, *http://www.texaslandconservancy.org*). Purchase of this easement on private land was specifically for the conservation of the rose-mallow; however plants occur on private land, and they are not offered protection under the Act unless a Federal action or funding is planned. However, TLC has initiated a voluntary effort to construct a cattle-exclusion fence but funds were taken prior to completion of the fence and the project was not completed (Dietz 2011, pers. comm.). The introduced site at Mill Creek Gardens was created in 1995 as a conservation easement by a private donor (SFASU 1999, p.1) and was used as an experimental plot to test fertilizer and mulching effects on the rose-mallow (Scott 1997, pp. 6–7). This site is informally managed through mowing and burning regimes prescribed by SFASU staff, but encroachment from native woody species has been observed in the past (Creech 2011c, pers. comm.). Due to a lack of accessibility, the two remaining private properties, the Harrison County site and Camp Olympia have not been observed since 1980 and 1992, respectively (Warnock 1995, pp. 6, 8; TXNDD 2012a, pp. 58–60).

Summary of Factor A

Based on our evaluation of the best available information, we conclude that the present loss and modification of the rose-mallow's habitat is a significant threat to the species' continued survival. Threats include competition for light and nutrients by invasive plant species, particularly chinese tallow, altered hydrology, and herbicide drift; these threats may be exacerbated by future road and bridge construction and maintenance work. We determine that livestock grazing and feral hogs are not significant threats to the species. Although silvicultural practices have caused some prior impacts to the species, we do not anticipate that silviculture will continue to be a significant threat. The exploration and development of oil and natural gas wells, and predicted effects of climate change, are not currently threats to the species, but do represent potential future stressors. Additional conservation measures that had protected habitat and certain actions on privately owned land have expired and no longer provide protection to habitat of the rose-mallow. Therefore, we conclude that the rose-mallow faces significant threats due to habitat loss, destruction, modification, or curtailment of the species' habitat or range.

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

The showy flowers produced by the genus *Hibiscus* make it of high horticultural interest (USFWS 2010a, p. 8) to *Hibiscus* enthusiasts (Warnock 1995, p. 25; Poole *et al.* 2007, p. 265). Hybridization within genus *Hibiscus* is repeatedly done in the nursery trade (Creech 2011a, pers. comm.) to produce different colored flowers and modify other traits that may be of commercial interest. Ornamental landscaping companies sell rose-mallow plants online (Creech 2011a, pers. comm.). Rose-mallow plants are easy to cultivate from cuttings, and having plants available for sale in the nursery trade reduces collecting pressures of the species from the wild (Creech 2011a, pers. comm.). Plantings of rose-mallow into garden settings are standard and placement within close proximity to wild populations has not been recorded or observed.

Mercer Arboretum collected seed in 1993, 1994, 1996, 1997, and 2003; these seeds, as well as living plants, are being maintained at the Mercer Arboretum (Tiller 2011, pers. comm.). A portion of the seeds collected were grown out in the Arboretum's Rare and Endangered Gardens, where they have remained; seeds and plants have not been transplanted back into the wild populations (Tiller 2011, pers. comm.). Rose-mallow seed was also sent to the National Seed Storage Laboratory in Fort Collins, Colorado, for long-term storage for conservation purposes (Ellis 2011, pers. comm.).

The scientific and horticultural communities have collected rose-mallow seeds and plants from wild populations; however, we have no evidence that suggests that collection has depleted the seed bank or has adversely affected populations. Plants are easily cultivated and the species is well established as a nursery trade plant, thereby reducing potential collection pressure. Based on the best available information, we conclude that collection for recreational, scientific, or educational purposes is not a threat to the rose-mallow and is not likely to increase in the future.

C. Disease or Predation

Leaves and stems of plants in the *Hibiscus* family (Kroll 1991, p. 392; Everitt *et al.* 1999, pp. 177–193) are often consumed by white-tailed deer (*Odocoileus virginianus*) (Moreland 2005, p. 48). Cattle also consume the stems but to a lesser degree than white-tailed deer (Everitt *et al.* 1999, pp. 187–193). In 1993, evidence of herbivory was present at four rose-mallow subpopulations at Lovelady (Warnock 1995, p. 18) and in 2010, at compartment 20 (Allen and Duty 2010, p. 3). In 2011 at 5 of the 11 populations, above-ground portions of the rose-mallow, mainly the tips, were grazed by white-tail deer, with the most intense herbivory occurring at the Lovelady site. Plants consumed by deer could decrease the reproductive success of the rose-mallow (Adler *et al.* 2001, p. 1). Only at the compartment 20 on the Davy Crockett NF was the evidence of browsing on the flowers observed (Allen and Duty 2010, p. 3); however, the species is able to produce secondary growth (Strauss and Agrawal 1999, p. 179). Drought could exacerbate the consumption of leaves and stems if preferred plants were not available, but we conclude that ungulate (hoofed animal) herbivory is an insignificant stressor to the rose-mallow.

Insect damage and predation has been observed on rose-mallow plants in several populations; however, regrowth of foliage after herbivory incidents may indicate that the rose-mallow is adapted to herbivory (Strauss and Agrawal 1999, p. 179). Ninety percent of the first foliage of rose-mallow leaves at Lovelady had been consumed by insects (USFWS 2010a, p. 8) with insect predation also seen on compartment 11 plants in 2006 (Philipps 2009, p. 1). The scentless plant bug was observed on plants in compartment 55 (Miller 2011, pers. comm.). This bug is known to deposit egg masses on stems, leaves,

flower parts, buds, and seed pods of *Hibiscus* species (Wheeler 1977, p. 632), but to also consume *Hibiscus* seeds (Toth 2007, p. 6). Holes were observed on several rose-mallow plants on all NF sites (Miller 2011, pers. comm.) and were likely caused by this plant bug; however, these bugs are not considered a significant pest because the damage to the plants is minor (Toth 2007, p. 6). Larval forms of the Hibiscus sawfly (*Atomacera decepta*) can consume rose-mallow seed pods in herbaria, but have not been noted to affect wild populations (Wieland 1995, p. 1; Creech 2011a, pers. comm.).

Changes in precipitation are not well understood in relationship to insect herbivory (Bale *et al.* 2002, p. 2). Drought conditions may exacerbate consumption of the vegetative and floral parts if other food resources within the plant community become scarce. Temperature shifts related to climate change may trigger corresponding insect population shifts. Impacts from insect population shifts cannot be predicted; however, if conditions favor the growth of insect populations, the effects of insect herbivory on the rose-mallow could increase.

Summary of Factor C

Mammalian herbivory has affected the majority of sites; however, grazing pressures are largely attributed to the lack of other available food resources during periods of drought. Rose-mallow recovers quickly from herbivory incidents and can produce secondary growth, minimizing the overall negative effects of mammalian herbivory. This type of herbivory is not considered to be a threat to the species. Insect herbivory was also observed on several of the sites and was not range-wide but, with anticipated climate change shifts in temperature and the likelihood that insect populations will increase, we conclude that insect predation is a minor stressor that will likely continue into the future.

D. The Inadequacy of Existing Regulatory Mechanisms

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

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

Davy Crockett NF lands are federally owned and managed by the USDA Forest Service for the general public. Four populations of the rose-mallow occur on the Davy Crockett NF. The NF classifies the rose-mallow as a Regional Forester's Sensitive Species (Philipps 2012, pers. comm.) and habitat is within Management Area Zone 4, according to the Revised Land and Resource Management Plan (1996). This management zone includes the bed, bank, and water resources of the rivers, perennial and intermittent streams and wetlands, and their adjacent areas (USDA 1996, p. 145). This area is managed to maintain the role and function of aquatic, riparian, and wetland ecosystems while providing opportunities for compatible multiple uses and will be managed to meet recommendations stated in the Texas Wetland Plan (TPWD 1988) and Best Management Practices established by the State (USDA 1996, p. 151). Relative Management Area Zone 4 standards and guidelines include: Maintenance or restoration of native plant communities; prohibition of nonaquatic herbicide uses except hand applications or noxious weed control following restriction on the herbicide label; and use of prescribed fire when necessary to enhance riparian vegetation or wildlife habitat (USDA 1996, pp. 153, 155). Herbicides are not currently being used on the Davy Crockett NF and have been replaced by prescribed fire, with the goal of routinely burning compartments every 3 years (Stiles 2011, pers. comm.). As discussed previously (see *Factor A;* Nonnative Species), routine fires may play a role in reducing chinese tallow. Actions that may affect rose-mallow habitat need to be assessed using these standards and guidelines because these are considered regulations that need to be followed (Phillips 2012, pers. comm.). The encroachment of nonnative and native vegetation in rose-mallow habitat is not addressed in the Revised Land and Resource Management Plan; however, the application of prescribed fire in some areas may benefit the rose-mallow.

The rose-mallow is considered by the Forest Service to be a sensitive species on the Davy Crockett NF. A sensitive species is defined as one not yet warranting listing as an endangered or threatened species, but which is sufficiently rare that its future survival is of concern (Forest Service Manual (FSM) 2670). The management of sensitive species is described in FSM 2670, and the management objectives are to develop and implement management practices to ensure that species do not become an endangered or threatened species because of Forest Service actions; maintain viable populations of all native and desired nonnative wildlife, fish, and plant species in habitats distributed throughout their geographic range on National Forest System lands; and develop and implement management objectives for populations or habitat of sensitive species or both. In addition, the Forest Service has to consider the effects of their actions on the viability of sensitive species through the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et. seq.*) process. As defined by Forest Service policy, actions must not result in loss of species viability or create significant trends toward the need for Federal listing. This designation does not provide specific habitat or species protection, but does provide some benefits to the species because of increased awareness and evaluating projects that may affect the species through the NEPA process. Significant threats to the rose-mallow are not addressed with this designation.

Existing regulatory mechanisms do not provide protection for plants on private lands. Rose-mallow populations on NF lands receive some protection from habitat modification, and the application of the Forest Service standards and guidelines are not mandatory. In addition, not all threats are addressed, such as encroachment of nonnative and native species into rose-mallow habitat. The designation of sensitive species for the rose-mallow does not address the threats to the species. Therefore, based on our review of available information, we conclude

that existing regulatory mechanisms provide some protection against threats, but not all of the threats are addressed. Therefore, the existing regulatory mechanisms are inadequate.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Small Population Size

Small population size can result in a decrease in genetic diversity due to genetic drift (the random change in genetic variation each generation) and inbreeding (mating of related individuals) (Antonovics 1976, p. 238; Ellstram and Elam 1993, pp. 218–219). Genetic drift can decrease genetic variation within a population by favoring certain characteristics and, thereby, increasing differences between populations (Ellstram and Elam 1993, pp. 218–219). Self-fertilization and low dispersal rates can cause low genetic diversity due to inbreeding (Antonovics 1976, p. 238; Barrett and Kohn 1991, p. 21). This decreased genetic diversity diminishes a species' ability to adapt to the selective pressures of a changing environment (Ellstrand 1992, p. 77; Newman and Pilson 1997, p. 360).

No genetic studies have been conducted on the rose-mallow. There is no evidence that rose-mallow populations are experiencing genetic drift or inbreeding. We conclude that small population size is not a threat to the rose-mallow.

Hybridization

The genus *Hibiscus* easily hybridizes in the nursery trade (Creech 2011a, pers. comm.). Hybridization under natural conditions has not been verified, but several rose-mallow sites contain individuals that may be products of crosses between the rose-mallow with *H. laevis* or *H. moscheutos.* In some locations, *H. laevis* or *H. moscheutos,* or both, grow in close proximity to the rose-mallow. These plants have leaves, flowers, and floral parts resembling both parent species (USFWS 2010a, p. 3; TXNDD 2012a, entire). So far, these are only observations and no genetic studies have taken place to verify if hybridization is occurring. We do not consider hybridization to be a threat to the rose-mallow.

Proposed Determination

We have carefully assessed the best scientific and commercial available information regarding the past, present, and future threats to the rose-mallow and have determined that the species warrants listing as a threatened species throughout its range. Significant factors that support this determination include the following:

- The significant and ongoing threat from nonnative species at all sites (Factor A);
- The potential extirpation of an occupied rose-mallow site from a reservoir project (Factor A);
- Ongoing and potential changes to key hydrological features of the species' habitat (Factor A);
- The potential threat from future construction and ROW projects (Factor A);
- Ongoing threats from aerial herbicide drift incidents (Factor A); and
- Sustained drought that affects habitat quality and reproductive output of the species (Factor A).

Existing threats may be exacerbated by the effects of ongoing and future climate change, especially projected increases in temperature and decreases in precipitation that may increase the frequency and severity of droughts. The species receives some level of protection from habitat modification on NF lands through the standards and guidelines for Management Area Zone 4, which encompasses rose-mallow sites. However, these guidelines do not address all the significant threats to the species. Four of the 11 existing rose-mallow populations, including the largest and most robust population, occur on NF lands. Therefore, existing regulatory mechanisms are inadequate.

Some threats (such as herbicide spraying and nonnative species encroachment) are significant and occur throughout the range of the species, but the threats do not affect all rose-mallow populations. For instance, drift from herbicide spraying likely resulted in the extirpation of the rose-mallow in the SH 230 ROW, and the other two populations within SH ROWs may be affected by herbicide spraying in the future; however, rose-mallow populations on NF lands are not threatened by this activity. All populations are threatened by the invasion of nonnatives, resulting in competition for light and nutrients, but maintenance activities occur within different populations to minimize this threat. To our knowledge, this species has not experienced a reduction in its range, all of the known populations and sites are still present on the landscape, and the natural populations have maintained viable population numbers. In addition, there are four introduced populations that remain viable, although the introduced populations on NF lands have declined in recent years. Some threats are likely to occur in the foreseeable future, but are not ongoing. The potential effects from the construction of the Lake Columbia reservoir have not taken place, and there is uncertainty if the downstream population of rose-mallow would be affected by changes in hydrology. Therefore, we conclude that the species does not meet the definition of an endangered species (in danger of extinction throughout all or a significant portion of its range), but meets the definition of a threatened species (likely to become an endangered species in the foreseeable future throughout all or a significant portion of its range).

The Act defines threatened as ''any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' A major part of the analysis of ''significant portion of the range'' requires considering whether the threats to the rose-mallow are geographically concentrated in any way. If the threats are consistently uniform throughout the species' range, then no portion is likely to warrant further consideration.

Since threats extend throughout its entire range and are not geographically concentrated, it is unnecessary to determine whether the rose-mallow should be considered an endangered species within a significant portion of its range. Therefore, on the basis of the best available scientific and commercial information, we propose listing the Neches River rose-mallow as a threatened species throughout its range in accordance with sections 3(6) and 4(a)(1) of the Act.

Available Conservation Measures

Conservation measures provided to species listed as an endangered or threatened species under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation by Federal, State, Tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act requires the Service to develop

and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed, preparation of a draft and final recovery plan, and revisions to the plan as significant new information becomes available. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. The recovery plan identifies site-specific management actions that will achieve recovery of the species, measurable criteria that determine when a species may be downlisted or delisted, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (comprising species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our Web site (*http://www.fws.gov/endangered*), or from our Corpus Christi Ecological Service Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT,** above).

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

If these species are listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the State of Texas would be eligible for Federal funds to implement management actions that promote the protection and recovery of the gladecress and the rose-mallow. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants.*

Although the gladecress and rose-mallow are only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for this species. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**, above).

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

For the gladecress, Federal agency actions that may require consultation would include federally funded or permitted actions occurring within the species' habitat, specifically within the zone of Weches outcrops in Sabine and San Augustine Counties. Anticipated actions include provision of Federal financial and technical assistance through the United States Department of Agriculture; permits issued by the Federal Energy Regulatory Commission for installation of interstate pipelines and associated infrastructure; provision of Federal Highway Administration funds for road projects; provision of Department of Housing and Urban Development funds for municipal and residential construction and infrastructure projects in small towns along SH 21 within the range of gladecress; U.S. Army Corps of Engineers (USACE)-issued section 404 and section 10 permits for wetland crossings that are part of linear projects such as roads, transmission lines, or pipelines; and Federal Emergency Management Agency-funded actions. Also subject to consultation would be provision of Federal funds to State and private entities through Federal programs such as the Service's Partners for Fish and Wildlife Program, State Wildlife Grant Program, and Federal Aid in Wildlife Restoration Program.

For the rose-mallow, Federal agency actions that may require consultation would include federally funded or permitted actions occurring within the species habitat. These actions could include: (1) New construction and maintenance of roads or highways by the Federal Highway Administration; (2) issuance of section 404 Clean Water Act and section 10 permits by the USACE for Federally funded activities within Federal jurisdictional wetlands; (3) management and any other landscape altering activities on Federal lands administered by the Fish and Wildlife Service and USDA Forest Service; and (4) Federal Highway Administration funds given to TxDOT for SH ROW maintenance.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to endangered and threatened plants. The prohibitions of section 9(a)(2) of the Act, codified at 50 CFR 17.61, apply to endangered plants. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. It is also unlawful to violate any regulation pertaining to plant species listed as threatened or endangered (section 9(a)(2)(E) of the Act). Certain exceptions apply to agents of the Service and State conservation agencies. Chapter 88 of the Texas Parks and Wildlife Code lists plant species as State threatened or endangered, with the same status as the Federal designation, immediately upon completion of final Federal listing. The State prohibits taking and or possession for commercial

sale of all or any part of an endangered, threatened, or protected plant from public land (defined as State-owned and land belonging to local governments). The TPWD requires commercial permits for the commercial use of listed plants collected from private land. Scientific permits are required for collection of endangered plants or plant parts from public lands for scientific or education purposes.

We may issue permits to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.62 for endangered plants, and at 17.72 for threatened plants. With regard to endangered plants, a permit must be issued for the following purposes: For scientific purposes or to enhance the propagation or survival of the species.

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

(1) Unauthorized collecting, handling, possessing, selling, delivering, carrying, or transporting of the gladecress or the rose-mallow, including import or export across State lines and international boundaries, except for properly documented antique specimens of these taxa at least 100 years old, as defined by section 10(h)(1) of the Act.

(2) Unauthorized removal, damage, or destruction of gladecress or rose-mallow plants from populations located on State-owned land (highway ROW's) or on land owned by local governments.

(3) Unauthorized removal, damage, or destruction of gladecress or rose-mallow plants on private land in violation of any State regulation, including criminal trespass.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Corpus Christi Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). Requests for copies of the regulations concerning listed animals and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 6300 Ocean Drive, Unit 5837, Corpus Christi, Texas 78412–5837 (telephone 361–994–9005; facsimile 361–994–8262).

If the gladecress and the rose-mallow are listed under the Act, the State of Texas's Endangered Species Act (Texas Administrative Code Chapter 88:88.001–88.012) is automatically invoked, which would also prohibit take of these species and encourage conservation by State government agencies. Further, the State may enter into agreements with Federal agencies to administer and manage any area required for the conservation, management, enhancement, or protection of endangered species. Funds for these activities could be made available under section 6 of the Act (Cooperation with the States). Thus, the Federal protection afforded to these species by listing them as endangered species will be reinforced and supplemented by protection under State law.

Critical Habitat

Background

It is our intent to discuss below only those topics directly relevant to the designation of critical habitat for Texas golden gladecress and Neches River rose-mallow in this section of the proposed rule.

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

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

(a) Essential to the conservation of the species and

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

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

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

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographic area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical and biological features within an area, we focus on the principal biological or physical constituent elements (primary constituent elements such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type) that are essential to the conservation of the species. Primary constituent elements are the elements of physical or biological features that, when laid out in the appropriate quantity and spatial arrangement to provide for a species' life-history processes, are essential to the conservation of the species.

Under the second prong of the Act's definition of critical habitat, we can

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

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, other unpublished materials, or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act; (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species; and (3) the prohibitions of section 9 of the Act if actions occurring in these areas may affect the species. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Prudency Determination

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

There is no evidence that the Texas golden gladecress or Neches River rose-mallow are threatened by collection and no evidence to support the conclusion that there would be increases in threats to both species if critical habitat were designated. These species are not targets of collection and the areas proposed for critical habitat designation either have restricted public access or are already readily open to the public. Several of the identified threats to both species are associated with human access to the sites; however, we do not anticipate the designation of critical habitat to increase the level of these threats. Threats to gladecress associated with human access are the loss and degradation of gladecress habitat due to quarry excavations, natural gas-related construction, land conversion to pine plantations, and exposure to agricultural herbicides. These activities take place primarily on private lands, and the designation of critical habitat will not likely influence whether these activities continue. For the rose-mallow, 10 of the 12 sites are accessible with landowner permission having been granted to the quarry companies. Road and SH ROW maintenance and construction projects, exposure of plants to herbicide, nonnative species and native woody vegetation encroachment, and the alteration of the sites' hydrology have been ongoing throughout the range of the species. These threats, or any other identified threat, are not expected to increase as a result of critical habitat designation.

In the absence of finding that the designation of critical habitat would increase threats to a species, if there are any benefits to a critical habitat designation, then a prudent finding is warranted. The potential benefits of critical habitat to the Texas golden gladecress and Neches River rose-mallow include: (1) Triggering consultation under section 7 of the Act, in new areas for actions in which there may be a Federal nexus where it would not otherwise occur, because, for example, Federal agencies were not aware of the potential impacts of an action on the species; (2) focusing conservation activities on the species and its habitat; (3) providing educational benefits to State or county governments or private entities; and (4) preventing people from causing inadvertent harm to the species. Therefore, because we have determined that the designation of critical habitat will not likely increase the degree of threat to Texas golden gladecress and Neches River rose-mallow and may provide some measure of benefit, we find that designation of critical habitat is prudent for the Texas golden gladecress and Neches River rose-mallow.

Critical Habitat Determinability

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

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

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

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

We reviewed the available information pertaining to the biological needs of these species and habitat characteristics where these species are located. This and other information represent the best scientific data available, and the available information is sufficient for us to identify areas to propose as critical habitat. Therefore, we conclude that the designation of critical habitat is determinable for the Texas golden gladecress and the Neches River rose-mallow.

Physical or Biological Features for Texas Golden Gladecress

In accordance with sections 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographic area occupied by the species at the time of listing to designate as critical habitat, we consider the physical or biological features that are essential to the conservation of the species and which may require special management considerations or protection. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical, geographic, and ecological distributions of a species.

We derive the specific physical or biological features required for Texas golden gladecress from studies of the species' habitat, ecology, and life history as described below. We have determined that the following physical or biological features are essential for Texas golden gladecress:

Space for Individual and Population Growth and for Normal Behavior

The Weches Glades form a small patch system of habitats, endemic to the outcrops of marine sediment and glauconitic clays that occur primarily in Nacogdoches, San Augustine, and Sabine Counties (Nature Serve 2009, p. 6). The average width of the Weches outcrop region varies from 2–5 mi (3.2–8 km) (Sellards *et al.* 1932 in Diggs *et al.* 2006, p. 56) and encompasses the route of SH 21. All known Texas golden gladecress populations occur, or formerly occurred, within 1 mi (1.6 km) of SH 21. Populations in the closest proximity to each other were part of the Caney Creek Glade Complex that contained five of the eight known sites. This entire complex was located within an area that did not exceed 1 mi (1.6 km) from the most northern to most southern plant occurrences, and extended less than 0.32 miles (0.53 km) from east to west. The Chapel Hill and Geneva sites were outliers to the Caney Creek Complex, located 4.5 mi (7.24 km) and 11.4 mi (18.3 km), respectively, to the southeast. Multiple glades in close proximity to one another, as exemplified by the Caney Creek Glade Complex, may have facilitated cross fertilization between populations, enhancing genetic diversity, and perhaps providing space for population expansion. Potential exists for other areas within the range of the gladecress to support glade complexes. Singhurst (2011, pers. comm.), using aerial photography and maps of geology and soils, has identified clusters of potential glade sites in additional areas within the Weches Formation within 1 mi (1.6 km) to the north and south of SH 21 as it traverses San Augustine County, as well as into Sabine County. We are also aware that areas adjacent to the Chapel Hill and Geneva sites have a high likelihood of suitable habitat.

Due to loss, degradation, and fragmentation of habitat, optimal glade size or density of glade complexes needed to support long-term survival of Texas golden gladecress is not well understood, but monitoring of the extant sites between 1999–2009 showed that the gladecress could persist on small, disjunct sites where it is able to grow and reproduce, at least in the short term. Based on the best available information, a better model of a healthy population and habitat site may be found by looking at the historic CCG Site 6, which supported the largest population ever documented. This former site was contained within an area of approximately 10 ac (4 ha) and supported thousands of plants until the mid-1990's, when it was destroyed by mining excavation. This glade complex consisted of long, sheeted openings that presented a patchwork appearance of soil, rock, and glades (Singhurst 2012d, pers. comm.). This site likely represented ideal glade conditions for this species because it supported a healthy and robust population.

The best available information regarding gene flow between gladecress populations is that seed dispersal may be limited. Seeds appear to fall to the ground near the parent plant and probably stay in place unless water movement, such as flooding, carries them to other suitable habitats. The Weches outcrops occur in a scattered fashion across the landscape with habitat that is unsuitable for gladecress lying between outcrops.

Pollinators specific to Texas golden gladecress have not been identified. Native bees in the Families Andrenidae and Halictidae (sweat bees), including the species *Halictus ligatus* (sweat bee), were observed carrying pollen from *Leavenworthia crassa* (fleshyfruit gladecress) and *L. stylosa* (cedar gladecress) in northern Alabama (Llyod 1965, pp. 106–115). Although representatives of these bee families are found across eastern Texas (Warriner 2012b, pers. comm.), there is no documentation of them visiting Texas golden gladecress. Busch and Urban (2011, p. 18) indicated the efficacy of these pollinators has not been studied in *Leavenworthia.* Texas golden gladecress is believed to be self-compatible and may not rely solely on pollinators for fertilization (see Biology section). Based on this information, close proximity of glade outcrops to one another may help to facilitate cross pollination and seed dispersal.

Therefore, based on the information above, we identify glauconite exposures (outcrops) of the Weches Geologic Formation, found within Weches glades and prairies, as an essential physical feature for the species' continued existence. Although these individual exposures can be small in size and scattered throughout a glade or glades, ideally the glades will occur in multiples (a complex).

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

The geology and soils of Texas golden gladecress sites are unique in East Texas, and the species shows a tight association with these features (Singhurst, 2011, pers. comm.). The Weches Formation is characterized by the mineral glauconite and contains glauconitic clays, calcareous marls, rich marine fossil deposits, and mudstone (George and Nixon 1990, pp. 117–118). In some areas, leaching of the soluble ingredients in the glauconite has concentrated iron in ironstone (iron-bearing limonite). Surface exposures of the Weches Formation are usually on slopes (due to erosion) and typically are small; 16.4–65.6 ft (5–20 m) in width, and generally not exceeding 328 ft (100 m) in length (George and Nixon 1990 p. 118). The Weches Formation affects the local topography and vegetation, with cap hills and escarpments where the

erosion-resistant ironstone layers occur, and more rolling topography where ironstone is not present (Diggs *et al.* 2006, p. 56).

The Weches outcrops create limited areas of relatively thin alkaline soils in a region of mostly sandy soils (USFWS 1992, pp. 3–4) resulting in natural glade communities on the shallow, seasonally saturated, but frequently dry soils (Bezanson 2000 in Diggs *et al.* 2006, p. 56). Soils associated with Weches glades are shallow, rocky, and basic in pH (alkaline), inhibiting the presence of woody species (Nature Serve, 2009, p. 6). Soils underlying known Texas golden gladecress sites appear to be inclusions in the Nacogdoches, Trawick, or Bub soils series (USDA 2009, entire). George (1987, p. 18) found that the soil profile of three Weches outcrops had a surface layer of sandy loam or sandy clay loam with impermeable glauconite clay at a depth of about 19.7 inches (50 cm). Measurements of soil pH ranged from 7.6 to 8.1 (George 1987, p. 18). Weches soils contain exceptionally high levels of calcium (2,500–6,000 parts per million (ppm)) from fossilized shells, as well as high levels of potassium (170–250 ppm) and magnesium (250–400 ppm). The basic pH at these sites results from dissolution of the calcareous component of the rich marine fossil fauna of the Weches Formation (George 1987, p. 47). These conditions produce a harsh, variable environment that becomes saturated and seepy in cool moist months and during rainy seasons, but that dries out, becoming parched and hard, during hot summer months (USFWS 1992, pp. 3–4). *Leavenworthia* species are dormant by early summer, helping them to survive the dry period as seed; this dormancy is likely one of the major evolutionary adaptations in this genus enabling its species to endure the extreme droughty conditions of late summer (Quarterman 1950, p. 5).

Texas golden gladecress is dependent on late fall-winter precipitation levels that keep the glade sediments saturated and leave pooled water on the small outcrop ledges. Based on observations of gladecress population sites over a 10-year period within the Weches outcrops and glade complexes, Texas golden gladecress appeared to be highly restricted to wet microhabitats and ''even within suitable sites, the species seems limited to only seasonal seep runs and vernal pools within the site'' (Singhurst 2011a, pers. comm.). The species' apparent requirement for direct contact with seeps and shallow puddles on exposed ledges of outcrop implies reliance on precipitation that falls directly onto the ledges and possibly on down-slope movement of water percolating through the sediment atop the clay layer. George (1988, pp. 2–4) observed that the Weches outcrops were waterlogged in the spring due to the clay stratum, with water percolating until it hit the clay, then moving laterally and exiting on the hillsides where the outcrops are. At the Chapel Hill site, gladecress was found on and around a few spots where the glauconite was exposed rather than in the dense cover of the herbaceous matrix (Carr 2005, p. 2). The glauconite exposures at this site were wet from seeps or due to percolating water moving laterally on top of the bedrock.

All known Texas golden gladecress populations have been found on open, sunny exposures on Weches outcrops. Baskin and Baskin (1988, p. 837) indicated that a high light requirement was common among the endemic plants of rock outcrop plant communities in the unglaciated eastern United States. This obligate need for high light has been supported by field observations showing that these eastern outcrop endemics, such as Texas golden gladecress: Grow on well-lighted portion of the outcrops but not in adjacent shaded forests; photosynthesize best in full sun, with a reduction in the presence of heavy shading; and compete poorly with plants that shade them (Baskin and Baskin 1988, p. 837).

Texas golden gladecress apparently persists on its specialized habitat, at least in part, due to a lack of competition from taller or more vigorous plants. Rollins (1963, p. 17) found that, while *Leavenworthia alabamica* and *L. crassa* grew normally and produced seed in a weeded portion of an experimental plot, plants from both species died in the unweeded portion of the plot where *Poa annua* (annual bluegrass) was allowed unrestricted growth. Lloyd (1965, pp. 86–87) observed that plants of these two species competed poorly with the invading weed flora in abandoned agricultural fields.

The Weches outcrops and surrounding glade sites show large seasonal variation in species dominance as a result of the shift from saturated soils in winter-spring to hard, dry soil in summer (George and Nixon 1990, pp. 120–124). Singhurst (2012, pers. comm.) described the Chapel Hill site as having bare spots on the tops of the glade with seasonal pools of water (similar to vernal pools). At this site the gladecress would bloom, seed, dry out, and die back to be replaced in summer by drier, more succulent plants. Quarterman (1986 in George and Nixon 1990, p. 124) found that the thinner soils in Tennessee glades were dominated in spring by *Leavenworthia* spp., *Minuartia patula* (Pitcher's sandwort), and *Sedum pulchellum* (stonecrop), and that *Sporobolus vaginiflorus* (poverty dropseed) would be the dominant grass on these soils in summer. Singhurst observed similar species composition shifts at Texas golden gladecress sites (Singhurst 2012e, pers. comm.). Even with this seasonal shift, there are a number of characteristic herbaceous species that occur in association with gladecress (Table 6) (Bridges 1988, p. II–35; TNC 2003, p. 4; Carr 2006, p. 4). Carr (2006, p. 2) found that gladecress at the Chapel Hill site shared the rocky outcrop ledges with a sparse covering of *Eleocharis* sp. (spike sedge), *Calamintha arkansana* (Ozark savory), and an unidentified moss. He described the 40–50 gladecress plants as ''growing on or among clumps of moss on these soggy, unshaded glauconite exposures.''

TABLE 6—CHARACTERISTIC FLORA OF WECHES OUTCROPS

Scientific name	Common name
Primary Characteristic Herbs	
*Sedum pulchellum**	stonecrop.
*Clinopodium arkansanum**	Ozark savory.
*Minuartia patula**	Pitcher's sandwort.
*Minuartia drummondii**	Drummond sandwort.
*Valerianella radiata**	beaked cornsalad.
Isoetes butleri	Butler's quillwort.
*Allium drummondii**	Drummond wild-garlic.
Calamintha arkansana	low calamint.

TABLE 6—CHARACTERISTIC FLORA OF WECHES OUTCROPS—Continued

Scientific name	Common name
*Portulaca oleracea**	common purslane.
*Phemeranthus parviflorus**	sunbright.
*Eleocharis occulata**	limestone spikerush.
Some Other Potential Species	
Erigeron sp.	fleabane.
Physaria pallida	white bladderpod.
Desmanthus illinoensis	Illinois bundleflower.
Euphorbia dentate	toothed spurge.
Croton monanthogynus	doveweed.
Dalea purpurea	prairie clover.
Houstonia spp.	Bluetts.
Nassella leucotricha	Texas wintergrass.
B*outelous curtipendula*	sideoats grama.
Eleocharis compressa	flat-stemmed spikerush.
*Sporobolus vaginiflorus**	poverty dropseed.
Thelesperma filifolium	slender greenthread.
Arnoglossum plantagineum	groovestem Indian plantain.
Plantago virginica	Virginia plantain.
Schizachyrium scoparium	little bluestem.
Polytaenia nuttallii	Nuttall's prairie parsley.
Onosmodium bejariense	softhair marbleseed.
Liatris mucronata	narrowleaf gayfeather.
Draba cuneifolia	wedgeleaf draba.
Paronychia virginica	Whitlow wort.
Camassia scilloides	wild hyacinth.
Zigadenus nuttallii	Nuttall's death cama.
Algae	
Nostoc spp	Cyanobacteria.
Frequent Woody Species	
Juniperus virginiana	eastern redcedar.
Pinus taeda	loblolly pine.
Liquidambar styraciflua	sweetgum.
Cornus drummondii	roughleaf dogwood.
Sideroxylon lanuginosum	gum bumelia.
Sophora affinis	Texas sophora.
Quercus muhlengergii	Chinquapin oak.
Opuntia sp.	prickly pear cactus.
Rhus glabra	smooth sumac.
Rhamnus lanceolata	sanceleaf buckthorn.

* Strong association with gladecress sites.

Therefore, based on the information above, we identify as essential physical features for Texas golden gladecress the following: Open, sunny exposures of Weches outcrops within Weches glade plant communities that are characterized by the species listed in Table 6. These exposures should have relatively thin rocky soils that are classified within Nacogdoches, Trawick, or Bub soils mapping units. There must be bare, exposed bedrock on top-level surfaces or rocky ledges with very shallow depressions where rainwater can pool or seepage can collect.

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

In order to undergo successful reproduction, Texas golden gladecress requires sufficient moisture in late fall to germinate, and in winter-spring to support growth, flowering, and fruit production. At sites where the gladecress depends on seeps to provide its water, there must be sufficient sediment and/or slope at elevations above its habitat site in order to catch rainfall and allow its slow percolation down to the plant's location. For those gladecress plants growing in what appear to be microdepressions that occur on fairly level spots in more gently sloping ground, the water supply may be more due to direct rainfall and dew collection. The species appears to be dependent on its seedbank for its continued existence, so habitat should not be subjected to activities that would remove the seedbank. Therefore, based on the information above, we identify as essential physical features needed for Texas golden gladecress' successful reproduction outcrops that have intact hydrology and for which the surface features and gladecress seedbed are undisturbed.

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

Texas golden gladecress has a restricted geographic distribution. Its historic range did not extend further than approximately 12 miles (19 km) from the most southeastern to the most northwestern documented locations and all occurrences were located within a 3.1-mile-wide band (5 km-wide) around SH 21. The gladecress is also an endemic species, highly restricted to a specific habitat type that occurs in a

scattered or patchy fashion across the landscape, with large areas of unsuitable habitat interspersed. The extant populations exhibit a high degree of isolation, being separated from each other by distances of 4.5 mi (7.2 km) and 7 mi (11.3 km), respectively, between the northern (CCG Site 1), central (Chapel Hill), and southern (Geneva) populations. All three populations are small in terms of areal extent and number of individual plants. Given their geographic isolation and small size, all of the sites are important for the conservation of the species. In addition, we have determined that gladecress likely persists at the CCG Site 7, even though access has been denied since 1988. Combined, these sites represent the best habitat for the species throughout the geographic range. The loss of any of the known populations would result in a high risk of extinction for the remaining populations. Mapping of potential glade sites by TPWD shows that there is suitable habitat near the three extant populations, providing sites for population expansion, thereby increasing its resiliency. These areas are representative of habitat across the species range and provide the potential for populations to spread, thereby enhancing recovery opportunities. Therefore, we do not believe that unoccupied areas outside of the geographic range are needed.

The long-term effects of climate change on the species are less clear with regard to whether any additional areas outside of those discussed above are needed for the species' future. See the Factor A discussion of Climate Change for a summary of projected climate changes in Texas and how these changes may affect the Texas golden gladecress. The information currently available on the effects of global climate change and increasing temperatures does not make sufficiently precise estimates of the location and severity of the effects. Nor are we currently aware of any climate change information specific to the habitat of Texas golden gladecress that would indicate what areas may become important to the species in the future. We do not believe the species can easily adapt and colonize new habitats due to its habitat specificity. Therefore, based on the best available information, we are not identifying areas outside of those currently occupied as areas that may be suitable due to the effects of climate change.

Primary Constituent Elements for Texas Golden Gladecress

Under the Act and its implementing regulations, we are required to identify the physical or biological features essential to the conservation of Texas golden gladecress in areas occupied at the time of listing, focusing on the features' primary constituent elements. We consider primary constituent elements to be the specific elements of physical or biological features that, when laid out in the appropriate quantity and spatial arrangement to provide for a species' life-history processes, are essential to the conservation of the species.

Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the species' life-history processes, we determine that the primary constituent elements specific to Texas golden gladecress are:

(1) Exposed outcrops of the Weches Formation within Weches prairies. Within the outcrop sites, there must be bare, exposed bedrock on top-level surfaces or rocky ledges with small depressions where rainwater or seepage can collect. The prairie openings should support Weches Glade herbaceous plant communities.

(2) Thin layers of rocky, alkaline soils, underlain by glauconite clay (greenstone, ironstone, bluestone), that are found only on the Weches Formation. Appropriate soils are in the series classifications Nacogdoches clay loam, Trawick gravelly clay loam, or Bub clay loam, ranging in slope 1–15 percent.

(3) The outcrop ledges should occur within the glade such that Texas golden gladecress plants remain unshaded for a significant portion of the day and trees should be far enough away from the outcrop(s) that leaves do not accumulate within the gladecress habitat. The habitat should be relatively clear of nonnative and native invasive plants, especially woody species, or with only a minimal level of invasion.

Special Management Considerations or Protection for Texas Golden Gladecress

When designating critical habitat, we assess whether the specific areas within the geographic area occupied by the species at the time of listing contain features that are essential to the conservation of the species and which may require special management considerations or protection.

The features essential to the conservation of gladecress may require special management considerations or protection to reduce the following threats:

- Actions that remove the soils and alter the surface geology of the glades;
- Building or paving over the glades;
- Construction or excavation upslope that alters water movement (sheet flow or seepage) downslope to gladecress sites;
- Planting trees adjacent to the edges of an outcrop resulting in shading of the glade and accumulations of leaf litter and tree debris;
- Encroachment by nonnative and native invading trees, shrubs, and vines that shade the glade;
- The use and timing of application of certain herbicides that can harm gladecress seedlings; and
- Access by cattle to gladecress sites where habitat and plants may be trampled.

Management activities that could ameliorate these threats include (but are not limited to):

- Avoiding Weches glades when planning the location of quarries, well pads, roads, other facilities or structures, or pipeline routes, through glade complexes;
- Avoiding above-ground construction and/or excavations in locations that would interfere with natural water movement to gladecress habitat sites;
- Locating suitable habitat and determining the presence or absence of the species and identifying areas with glade complexes and protecting or restoring as many complexes as possible;
- Extending outreach to all landowners, including private and State, to raise awareness of the plant and its specialized habitat;
- Providing technical or financial assistance to landowners to help in the design and implementation of management actions that protect the plant and its habitat;
- Avoiding pine tree plantings near glades; and
- Management, including brush removal, to maintain an intact native glade vegetation community.

Criteria Used To Identify Critical Habitat for Texas Golden Gladecress

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. We reviewed all available information pertaining to the habitat requirements of the species. We are proposing to designate critical habitat in areas within the geographic area occupied by the Texas golden gladecress. In accordance with the Act and its implementing regulation at 50 CFR 424.12(e), we also considered whether designating additional areas—outside those currently occupied as well as those occupied at the time of listing—are necessary to ensure the conservation of

the species. We are not currently proposing to designate any areas outside the geographic area currently occupied by the species because we found that the currently occupied areas are sufficient for the conservation of the species.

Areas Occupied by the Texas Golden Gladecress

As required by section 3(5)(A)(i) of the Act, for the purpose of designating critical habitat for Texas golden gladecress, we defined the geographic area currently occupied by the species. Generally, we define occupied areas as those where recent surveys in 2012 confirmed the species was present (Singhurst 2012f, pers. comm.). For one area, occupancy by the species has not been confirmed since 1988 (TXNDD 2012, entire); however, there have been no recent surveys due to lack of access to the properties. For the purposes of designation of critical habitat, we are considering this area to be currently occupied because the species was known from this area in the past and the habitat conditions that support the species appear intact (based on aerial imagery), except for the growth of some woody vegetation in some areas. In total, we found four areas currently occupied by the Texas golden gladecress at the time it is listed.

Areas Unoccupied at the Time of Listing

We considered whether there were any specific areas outside the geographic area found to be occupied by the Texas golden gladecress that are essential for the conservation of the species as required by section 3(5)(A)(ii) of the Act. First, we evaluated whether there was sufficient area for the conservation of the species within the occupied areas determined above.

To guide what would be considered needed for the conservation of the species, we relied upon recommendations in a conservation plan for the San Augustine Glades developed by TNC (TNC 2003, p. 8). This served as a basis for the number of populations considered necessary for the conservation of Texas golden gladecress. This plan came from TNC's structured conservation planning process that relied on a science team with expertise in the habitats and flora of East Texas. The plan was developed with input from representative experts from academia, botanical institutions, and Federal and State agencies. We consider this plan the best available scientific information to determine what is essential for the conservation of the Texas golden gladecress.

This conservation plan concluded that at least eight viable populations of Texas golden gladecress, containing an average of 500 individuals each, was the target conservation goal for the species (TNC 2003, p. 8). We currently know of four confirmed populations of the species within the areas occupied by the species (see Mapping Texas Golden Gladecress Critical Habitat section below for how we mapped the occupied areas). We used information provided by a TPWD botanist to evaluate whether the four proposed areas might be sufficient to support eight viable populations of the species (Singhurst 2012a, pers. comm.; Singhurst 2012b, pers. comm.). The maps provided by this species expert identified potential glades within these areas by using: Soil map units; a time series of aerial photographs that depicted changes in land cover; and personal experience and expertise with the species, the habitat, and this area of East Texas (Singhurst 2012b, pers. comm.). These sites occur in discrete areas across the entire historic range of the species and include sites that represent the different landscape settings and soil types that have been documented at gladecress occurrences.

Based on this analysis and our site visits, we determined that the proposed occupied areas contain suitable habitat (with special management) to expand current populations and support additional populations of Texas golden gladecress to meet the conservation goals for the species. We judge there to be suitable sites within the occupied areas that can be used for natural expansion of existing populations or possible future augmentation if needed and advised during future recovery planning and implementation. The habitat in the four occupied areas is sufficient for attaining the goal of eight viable populations throughout the geographic range of the species. Therefore, proposing additional areas as critical habitat outside of the currently occupied geographic areas would not be essential for the conservation of the species, and we have not proposed any additional areas.

Mapping Texas Golden Gladecress Critical Habitat

To determine the boundaries of proposed critical habitat units around the species areas occupied by the species, we used a geographic information system to overlay the appropriate soil maps over the occupied areas. The Texas golden gladecress is restricted to the Weches Formation, being found on only three soil map units: Nacogdoches clay loam 1–5 percent slope (NeE); Trawick gravelly clay loam 5–15 percent slope (TuD); and Bub clay loam 2–5 percent slope (BuB). We drew the proposed boundaries around contiguous segments of these soil mapping units from the online San Augustine and Sabine County's soils survey (*http://WebSoilSurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx*) encompassing the occupied areas to form the boundary of the four critical units by using the edge of the soil type layer.

When determining proposed critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, unpaved roads, and other structures because such lands lack physical or biological features for Texas golden gladecress. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

Summary

In conclusion, we are proposing for designation as critical habitat specific areas that we have determined will be occupied at the time of listing and contain sufficient elements of the physical or biological features to support life-history processes essential for the conservation of the Texas golden gladecress that may require special management. We proposed four areas that meet the criteria for critical habitat. We determined that no additional areas are considered essential for the conservation of the species because the proposed occupied areas provide sufficient habitat to conserve the species.

The critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document in the rule portion. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on

which each map is based available to the public on *http://www.regulations.gov* at Docket No. FWS–R2–ES–2012–0064, on our Internet sites *http://www.fws.gov/southwest/es/ElectronicLibrary/ElectronicLibrary_Main.cfm,* and at the field office responsible for the designation (see **FOR FURTHER INFORMATION CONTACT** above).

Proposed Critical Habitat Designation for Texas Golden Gladecress

We are proposing four units as critical habitat for Texas golden gladecress. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for Texas golden gladecress and all are considered to be occupied at the time of listing. The four areas we propose as critical habitat are: (1) Geneva; (2) Chapel Hill; (3) Southeast Caney Creek Glades; and (4) Northwest Caney Creek Glades. The approximate area of each proposed critical habitat unit is shown in Table 7.

TABLE 7—PROPOSED CRITICAL HABITAT UNITS FOR TEXAS GOLDEN GLADECRESS

Critical habitat unit	Private ac (ha)	State ac (ha)	Total size of all units ac (ha)
1. Geneva	381 (154)	7(3)	388 (157)
2. Chapel Hill	147 (59)	*3 (1)	150 (61)
3. Southeast Caney Creek Glades	37 (15)	3 (1)	40 (16)
4. Northwest Caney Creek Glades	767 (310)	8 (4)	775 (314)
Total	1,332 (539)	21 (9)	1,353 (548)

* County owned
Note: Area sizes may not sum due to rounding.

We present brief descriptions of all units, and the reasons why they meet the definition of critical habitat for Texas golden gladecress, below.

Unit 1: Geneva

Unit 1 consists of 388 ac (157 ha) of private and State land located in northwest Sabine County, Texas. The unit is located 1.5 mi (2.3 km) south of Geneva, Texas, and 4.8 mi (7.7 km) north of Milam, Texas, and is bisected by SH 21. This unit is occupied at the time of listing and contains all of the features essential to the conservation of the species. Approximately 2 percent (7.3 ac (3 ha)) of the land is State-owned and is managed TxDOT ROW, and the Geneva Site gladecress population occurs, in part, within this ROW. The remaining 98 percent of the land is privately owned. The area directly adjacent to the ROW gladecress population has been cleared of woody vegetation within the recent past but is not fenced, so future land use is unknown. The geology and soils (PCE1 and PCE2) occur throughout the unit and aerial photography indicates that at least three other small, scattered open glades (as identified by TPWD) occur within the critical habitat unit.

The features essential to the conservation of the species in this unit may require special management considerations or protection to address threats of woody plant invasion into open glades, possible changes in land use, including planting of loblolly or long-leaf pine to establish tree plantations, potential agricultural herbicide use to control woody plants, and destruction of the features by excavation, pipeline construction, or buildings.

Unit 2: Chapel Hill

Unit 2 consists of 150 ac (61 ha) of privately owned land, with one county road ROW, in northwestern San Augustine County, Texas. This unit is located 1.0 mi (1.6 km) south of SH 21, due west of the San Augustine-Sabine County line, and lies alongside County Road (CR) 151. This unit is linear in shape, running from southeast to northwest. Aside from CR 151, all other land in Unit 2 is privately owned. Current land cover appears to be approximately 70 percent woody cover; much of the forest being rows of pine trees. This unit was occupied at the time of listing by a population that grows on a privately owned, unfenced tract of land that measures approximately 0.25 ac (0.1 ha) in size. The geology and soils PCEs occur throughout the unit, and aerial photography indicates that at least two other small, scattered, open glades (as identified by TPWD) occur within the critical habitat unit.

The features essential to the conservation of the species in this unit may require special management considerations or protection to address threats of woody plant invasion into open glades throughout the unit, conversion of pasture to pine plantations, pipeline construction, and herbicide application.

Unit 3: Southeast Caney Creek Glades

Unit 3 consists of 39.9 ac (16.2 ha) just southeast of the City of San Augustine, San Augustine County, Texas. Approximately 99 percent of the land within this unit is privately owned, with the other 1 percent being county ROW under the management of TxDOT. This unit is located 0.8 mi (1.2 km) south from SH 21 near San Augustine, Texas, along the north side of FM 3483. This unit is located across Sunrise Road from a glauconite quarry. Although this site has not been visited since the late 1980's, we determined that the site still contains all the physical or biological features; therefore, we consider the unit occupied at the time of listing.

The features essential to the conservation of the species in this unit may require special management considerations or protection to address threats of woody plant invasion into the natural prairie and glade habitat, and pipeline construction.

Unit 4: Northwest Caney Creek Glades

Unit 4 consists of 775.3 ac (313.7 ha) that extends in a diagonal line from northeast to southwest, to the north and south of SH 21 just east of the City of San Augustine, San Augustine County, Texas. The unit is approximately 0.7 mi (1.1 km) wide. This unit is occupied at the time of listing. The geology and soils PCEs occur throughout the unit and aerial photography indicates that at least five other small, scattered, open glades (as identified by TPWD) occur within the critical habitat unit. Approximately 1 percent (7.8 ac) of the land is State-owned and managed ROW by the TxDOT. The remaining 99 percent is privately owned. Approximately 75–80 percent of the southern portion of Unit 4 is forested. Historically, this unit was occupied by four of the eight known occurrences of Texas golden gladecress;

however, three of the four have been lost to glauconite quarrying activities.

The features essential to the conservation of the species in this unit may require special management considerations or protection to address threats of glauconite mining, woody plant invasion into the natural prairie and glade habitat, and pipeline construction.

Physical or Biological Features for Neches River Rose-mallow

We derive the specific physical or biological features required for the Neches River rose-mallow from studies of the species' habitat, ecology, and life history as described below. We have determined that the following physical or biological features are essential for the Neches River rose-mallow:

Space for Individual and Population Growth and for Normal Behavior

Neches River rose-mallow is endemic to open habitats in wetlands of the Pineywoods of East Texas (Gould 1975, p. 1; Correll and Johnston 1979, p. 1). This ecoregion contains hardwood (oaks, hickory, and maple), pine species (loblolly, shortleaf, longleaf, and slash) (Gould 1975, p. 10), and native woody and herbaceous plant associates (Warnock 1995, pp. 14–15; Poole *et al.* 2007, pp. 264–265; see Table 3). Partial to full sun is required to allow for blooming.

Habitat is characterized as sloughs, oxbows, terraces, and sand bars, and habitat is found along depressional or low-lying areas of the Neches River floodplains and Mud and Tantabogue Creek basins (Warnock 1995, p. 11). Sites include both intermittent and perennial wetlands with plants located within 3.2 ft (1.0 m) of standing water, depending on current drought and precipitation levels (Warnock 1995, p. 14). Water levels at each site are variable, depending on proximity to water, amount of rainfall, and floodwaters. Habitat elevations range from 170 to 265 ft (51–80 m) above sea level (Warnock 1995, p. 13).

Based on the best available information, we identify intermittent and perennial open waters in the Neches River basin and Mud and Tantabogue Creeks, with areas of seasonal or permanent inundation with native woody vegetation, as an essential physical feature for the species.

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

The rose-mallow is typically found in open, flat areas of wetlands with hydric, alluvial sands or sandy loams of the Inceptisol or Entisol orders (Gould 1975, p. 10; Warnock 1995, pp. 11, 13; Diggs *et al.* 2006, pp. 46, 79). Intermittent wetlands are inundated during the winter months but become dry during the summer months (Warnock 1995, p. 11), yet flowing water is required for seed dispersal downstream (Warnock 1995, p. 20; Scott 1997, p. 8; Reeves 2008, p. 3). Rivers of East Texas tend to overflow onto banks and floodplains (Diggs *et al.* 2006, p. 78), especially during the rainy season, thereby dispersing seed. Precipitation in Texas increases from the west to the east, making East Texas an area with comparatively higher annual precipitation, generally ranging from 35 to 50 in (89–127 cm) (Gould 1975, p. 10). Therefore, based on the information above, we identify hydric alluvial soils of seasonally or permanently inundated wetlands to be a physical or biological feature for the rose-mallow.

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

Flowing water is required for seed dispersal, and seeds can remain buoyant for several hours (Warnock 1995, p. 20; Scott 1997, p. 8; Reeves 2008, p. 3). Long-distance seed dispersal ranges and upstream dispersal methods are unknown, but may be facilitated by avian species. Therefore, we identify flowing water for seed dispersal as a physical and biological feature for the rose-mallow.

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

East Texas is subtropical with a wide range of extremes in weather (Diggs *et al.* 2006, p. 65). The native vegetation of this region evolved with, and is adapted to, recurrent temperature extremes (Diggs *et al.* 2006, p. 67). The Pineywoods region of East Texas is vulnerable to even small climatic shifts because it is ''balanced'' on the eastern edge of a dramatic precipitation gradient. Temperature increases that are projected in climate change scenarios will likely be associated with increases in transpiration and more frequent summer droughts. Decreased rainfall may result in an eastward shift in the forest boundary and replacement of the Pineywoods forest with scrubland (Diggs *et al.* 2006, p. 80). There may also be a northerly shift of southerly species based on climate models that predict increasing temperatures and, therefore, increasing evapotranspiration and decreasing regional precipitation and soil moisture (Diggs *et al.* 2006 p. 73).

In October 2011, the Service observed that all known rose-mallow sites were impacted by extreme drought conditions. Normal habitat conditions include a cyclical pattern of wet winters and dry summers so the rose-mallow may have some tolerance of drought; however, the species may not be able to thrive in an environment with a higher frequency and intensity of droughts. Soil compaction from hogs and cattle, invasion from nonnative species, and herbivory may increase during periods of drought. Predictions of climate change are variable, and effects from climate change on this species are not fully understood. The information currently available on the effects of global climate change and increasing temperatures does not make sufficiently precise estimates of the location and severity of the effects specific to East Texas. Nor are we currently aware of any climate change information specific to the habitat of the rose-mallow that would indicate what areas may become important to this species in the future. Therefore, we are not identifying any areas outside of those currently occupied as areas that may be suitable for rose-mallow due to the effects of climate change.

Primary Constituent Elements for Neches River Rose-mallow

Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the species' life-history processes, we determine that the primary constituent elements specific to the rose-mallow are intermittent or perennial wetlands within the Neches River floodplains or Mud and Tantabogue Creek basins that contain:

(a) Hydric alluvial soils and flowing water when found in depressional sloughs, oxbows, terraces, side channels, or sand bars;

(b) Native woody or associated herbaceous vegetation that has an open canopy providing partial to full sun exposure without nonnative species.

With these proposed designations of critical habitat, we intend to identify the physical or biological features essential to the conservation of both species, through the identification of the appropriate quantity and spatial arrangement of the primary constituent elements sufficient to support the life-history processes of the species.

Special Management Considerations or Protection for Neches River Rose-mallow

When designating critical habitat, we assess whether the specific areas within the geographic area occupied by the

species at the time of listing contain features that are essential to the conservation of the species and which may require special management considerations or protection.

Threats to those features that define the primary constituent elements for the rose-mallow include: (1) Alteration of naturalized flow regimes through projects that require channelization; (2) water diversions from streams and rivers and changes to the overall hydrology; (3) encroachment from native woody riparian species and nonnative species; (4) detrimental roadside management practices including inappropriate frequency and timing of mowing during the species' blooming period; (5) herbivory; and, (6) drought. Special management considerations or protection are required within critical habitat areas to address these threats. Management activities that could ameliorate these threats include, but are not limited to:

- Construction of cattle exclusion fencing to remedy herbivory at Lovelady;
- Restoration of the cattle stock pond back to a natural flatwoods pond at Lovelady;
- Coordination with TxDOT to establish and continue effective management along ROWs for control of native woody species and nonnatives (including, but not limited to mowing, brush-hogging, or other hand-clearing techniques) and completion of these techniques only during the appropriate life stages of the rose-mallow;
- Coordination with the ANRA and consultation with the USACE on the proposed construction of Lake Columbia Reservoir;
- Consultation between the Service and the USACE for any filling or draining of Federal jurisdictional wetlands; and
- Clearing or burning on the Davy Crockett NF for control of chinese tallow and to maintain an adequate level of openness in habitat.

Criteria Used To Identify Critical Habitat for Neches River Rose-mallow

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. We reviewed all available information pertaining to the habitat requirements of the species. We are proposing to designate critical habitat in areas within thegeographic area occupied by the rose-mallow. In accordance with the Act and its implementing regulation at 50 CFR 424.12(e), we also considered whether designating additional areas—outside those currently occupied as well as those occupied at the time of listing—are necessary to ensure the conservation of the species. We are not currently proposing to designate any areas outside the geographic area currently occupied by the species because we found that the currently occupied areas are sufficient for the conservation of the species.

Areas Occupied by the Neches River Rose-mallow

For the purpose of designating critical habitat for the rose-mallow, we defined the geographic area currently occupied by the species as required by section 3(5)(A)(i) of the Act. Generally, we define occupied areas based on the most recent field surveys available in 2011 and recent reports and survey information from the Davy Crockett NF, TPWD, TxDOT, and observations by species experts (Miller 2011, pers. comm.; TXNDD 2012a, entire). Currently occupied areas for the Neches River rose-mallow are found in Trinity, Houston, Cherokee, Nacogdoches, and Harrison Counties in East Texas.

In total, we found 11 areas currently occupied by the rose-mallow. Two of these areas have not been verified since the 1980s and mid-1990s. However, the sites have not been modified to our knowledge such that they no longer have the physical or biological features essential for the rose-mallow, so we consider them still occupied. Four of the proposed critical habitat units currently occupied are introduction sites, three of which are located on Davy Crockett NF compartments and one in Mill Creek Gardens. The remaining five units support existing populations of rose-mallow and the plants were observed at each of these nine areas in 2011 (Creech 2011b, pers. comm.; Miller 2011, pers. comm.; TXNDD 2012a, entire).

Areas Unoccupied by the Neches River Rose-mallow

We considered whether there were any specific areas outside the geographic area found to be occupied by the rose-mallow that are essential for the conservation of the species, as required by section 3(5)(A)(ii) of the Act. We first evaluated whether there was sufficient area for the conservation of the species within the occupied areas determined above.

To guide what would be considered needed for the conservation of the species, we relied upon Pavlik's 1996 (pp. 127–155) Minimum Viable Population (MVP) analysis tool, using the best known and available scientific information on the species' life history and reproductive characteristics and input from a species expert (Poole 2012a, pers. comm.). Based on this analysis, we concluded that at least 10 viable populations of the rose-mallow, containing an average of about 1,400 individuals each, was the conservation goal for the species.

We considered whether the 11 occupied areas contained sufficient habitat to meet these conservation goals. Each area currently has one population, so the occupied areas are sufficient for the ten populations needed. However, the overall estimates of the number of individuals in each population are low, with the largest population estimated to contain 750 individuals at compartment 55 in October 2010 (Allen and Duty 2010, p. 4). All of the known populations currently have much fewer individuals than the conservation goals. Considering the size and amount of suitable habitat in the areas occupied by the species (see Mapping Neches River Rose-mallow Critical Habitat section below for how we mapped the occupied areas), we found that the 11 areas contain suitable habitat (with special management) to support increased population sizes to meet the conservation goals for the species.

Based on this analysis and our site visits, we determined that the proposed occupied areas contain suitable habitat (with future special management) to support larger populations of rose-mallow to meet the conservation goals for the species. We judge there to be suitable sites within the occupied areas that can be used for natural expansion of the populations during future recovery planning and implementation. The habitat in the 11 occupied areas is sufficient for attaining the goal of 10 viable populations throughout the geographic range of the species. Therefore, proposing additional areas as critical habitat outside of the currently occupied geographic areas would not be essential for the conservation of the species, and we have not proposed any additional areas.

Mapping Neches River Rose-mallow Critical Habitat

Once we determined the occupied areas, we next delineated the primary constituent elements. We estimated the area of habitat based on several key features determined through our 2011 field surveys and in past reports on habitat requirements. Since the rose-mallow prefers depressional or palustrine areas, we used topographic maps to identify changes in slope where the species was not anticipated to occur and where seeds were not likely to be dispersed by flowing water (i.e., the uplands). National Wetland Inventory (NWI) maps were used to determine

habitat types within palustrine systems. All areas, when mapped with this layer in GIS, were associated with emergent, forested, or scrub-shrub, with one area having an undetermined bottom (open water). All proposed critical habitat units are seasonally, permanently, or semipermanently flooded, which is consistent with our observations and available data. Due to the high variation of alluvial and hydric soils of rose-mallow habitat, soils were not mapped during this analysis but are still a general wetland indicator.

To determine the boundaries of proposed critical habitat units around the areas occupied by the species, we focused primarily on available canopy openness. We used topographic and NWI maps for confirmation of suitable habitat, then used aerial imagery available through GoogleEarth to determine dense cover in the habitat. We drew boundaries around the open areas that delineate the outer boundary of our proposed critical habitat units. Critical habitat boundaries did not expand into heavily forested areas because those areas are too shady for the rose-mallow.

When determining proposed critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, ROWs, and other structures because such lands lack physical or biological features for the rose-mallow. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands, as is the case with Unit 4, where the rose-mallow is known to occur in habitat beneath the Hwy 204 overpass. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

Summary

In conclusion, we are proposing for designation of critical habitat specific areas that we have determined will be occupied at the time of listing and contain sufficient elements of the physical or biological features essential in supporting life-history processes essential in the conservation of the rose-mallow that may require special management. We proposed 11 areas that meet the criteria for critical habitat. We determined that no additional areas are considered essential for the conservation of the species because the proposed occupied areas provided sufficient habitat to conserve the species.

The critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document in the rule portion. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on which each map is based available to the public on *http://www.regulations.gov* at Docket No. FWS–R2–ES–2012–0064, on our Internet sites *http://www.fws.gov/southwest/es/ElectronicLibrary/ElectronicLibrary_Main.cfm,* and at the field office responsible for the designation (see **FOR FURTHER INFORMATION CONTACT** above).

Proposed Critical Habitat Designation for Neches River Rose-mallow

The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the rose mallow. The 11 areas we propose as critical habitat are: (1) Hwy 94 ROW, Trinity County; (2) Harrison County; (3) Lovelady, Houston County; (4) Hwy 204 ROW, Cherokee County; (5) Davy Crockett NF, compartment 55, Houston County; (6) Davy Crockett NF, compartment 11, Houston County; (7) Davy Crockett NF, compartment 20, Houston County; (8) Davy Crockett NF, compartment 16, Houston County; (9) Champion, Trinity County; (10) Mill Creek Gardens, Nacogdoches County; and (11) Camp Olympia, Trinity County. The approximate area of each proposed critical habitat unit is shown in Table 8.

TABLE 8—PROPOSED CRITICAL HABITAT UNITS FOR THE NECHES RIVER ROSE-MALLOW

Critical habitat unit	Private ac (ha)	State ac (ha)	Federal ac (ha)	Size of unit ac (ha)
1. Highway 94 ROW	2.3 (0.9)	1.1 (0.5)	0	3.4 (1.4)
2. Harrison County	20.8 (8.4)	0	0	20.8 (8.4)
3. Lovelady	6.3 (2.5)	0	0	6.3 (2.5)
4. Highway 204 ROW	0	8.7 (3.5)	0	8.7 (3.5)
5. Davy Crockett NF, compartment 55	0	0	3.8 (1.5)	3.8 (1.5)
6. Davy Crockett NF, compartment 11	0	0	7.3 (3.0)	7.3 (3.0)
7. Davy Crockett NF, compartment 20	0	0	3.4 (1.4)	3.4 (1.4)
8. Davy Crockett NF, compartment 16	0	0	32.8 (13.3)	32.8 (13.3)
9. Champion	2.9 (1.2)	0	0	2.9 (1.2)
10. Mill Creek Gardens	95.3 (38. 6)	0	0	95.3 (38. 6)
11. Camp Olympia	0.2 (0.1)	0	0	0.2 (0.1)
Total Acreages for All Critical Habitat Units:	.....	.....	.....	187.8 (76.0)

Note: Area sizes may not sum due to rounding.

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for the rose-mallow, below.

Unit 1: Hwy 94 ROW

Unit 1 consists of 3.4 ac (1.4 ha) on both the Hwy 94 ROW and on private land in Trinity County. The unit was occupied at the time of listing and contains the physical and biological features essential to the conservation of the species. The unit parallels Hwy 94 for 0.1 mi (0.2 km) to the north, beginning about 0.06 mi (0.09 km) from the now abandoned rest stop. From the easternmost boundary, Unit 1 then extends onto private lands (about 0.06 mi (0.09 km)) where it ends, abutting a

drainage ditch and levee. The unit parallels the ditch for about 0.8 mi (1.3 km) until vegetation becomes thick and the canopy cover increases. Hwy 94 ROW was first observed in 1955 with only herbarium specimens collected, and in 1968, over 100 plants were censused (TXNDD 2012a, pp. 1–11). A total of 128 plants were counted in October 2011. Unit 1 is optimal habitat for the rose-mallow and is so indicated by the abundance of species observed this fall even during drought conditions.

The features essential to the conservation of the species in Unit 1 may require special management considerations or protection to address the threats of: hydrologic changes on the private lands, management of nonnative species and native woody vegetation, and appropriate timing and frequency of mowing and maintenance along the ROW.

Unit 2: Harrison County

Unit 2 is between 0. 2–0.4 mi (0.3–0.6 km) north of Farm to Market road 2625 in Harrison County. The unit was occupied at the time of listing and contains the physical and biological features essential to the conservation of the species. A specimen of the rose-mallow was first collected from the site in 1980 by Elray Nixon from SFASU and was originally thought to have been *H. laevis;* the specimen was recently reexamined and confirmed as the rose-mallow (TXNDD 2012a, p. 12). Warnock (1995) provided only generic coordinates for the location of this site, but, using aerial photography, we were able to determine the location of this unit. Unit 2 is composed of 8.4 ha (20.8 ac) of occupied habitat entirely on private land; the landowner of the site is unknown. The physical and biological features essential to the conservation of the species include the large wetland or pond of hydric alluvial soils and open canopy.

The features essential to the conservation of the species in Unit 2 may require special management considerations or protection to address the threats of management of nonnative species and native woody vegetation, maintenance of natural hydrology of the wetland.

Unit 3: Lovelady

Unit 3 was habitat within Houston County, found northwest of FM 230, extending 0.3 mi (0.5 km) north and contains 6.3 ac (2.5 ha) of private land. The unit was occupied at the time of listing and contains the physical and biological features essential to the conservation of the species. The majority of land in Unit 3 belongs to TLC, who purchased the property in 2004 for the direct conservation of the rose-mallow. This unit extends northward onto private lands where a known population of the rose-mallow was found during a 2004 TxDOT survey. Essential biological features within Unit 3 include a depressional creek bed within Tantabogue Creek basin; inundation from overflow of the creek from the northwest or from rain events that may allow ponding in low-lying areas; open habitat with native woody vegetation; and frequently inundated alluvial soils.

The features essential to the conservation of the species in Unit 3 may require special management considerations or protection to address the following threats: Management of nonnative species and native woody vegetation; maintenance of natural hydrology of habitat and adjacent areas, including rebuilding the stock pond to mimic natural flow regimes; construction of a cattle-exclusion fence to restrict grazing; and long-term maintenance of Tantabogue Creek flows by obtaining a conservation easement or agreement.

Unit 4: Hwy 204 ROW

Unit 4 in Cherokee County contains 8.7 ac (3.5 ha) of occupied habitat along Hwy 204 ROW and within the Mud Creek basin. The unit was occupied at the time of listing and contains the physical and biological features essential to the conservation of the species. Unit 4 extends about 0.3 mi (0.5 km) from east to west and about 0.01 mi (0.02 km) from Hwy 204 on both the north and south sides, each to the private fence. Unit 4 also includes a 0.1-mi (0.2-km) section of the Mud Creek basin where rose-mallow could expand or where seeds could be dispersed. This site was first observed in 1992 with a single plant. Since that time, a maximum number of seven plants has been counted. Since 2003, the rose-mallow has been observed underneath most overpasses (TXNDD 2012a, pp. 20–28). Essential biological features of Unit 4 include its location within the Mud Creek basin, open habitat with full sun, and association with alluvial, hydric soils.

The features essential to the conservation of the species in Unit 4 may require special management considerations or protection to address the threats of management of nonnative species and native woody vegetation, maintenance of natural hydrology of the wetland, and appropriate timing and frequency of mowing and maintenance along the ROW.

Unit 5: Davy Crockett NF, Compartment 55

Unit 5 is the only unit that contains a natural population of the rose-mallow on Federal lands within the Davy Crockett NF. The unit was occupied at the time of listing and contains the physical and biological features essential to the conservation of the species. Occupied habitat of Unit 5 includes 3.8 ac (1.5 ha). An open flatwood or forested (Cowardin *et al.* 1979, p. 20) pond is surrounded by pine-oak forest. Unit 5 is 0.09 mi (0.14 km) in diameter and includes a palustrine flatwood pond and the surrounding open habitat. Essential habitat features of Unit 5 include its location within the Neches River basin, potential proximity to standing water contained within the flatwood pond, surrounding native woody vegetation, and associated alluvial soils.

The features essential to the conservation of the species in unit 6 may require special management considerations or protection to address the threats of management of nonnative species and native woody vegetation, maintenance of natural hydrology of the wetland, and controlled use of herbicides.

Unit 6: Davy Crockett NF, Compartment 11

Unit 6 includes 7.3 ac (3.0 ha) of occupied habitat on compartment 11 on Federal land of the NF within Houston County. The unit was occupied at the time of listing and contains the physical and biological features essential to the conservation of the species. SFASU introduced 200 plants into a seasonally flooded and low-lying wetland. Unit 6 is 0.2 mi (0.3 km) in diameter, and essential habitat features include a partially open, depressional pond, surrounded by native vegetation.

The features essential to the conservation of the species in Unit 6 may require special management considerations or protection to address the threats of management of nonnative species and native woody vegetation, maintenance of natural hydrology of the wetland, and controlled use of herbicides.

Unit 7: Davy Crockett NF, Compartment 20

Unit 7 includes 3.4 ac (1.4 ha) of Federal land on compartment 20 of the Davy Crockett NF, Houston County. The unit was occupied at the time of listing and contains the physical and biological features essential to the conservation of the species. SFASU introduced 350–400 plants in 2000, and the site was

occupied at the time of listing. Essential habitat features to the unit include the hydric alluvial soils, native woody vegetation, natural flows and hydrology of the draining pond, and an open canopy of the perennial wetland where the rose-mallow is located.

The features essential to the conservation of the species in Unit 7 may require special management considerations or protection to address the threats of management of nonnative species and native woody vegetation, maintenance of natural hydrology of the wetland, maintenance and repair of habitat from hog damage, and controlled use of herbicides.

Unit 8: Davy Crockett NF, Compartment 16

Unit 8 encompasses 32.8 ac (13.3 ha) of occupied Federal habitat on NF lands. SFASU introduced 450 plants at this site in 2000, but only 43 stem clusters were observed in 2011. The unit was occupied at the time of listing and contains the physical and biological features essential to the conservation of the species. Essential habitat and biological features include a partially open, depressional wetland within the Neches River floodplain, native riparian plant associates, and alluvial soils.

The features essential to the conservation of the species in Unit 8 may require special management considerations or protection to address the threats of management of nonnative species and native woody vegetation, maintenance of natural hydrology of the wetland, restriction of wetland conversion to beaver dams, and controlled use of herbicides.

Unit 9: Champion

The Champion site, Trinity County, is located on private land approximately 0.7 mi (1.1 km) south-southeast of the Houston County line, about 0.8 mi (1.2 km) north of the confluence of White Rock Creek and Cedar Creek (TXNDD 2012a, p. 55). The unit was occupied at the time of listing and contains the physical and biological features essential to the conservation of the species. Two small polygons are being designated as occupied critical habitat, both encompassing 1.2 ha (2.9 ac). Essential habitat features on the unit include palustrine wetlands with an open canopy.

The features essential to the conservation of the species in Unit 9 may require special management considerations or protection to address the threats of management of nonnative species and native woody vegetation, maintenance of natural hydrology of the entire site, and habitat conversion to planted pine and other hardwoods.

Unit 10: Mill Creek Gardens

Unit 10 is an introduced site at Mill Creek Gardens, Nacogdoches County. SFASU Mass Arboretum purchased the land and created the gardens in 1995 as part of a conservation agreement. The unit was occupied at the time of listing and contains the physical and biological features essential to the conservation of the species. Plants grown from cuttings by SFASU were introduced within research plots in an area that overflows from an adjacent pond. Vegetation around the site is well adapted to full and partial water inundation (TXNDD 2012a, p. 50). The unit contains 95.3 ac (38. 6 ha) of occupied habitat.

The features essential to the conservation of the species in Unit 10 may require special management considerations or protection to address the threats of management of nonnative species and native woody vegetation, maintaining natural hydrology of the entire site, and maintaining the natural hydrology of the adjacent pond.

Unit 11: Camp Olympia

Unit 11 is located on private property in Trinity County. The unit contains 0.2 ac (0.1 ha) of palustrine wetland habitat north of Lake Livingston. Warnock (1995, p. 6) suggested that the rose-mallow was highly dependent on the water levels of Lake Livingston; therefore, complete inundation of the site may cause extirpation of this population. The unit was occupied at the time of listing and contains the physical and biological features essential to the conservation of the species.

The features essential to the conservation of the species in Unit 11 may require special management considerations or protection to address the threats of management of nonnative species and native woody vegetation to maintain openness, and hydrological changes through potential site alteration or construction projects.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action that is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

Decisions by the 5th and 9th Circuit Courts of Appeals have invalidated our regulatory definition of ''destruction or adverse modification'' (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F. 3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.,* 245 F.3d 434, 442 (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally funded or authorized, do not require section 7 consultation.

As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

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

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

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are

identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies sometimes may need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Application of the ''Adverse Modification'' Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that alter the physical or biological features to an extent that appreciably reduces the conservation value of critical habitat for Texas golden gladecress and Neches River rose-mallow. As discussed above, the role of critical habitat is to support life-history needs of the species and provide for the conservation of the species. Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that may affect critical habitat, when carried out, funded, or authorized by a Federal agency, should result in consultation for the gladecress. These activities include, but are not limited to:

Actions that would significantly reduce available habitat could include, but are not limited to construction of interstate pipelines and associated structures that are regulated by the Federal Energy Regulatory Commission; U.S. Army Corps of Engineers-issued Clean Water Act section 404 and River and Harbors Act section 10 permits for wetland crossings for linear projects (pipelines, transmission lines, and roads); road development (expansions and improvements) funded by the Federal Highway Administration; and U.S. Department of Agriculture funding and technical assistance for conversion of glades and surroundings to pine plantations or for brush control programs involving herbicide applications. These actions could directly eliminate a site or alter the hydrology, open sunny aspect, and substrate conditions, reducing suitability of a location to a point that it no longer provides the environment necessary to sustain the species. In the case of some types of herbicide applications, the habitat may become unsuitable for germination and successful growth of seedlings. Activities that may affect critical habitat, when carried out, funded, or authorized by a Federal agency, should result in section 7 consultation for the rose-mallow. These activities include, but are not limited to: actions that would significantly alter flow regimes, such as impoundment, channelization, water restriction, water withdrawal, and hydropower generation.

In addition, activities that may affect critical habitat include actions that would significantly alter natural flora, such as disturbance activities like digging, disking, blading or construction work; introduction of nonnative species for erosion control along ROWs or in other areas; and a lack of management of nonnative or native woody species.

Exemptions

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

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

(1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;

(2) A statement of goals and priorities;

(3) A detailed description of management actions to be implemented to provide for these ecological needs; and

(4) A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

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

There are no Department of Defense lands within these proposed critical habitat designations.

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

Exclusions

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

designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

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

Exclusions Based on Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we are preparing an analysis of the economic impacts of the proposed critical habitat designation and related factors.

We will announce the availability of the draft economic analysis as soon as it is completed. At that time, copies of the draft economic analysis will be available for downloading from the Internet at *http://www.regulations.gov,* or by contacting the Corpus Christi Ecological Services Fish and Wildlife Office directly (see **FOR FURTHER INFORMATION CONTACT**, above). During the development of a final designation, we will consider economic impacts, public comments, and other new information, and areas may be excluded from the final critical habitat designation under section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19.

Exclusions Based on National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the Department of Defense where a national security impact might exist.

In preparing this proposal, we have determined that the lands within the proposed designation of critical habitat for the Texas golden gladecress and the Neches River rose-mallow are not owned or managed by the Department of Defense. Therefore, we anticipate no impact on national security. Consequently, the Secretary does not propose to exert his discretion to exclude any areas from the final designation based on impacts on national security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors, including whether the landowners have developed any HCPs or other management plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any tribal issues, and consider the government-to-government relationship of the United States with tribal entities. We also consider any social impacts that might occur because of the designation.

Other Exclusions

We are not considering any exclusion at this time from the proposed designation under section 4(b)(2) of the Act based on partnerships, management, or protection afforded by cooperative management efforts. In preparing this proposal, we have determined that there are currently no HCPs or other management plans for the gladecress or the rose-mallow, and the proposed designations do not include any tribal lands or trust resources.

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We have invited these peer reviewers to comment during this public comment period on our proposed listing determination and designation of critical habitat for these species.

We will consider all comments and information received during this comment period on this proposed rule during our preparation of a final determination. Accordingly, the final decision may differ from this proposal.

Public Hearings

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days after the date of publication of this proposed rule in the **Federal Register**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Required Determinations

Regulatory Planning and Review—Executive Orders 12866 and 13563

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

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

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*) as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (5 U.S.C 801 *et seq.*), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to

require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

At this time, we lack the available economic information necessary to provide an adequate factual basis for the required RFA finding. Therefore, we defer the RFA finding until completion of the draft economic analysis prepared under section 4(b)(2) of the Act and Executive Order 12866. This draft economic analysis will provide the required factual basis for the RFA finding. Upon completion of the draft economic analysis, we will announce availability of the draft economic analysis of the proposed designation in the **Federal Register** and reopen the public comment period for the proposed designation. We will include with this announcement, as appropriate, an initial regulatory flexibility analysis or a certification that the rule will not have a significant economic impact on a substantial number of small entities accompanied by the factual basis for that determination.

We have concluded that deferring the RFA finding until completion of the draft economic analysis is necessary to meet the purposes and requirements of the RFA. Deferring the RFA finding in this manner will ensure that we make a sufficiently informed determination based on adequate economic information and provide the necessary opportunity for public comment.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. We do not expect the designation of this proposed critical habitat to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment as warranted.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

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

(1) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule will significantly or uniquely affect small governments. The majority of lands being proposed for critical habitat designation are owned by private landowners, although the Federal Government and the State of Texas own small portions. None of these government entities fit the definition of ''small governmental jurisdiction.'' Therefore, a Small Government Agency Plan is not required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment as warranted.

Takings—Executive Order 12630

In accordance with Executive Order 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we will analyze the potential takings implications of designating critical habitat for Texas golden gladecress and Neches River rose-mallow in a takings implications assessment. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward.

Federalism—Executive Order 13132

In accordance with Executive Order 13132 (Federalism), this proposed rule does not have significant Federalism effects. A Federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies in Texas. The designation may have some benefit to these governments because the areas that contain the physical or biological features essential to the conservation of the species are more clearly defined, and the elements of the features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may

affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. This proposed rule uses standard property descriptions and identifies the elements of physical or biological features essential to the conservation of the Texas golden gladecress and Neches River rose-mallow within the designated areas to assist the public in understanding the habitat needs of the species.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

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

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), need not be prepared under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to NEPA in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).]

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes.

We determined that there are no tribal lands that are occupied by the gladecress or the rose-mallow that contain the features essential for conservation of either species, and no tribal lands unoccupied by the gladecress or the rose-mallow that are essential for the conservation of the species. Therefore, we are not proposing to designate critical habitat for the gladecress or the rose-mallow on tribal lands.

References Cited

A complete list of references cited in this rulemaking is available on the Internet at *http://www.regulations.gov* at Docket No. FWS–R2–ES–2012–0064 and upon request from the Corpus Christi Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this package are the staff members of the Corpus Christi Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

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

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding entries for ''*Hibiscus dasycalyx''* and *''Leavenworthia texana''* to the List of Endangered and Threatened Plants in alphabetical order under ''Flowering Plants'', to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	* *		*	*	*	*	
Hibiscus dasycalyx	Neches River rose-mallow	U.S.A. (TX).	Malvaceae	T	.....	17.96(a)	NA
*	* *		*	*	*	*	
Leavenworthia texana	Texas golden gladecress ..	U.S.A. (TX).	Brassicaceae	E	.....	17.96(a)	NA
*	* *		*	*	*	*	

3. Amend § 17.96(a) by adding an entry for ''*Leavenworthia texana* (Texas golden gladecress)'' in alphabetical order under the family Brassicaceae and an entry for ''*Hibiscus dasycalyx* (Neches River rose-mallow)'' in alphabetical order under the family Malvaceae, to read as follows:

§ 17.96 Critical habitat—plants.

(a) *Flowering plants.*

* * * * *

Family Brassicaceae: *Leavenworthia texana* (Texas golden gladecress)

(1) Critical habitat units are depicted for San Augustine and Sabine Counties, Texas, on the maps below.

(2) Within these areas, the primary constituent elements of the physical or biological features essential to the conservation of *Leavenworthia texana* consist of the three primary constituent elements identified for the species:

(i) Exposed outcrops of the Weches Formation within Weches prairies. Within the outcrop sites, there must be bare, exposed bedrock on top-level surfaces or rocky ledges with small depressions where rainwater or seepage can collect. The prairie openings should support Weches Glade herbaceous plant communities.

(ii) Thin layers of rocky, alkaline soils, underlain by glauconite clay (greenstone, ironstone, bluestone), that are found only on the Weches Formation. Appropriate soils are in the series classifications Nacogdoches clay loam, Trawick gravelly clay loam, or Bub clay loam, ranging in slope from 1–15 percent.

(iii) The outcrop ledges should occur within the glade such that Texas golden gladecress plants remain unshaded for a significant portion of the day, and trees should be far enough away from the outcrop(s) that leaves do not accumulate within the gladecress habitat. The habitat should be relatively clear of nonnative and native invasive plants, especially woody species, or with only a minimal level of invasion.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, well pads, metering stations, other paved areas, or unpaved roads) and the land on which they are located, existing within the legal boundaries on [DATE 30 DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE].

(4) *Critical habitat map units.* Soil Survey Geographic Dataset (SSURGO) was used as a base map layer. SSURGO is an updated digital version of the National Resource Conservation Service (NRCS) county soil surveys. SSURGO uses recent digital orthophotos and fieldwork to update the original printed surveys. Data layers defining map units were created using the Texas golden gladecress' restriction to the Weches Formation and its tight association with the three soil map units: Nacogdoches clay loam 1–5 percent slope, Trawick gravelly clay loam 5–15 percent slope, or Bub clay loam 2–5 percent slope. In San Augustine and Sabine Counties, these soil types are restricted to the Weches Formation. Locations of all known gladecress populations, as well as potential glade sites, were overlaid on the three aforenamed soil mapping units from the San Augustine and Sabine County's soils survey. Potential glade sites were identified using soil map units and a time series of aerial photographs that depicted changes in land cover. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's internet site, at *http://www.fws.gov/southwest/es/ElectronicLibrary/ElectronicLibrary_Main.cfm, http://www.regulations.gov* at Docket No. FWS–R2–ES–2012–0064 and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) Index map follows:

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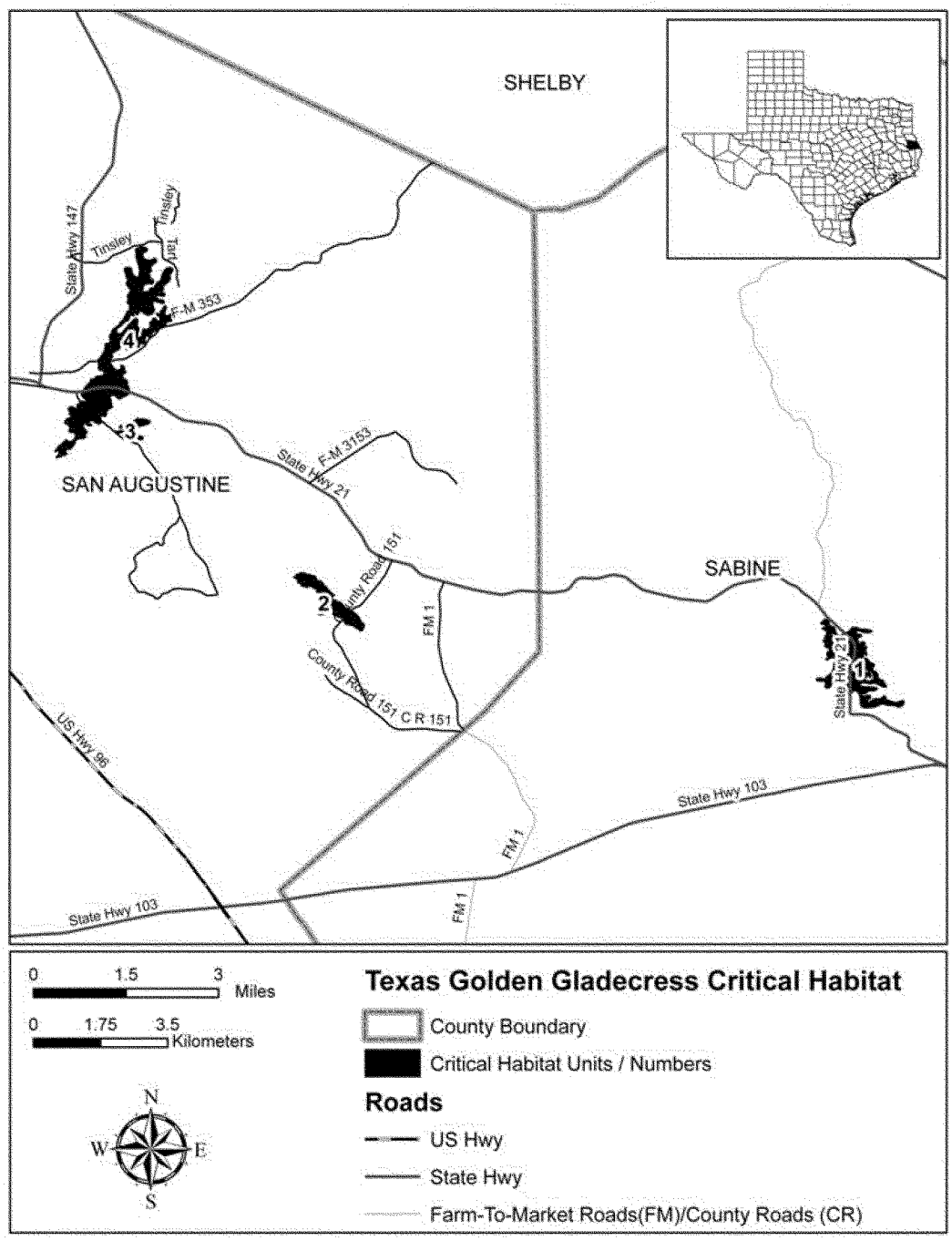
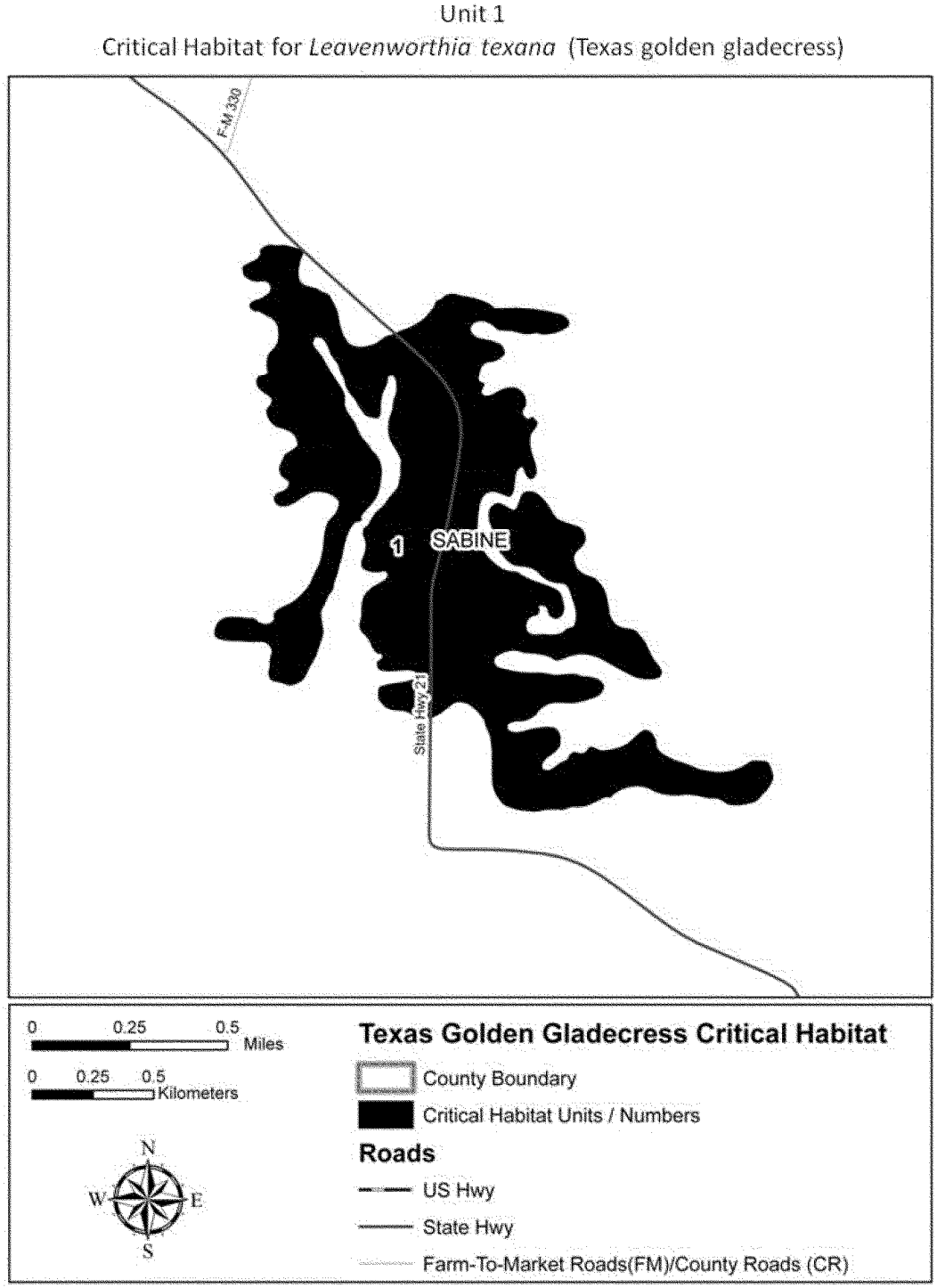
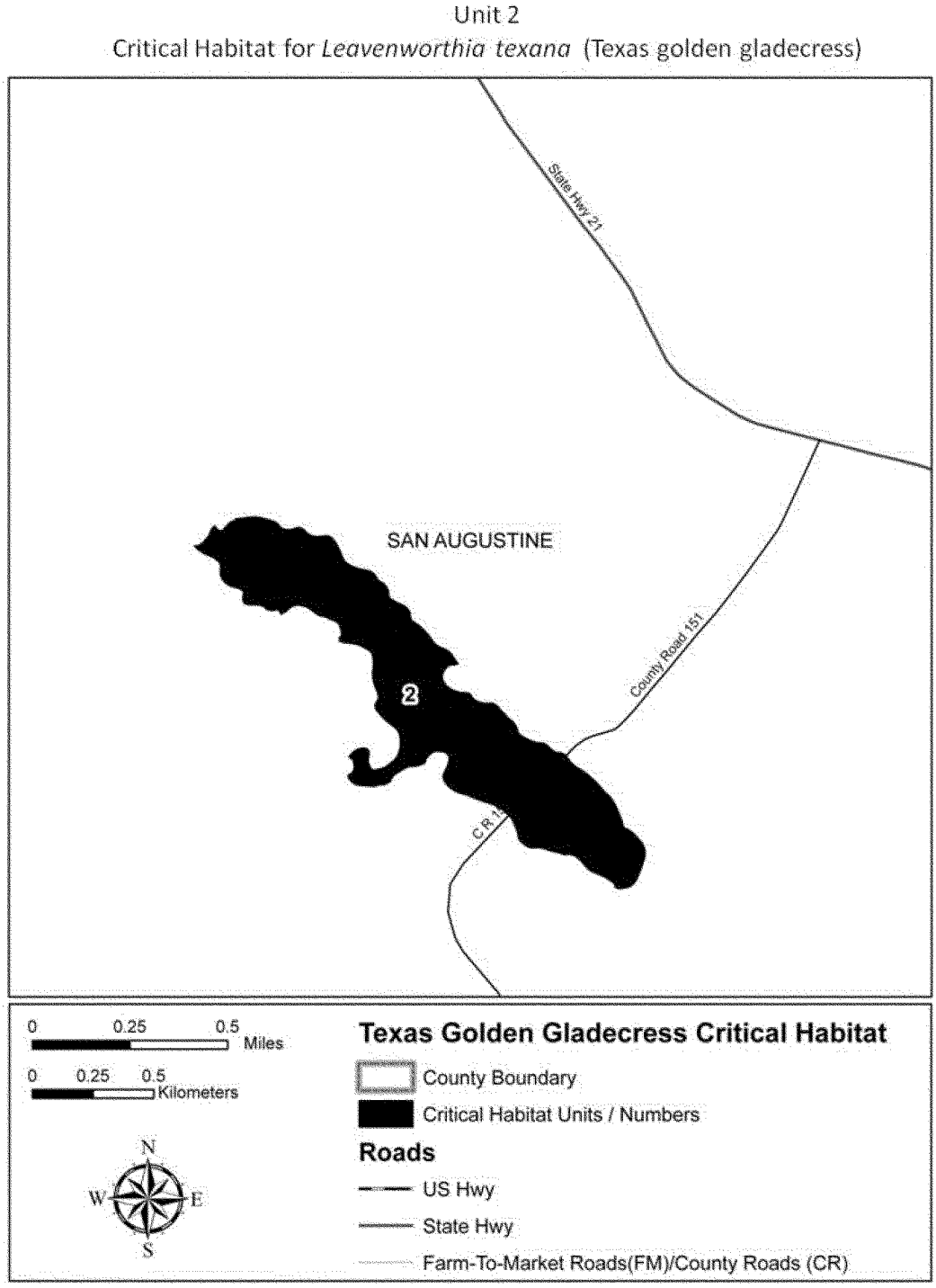
Index Map
Critical Habitat for *Leavenworthia texana* (Texas golden gladecress)



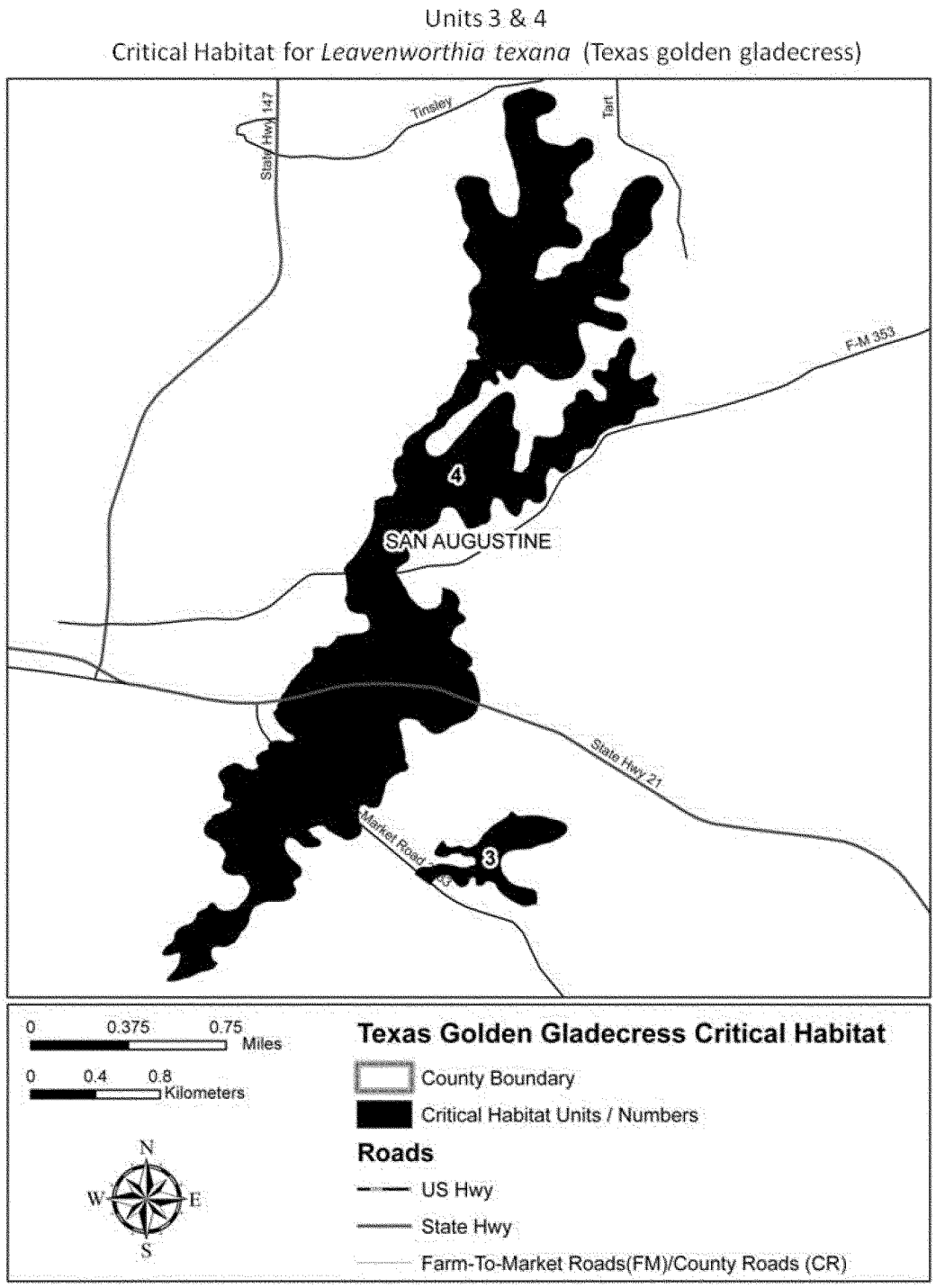
(6) Unit 1: Geneva Unit, Sabine County, Texas. Map of Unit 1 follows:



(7) Unit 2: Chapel Hill, San Augustine County. Map of Unit 2 follows:



(10) Unit 3: Southeast Caney Creek Glades, San Augustine County, Texas. Map of Units 3 and 4 follows:



BILLING CODE 4310–55–C

(11) Unit 4: Northwest Caney Creek Glades, San Augustine County, Texas. Map of Unit 4 is depicted in paragraph (10) of this entry.

* * * * *

Family Malvaceae: *Hibiscus dasycalyx* (Neches River rose-mallow)

(1) Critical habitat units are depicted for Cherokee, Harrison, Houston, Nacogdoches, and Trinity Counties, Texas, on the maps below.

(2) Within these areas, the primary constituent element of the physical or biological features essential to the conservation of *Hibiscus dasycalyx* is intermittent or perennial wetlands within the Neches River floodplains or Mud and Tantabogue Creek basins that contain:

(i) Hydric alluvial soils and flowing water when found in depressional sloughs, oxbows, terraces, side channels, or sand bars; and

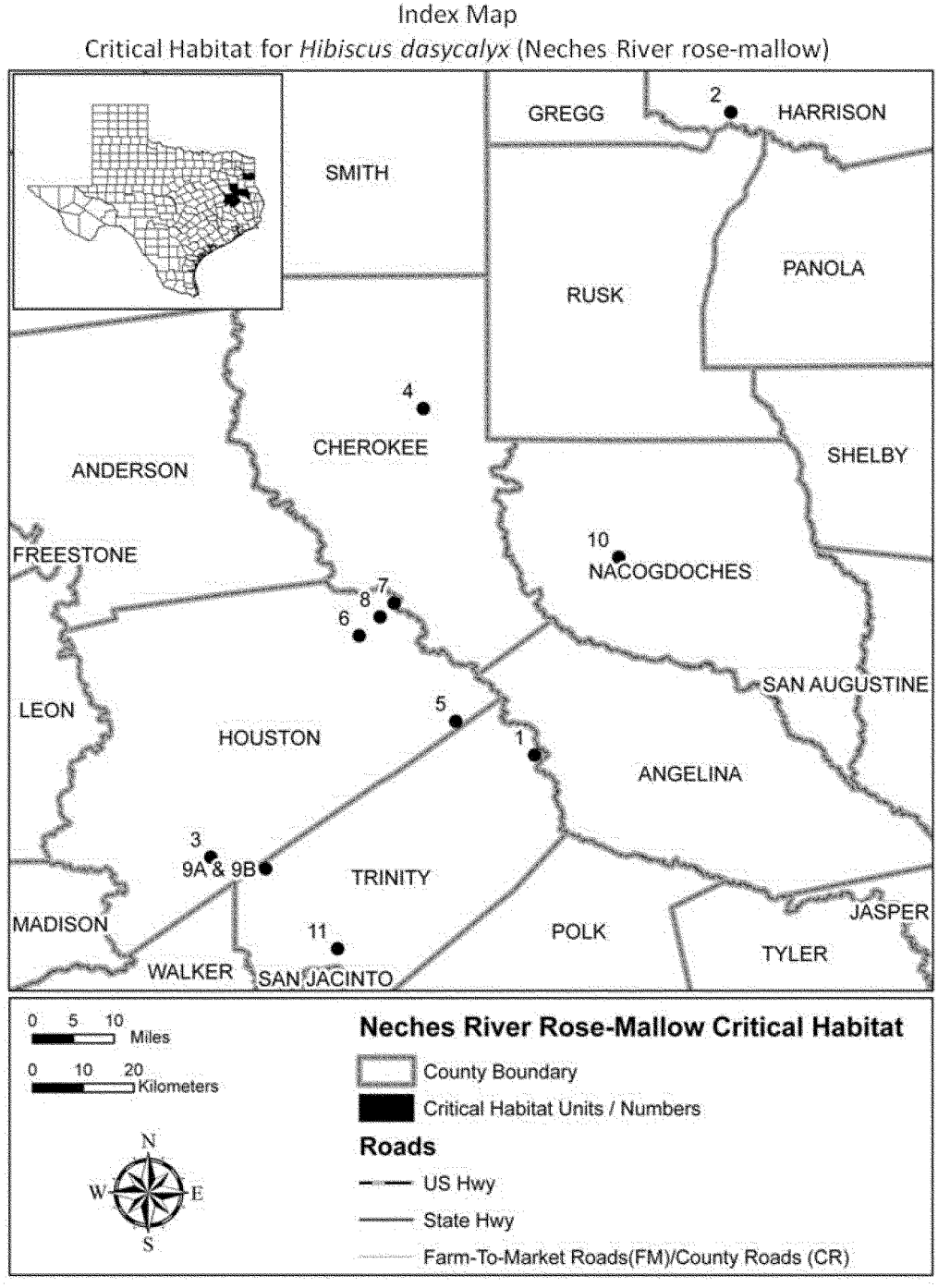
(ii) Native woody or associated herbaceous vegetation that has an open canopy providing partial to full sun exposure without nonnative species.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, ROWs, and other paved areas) and the land on which they are located existing within the legal boundaries on [DATE 30 DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE].

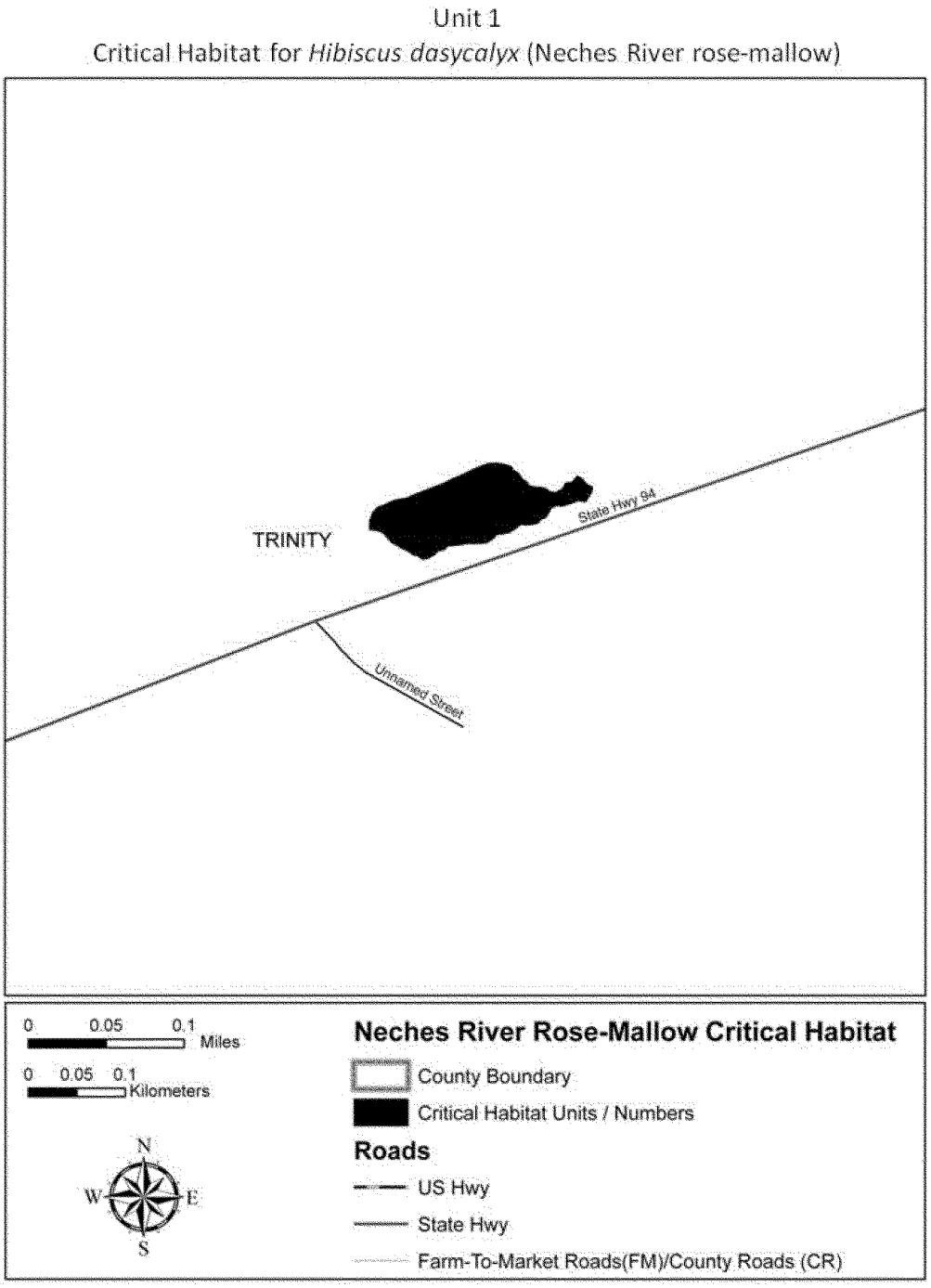
(4) *Critical habitat map units.* Data layers defining map units were created on a base of Strategic Mapping Program (StratMap) digital orthophoto quarter-quadrangles (DOQQs), with layers for boundaries and roads. The Service's National Wetlands Inventory maps for the appropriate USGS quads were also downloaded as layers. Critical habitat units were mapped using Geographic Coordinate System (GCS), North American, 1983. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's internet site, at *http://www.fws.gov/southwest/es/ElectronicLibrary/ElectronicLibrary_Main.cfm, http://www.regulations.gov* at Docket No. FWS–R2–ES–2012–0064 and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) Index map follows:

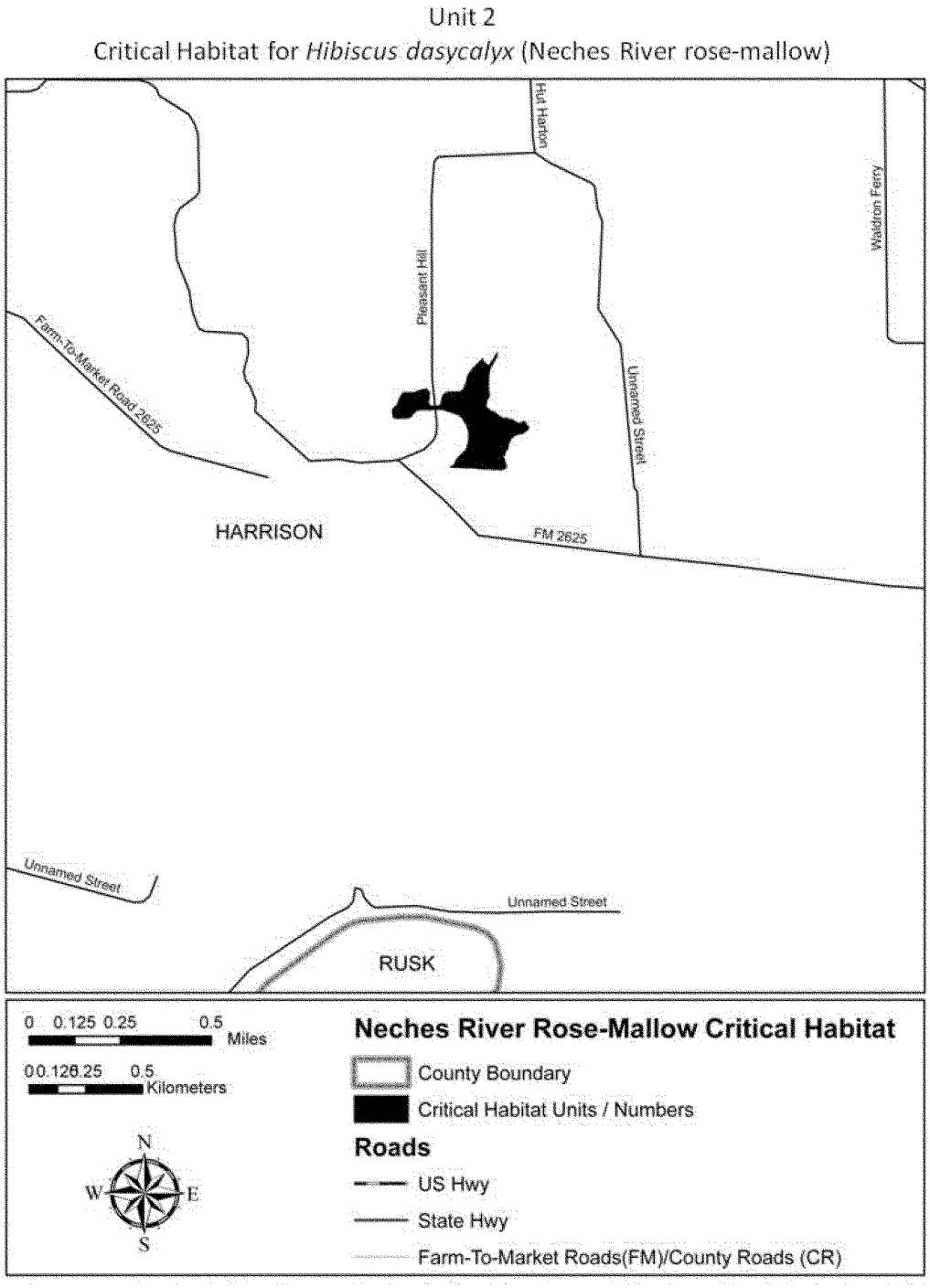
BILLING CODE 4310–55–P



(6) Unit 1: Highway 94 ROW, Trinity County, Texas. Map of Unit 1 follows:



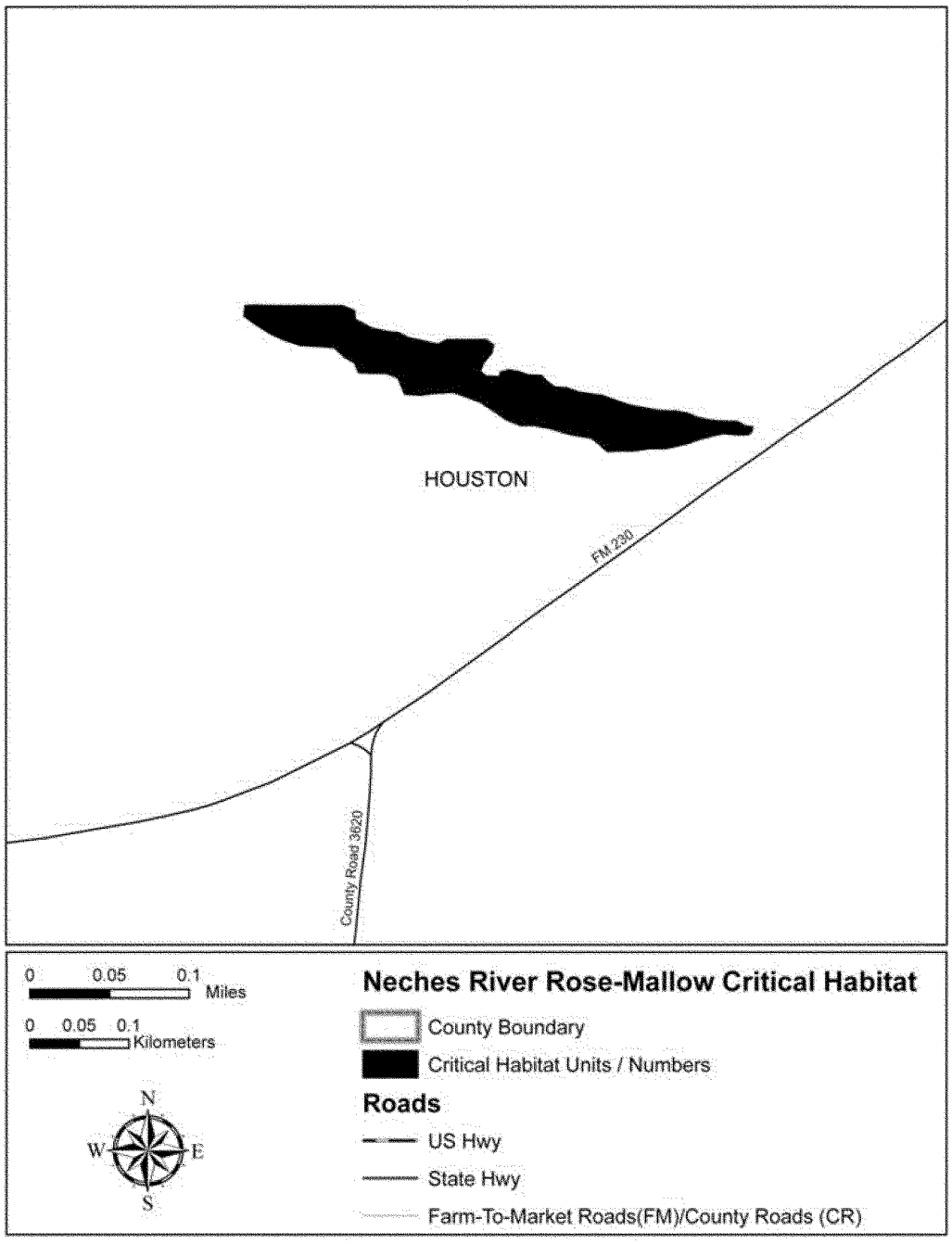
(7) Unit 2: Harrison site, Harrison County, Texas. Map of Unit 2 follows:



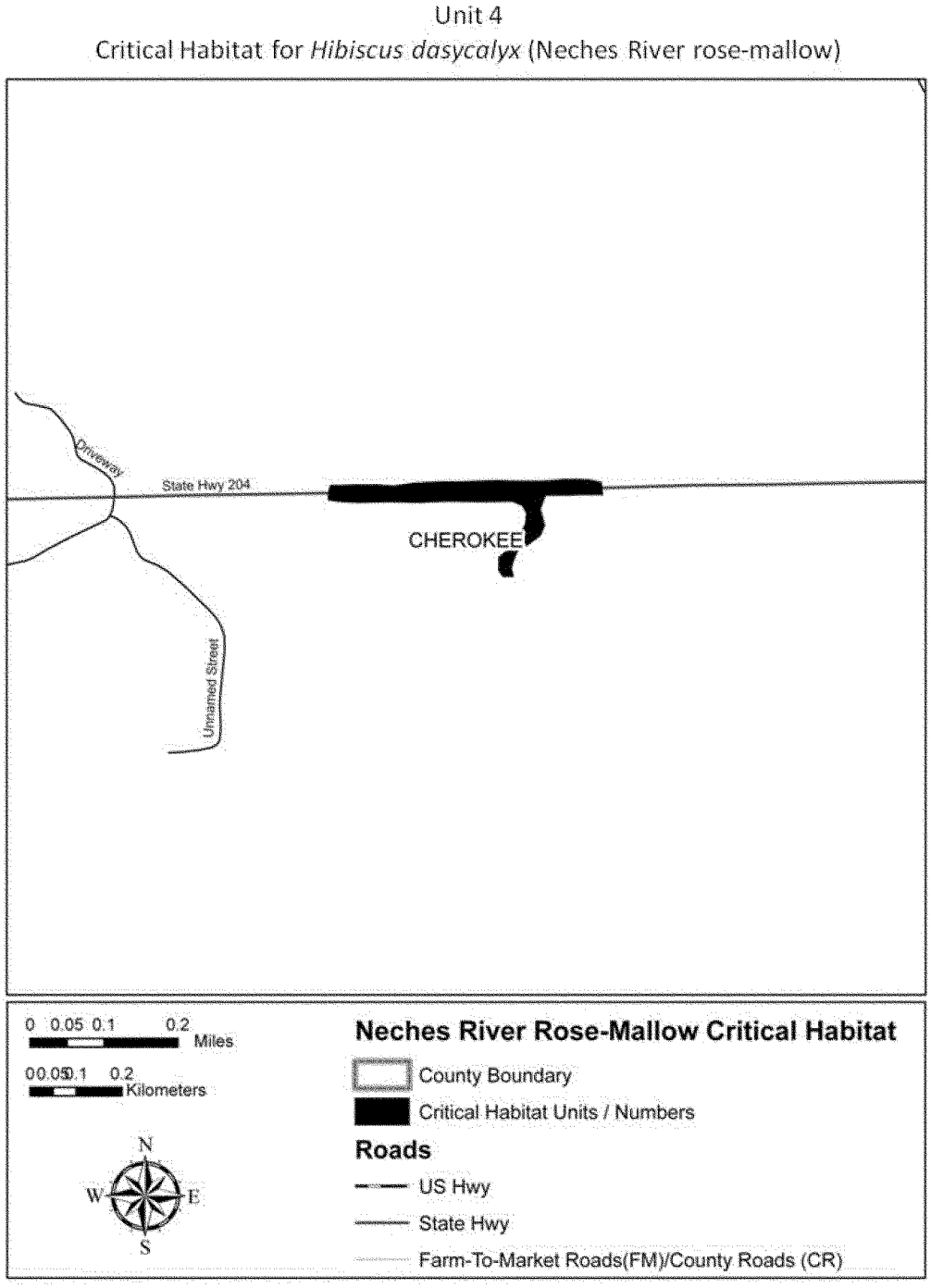
(8) Unit 3: Lovelady, Houston County, Texas. Map of Unit 3 follows:

Unit 3

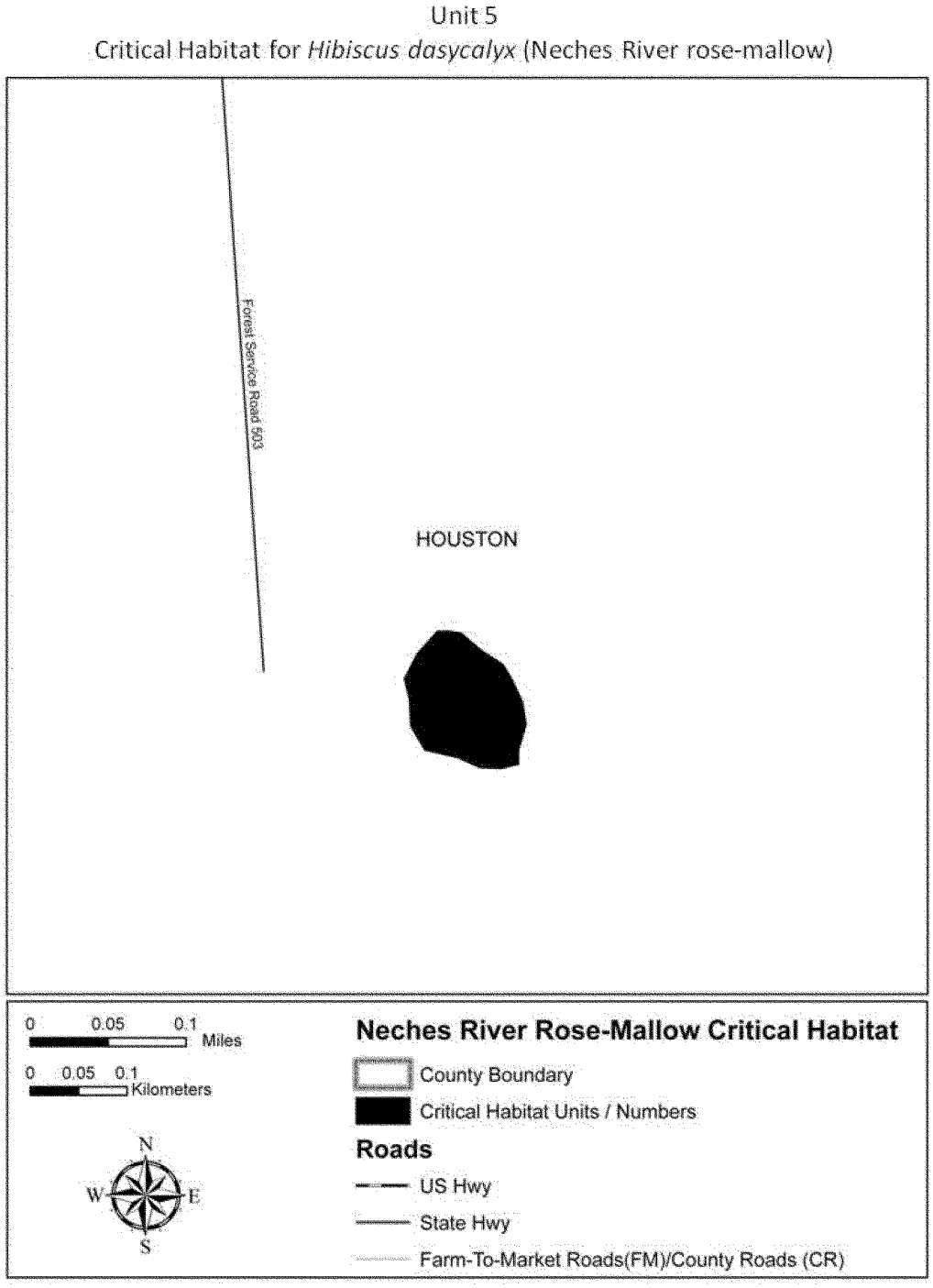
Critical Habitat for *Hibiscus dasycalyx* (Neches River rose-mallow)



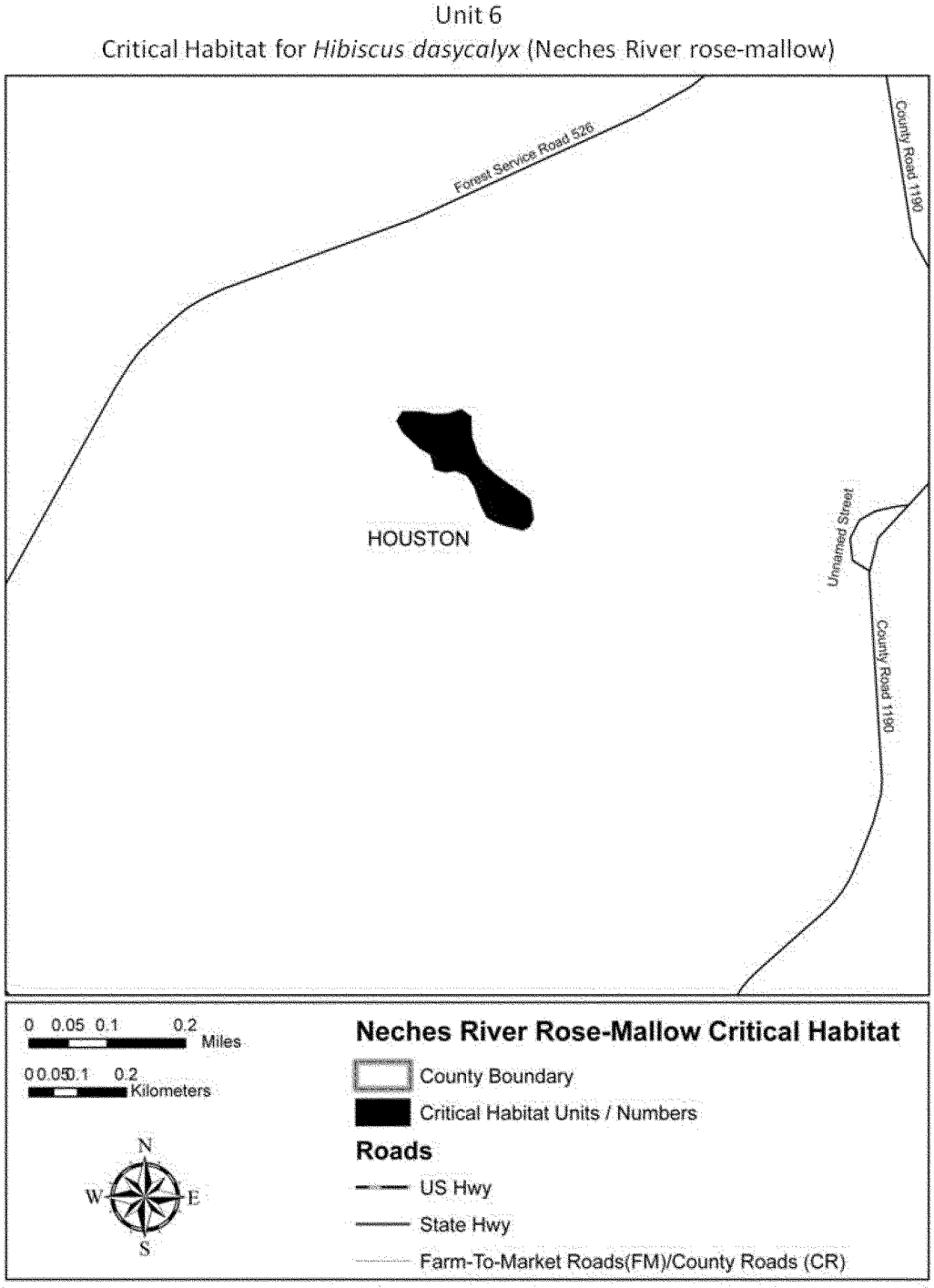
(9) Unit 4: Highway 204 ROW, Cherokee County, Texas. Map of Unit 4 follows:



(10) Unit 5: Davy Crockett National Forest, compartment 55, Houston County, Texas. Map of Unit 5 follows:



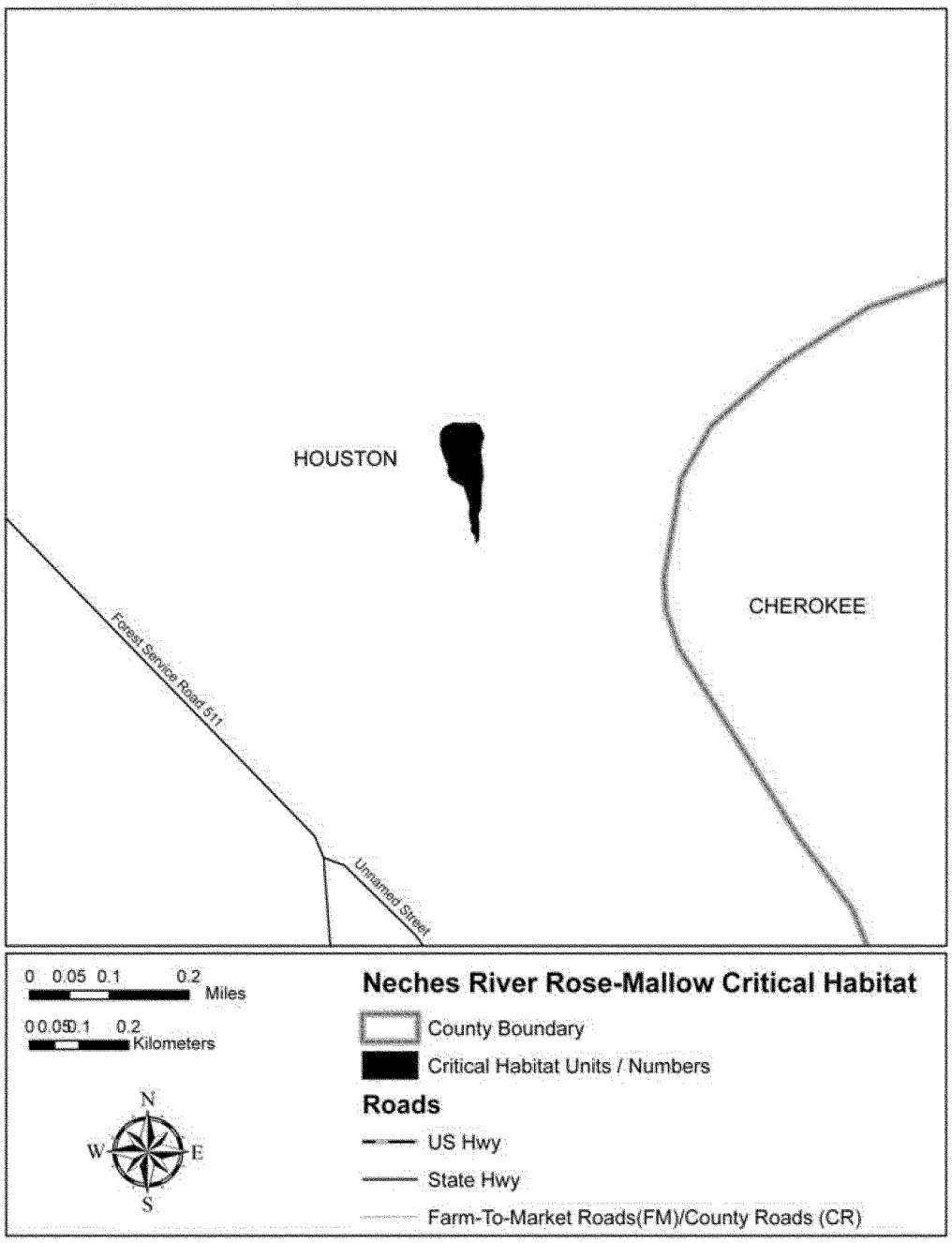
(11) Unit 6: Davy Crockett NF, compartment 11, Houston County, Texas. Map of Unit 6 follows:



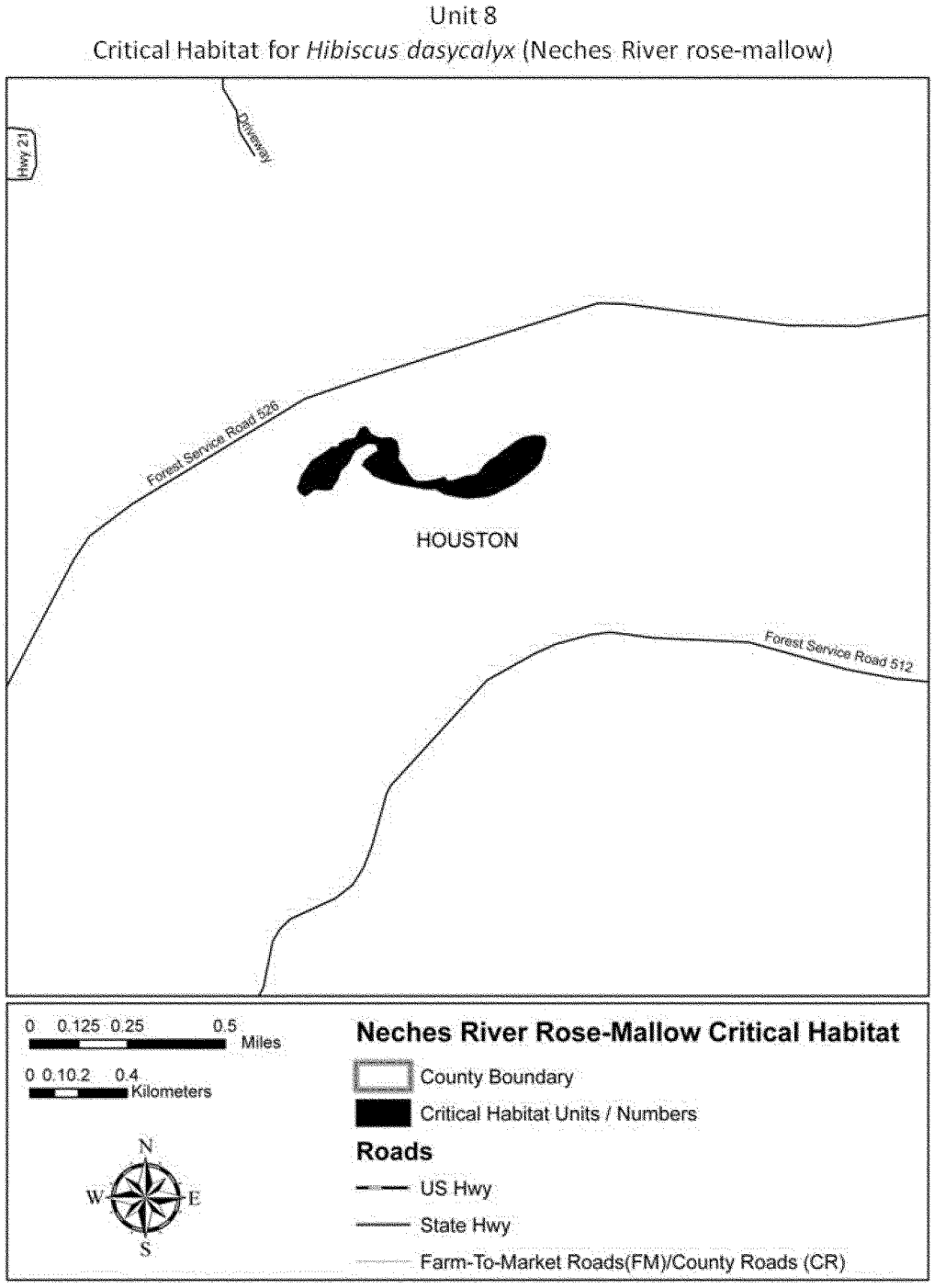
(12) Unit 7: Davy Crockett NF, compartment 20, Houston County, Texas. Map of Unit 7 follows:

Unit 7

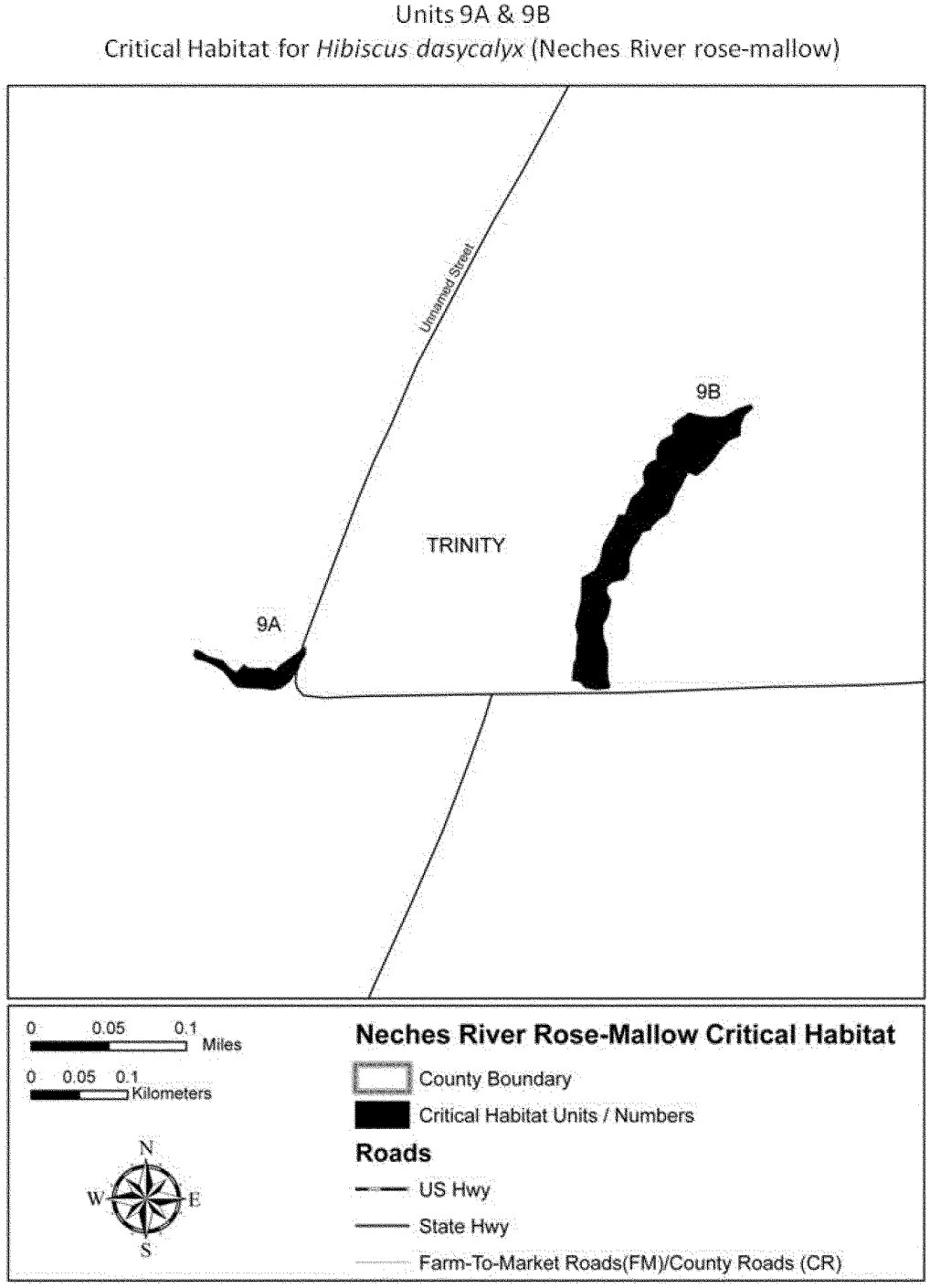
Critical Habitat for *Hibiscus dasycalyx* (Neches River rose-mallow)



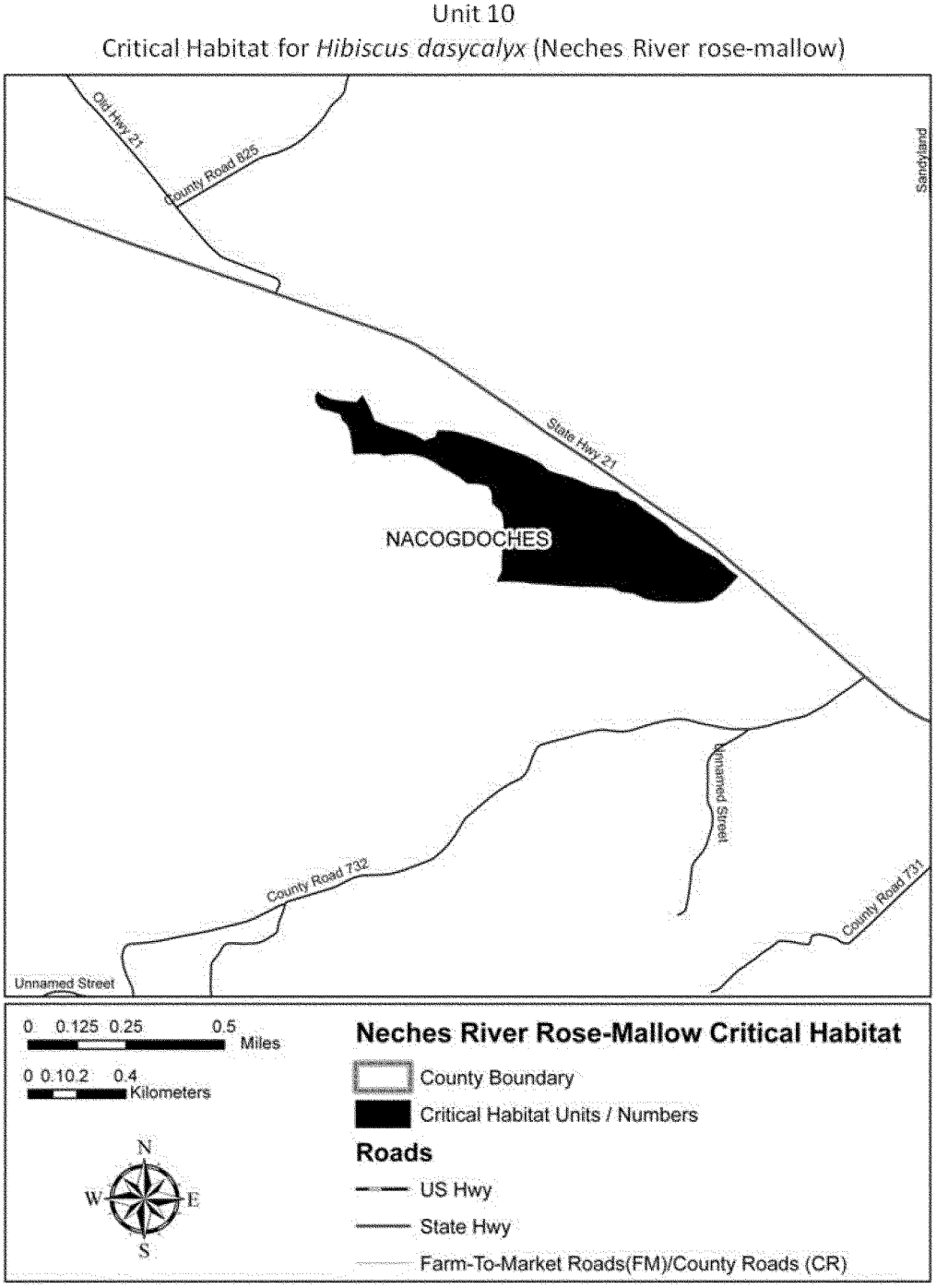
(13) Unit 8: Davy Crockett NF, compartment 16, Houston County, Texas. Map of Unit 8 follows:



(14) Unit 9: Champion site, Trinity County, Texas. Map of Unit 9 follows:



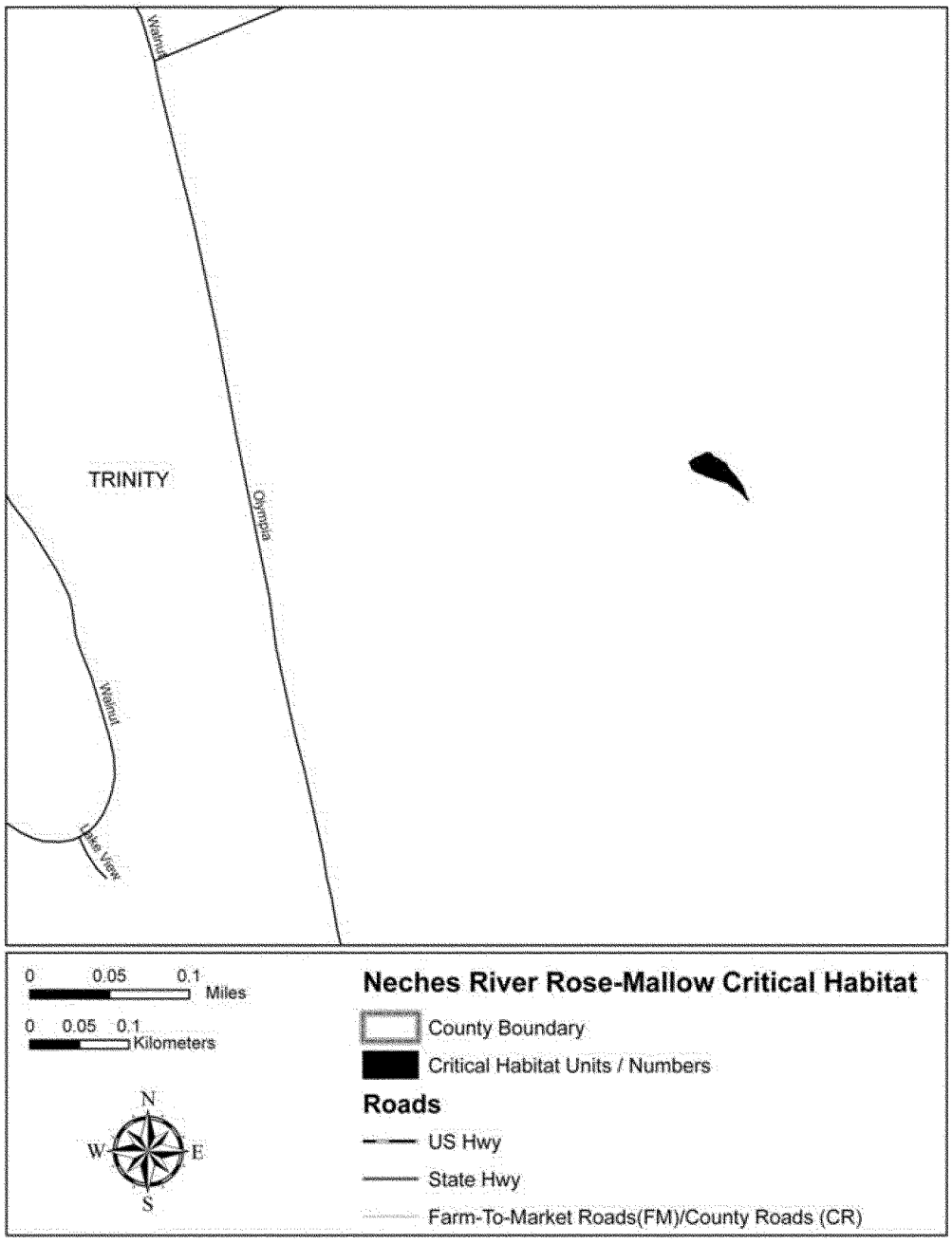
(15) Unit 10: Mill Creek Gardens, Nacogdoches County, Texas. Map of Unit 10 follows:



(16) Unit 11: Camp Olympia, Trinity County, Texas. Map of Unit 11 follows:

Unit 11

Critical Habitat for *Hibiscus dasycalyx* (Neches River rose-mallow)



* * * * *

Dated: August 28, 2012.

Michael J. Bean,

Acting Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2012–22061 Filed 9–10–12; 8:45 am]

BILLING CODE 4310–55–C



FEDERAL REGISTER

Vol. 77 Tuesday,
No. 176 September 11, 2012

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 32
2012–2013 Refuge-Specific Hunting and Sport Fishing Regulations; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

[Docket No. FWS–R9–NWRS–2012–0022; FXRS126509000004A–123–FF09R20000]

RIN 1018–AY37

2012–2013 Refuge-Specific Hunting and Sport Fishing Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service adds one refuge to the list of areas open for hunting and/or sport fishing, closes one refuge to hunt activities, closes one hunt opportunity at one refuge, and increases the hunting activities available at 16 other refuges, along with pertinent refuge-specific regulations on other refuges that pertain to migratory game bird hunting, upland game hunting, big game hunting, and sport fishing for the 2012–2013 season.

DATES: This rule is effective September 11, 2012.

FOR FURTHER INFORMATION CONTACT: Leslie A. Marler, (703) 358–2397.

SUPPLEMENTARY INFORMATION: The National Wildlife Refuge System Administration Act of 1966 closes national wildlife refuges in all States except Alaska to all uses until opened. The Secretary of the Interior (Secretary) may open refuge areas to any use, including hunting and/or sport fishing, upon a determination that such uses are compatible with the purposes of the refuge and National Wildlife Refuge System (Refuge System or our/we) mission. The action also must be in accordance with provisions of all laws applicable to the areas, developed in coordination with the appropriate State fish and wildlife agency(ies), consistent with the principles of sound fish and wildlife management and administration, and otherwise in the public interest. These requirements ensure that we maintain the biological integrity, diversity, and environmental health of the Refuge System for the benefit of present and future generations of Americans.

We annually review refuge hunting and sport fishing programs to determine whether to include additional refuges or whether individual refuge regulations governing existing programs need modifications. Changing environmental conditions, State and Federal regulations, and other factors affecting fish and wildlife populations and habitat may warrant modifications to refuge-specific regulations to ensure the continued compatibility of hunting and sport fishing programs and to ensure that these programs will not materially interfere with or detract from the fulfillment of refuge purposes or the Refuge System's mission.

Provisions governing hunting and sport fishing on refuges are in title 50 of the Code of Federal Regulations in part 32 (50 CFR part 32). We regulate hunting and sport fishing on refuges to:

- Ensure compatibility with refuge purpose(s);
- Properly manage the fish and wildlife resource(s);
- Protect other refuge values;
- Ensure refuge visitor safety; and
- Provide opportunities for quality fish- and wildlife-dependent recreation.

On many refuges where we decide to allow hunting and sport fishing, our general policy of adopting regulations identical to State hunting and sport fishing regulations is adequate in meeting these objectives. On other refuges, we must supplement State regulations with more-restrictive Federal regulations to ensure that we meet our management responsibilities, as outlined in the ''Statutory Authority'' section. We issue refuge-specific hunting and sport fishing regulations when we open wildlife refuges to migratory game bird hunting, upland game hunting, big game hunting, or sport fishing. These regulations list the wildlife species that you may hunt or fish, seasons, bag or creel (container for carrying fish) limits, methods of hunting or sport fishing, descriptions of areas open to hunting or sport fishing, and other provisions as appropriate. You may find previously issued refuge-specific regulations for hunting and sport fishing in 50 CFR part 32. In this rulemaking, we are also proposing to standardize and clarify the language of existing regulations.

Statutory Authority

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee, as amended by the National Wildlife Refuge System Improvement Act of 1997 [Improvement Act]) (Administration Act), and the Refuge Recreation Act of 1962 (16 U.S.C. 460k–460k–4) (Recreation Act) govern the administration and public use of refuges.

Amendments enacted by the Improvement Act, built upon the Administration Act in a manner that provides an ''organic act'' for the Refuge System, are similar to those that exist for other public Federal lands. The Improvement Act serves to ensure that we effectively manage the Refuge System as a national network of lands, waters, and interests for the protection and conservation of our Nation's wildlife resources. The Administration Act states first and foremost that we focus our Refuge System mission on conservation of fish, wildlife, and plant resources and their habitats. The Improvement Act requires the Secretary, before allowing a new use of a refuge, or before expanding, renewing, or extending an existing use of a refuge, to determine that the use is compatible with the purpose for which the refuge was established and the mission of the Refuge System. The Improvement Act established as the policy of the United States that wildlife-dependent recreation, when compatible, is a legitimate and appropriate public use of the Refuge System, through which the American public can develop an appreciation for fish and wildlife. The Improvement Act established six wildlife-dependent recreational uses as the priority general public uses of the Refuge System. These uses are: hunting, fishing, wildlife observation and photography, and environmental education and interpretation.

The Recreation Act authorizes the Secretary to administer areas within the Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that doing so is practicable and not inconsistent with the primary purpose(s) for which Congress and the Service established the areas. The Recreation Act requires that any recreational use of refuge lands be compatible with the primary purpose(s) for which we established the refuge and not inconsistent with other previously authorized operations.

The Administration Act and Recreation Act also authorize the Secretary to issue regulations to carry out the purposes of the Acts and regulate uses.

We develop specific management plans for each refuge prior to opening it to hunting or sport fishing. In many cases, we develop refuge-specific regulations to ensure the compatibility of the programs with the purpose(s) for which we established the refuge and the Refuge System mission. We ensure initial compliance with the Administration Act and the Recreation Act for hunting and sport fishing on newly acquired refuges through an interim determination of compatibility made at or near the time of acquisition. These regulations ensure that we make the determinations required by these acts prior to adding refuges to the lists of areas open to hunting and sport fishing in 50 CFR part 32. We ensure continued compliance by the

development of comprehensive conservation plans, specific plans, and by annual review of hunting and sport fishing programs and regulations.

Response to Comments Received

In the July 11, 2012, **Federal Register** (77 FR 41002), we published a proposed rulemaking identifying changes pertaining to migratory game bird hunting, upland game bird hunting, big game hunting, and sport fishing to existing refuge-specific language on certain refuges for the 2012–2013 season. We received 33 comments on this proposed rule during a 30-day comment period; 9 of those comments were supportive of the rulemaking; 16 were opposed to our ban of falconry on a specific refuge; and several were opposed to allowing hunting at all on our refuges.

Comment 1: Numerous commenters expressed concern regarding a proposed prohibition on falconry at Hagerman National Wildlife Refuge in the State of Texas. They state we offered no explanation in the Cumulative Impacts Report and no environmental, biological, or other such scientific justification for this prohibition. They contend that falconry is a legal means of hunting/take in the State of Texas as it is in 49 of the 50 States. They object strongly to what appears to be ''prejudicial and a denied equitable public opportunity'' on the refuge and request that we remove such a bias from the regulations by allowing falconry.

Response 1: During the recent National Environmental Policy Act (NEPA) process to open Hagerman National Wildlife Refuge (NWR) to two new hunts (wild turkey and feral hog), we did not address impacts of falconry as it is not a legal means of take for wild turkey in Texas and unfeasible for feral hog hunting. Falconry for any species has never occurred on the refuge. Therefore, we have completed no assessment of short-term, long-term, or cumulative impacts related to this type of special hunt.

The only migratory game bird hunting currently or historically allowed on Hagerman NWR is for mourning dove. We have allowed mourning dove hunting by shotguns only in the Big Mineral Management Unit of Hagerman NWR from September 1 through 30, annually, since 1985.

In Texas, the Statewide falconry season for doves is from mid-November to mid-December (dates fluctuate annually). This is outside of the refuge's open season for dove hunting, and during this time, limited permit archery deer hunting is in progress at the refuge. By law, refuges may be more conservative than the States when setting their individual refuge-specific regulations but not more liberal.

Regarding policy specific to falconry, Service policy 605 FW 2.7M Special Hunts, stipulates, ''We will address special types of hunts, such as falconry, in the hunt section of the visitor service plan (VSP).'' In other words, each refuge manager when developing their step-down visitor service's plan (which would include a hunt plan, if appropriate) from their Comprehensive Conservation Plan, must first determine if hunting is compatible. Assuming it is found to be compatible, the refuge manager would next determine the conduct of the hunt which might include the use of falconry. A refuge manager has discretion to prohibit hunting, and specifically falconry, in certain cases such as if endangered or threatened species are present; thus, this issue is decided individually on a refuge-by-refuge basis.

Other than the issue of our dove season falling outside of the State of Texas' season for falconry, there is concern regarding the potential take of nontarget species if we allowed falconry for migratory game bird hunting at Hagerman NWR. For example, mourning doves and Inca doves (which occur around Hagerman NWR) are similar in appearance and size, with the mourning dove being only slightly larger. While mourning doves are a legal species to hunt, Inca doves are a protected species. Also, bird species listed as federally or State threatened or endangered, including interior least tern (nesting site) and piping plover, forage on the refuge during spring and fall migration. We are making no change to the regulation as a result of this comment.

Comment 2: A commenter noted that Minnesota Valley NWR in the State of Minnesota is located in a more suburban setting and is mixed use for the hunting and nonhunting public. The commenter feels there should be better parking access in the spring for turkey hunters to minimize contact with the nonhunting users of the Wilkie Unit of the refuge.

Response 2: Minnesota Valley NWR is constructing an additional parking lot and making improvements to the existing parking lot, both of which the refuge manager expects to complete by early fall 2012. The new parking lot will accommodate approximately 15 vehicles with options for overflow parking. The improvements to the second parking lot, which accommodates approximately 25 vehicles, will include additional signage and surface improvements. We will still allow hunters to use the current parking lot along with other refuge visitors. We believe that these improvements will ease congestion for all users of Minnesota Valley NWR and enhance the visitor's enjoyment of refuge resources. We are making no change to the regulation as a result of this comment.

Comment 3: A commenter felt that the ''working population of America needs more than 30 days to comment. 60 days or 3 months would be more appropriate.''

Response 3: We disagree that the 30-day public comment period is insufficient. The process of opening refuges is done in stages, with the fundamental work being done on the ground at the refuge and in the community where the program is administered. In these stages, the public is provided other opportunities to comment, for example, on the comprehensive conservation plans, the compatibility determinations, on the hunt plans, and on accompanying NEPA documents. The final stage for public comment is when we publish the proposed rule in the **Federal Register**, commonly providing a 30-day comment period.

We make every attempt to collect all of the proposals from the refuges nationwide and process them expeditiously to maximize the time available for public review. We believe that a 30-day comment period, through the broader publication following the earlier public involvement, gives the public sufficient time to comment and allows us to establish hunting and fishing programs in time for the upcoming seasons. Many of these rules also relieve restrictions and allow the public to participate in wildlife-dependent recreational activities for the first time on a number of refuges. Even after issuance of a final rule, we accept comments, suggestions, and concerns for consideration for any appropriate subsequent rulemaking. We are making no changes to the regulation as a result of this comment.

Comment 4: A commenter felt that the name, National Bison National Wildlife Refuge, should remain unchanged, and it should be a refuge.

Response 4: The commenter is referring to amendment (e) we made to 50 CFR 32.7 where we revised the entry for ''National Bison National Wildlife Refuge'' to read ''National Bison Range'' and placed it in alphabetical order in the State of Montana. This was a technical amendment change to the regulation. The proper name of the National Bison Range has always been National Bison Range since its establishment in an amendment by

Senator Dixon of Montana to an agriculture bill on May 23, 1908. We are correcting the way the refuge name is listed in the Code of Federal Regulations to reflect the legal name of the refuge. We are making no changes to the regulation as a result of this comment.

Comment 5: A commenter stated, ''the number of hunters has been diminishing every single year, there are fewer hunters in 2012 than there were in 2006 so why is this agency using 2006 numbers when a 2011 report has been bought and paid for by us general taxpayers.''

Response 5: The economists use the most up-to-date data available to them when calculating hunter numbers to determine the economic impacts. The national numbers are updated every 5 years then another year is needed to tabulate and incorporate this data into the databases and produce a new survey. The 2006 National Survey of Fishing, Hunting, and Wildlife Associated Recreation provides the national estimates of expenditures for food and lodging, transportation and other incidental expenses. The revised survey (issued jointly by the Service and the Department of Commerce) will not be available until November 2012. We are making no changes to the regulation as a result of this comment.

Comment 6: A commenter opined that ''killing wildlife is not an acceptable use for a refuge, you even misuse the word refuge.''

Response 6: The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–ee), amended by the 1997 National Wildlife Refuge System Improvement Act (Pub. L. 105–57), stipulates that hunting (along with fishing, wildlife observation and photography, and environmental education and interpretation), if found to be compatible, is a legitimate and priority general public use of a refuge and should be facilitated. The Administration Act authorizes the Secretary to allow use of any refuge area for any purpose as long as those uses are compatible. In the case of each refuge opening/expansion in this rule, the refuge managers went through the compatibility process (which allows for public comment), in addition to complying with NEPA, which also allows for public comment, to make the determination before opening or expanding the refuge to allow for hunting. We are making no changes to the regulation as a result of this comment.

Comment 7: A commenter felt that the [National Wildlife Refuge System Administration Act] 1966 law is ''too old to use as a plan since this is 2012 and massive changes in both habitat and climate [have occurred] since this law was passed.''

Response 7: The National Wildlife Refuge System Administration Act of 1966, as amended, (as referenced and described in some detail in the Statutory Authority section of this rule) is foundational legislation for the National Wildlife Refuge System. The 1997 National Wildlife Refuge System Improvement Act amended the 1966 Act as described in Response 6. Congress determines when changes to law are necessary and appropriate. Further, refuge managers do take changes in habitat and climate into consideration when deciding whether to open or continue hunting and/or fishing activities on national wildlife refuges. These discussions take place when the refuge managers develop their comprehensive conservation plans and then their step-down hunting and/or fishing plans. Those plans are modified when and if situations change on the refuge affecting their hunting and/or fishing programs. We are making no changes to the regulation as a result of this comment.

Comment 8: Several commenters felt that the use of lead shot (Pb) was inappropriate on national wildlife refuges. One commenter expanded this thought to state that they believed that we should extend the ban ''on nontoxic shot to all firearms ammunition, especially center-fire and rim-fire lead-based bullets.'' They ask that we consider developing and implementing an aggressive education outreach program on all national wildlife refuges informing users about the dangers related to the deposition of all traditional Pb-based hunting ammunition and fishing tackle.

Response 8: This rule contains amendments to 94 refuges. Lead shot for waterfowl hunting has been illegal on national wildlife refuges since 1998. The majority (54) of these 94 refuges also ban the use of toxic shot for upland game hunting (for such species as squirrel, rabbit, quail, pheasant, and/or partridge); 27 of those 94 refuges do not offer upland game hunting. Under the big game category (primarily deer and/or turkey), 8 of the refuges only allow nontoxic shot for turkey hunting, 14 of them ban the use of toxic shot, and 12 of them are closed to big game hunting.

As for fishing tackle, there are nontoxic fishing weights (split shots) for use in nontidal waters that are readily available on the marketplace. Many anglers use fishing tackle made from nontoxic materials such as tin, bismuth, steel, and tungsten, alternatives which are found in all 50 States. Many of our refuges have banned lead sinkers for years. Of the 94 refuges in this rulemaking, currently 7 of them ban lead tackle and 19 do not offer fishing.

Lead is a toxic metal that, in sufficient quantities, has adverse effects on the nervous and reproductive systems of animals and can be lethal to wildlife if ingested, even in small amounts. We continue to look at options and ways to reduce the indirect impacts of toxic shot to scavengers. We are and have been phasing out the use of lead shot by hunters on refuge lands.

As part of the Service's effort in Conserving the Future: Wildlife Refuges and the Next Generation (a vision document for the National Wildlife Refuge System developed in 2011), there are several implementation teams that will consider developing and implementing education products on the dangers of lead shot and fishing tackle. We invite and encourage the involvement of those interested parties in developing outreach elements relating to the dangers of toxicity in our continuing efforts to educate the public on alternative ammunition and fishing tackle.

The National Wildlife Refuge System Improvement Act of 1997 directs us to make refuge regulations as consistent with State regulations as practicable. We share a strong partnership with the States in managing wildlife, and, therefore, we are proceeding with the phase-out of toxic ammunition and tackle in a coordinated manner with the respective State wildlife agency. There were no changes to this rulemaking as a result of these comments.

Comment 9: A commenter felt that the Improvement Act which amended the National Wildlife Refuge System Administration Act should include trapping as one of the six priority public uses on a national wildlife refuge, as they feel it is a legitimate wildlife-dependent activity in the State of New York.

Response 9: As mentioned in the previous response, the National Wildlife Refuge System does not write legislation, Congress does. As trapping is not one of the six priority public uses (which are hunting, fishing, wildlife observation and interpretation, and environmental education) outlined in the Improvement Act and not a subject of this rulemaking. Additionally as mentioned earlier, the Refuge System reserves the right to be more restrictive than the States in formulating the conduct of hunting and/or fishing activities on our national wildlife refuges. We are making no changes as a result of this comment.

Effective Date

This rule is effective upon publication in the **Federal Register**. We have determined that any further delay in implementing these refuge-specific hunting and sport fishing regulations would not be in the public interest, in that a delay would hinder the effective planning and administration of the hunting and fishing programs. We provided a 30-day public comment period for the July 11, 2012, proposed rule. An additional delay would jeopardize holding the hunting and/or fishing programs this year or shorten their duration and thereby lessen the management effectiveness of this regulation. This rule does not impact the public generally in terms of requiring lead time for compliance. Rather it relieves restrictions in that it allows activities on refuges that we would otherwise prohibit. Therefore, we find good cause under 5 U.S.C. 553(d)(3) to make this rule effective upon publication.

Amendments to Existing Regulations

This document codifies in the Code of Federal Regulations all of the Service's hunting and/or sport fishing regulations that are applicable at Refuge System units previously opened to hunting and/or sport fishing. We are doing this to better inform the general public of the regulations at each refuge, to increase understanding and compliance with these regulations, and to make enforcement of these regulations more efficient. In addition to now finding these regulations in 50 CFR part 32, visitors to our refuges will usually find them reiterated in literature distributed by each refuge or posted on signs.

We have cross-referenced a number of existing regulations in 50 CFR parts 26, 27, 28, and 32 to assist hunting and sport fishing visitors with understanding safety and other legal requirements on refuges. This redundancy is deliberate, with the intention of improving safety and compliance in our hunting and sport fishing programs.

TABLE 1—CHANGES FOR 2012–2013 HUNTING/FISHING SEASON

Refuge (FWS region)	State	Migratory bird hunting	Upland game hunting	Big game hunting	Sport fishing
Big Muddy (3)	Missouri	C	C	C	Already open.
Big Oaks (3)	Indiana	Closed	Already open	C	Already open.
Block Island (3)	Rhode Island	Closed	Closed	B deer	Already open.
Bond Swamp (4)	Georgia	B	B	C/D turkey	Already open.
Chickasaw (4)	Tennessee	C	C	C	Already open.
Deer Flat (1)	Idaho	Already open	Already open	C	Already open.
Detroit River International (3).	Michigan	A	A	A	Closed.
Hagerman (2)	Texas	Already open	Already open	D turkey	Already open.
Hakalau Forest (1)	Hawaii	Closed	Closed	E	Closed.
Hanford Reach/Saddle Mt. (1).	Washington	C	C/D chukar	C	Already open.
Julia Butler Hansen (1)	Oregon	C	Closed	Closed	Already open.
Lower Hatchie (4)	Tennessee	C	C	C	Already open.
Minnesota Valley (3)	Minnesota	C	C	C	Already open.
Ninigret (5)	Rhode Island	Closed	Closed	B deer	Already open.
Red Rock Lakes (6)	Montana	C	Closed	C	Already open.
Santee (4)	South Carolina	E	Already open	Already open	Already open.
Upper Ouachita (4)	Louisiana	C	C	C	Already open.
Waccamaw (4)	South Carolina	D Woodcock	Already open	C	Already open.
William L. Finley (1)	Oregon	Closed	Closed	C	Already open.

A = New refuge opened.
B = New activity on a refuge previously opened to other activities.
C = Refuge already open to activity but added new land/waters which increased activity.
D = Refuge already open to activity but added new species to hunt.
E = Refuge closing to previously opened activity.

We are closing and reserving big game hunting on the Hakalau Forest National Wildlife Refuge in the State of Hawaii. We opened the Maulua tract (2,000 acres) of Hakalau Forest NWR to the public for pig and cattle hunting in 1991 (with most of the area never hunted) but closed it in 2000 as hunting had reduced the pig population to such low numbers as to provide an unacceptable hunting experience. As there were few cattle, they were quickly removed. We have received no requests for approval to hunt on Hakalau Forest NWR since 2000.

We are closing and reserving migratory bird game hunting on Santee National Wildlife Refuge in the State of South Carolina. The refuge will remain open both for upland and big game hunting as well as for sport fishing. The refuge established a mourning dove hunt in 1975 when historic land management practices on the refuge were productive for both resident and migratory mourning dove habitat. We farmed over 500 acres of corn, wheat, and soybean annually in the Cuddo Unit of the refuge. Over time, however, land management practices and objectives for habitat management adapted and changed, and farming practices are now minimal. Without habitat suitable for mourning dove or the hunting of mourning dove, the refuge has had no public interest in the morning dove hunt. There have been no recorded mourning dove hunting visits since 2003.

We also added Rainwater Basin Wetland Management District in the State of Nebraska to the list of refuges in part 32. As set forth in 50 CFR 32.1 and 32.4, ''Lands acquired as 'waterfowl production areas' shall annually be open to the hunting of migratory game birds, upland game, big game and sport fishing subject to the provisions of State law and regulations and the pertinent provisions of parts 25 through 31 of this subchapter: *Provided,* That all forms of hunting or entry on all or any part of the individual areas may be temporarily suspended by posting upon occasions of unusual or critical conditions of, or affecting land, water, vegetation, or wildlife populations.''

The changes for the 2012–13 hunting/fishing season noted in the chart above

are each based on a complete administrative record which, among other detailed documentation, also includes a hunt plan, a compatibility determination, and the appropriate National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.)* analysis, all of which were the subject of a public review and comment process. These documents are available upon request.

Fish Advisory

For health reasons, anglers should review and follow State-issued consumption advisories before enjoying recreational sport fishing opportunities on Service-managed waters. You can find information about current fish consumption advisories on the internet at: *http://www.epa.gov/waterscience/fish/*

Plain Language Mandate

In this rule we made some of the revisions to the individual refuge units to comply with a Presidential mandate to use plain language in regulations; as such, these particular revisions do not modify the substance of the previous regulations. These types of changes include using ''you'' to refer to the reader and ''we'' to refer to the Refuge System, using the word ''allow'' instead of ''permit'' when we do not require the use of a permit for an activity, and using active voice (i.e., ''We restrict entry into the refuge'' vs. ''Entry into the refuge is restricted'').

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. OIRA has determined that this rule is not significant.

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

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act [SBREFA] of 1996) (5 U.S.C. 601 *et seq.*), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for ''significant impact'' and a threshold for a ''substantial number of small entities.'' See 5 U.S.C. 605(b). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

This rule adds 1 national wildlife refuge to the list of refuges open to hunting, increases hunting activities on 16 national wildlife refuges, closes 1 national wildlife refuge that was previously open to hunting, and closes 1 hunting activity previously open at 1 national wildlife refuge. As a result, visitor use for wildlife-dependent recreation on these national wildlife refuges will change. If the refuges establishing new programs were a pure addition to the current supply of such activities, it would mean an estimated increase of 7,960 user days (one person per day participating in a recreational opportunity) (Table 2). Because the participation trend is flat in these activities since 1991, this increase in supply will most likely be offset by other sites losing participants. Therefore, this is likely to be a substitute site for the activity and not necessarily an increase in participation rates for the activity.

TABLE 2—ESTIMATED CHANGE IN RECREATION OPPORTUNITIES IN 2012/2013

[Dollars in thousands]

Refuge	Additional days	Additional expenditures
Big Muddy	30	$1.0
Big Oaks	100	3.3
Block Island	60	2.0
Bond Swamp	1,000	32.6
Chickasaw	150	4.9
Deer Flat	3,300	107.7
Detroit River International	1,021	33.3
Hagerman	194	6.3
Hakalau Forest	0	0.0
Hanford Reach/Saddle Mountain	260	8.5
Julia Butler Hansen	900	29.4
Lower Hatchie	300	9.8
Minnesota Valley	200	6.5
Ninigret	347	11.3
Red Rock Lakes	52	1.7
Santee	0	0.0
Upper Ouachita	50	1.6
Waccamaw	4	0.1
William L. Finley	−8	−0.3*

TABLE 2—ESTIMATED CHANGE IN RECREATION OPPORTUNITIES IN 2012/2013—Continued

[Dollars in thousands]

Refuge	Additional days	Additional expenditures
TOTAL	7,960	259.7

* Negative number resulting from decreased hunting days available despite increased acres to hunt.

To the extent visitors spend time and money in the area of the refuge that they would not have spent there anyway, they contribute new income to the regional economy and benefit local businesses. Due to the unavailability of site-specific expenditure data, we use the national estimates from the 2006 National Survey of Fishing, Hunting, and Wildlife Associated Recreation to identify expenditures for food and lodging, transportation, and other incidental expenses. Using the average expenditures for these categories with the maximum expected additional participation of the Refuge System yields approximately $259,700 in recreation-related expenditures (Table 2). By having ripple effects throughout the economy, these direct expenditures are only part of the economic impact of these recreational activities. Using a national impact multiplier for hunting activities (2.67) derived from the report ''Economic Importance of Hunting in America'' yields a total economic impact of approximately $693,500 (2011 dollars) (Southwick Associates, Inc., 2007). Using a local impact multiplier would yield more accurate and smaller results. However, we employed the national impact multiplier due to the difficulty in developing local multipliers for each specific region.

Since we know that most of the fishing and hunting occurs within 100 miles of a participant's residence, then it is unlikely that most of this spending would be ''new'' money coming into a local economy; therefore, this spending would be offset with a decrease in some other sector of the local economy. The net gain to the local economies would be no more than $693,500, and most likely considerably less. Since 80 percent of the participants travel less than 100 miles to engage in hunting and fishing activities, their spending patterns would not add new money into the local economy and, therefore, the real impact would be on the order of about $138,700 annually.

Small businesses within the retail trade industry (such as hotels, gas stations, taxidermy shops, bait and tackle shops, etc.) may be impacted from some increased or decreased refuge visitation. A large percentage of these retail trade establishments in the local communities around national wildlife refuges qualify as small businesses. We expect that the incremental recreational changes will be scattered, and so we do not expect that the rule would have a significant economic effect on a substantial number of small entities in any region or nationally. As noted previously, we expect approximately $259,700 to be spent in total in the refuges' local economies. The maximum increase at most would be less than one-tenth of 1 percent for local retail trade spending (Table 3).

TABLE 3—COMPARATIVE EXPENDITURES FOR RETAIL TRADE ASSOCIATED WITH ADDITIONAL REFUGE VISITATION FOR 2012/2013

[Thousands, 2011 dollars]

Refuge/county(ies) or parishes	Retail trade in 2007	Estimated maximum addition from new activities	Addition as % of total	Establish-ments in 2009	Establ. with <10 emp in 2009
Big Muddy:					
Moniteau, MO	$173,206	$1.0	0.001%	56	43
Big Oaks:					
Ripley, IN	277,024	1.1	<0.001%	97	74
Jefferson, IN	415,188	1.1	<0.001%	152	118
Jennings, IN	242,792	1.1	<0.001%	72	54
Block Island:					
Washington, RI	1,873,234	2.0	<0.001%	545	398
Bond Swamp:					
Bibb, GA	135,291	16.3	0.012%	815	575
Twiggs, GA	32,915	16.3	0.050%	16	12
Chickasaw:					
Lauderdale, TN	164,722	2.4	0.001%	85	65
Dyer, TN	557,684	2.4	<0.001%	182	140
Deer Flat:					
Payette, ID	557,684	107.7	0.019%	68	52
Detroit River International:					
Wayne, MI	18,741,934	16.7	<0.001%	6,069	4,702
Monroe, MI	1,589,678	16.7	0.001%	383	267
Hagerman:					
Grayson, TX	1,730,094	6.3	<0.001%	457	327
Hanford Reach/Saddle Mountain:					
Benton, WA	2,302,112	8.5	<0.001%	587	399
Julia Butler Hansen:					
Columbia, OR	684,891	29.4	0.004%	119	83
Lower Hatchie:					

TABLE 3—COMPARATIVE EXPENDITURES FOR RETAIL TRADE ASSOCIATED WITH ADDITIONAL REFUGE VISITATION FOR 2012/2013—Continued

[Thousands, 2011 dollars]

Refuge/county(ies) or parishes	Retail trade in 2007	Estimated maximum addition from new activities	Addition as % of total	Establish-ments in 2009	Establ. with <10 emp in 2009
Lauderdale, TN	164,722	4.9	0.003%	85	65
Tipton, TN	438,464	4.9	0.001%	156	119
Minnesota Valley:					
Sibley, MN	81,861	3.3	0.004%	59	46
Scott, MN	1,268,971	3.3	<0.001%	344	234
Ninigret:					
Washington, RI	1,873,234	11.3	0.001%	545	398
Red Rock Lakes:					
Beaverhead, MT	133,341	1.7	0.001%	53	37
Upper Ouachita:					
Union, LA	160,639	0.8	0.001%	68	55
Morehouse, LA	261,859	0.8	<0.001%	96	70
Waccamaw:					
Georgetown, SC	761,751	0.04	<0.001%	295	229
Horry, SC	5,388,805	0.04	<0.001%	1,707	1,241
Marion, SC	292,846	0.04	<0.001%	135	103
William L. Finley:					
Benton, OR	743,322	−0.3	<0.001%	275	192

With the small change in overall spending anticipated from this rule, it is unlikely that a substantial number of small entities would have more than a small impact from the spending change near the affected refuges. Therefore, we certify that this rule would not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial/final Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

Small Business Regulatory Enforcement Fairness Act

The rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. We anticipate no significant employment or small business effects. This rule:

a. Will not have an annual effect on the economy of $100 million or more. The minimal impact will be scattered across the country and would most likely not be significant in any local area.

b. Will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. This rule will have only a slight effect on the costs of hunting opportunities for Americans. If the substitute sites are farther from the participants' residences, then an increase in travel costs would occur. The Service does not have information to quantify this change in travel cost but assumes that, since most people travel less than 100 miles to hunt, the increased travel cost would be small. We do not expect this rule to affect the supply or demand for hunting opportunities in the United States and, therefore, it should not affect prices for hunting equipment and supplies, or the retailers that sell equipment.

c. Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises. This rule represents only a small proportion of recreational spending at national wildlife refuges. Therefore, this rule will have no measurable economic effect on the wildlife-dependent industry, which has annual sales of equipment and travel expenditures of $72 billion nationwide.

Unfunded Mandates Reform Act

Since this rule applies to public use of federally owned and managed refuges, it will not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. The rule will not have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (E.O. 12630)

In accordance with E.O. 12630, this rule does not have significant takings implications. This regulation affects only visitors at national wildlife refuges and describes what they can do while they are on a refuge.

Federalism (E.O. 13132)

As discussed in the Regulatory Planning and Review and Unfunded Mandates Reform Act sections above, this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment under E.O. 13132. In preparing this rule, we worked with State governments.

Civil Justice Reform (E.O. 12988)

In accordance with E.O. 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. The regulation clarifies established regulations and will result in better understanding of the regulations by refuge visitors.

Energy Supply, Distribution or Use (E.O. 13211)

On May 18, 2001, the President issued E.O. 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule increases activities at 16 refuges, closes hunting at one refuge, stops one hunt at

another refuge, and opens one new refuge, it is not a significant regulatory action under E.O. 12866, and we do not expect it to significantly affect energy supplies, distribution, and use. Therefore, this action is a not a significant energy action and no Statement of Energy Effects is required.

Consultation and Coordination With Indian Tribal Governments (E.O. 13175)

In accordance with E.O. 13175, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no effects. We coordinate recreational use on national wildlife refuges with Tribal governments having adjoining or overlapping jurisdiction before we propose the regulations.

Paperwork Reduction Act

This regulation does not contain any information collection requirements other than those already approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) (OMB Control Numbers are 1018–0102 and 1018–0140). See 50 CFR 25.23 for information concerning that approval. 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.

Endangered Species Act Section 7 Consultation

We comply with section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), when developing Comprehensive Conservation Plans (CCPs) and step-down management plans (which would include hunting and/or fishing plans) for public use of refuges, and prior to implementing any new or revised public recreation program on a refuge as identified in 50 CFR 26.32. We have completed section 7 consultation on each of the affected refuges.

National Environmental Policy Act

We analyzed this rule in accordance with the criteria of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)), 43 CFR part 46, and 516 Departmental Manual (DM) 8.

A categorical exclusion from NEPA documentation applies to publication of amendments to refuge-specific hunting and fishing regulations since they are technical and procedural in nature, and the environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis (43 CFR 46.210 and 516 DM 8). Concerning the actions that are the subject of this rulemaking, we have complied with NEPA at the project level when developing each proposal. This is consistent with the Department of the Interior instructions for compliance with NEPA where actions are covered sufficiently by an earlier environmental document (516 DM 3.2A).

Prior to the addition of a refuge to the list of areas open to hunting and fishing in 50 CFR part 32, we develop hunting and fishing plans for the affected refuges. We incorporate these refuge hunting and fishing activities in the refuge CCPs and/or other step-down management plans, pursuant to our refuge planning guidance in 602 Fish and Wildlife Service Manual (FW) 1, 3, and 4. We prepare these CCPs and step-down plans in compliance with section 102(2)(C) of NEPA, and the Council on Environmental Quality's regulations for implementing NEPA in 40 CFR parts 1500–1508. We invite the affected public to participate in the review, development, and implementation of these plans. Copies of all plans and NEPA compliance are available from the refuges at the addresses provided below.

Available Information for Specific Refuges

Individual refuge headquarters have information about public use programs and conditions that apply to their specific programs and maps of their respective areas. To find out how to contact a specific refuge, contact the appropriate Regional office listed below:

Region 1—Hawaii, Idaho, Oregon, and Washington. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, Eastside Federal Complex, Suite 1692, 911 N.E. 11th Avenue, Portland, OR 97232–4181; Telephone (503) 231–6214.

Region 2—Arizona, New Mexico, Oklahoma, and Texas. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, Box 1306, 500 Gold Avenue, Albuquerque, NM 87103; Telephone (505) 248–7419.

Region 3—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1 Federal Drive, Federal Building, Fort Snelling, Twin Cities, MN 55111; Telephone (612) 713–5401. Detroit River International Wildlife Refuge, 9311 Groh Road, Large Lakes Research Station, Grossle Ile, MI 43138; Telephone (734) 692–7608.

Region 4—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, and the Virgin Islands. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Atlanta, GA 30345; Telephone (404) 679–7166.

Region 5—Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035–9589; Telephone (413) 253–8306.

Region 6—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 134 Union Blvd., Lakewood, CO 80228; Telephone (303) 236–8145.

Region 7—Alaska. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, AK 99503; Telephone (907) 786–3545.

Region 8—California and Nevada. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room W–2606, Sacramento, CA 95825; Telephone (916) 414–6464.

Primary Author

Leslie A. Marler, Management Analyst, Division of Conservation Planning and Policy, National Wildlife Refuge System is the primary author of this rulemaking document.

List of Subjects in 50 CFR Part 32

Fishing, Hunting, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

Regulation Promulgation

For the reasons set forth in the preamble, we amend title 50, chapter I, subchapter C of the Code of Federal Regulations as follows:

PART 32—[AMENDED]

■ 1. The authority citation for part 32 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd–668ee, and 715i.

■ 2. Amend § 32.7 ''What refuge units are open to hunting and/or sport fishing?'' by:

■ a. Revising the entry for ''Mountain Lonleaf National Wildlife Refuge'' to read ''Mountain Longleaf National Wildlife Refuge'' in the State of Alabama;

■ b. Revising the entry for ''Lake Umbagog National Wildlife Refuge'' to read ''Umbagog National Wildlife

Refuge'' and placing it in alphabetical order in the State of Maine;

■ c. Adding an entry for ''Detroit River International Wildlife Refuge'' and placing it in alphabetical order in the State of Michigan;

■ d. Revising the entry for ''Noxubee National Wildlife Refuge'' to read ''Sam D. Hamilton Noxubee National Wildlife Refuge'' and placing it in alphabetical order in the State of Mississippi;

■ e. Revising the entry for ''National Bison National Wildlife Refuge'' to read ''National Bison Range'' in the State of Montana;

■ f. Revising the entry for ''Nine-Pipe National Wildlife Refuge'' to read ''Ninepipe National Wildlife Refuge'' in the State of Montana;

■ g. Adding an entry for ''Rainwater Basin Wetland Management District'' and placing it alphabetical order in the State of Nebraska;

■ h. Adding an entry for ''Umbagog National Wildlife Refuge'' and placing it in alphabetical order in the State of New Hampshire;

■ i. Placing the entry for ''Currituck National Wildlife Refuge'' in alphabetical order in the State of North Carolina in this section; and

■ j. Removing the entry for ''Pocasse National Wildlife Refuge'' in the State of South Dakota.

■ 3. Amend § 32.20 Alabama by revising paragraphs B.6., B.8., and B.10., adding paragraph B.11., revising the introductory text of paragraph C., and revising paragraph C.1. under Choctaw National Wildlife Refuge. These revisions and addition reads as follows:

§ 32.20 Alabama.

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Choctaw National Wildlife Refuge

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B. Upland Game Hunting. * * *

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6. We prohibit the mooring and storing of boats from ½ hour after legal sunset to ½ hour before legal sunrise.

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8. Persons possessing, transporting, or carrying firearms on the refuge must comply with all provisions of State and local law. Persons may only use (discharge) firearms in accordance with refuge regulations (see § 27.42 of this chapter and specific refuge regulations in part 32). Persons may only use approved nontoxic shot (see § 32.2(k)) #4 or smaller, .22 caliber rimfire or smaller rifles, or legal archery equipment.

* * * * *

10. We allow squirrel, raccoon, rabbit, and opossum to be hunted with dogs during designated hunts. We prohibit dogs in the Middle Swamp area of the refuge, except during the February small game hunt.

11. Hunt information and hunt dates are available at refuge headquarters and specified in the refuge brochure.

C. Big Game Hunting. We allow archery hunting of white-tailed deer and incidental take of feral hog in accordance with State regulations subject to the following conditions:

1. Conditions B1 through B9 and B11 apply.

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■ 4. Amend § 32.22 Arizona by revising paragraph C.1. under Cibola National Wildlife Refuge to read as follows:

§ 32.22 Arizona.

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Cibola National Wildlife Refuge

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C. Big Game Hunting. * * *

1. For units open to mule deer hunting, refer to current Big Game hunt brochure.

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■ 5. Amend § 32.23 Arkansas by:

■ a. Revising paragraph C.10. under Bald Knob National Wildlife Refuge;

■ b. Removing paragraph C.7., redesignating paragraphs C.8. through C.12. as paragraphs C.7. through C.11., and revising newly redesignated paragraph C.7. under Big Lake National Wildlife Refuge;

■ c. Revising paragraph C.10. under Cache River National Wildlife Refuge;

■ d. Adding paragraph C.16. under Felsenthal National Wildlife Refuge;

■ e. Revising paragraph A.5., removing paragraph A.19., and redesignating paragraphs A.20. through A.23. as paragraphs A.19. through A.22. under Overflow National Wildlife Refuge;

■ f. Removing paragraph C.5., redesignating paragraphs C.6. through C.9. as paragraphs C.5. through C.8., and revising newly redesignated paragraph C.6. under Wapanocca National Wildlife Refuge; and

■ g. Revising paragraphs A.22., B.2., and B.3., removing paragraph B.8., redesignating paragraphs B.9. through B.11. as paragraphs B.8. through B.10., revising newly redesignated paragraphs B.8. and B.9., and revising paragraphs C.10. and C.13. under White River National Wildlife Refuge.

These additions and revisions read as follows:

§ 32.23 Arkansas.

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Bald Knob National Wildlife Refuge

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C. Big Game Hunting. * * *

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10. We allow only portable deer stands capable of being carried in their entirety by a single individual. Hunters may erect stands 7 days prior to the refuge deer season and must remove them from the waterfowl sanctuaries prior to November 15, except for stands used by Quota Gun Deer Hunt permit holders (signature required), which hunters must remove by the last day of the Quota Gun Deer Hunt. Hunters must remove all stands on the remainder of the refuge within 7 days of the closure of archery season (see § 27.93 of this chapter). Hunters must permanently affix the owner's name and address to their deer stands on the refuge.

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Big Lake National Wildlife Refuge

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C. Big Game Hunting. * * *

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7. We allow only portable deer stands capable of being carried in their entirety by a single individual. Hunters may erect stands 7 days prior to the refuge deer season and must remove them within 7 days of the closure of archery season (see § 27.93 of this chapter). Hunters must permanently affix the owner's name and address to stands on the refuge.

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Cache River National Wildlife Refuge

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C. Big Game Hunting. * * *

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10. We allow only portable deer stands capable of being carried in their entirety by a single individual.

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Felsenthal National Wildlife Refuge

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C. Big Game Hunting. * * *

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16. We restrict hunt participants for quota hunts to those drawn for a quota permit (OMB 1018–0140). These permits are nontransferable and permit fees are nonrefundable. If conditions prevent the hunts from taking place, there will be no refunds or permits carried over from year to year. Hunt dates and application procedures will be available at the refuge office in July for deer and January for turkey.

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Overflow National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

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5. We close areas of the refuge by posting ''Area Closed'' signs and identifying them on the refuge hunt brochure map as ''Sanctuary'' and closed to all public entry and public use. Exception: We open the area identified as ''North Sanctuary'' on the refuge hunt brochure map to all authorized public use activities from 2 days prior to the opening of deer archery season through October 31.

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Wapanocca National Wildlife Refuge

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C. Big Game Hunting. * * *

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6. We allow only portable deer stands capable of being carried in their entirety by a single individual. Hunters may erect stands 7 days prior to the refuge deer season and must remove them from the waterfowl sanctuaries by December 1. Hunters must remove all stands on the remainder of the refuge within 7 days of the closure of archery season (see § 27.93 of this chapter). Hunters must permanently affix their name and address on stands on the refuge.

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White River National Wildlife Refuge

A. Migratory Game Bird Hunting.

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22. We allow refuge users to leave boats 16 feet (4.8 m) or less in length unattended overnight from March 1 to October 31 as long as the owner clearly and prominently displays his or her complete name and physical address.

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B. Upland Game Hunting. * * *

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2. We allow hunting of rabbit and squirrel on the North Unit from September 1 until January 31.

3. We allow dogs for hunting of rabbit and squirrel from December 1 through January 31 on the North Unit.

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8. We allow furbearer (as defined by State law) hunting in accordance with season dates posted in the refuge user brochure/permit (signed brochure). We allow furbearer hunting only with rimfire weapons and shotguns.

9. We allow the use of dogs for hunting furbearers from legal sunset to legal sunrise. Hunters must tether or pen all dogs used for furbearer hunting from legal sunrise to legal sunset and any time they are not involved in actual hunting.

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C. Big Game Hunting. * * *

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10. We close refuge lands on the North Unit to all deer hunting and fall turkey hunting when the White River Gauge at St. Charles (station no. 53) reaches 23 feet (7 m) as reported by the following Web site: *http://www.srh.noaa.gov/lzk/html/whitervr.htm*. The season will reopen when the gauge reading reaches 21 feet (6 m) as reported by the same Web site.

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13. We prohibit the use of dogs other than those specified in the user permit.

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■ 6. Amend § 32.28 Florida by:

■ a. Revising paragraphs D.9., D.10., and D.17. under J.N. ''Ding'' Darling National Wildlife Refuge;

■ b. Revising paragraphs A.2., B.3., and C.25. under Lower Suwannee National Wildlife Refuge;

■ c. Revising paragraphs B.1., B.3., and B.4., adding a new paragraph B.11., and revising paragraphs C.8., C.9., and D.11. under St. Marks National Wildlife Refuge;

■ d. Revising paragraph C.9. under St. Vincent National Wildlife Refuge; and

■ e. Revising paragraph A.13. under Ten Thousand Islands National Wildlife Refuge.

These additions and revisions read as follows:

§ 32.28 Florida.

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J.N. ''Ding'' Darling National Wildlife Refuge

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D. Sport Fishing. * * *

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9. We allow anglers to launch canoes and kayaks anywhere on the north side of Wildlife Drive. We prohibit launching motorized vessels over 14 feet (4.2 m) in length from Wildlife Drive. We allow launching of motorized vessels only 14 feet (4.2 m) or less in length from designated site #2.

10. We allow public access to Wildlife Drive and Indigo Trail, except on Fridays, when we close Wildlife Drive to all public access. See hours posted at the front gate, on the refuge Web site *http://www.fws.gov/dingdarling/,* or call 239–472–1100.

* * * * *

17. We prohibit the use of bows and spears from Wildlife Drive or any structure affixed to shore.

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Lower Suwannee National Wildlife Refuge

A. Migratory Game Bird Hunting.

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2. We designate open and closed refuge hunting areas on the map in the refuge hunt brochure. The hunter must possess and carry this brochure while hunting on the refuge. The refuge can designate temporary closed hunting areas at the management's discretion for refuge management activities (e.g., prescribed burns, forestry, habitat restoration, wildlife management).

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B. Upland Game Hunting. * * *

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3. You may use only .17, .22, and .22 magnum caliber rimfire rifle firearms (see § 27.42 of this chapter), bows, or shotguns with shot no larger than #4 birdshot when hunting. The refuge retains the discretion to allow the use of a crossbow during refuge hunts.

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C. Big Game Hunting. * * *

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25. We retain the discretion to allow the use of crossbows during all or portions of refuge hunts. We may allow, on a case-by-case basis, individuals with a State-issued disabled-persons crossbow permit use of crossbows. Those individuals will hunt according to State regulations.

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St. Marks National Wildlife Refuge

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B. Upland Game Hunting. * * *

1. We require refuge permits (signed brochure) for hunting upland game. Permits are available at no cost from the refuge office. Each hunter must possess and carry a signed refuge permit while participating in a hunt.

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3. You may use .22 caliber or smaller rim-fire rifles, shotguns with nontoxic shot (#4 bird shot or smaller) (see § 32.2(k)), or muzzleloaders to harvest squirrel, rabbit, and raccoon. In addition, you may use shotgun slugs, buckshot, archery equipment, or pistols to take feral hogs. We prohibit the use of other weapons.

4. We allow the use of leashed dogs for trailing injured or harvested game. We prohibit unleashed dogs.

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11. We limit vehicle access to permitted hunters during the hunt.

C. Big Game Hunting. * * *

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8. The bag limit for white-tailed deer is two deer per scheduled hunt period. We allow hunters to harvest two antlerless deer per scheduled hunt period. We define antlerless deer per State regulations (i.e., deer with no antlers or antlers less than 5 inches

(12.5 cm)). Otherwise, hunters may harvest one antlerless deer and one antlered deer per hunt. Hunters must ensure that antlered deer must have at least 3 points, of 1 inch (2.5 cm) or more length.

9. There is one youth hunt, for youth ages 12 to 17, on the St. Marks Unit in an area we will specify in the refuge hunt brochure. Hunters may harvest one deer of either sex or feral hog (no limit). An adult age 21 or older possessing a refuge permit (State permit) must accompany each youth hunter, and each adult may accompany only one youth. Only the youth hunter may handle or discharge firearms. Contact the refuge office for specific dates.

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D. Sport Fishing. * * *

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11. We prohibit commercially registered boats, air-thrust boats, commercial guides, and personal watercraft to launch at the saltwater boat ramp on the St. Marks Unit.

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St. Vincent National Wildlife Refuge

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C. Big Game Hunting. * * *

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9. We limit weapons to primitive weapons (bow and arrow and muzzleloader) on the sambar deer hunt and the primitive weapons white-tailed deer hunt. We limit the archery hunt to bow and arrow. Weapons must meet all State regulations. We prohibit crossbows during the white-tailed deer archery hunt except with a State disabled persons permit.

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Ten Thousand Islands National Wildlife Refuge

A. Migratory Game Bird Hunting.

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13. We allow youth hunt days in accordance with State regulations. We also will designate a special youth hunt day during the second phase of the regular State waterfowl season that we will specify in the annual hunt brochure. Hunters under age 16 may hunt only with a nonhunting adult age 18 or older. Youth hunters must remain within sight and sound of the nonhunting adult.

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■ 7. Amend § 32.29 Georgia by:

■ a. Removing paragraph C.17. and redesignating paragraphs C.18. through C.20. as paragraphs C.17. through C.19. under Blackbeard Island National Wildlife Refuge;

■ b. Adding paragraphs A. and B., and revising paragraph C. under Bond Swamp National Wildlife Refuge;

■ c. Removing paragraph C.18. and redesignating paragraphs C.19. and C.20. as paragraphs C.18. and C.19. under Harris Neck National Wildlife Refuge;

■ d. Removing paragraph A.4. and redesignating paragraph A.5. as A.4., revising the introductory text of paragraph B., revising paragraph B.3., removing paragraphs B.5. and B.6., redesignating paragraphs B.7. and B.8. as B.5. and B.6, revising newly redesignated paragraphs B.5. and B.6., removing paragraph C.2., redesignating paragraph C.3. as paragraph C.2., revising newly redesignated paragraph C.2., removing paragraph C.4., redesignating paragraph C.5. as paragraph C.3., revising newly redesignated paragraph C.3., redesignating paragraphs C.6. and C.7. as paragraphs C.4. and C.5., removing paragraph C.8, redesignating paragraph C.9. as paragraph C.6., revising newly redesignated paragraph C.6., redesignating paragraph C.10. as paragraph C.7. and revising newly redesignated paragraph C.7., and redesignating paragraphs C.11. and C.12. as paragraphs C.8. and C.9. under Savannah National Wildlife Refuge; and

■ e. Removing paragraph C.19. and redesignating paragraphs C.20. and C.21. as paragraphs C.19. and C.20. under Wassaw National Wildlife Refuge.

These additions and revisions read as follows:

§ 32.29 Georgia.

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Bond Swamp National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of waterfowl, mourning dove, snipe, and woodcock on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We coordinate hunting seasons and limits with the State and annually list them in the hunting brochure.

2. We require you to possess and carry a signed refuge hunt brochure while hunting. The hunt brochure will serve as the hunt permit. You may obtain this permit from the refuge Web site, kiosks at designated parking lots, or the refuge office.

3. At the manager's discretion we may zone or restrict some of the areas of the refuge to season of use, while we may close other areas to all public use.

4. Persons possessing, transporting, or carrying firearms on national wildlife refuges must comply with all provisions of State and local law. Persons may only use (discharge) firearms in accordance with refuge regulations (50 CFR 27.42 and specific refuge regulations in part 32).

5. We allow the incidental take of feral hog with legal weapons during open season.

6. We allow only nontoxic shot with the use of a shotgun in designated areas at the manager's discretion (see § 32.2(k)).

7. We require hunters to report all harvested game at the check station before leaving the refuge (see hunting brochure).

8. We allow access to the hunt area from 1 hour before legal sunrise until 1 hour after legal sunset.

9. We allow the use of hunting dogs during migratory bird hunts.

10. We allow motorized boats in designated areas at the manager's discretion.

11. We prohibit flagging, blazing, painting, or any other trail-marking devices.

12. We prohibit hunting within 50 yards (45 m) of a road open to vehicle travel or within 200 yards (180 m) of a building.

13. We prohibit entry into the designated hunt area by nonhunters during the hunts.

14. We prohibit use or possession of alcoholic beverages while hunting on the refuge (see § 32.2(j)).

15. We prohibit target practice or any nonhunting discharge of firearms (see § 27.42 of this chapter).

16. We prohibit walking or trespassing on the railroad tracks to access the refuge.

17. We prohibit removal of live hogs from the refuge.

18. We prohibit the use of organized drives for taking or attempting to take game.

19. Youth hunters age 15 and under must remain within sight and normal voice contact of an adult age 21 or older possessing a valid hunting license. One adult may supervise no more than one youth hunter.

20. We prohibit taking, collecting, or disturbing any artifact, property, plant, wildlife, or part thereof, other than that specifically allowed by refuge regulation (see §§ 27.61 and 27.62 of this chapter).

21. We prohibit littering (see § 27.94 of this chapter).

22. We prohibit disturbing, annoying, or interfering with other persons.

23. We prohibit open fires (see § 27.95(a) of this chapter).

24. We prohibit ATVs on the refuge except by disabled hunters with a refuge Special Use Permit (General Special Use Application and Permit FWS Form 3–1383–G).

25. We prohibit off-road vehicle travel.

26. We prohibit vehicle travel around a closed gate.

27. We prohibit blocking refuge roads, boat ramp, or gates with vehicles, boats, or trailers.

28. We prohibit leaving vehicles, boats, or trailers on the refuge overnight (see § 27.93 of this chapter).

29. We prohibit overnight camping and/or parking.

B. Upland Game Hunting. We allow hunting of squirrel, rabbit, and quail on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 through A8 and A10 through A29 apply.

2. We allow the use of hunting dogs during small game hunts.

3. We require each small game hunter to wear at least 500 square inches (3,250 cm^2) of hunter orange as an outer garment above the waist during small game hunts.

C. Big Game Hunting. We allow hunting for white-tailed deer, feral hog, and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 through A8 and A10 through A29 apply.

2. We may implement designated feral hog hunts at the manager's discretion.

3. We prohibit the use of buckshot.

4. We prohibit the use of dogs during deer and feral hog hunts.

5. We require each deer and feral hog hunter to wear at least 500 square inches (3,250 cm^2) of hunter orange as an outer garment above the waist during hunts.

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Savannah National Wildlife Refuge

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B. Upland Game Hunting. We allow hunting of squirrel on designated areas of the refuge in accordance with State regulations subject to the following conditions:

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3. We prohibit hunting on or within 100 yards (90 m) of U.S. Highway 17, GA Highway 25/SC Highway 170, refuge facilities, road and trails, railroad rights of way, and within areas marked as closed.

* * * * *

5. During the period when the squirrel hunt coincides with the refuge gun hunt for deer and hogs, we require hunters to possess a big game license (State) and to wear an outer garment containing a minimum of 500 square inches (3,250 cm^2) of hunter-orange material above the waistline.

6. Condition A4 applies.

C. Big Game Hunting. * * *

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2. We allow only bows, in accordance with State regulations, for deer and hog hunting during the refuge archery hunt.

3. We allow only shotguns (20 gauge or larger; slugs only), center-fire rifles (.22 caliber or larger), muzzleloaders, and bows, in accordance with State regulations, for deer and hog hunting during the gun hunts.

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6. Conditions A4 and B3 apply.

7. Turkey hunters may harvest only three gobblers (male turkey).

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■ 8. Amend § 32.30 Hawaii by revising paragraph C. under Hakalau Forest National Wildlife Refuge to read as follows:

§ 32.30 Hawaii.

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Hakalau Forest National Wildlife Refuge

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C. Big Game Hunting. [Reserved]

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■ 9. Amend § 32.31 Idaho by revising the entry for Deer Flat National Wildlife Refuge to read as follows:

§ 32.32 Idaho.

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Deer Flat National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of goose, duck, coot, common snipe, and dove on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You may hunt only duck, coot, and dove on the Lake Lowell Unit.

2. Duck and coot hunting in the East Side Recreation Area is walk-in only. Duck and coot hunters may use float tubes, nonmotorized boats, or boats equipped with only electric motors within 200 yards (180 m) of the shoreline in the South Side Recreation Area.

3. We allow only portable and temporary blinds. We prohibit permanent structures.

4. You must remove boats, decoys, blinds, other personal property, and any materials brought onto the refuge for blind construction at the end of each day.

5. We allow hunters to enter the refuge 1 hour before official shooting hours (½ hour before legal sunrise), and remain on the refuge until 1 hour after official shooting hours (legal sunset).

6. We allow the use of dogs for hunting. Dogs must be under the immediate control of the handler at all times and not allowed to roam at large.

7. From February 1 through May 31, we prohibit hunting on the Snake River Islands Unit.

B. Upland Game Hunting. We allow hunting of upland game on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You may hunt only pheasant, quail, and partridge on the Lake Lowell Unit.

2. We allow hunters to enter the refuge 1 hour before official shooting hours (½ hour before legal sunrise), and remain on the refuge until 1 hour after official shooting hours (½ hour after legal sunset).

3. We allow the use of dogs for hunting. Dogs must be under the immediate control of the handler at all times and not allowed to roam at large.

C. Big Game Hunting. We allow hunting of deer on designated areas of the refuge in accordance with State regulations subject to the following conditions;

1. You must obtain a refuge-specific hunting permit (signed brochure) to hunt deer on the Lake Lowell Unit. Hunters must sign and carry the permit in the field while hunting.

2. Only the southern portion of the Lake Lowell Unit is open to deer hunting. We define the deer hunting area on the north by the southern shoreline of Lake Lowell, on the east by the New York Canal, on the south by the southern boundary of the refuge, and on the west by Riverside Road.

3. Hunters may place up to two portable deer stands (including elevated platforms) in the Lake Lowell Unit. Hunters must place stands/platforms by hand, without the use of a vehicle. Hunters may place stands/platforms on the refuge no earlier than the beginning date of the assigned hunt permit and must remove them no later than the ending date of the hunt permit. Each stand must bear the hunter's name, address, and telephone number so that it is legible from the ground.

4. In the Lake Lowell Unit you may only shoot deer while hunting from an elevated tree stand/platform. We prohibit ground stalking and/or still hunting from the ground. We prohibit shooting a firearm or bow while on the ground, except to kill a downed deer.

5. While hunting from a tree stand, you must use a Fall-Arrest System (FAS)/Full Body Harness meeting Treestand Manufacturer's Association (TMA) Standards.

6. Hunters may only access the Lake Lowell Unit deer hunting area from Parking Areas 1–8.

7. Hunters may enter the Lake Lowell Unit no earlier than 2 hours before official shooting hours (½ hour before legal sunrise) and must leave the area within 2 hours after official shooting hours (½ hour after legal sunset). Successful hunters may extend their departure time up to 5 hours past official shooting hours (½ hour after legal sunset) to retrieve dead deer.

8. A refuge employee or State Game Warden must accompany hunters to retrieve a wounded or dead deer from any Closed Area.

D. Sport Fishing. We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. During the waterfowl hunting season, we allow fishing only within 200 yards (180 m) of the shoreline in front of both the Lower Dam (Fishing Area A) and the Upper Dam (Fishing Area B) on the Lake Lowell Unit.

2. From October 1 through April 14, we allow nonmotorized boats from ½ hour before legal sunrise to ½ hour after legal sunset only within 200 yards (180 m) of the shoreline in front of both the Lower Dam (Fishing Area A) and the Upper Dam (Fishing Area B) on the Lake Lowell Unit.

3. From April 15 through September 30, we allow motorized and nonmotorized boats from ½ hour before legal sunrise to ½ hour after legal sunset throughout the Lake Lowell Unit.

4. From February 1 through May 31, we prohibit fishing from the islands within the Snake River Islands Unit.

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■ 10. Amend § 32.32 Illinois by:

■ a. Revising paragraph D. under Chautauqua National Wildlife Refuge;

■ b. Adding paragraph A.4., revising paragraph B., revising paragraphs C.1. and C.2., adding paragraph C.3., and revising paragraph D. under Emiquon National Wildlife Refuge; and

■ c. Revising paragraphs D.1. and D.2. under Meredosia National Wildlife Refuge.

These additions and revisions read as follows:

§ 32.32 Illinois.

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Chautauqua National Wildlife Refuge

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D. Sport Fishing. We allow fishing on designated areas of the refuge from legal sunrise to legal sunset in accordance with State regulations subject to the following conditions:

1. We allow fishing on Lake Chautauqua from February 1 through October 15. We prohibit fishing in the Waterfowl Hunting Area during the waterfowl hunting season.

2. We allow bank fishing year-round between the boat ramp and the fishing trail in the North Pool and from Goofy Ridge Public Access to the west gate of the north pool water control structure.

3. Motorboats must not exceed ''no-wake'' speeds.

4. We prohibit the public entering Weis Lake on the Cameron-Billsbach Unit of the refuge from October 16 through January 31.

5. We prohibit leaving boats on refuge waters overnight (see § 27.93 of this chapter).

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Emiquon National Wildlife Refuge

A. Migratory Game Bird Hunting.

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4. We allow access for hunting from 1 hour before legal shooting time (consult the State regulations for the species in question) until 1 hour after legal sunset.

B. Upland Game Hunting. We allow upland game hunting on designated areas of the refuge in accordance with State regulations subject to the following condition: Condition A4 applies.

C. Big Game Hunting. * * *

1. Condition A4 applies.

2. We prohibit the construction or use of permanent blinds, platforms, or ladders (see § 27.93 of this chapter).

3. You must remove all portable hunting stands and blinds from the area at the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

D. Sport Fishing. We allow sport fishing throughout the year on designated areas of the refuge. We allow fishing from legal sunrise to legal sunset in accordance with State regulations subject to the following conditions:

1. We prohibit fishing in the Waterfowl Hunting area during the waterfowl hunting season.

2. We prohibit leaving boats on refuge waters overnight (see § 27.93 of this chapter).

3. Condition A3 applies.

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Meredosia National Wildlife Refuge

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D. Sport Fishing. * * *

1. We allow sport fishing on all areas open to public access from legal sunrise to legal sunset from February 1 to October 15.

2. We allow access to Meredosia Lake from the boat ramp and allow foot access on refuge land along the east side of the Meredosia Lake in Morgan County from legal sunrise to legal sunset throughout the year.

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■ 11. Amend § 32.33 Indiana by:

■ a. Revising paragraphs B., C.1., C.3., D.1., and D.4. under Big Oaks National Wildlife Refuge; and

■ b. Revising paragraphs B.1., B.4., C., and D. under Muscatatuck National Wildlife Refuge.

These revisions read as follows:

§ 32.33 Indiana.

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Big Oaks National Wildlife Refuge

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B. Upland Game Hunting. We allow hunting of squirrel in accordance with State regulations subject to the following conditions.

1. We require a refuge hunt permit (signature only).

2. We allow the use of hunting dogs only during the squirrel hunting season. You must ensure that all hunting dogs wear a collar displaying the owner's name, address, and telephone number.

3. You must hunt only in assigned areas. We prohibit trespass into an unassigned hunt area.

4. In areas posted ''Area closed,'' we prohibit entry, including hunting.

5. We prohibit the use of flagging tape and reflective tacks.

6. We allow the use of squirrel hunting dogs only in the day-use areas.

7. You may possess only approved nontoxic shot while in the field (see § 32.2(k)).

8. We require that all hunters check all harvested game taken on the refuge at the refuge check station.

9. We require all refuge hunters to hunt with a partner. We require hunting partners to know the location of their partner while hunting. An adult, age 18 or older, must directly supervise youth hunters age 17 or under.

10. We prohibit the use or possession of alcoholic beverages while hunting on the refuge (see § 32.2(j)).

11. Hunters must possess and carry a compass and/or GPS while hunting on the refuge.

C. Big Game Hunting. * * *

1. Conditions B1, B3, B4, B5, and B7 through B11 apply.

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3. We allow the use of portable hunting stands and blinds. You may leave hunting stands and blinds in the field overnight only if you will be hunting that same location the following day. We prohibit tree steps or screw-in steps (see § 32.2(i)).

D. Sport Fishing. * * *

1. We require a refuge access permit (signature only).

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4. We allow boats only if rowed, paddled, or powered by an electric trolling motor on the Old Timbers Lake.

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Muscatatuck National Wildlife Refuge

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B. Upland Game Hunting. * * *

1. We prohibit hunting and the discharge of a firearm within 100 yards (30 m) of any dwelling or any other building that people, pets, or livestock may occupy.

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4. You may possess only approved nontoxic shot while in the field (see § 32.2(k)).

* * * * *

C. Big Game Hunting. We allow hunting of white-tailed deer and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions B1, B5, and B7 apply.

2. You must possess and carry a State-issued refuge hunting permit to hunt deer during the State muzzleloader season and the youth hunting weekend.

3. We prohibit firearms deer hunting during the State firearms season except in compliance with condition C2.

4. You may take only one deer per day from the refuge.

5. We prohibit the construction or use of permanent blinds, platforms, or ladders (see § 27.92 of this chapter).

6. We allow only spring turkey hunting on the refuge, and hunters must possess a State-issued hunting permit during the first 2 weeks of the season.

7. We require successful deer and turkey hunters to report their harvest on the Big Game Harvest Report (FWS Form 3–2359) at a box at the entrance gate before leaving the refuge.

8. Our late archery season deer hunt is open from the end of the State muzzleloader season to the conclusion of the State late archery season.

9. We allow archery deer hunting in November except during youth hunting weekend.

D. Sport Fishing. We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow the use of boats (hand- or foot-propelled only) on Stanfield Lake. We prohibit the use of electric or gasoline motors.

2. We allow the use of kayaks and nonmotorized canoes on Richart Lake.

3. We allow the use of belly boats or float tubes in all designated fishing areas.

4. We allow fishing only with rod and reel or pole and line.

5. We prohibit harvest of frog and turtle (see § 27.21 of this chapter).

6. We prohibit the use of lead fishing tackle.

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■ 12. Amend § 32.35 Kansas by:

■ a. Revising paragraph A. and B.1., adding paragraphs B.2. through B.4., revising paragraph C.5., and adding paragraph C.6. under Flint Hills National Wildlife Refuge; and

■ b. Revising paragraph A.4. and adding paragraph D.8. under Quivira National Wildlife Refuge.

These additions and revisions read as follows:

§ 32.35 Kansas.

* * * * *

Flint Hills National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of goose, duck, coot, dove, rail, woodcock, crow, and common snipe on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow waterfowl hunting only on portions of the refuge on the south side of the Neosho River.

2. We prohibit hunting on the Neosho River and using boats on the river to gain hunting access.

3. We prohibit shooting from or over roads and parking areas.

4. You must remove boats, decoys, portable blinds, other personal property, and any materials brought onto the area for blind construction at the end of each day (see §§ 27.93 and 27.94 of this chapter).

5. You may leave temporary blinds (other than portable blinds) constructed of natural vegetation found on site overnight. We prohibit bringing any type of live or dead vegetation onto the refuge for any purpose at any time. Construction of these temporary blinds does not constitute exclusive use of the blind.

6. Dogs must be under the owner's immediate control at all times.

7. We prohibit hunters or dogs retrieving game in areas closed to hunting.

8. We prohibit leaving decoys unattended at any time.

9. We allow crow hunting on designated areas of the refuge subject to the following conditions:

i. We prohibit the use of centerfire rifles and pistols for hunting on the range.

ii. We close hunting areas on the north side of the Neosho River to all hunting from November 1 through March 1.

iii. Conditions A2, A3, and A7 apply.

B. Upland Game Hunting. * * *

1. Conditions A2, A3, A6, and A7 apply.

2. Hunters may possess only approved nontoxic shot (see § 32.2(k)).

3. We prohibit the use of centerfire rifles and pistols for hunting on the refuge.

4. We close hunting areas on the north side of the Neosho River to all hunting from November 1 through March 1.

C. Big Game Hunting. * * *

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5. We allow portable tree stands and/or portable ground blinds; however, you must remove them along with any other personal property at the end of each day (see §§ 27.93 and 27.94 of this chapter).

6. Conditions A2, A3, A7, B3, and B4 apply.

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Quivira National Wildlife Refuge

A. Migratory Game Bird Hunting.

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4. The refuge is open from 1½ hours before legal sunrise to 1½ hours after legal sunset. We prohibit hunters entering refuge hunting areas to set up decoys and other devices until 1 hour prior to legal shooting time (½ hour before legal sunrise). Hunters must remove all decoys within 1 hour following the end of legal shooting time (legal sunset).

* * * * *

D. Sport Fishing. * * *

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8. The refuge is open 1½ hours before legal sunrise to 1½ hours after legal sunset.

■ 13. Amend § 32.37 Louisiana by:

■ a. Revising paragraphs A.3., A.5., and A.13., adding paragraph A.20., and revising paragraph D.2. under Bayou Sauvage National Wildlife Refuge;

■ b. Revising paragraph A.6. and A.17., adding paragraph A.18., and revising paragraphs B.4., C.8., and D.1. under Big Branch Marsh National Wildlife Refuge;

■ c. Adding paragraph D.9. under Black Bayou Lake National Wildlife Refuge;

■ d. Revising paragraphs A.9., A.13., B.4., C.1., and C.5., redesignating paragraphs C.6. through C.10. as paragraphs C.8. through C.12., and adding new paragraphs C.6. and C.7. under Bogue Chitto National Wildlife Refuge;

■ e. Revising paragraphs A.7. and D.10. under Lacassine National Wildlife Refuge;

■ f. Revising paragraphs A.16., D.8.i., D.8.ii., D.8.iv., and D.8.vi., removing paragraph D.8.ix., and redesignating paragraph D.8.x. as paragraph D.8.ix.

under Sabine National Wildlife Refuge; and

■ g. Revising the entry for Upper Ouachita National Wildlife Refuge.

These additions and revisions read as follows:

§ 32.37 Louisiana.

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Bayou Sauvage National Wildlife Refuge

A. Migratory Game Bird Hunting.

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3. We allow waterfowl (duck, goose, and coot) hunting until 12 p.m. (noon) on Wednesdays, Thursdays, Saturdays, and Sundays, including early teal season, youth waterfowl hunt season, or other such special seasons that may be promulgated by law or statute. We will close the refuge to waterfowl and coot hunting during any segment of goose season that extends beyond the regular duck season.

* * * * *

5. We allow hunting only on those portions of the refuge that lie outside of the confines of the hurricane protection levee, unless we post areas closed to hunting or designated areas closed on the refuge hunt permit (signed brochure).

* * * * *

13. We prohibit air-thrust boats, aircraft, mud boats, and air-cooled propulsion engines on the refuge, except hunters may use air-cooled propulsion engines to traverse the refuge through the Intracoastal Waterway and the Irish Bayou Straight Canal.

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20. We close all portions of the refuge outside of the Hurricane Protection Levee to public entry other than waterfowl hunting until 12 p.m. from November 1 through January 31 and during the State teal season.

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D. Sport Fishing. * * *

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2. We allow sport fishing and shell fishing year-round on designated areas of the refuge and only after 12 p.m. on portions of the refuge outside of the Hurricane Protection Levee from November 1 through January 31 and during the State teal season. We close the remainder of the refuge from November 1 through January 31.

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Big Branch Marsh National Wildlife Refuge

A. Migratory Game Bird Hunting.

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6. We prohibit air-thrust boats, aircraft, mud boats, and air-cooled propulsion engines on the refuge.

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17. We prohibit the use of any type of material used as flagging or trail markers except reflective tacks.

18. We designate refuge areas closed to public hunting on the refuge hunt permit (signed brochure) or posted with no hunting signs.

B. Upland Game Hunting. * * *

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4. Conditions A5 through A10 and A12 through A18 apply.

C. Big Game Hunting. * * *

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8. Conditions A5 through A10 and A12 through A18 apply.

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D. Sport Fishing. * * *

1. You may fish only from ½ hour before legal sunrise until ½ hour after legal sunset, except we allow night fishing from the bank and pier on Lake Road.

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Black Bayou Lake National Wildlife Refuge

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D. Sport Fishing. * * *

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9. We prohibit crossing the water hyacinth booms in a boat or traveling over idle speed within the booms.

Bogue Chitto National Wildlife Refuge

A. Migratory Game Bird Hunting.

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9. We allow primitive camping within 100 feet (30 m) of designated streams. These include either bank of the Boque Chitto River, Wilson Slough, and West Pearl River south of Wilson Slough, refuge lands along the East Pearl River, and Holmes Bayou. Campers must mark their campsite with the owner's name, address, and phone number placed in a conspicuous location in the center of camp.

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13. We prohibit the use of any type of material used as flagging or trail markers, except reflective tacks.

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B. Upland Game Hunting. * * *

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4. All hunters in Louisiana (including archery hunters and small game hunters), except waterfowl hunters, must wear and display not less than 400 square inches (2,600 cm^2) of unbroken hunter-orange as the outermost layer of clothing on the chest and back and a hunter-orange cap during deer gun seasons. We require all deer hunters to display a minimum of 400 square inches of hunter-orange or a hunter-orange cap or hat while walking to and from elevated stands. All hunters in Mississippi must wear not less than 500 square inches of hunter-orange in place of the 400 square inches requirement described above. All hunters, including archers (while on the ground), except waterfowl hunters, must wear a hunter-orange cap during the dog season for squirrels and rabbits.

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C. Big Game Hunting. * * *

1. Conditions A5 through A7, A9 through A11, A13 through A17, B2, and B4 apply.

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5. We list specific dates for the primitive weapons big game hunts in the refuge hunt brochure.

6. Legal primitive firearms used for hunting the primitive firearms season in Louisiana include:

i. Rifles or pistols, .35 caliber minimum, or shotguns 10 gauge or smaller, all of which must load exclusively from the muzzle or cap and ball cylinder; use of black powder or approved substitute only; use of ball or bullet projectile only, including saboted bullets, including primitive firearms known as ''inline'' primitive firearms; and

ii. Single shot, breech-loading rifles, .35 caliber or larger of a kind or type manufactured prior to 1900; and replicas, reproductions, or reintroductions of that type of rifle having an exposed hammer that use metallic cartridges loaded with black power or modern smokeless powder. Hunters may fit all of the above with magnified scopes.

7. Legal primitive firearms/weapons used for hunting the primitive firearms season in Mississippi are crossbows and primitive firearms, which include:

i. a. Single or double-barreled-muzzle-loading rifles of at least .38 caliber; single shot, breech- loading-metallic-cartridge rifles (.35 caliber or larger) and replicas, reproductions, or reintroductions of those type rifles with an exposed hammer; and

b. Single or double-barreled-muzzle-loading shotguns, with single ball or slug.

ii. All muzzle-loading primitive firearms must use black powder or a black powder substitute with either percussion caps or #209 shotgun primers or flintlock ignition. Hunters may load metallic cartridges with black powder or modern smokeless powder. Hunters may fit all of the above with magnified scopes.

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Lacassine National Wildlife Refuge

A. Migratory Game Bird Hunting.

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7. We prohibit all boat motors, excluding trolling motors, within refuge marshes. We prohibit air-thrust boats and ATVs on the refuge (see § 27.31(f) of this chapter), unless otherwise permitted.

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D. Sport Fishing. * * *

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10. We prohibit boat and bank fishing in Lacassine Pool Unit D and refuge waters from October 16 through March 14.

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Sabine National Wildlife Refuge

A. Migratory Game Bird Hunting.

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16. An adult at least age 21 must supervise youth hunters under age 16 during all hunts. One adult may supervise two youths during migratory game bird hunts. Youth must remain within normal voice contact of the adult who is supervising them. Parents or adult guardians are responsible for ensuring that hunters under age 16 do not engage in conduct that would constitute a violation of refuge regulations.

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D. Sport Fishing. * * *

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8. * * *

i. We allow recreational cast netting from boats only from legal sunrise to legal sunset during the Louisiana inshore shrimp season.

ii. Anglers must immediately return all incidental take (bycatch) to the water before continuing to cast.

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iv. The daily bait shrimp limit is one gallon (3.8 L) per day, per boat, outside the Louisiana inshore shrimp season.

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vi. We prohibit all cast netting activities from the banks, wharves, and water control structures.

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Upper Ouachita National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of waterfowl (duck, goose, coot, gallinule, rail, snipe), woodcock, and dove on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Hunters must possess and carry a signed refuge permit (brochure).

2. We allow dove hunting during the first 3 days of the State season.

3. We allow waterfowl hunting until 12 p.m. (noon) during the State season.

4. Hunters may enter the refuge no earlier than 4 a.m.

5. We prohibit hunting within 100 feet (30 m) of the maintained rights of ways of roads, from or across ATV trails, and from above-ground oil, gas, or electrical transmission facilities.

6. We prohibit leaving boats, blinds, and decoys unattended.

7. We allow only recognized dog breeds to locate, point, and retrieve when hunting for migratory game birds.

8. Youth hunters under age 16 must remain within sight and normal voice contact of an adult age 21 or older. Each adult may supervise no more than two youth hunters.

9. We prohibit any person or group to act as a hunting guide or outfitter, or in any other capacity that receives payment directly or indirectly for services rendered to any other person or persons hunting on the refuge, regardless of whether such payment is for guiding, outfitting, lodging, or club membership.

B. Upland Game Hunting. We allow hunting of quail, squirrel, rabbit, raccoon, beaver, coyote, and opossum on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 and A9 (to hunt upland game) apply.

2. We prohibit firearm ammunition used for hunting small game larger than a .22 caliber rim-fire, shotgun slugs, and buckshot.

3. We allow hunting of raccoon and opossum during the daylight hours (legal sunrise to legal sunset) of rabbit and squirrel season. We allow night hunting (legal sunset to legal sunrise) during December and January, and we allow use of dogs for night hunting. We prohibit the selling of raccoon and opossum taken on the refuge for human consumption.

4. We allow the use of dogs to hunt squirrel and rabbit after the last refuge gun deer hunt.

5. To use horses and mules to hunt raccoon and opossum at night, hunters must first obtain a General Special Use Application and Permit (FWS Form 3–1383–G) at the refuge office.

6. Hunters may enter the refuge no earlier than 4 a.m. and must exit no later than 2 hours after legal shooting hours.

7. We allow hunting of beaver and coyote during all open refuge hunts with weapons legal for the ongoing hunt.

8. Youth hunters under age 18 must remain within sight and normal voice contact of an adult age 21 or older. Each adult may supervise no more than two youth hunters.

C. Big Game Hunting. We allow hunting of white-tailed deer, feral hog, and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A9, B6, and B8 (to hunt big game) apply.

2. We allow deer gun hunts subject to State regulations. Specific open dates will appear in the Annual Public Use Regulations Brochure.

3. The daily bag limit is one either-sex deer. The State season limit applies.

4. We prohibit leaving deer stands, blinds, and other equipment unattended.

5. Deer hunters must wear hunter orange as per State deer hunting regulations on Wildlife Management Areas.

6. We prohibit hunters placing stands or hunting from stands on pine trees with white-painted bands and/or rings.

7. We will hold a limited lottery youth turkey hunt on the Saturday of the State youth turkey hunt weekend.

8. We prohibit possession or distribution of bait or hunting with the aid of bait, including any grain, salt, minerals, or other feed or nonnaturally occurring attractant on the refuge (see § 32.2(h)).

9. We allow hunting of hog during all open refuge hunts with weapons legal for the ongoing hunt.

10. We prohibit the use of dogs for hog hunting.

D. Sport Fishing. We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow sport fishing year-round except within closed areas of the refuge, as designated by the Annual Public Use Regulations Brochure.

2. We prohibit outboard motors in the Wigeon Ponds.

3. We prohibit launching boats from a trailer or from a nondesignated boat ramp within the Mollicy levee.

4. We prohibit leaving boats and other personal property on the refuge unattended (see § 27.93 of this chapter).

5. You must tend trotlines daily. You must attach ends of trotlines by a length of cotton line that extends into the water.

6. We prohibit commercial fishing. Recreational fishing using commercial gear (slat traps, etc.) requires a special refuge permit (General Special Use Application and Permit, FWS Form 3–1383–G) that you must possess and carry and that is available at the refuge office.

7. We prohibit the taking of turtle (see § 27.21 of this chapter).

■ 15. Amend § 32.38 Maine by:

■ a. Revising the listing of ''Lake Umbagog National Wildlife Refuge'' to read ''Umbagog National Wildlife Refuge'' and placing the newly titled entry in alphabetical order within the section;

■ b. Revising paragraph A.12., redesignating paragraphs C.6. through C.14. as paragraphs C.7. through C.15., adding a new paragraph C.6., and revising newly redesignated paragraph C.8. under Moosehorn National Wildlife Refuge;

■ c. Revising paragraph A., and the introductory text of paragraph B., adding paragraph B.5., revising paragraphs C.1. and C.2., redesignating paragraphs C.3. and C.4. as paragraphs C.4. and C.5., adding a new paragraph C.3., and revising newly redesignated paragraph C.5. under Petit Manan National Wildlife Refuge;

■ d. Revising paragraph A., revising the introductory text of paragraph B., revising paragraph B.3., adding paragraph B.4., revising the introductory text of paragraph C., revising paragraphs C.1. and C.2., and adding paragraph C.4. under Sunkhaze Meadows National Wildlife Refuge; and

■ e. Revising paragraphs A.1., A.3., A.4., and A.5., revising the introductory text of paragraph B., revising paragraphs B.3., B.5., and B.6., adding paragraph B.7., and revising paragraphs C.1., C.2., and C.4., under the newly titled Umbagog National Wildlife Refuge.

These additions and revisions read as follows:

§ 32.38 Maine.

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Moosehorn National Wildlife Refuge

A. Migratory Game Bird Hunting.

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12. You must follow the State hunter-orange clothing requirements.

C. Big Game Hunting. * * *

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6. The hunter must retrieve all species, including coyotes, harvested on the refuge.

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8. All tree stands, blinds, and ladders must be portable.

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Petit Manan National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of duck, goose, woodcock, rail, gallinule, and snipe on designated areas of the refuge (Gouldsboro Bay and Sawyers Marsh Divisions) in accordance with State regulations subject to the following conditions:

1. We allow waterfowl hunting on the following islands: Little Libby, Eastern Brothers, Halifax, Schoppee, Inner Sand, Jordans Delight, Petit Manan, Sally, Abbott, Egg Rock, South Twinnie, John's, Little Marshall, Ship, Trumpet, East and West Barge, Matinicus Rock, Two Bush, Hart, Little Thrumcap, Outer White, Outer Heron, Upper Flag, and Ram.

2. We prohibit erection of permanent waterfowl blinds.

3. You must remove all temporary blinds, concealment materials, boats, and decoys (see § 27.93 of this chapter) each day.

B. Upland Game Hunting. We allow hunting of upland game on designated areas of the refuge (Gouldsboro Bay and Sawyers Marsh Division) in accordance with State regulations subject to the following conditions:

* * * * *

5. The hunter must retrieve all species, including coyotes, harvested on the refuge.

C. Big Game Hunting. * * *

1. We allow white-tailed deer hunting on designated areas of the Petit Manan Point, Sawyers Marsh, and Gouldsboro Bay Division and Bois Bubert Island. Petit Manan Point is open only during the State-prescribed muzzleloader season.

2. We allow black bear hunting only on designated areas of the Sawyers Marsh and Gouldsboro Bay Divisions during the firearm season for white-tailed deer.

3. We prohibit the use of dogs.

* * * * *

5. We normally close the refuge to all visitors from legal sunset to legal sunrise. However, during hunting season, we allow hunters to enter the refuge 1 hour prior to legal sunrise and remain on the refuge 1 hour after legal sunset.

* * * * *

Sunkhaze Meadows National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of migratory game birds on all areas of the refuge in accordance with State regulations.

B. Upland Game Hunting. We allow hunting of upland game on all areas of the refuge in accordance with State regulations subject to the following conditions:

* * * * *

3. We allow hunters to enter the refuge 1 hour before legal shooting hours (½ hour before legal sunrise in the State of Maine), and they must exit the refuge by 1 hour past legal shooting hours (½ hour after legal sunset in the State of Maine), except for hunters pursuing raccoons and coyotes at night.

4. The hunter must retrieve all species, including coyotes, harvested on the refuge.

C. Big Game Hunting. We allow hunting of black bear, bobcat, moose, and white-tailed deer on all areas of the refuge in accordance with State regulations subject to the following conditions:

1. We require hunter-orange clothing in accordance with State of Maine regulations.

2. We allow hunters to enter the refuge 1 hour before legal shooting hours (½ hour before legal sunrise in the State of Maine), and they must exit the refuge by 1 hour past legal shooting hours (½ hour after legal sunset in the State of Maine).

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4. You must remove all tree stands by the last day of the white-tailed deer hunting season (see § 27.93 of this chapter).

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Umbagog National Wildlife Refuge

A. Migratory Game Bird Hunting.

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1. Hunters must comply with State regulations regarding hunter-orange clothing or material.

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3. Pursuant to State regulations, you may use dogs to assist in hunting and retrieval of harvested birds.

4. We prohibit dog training on the refuge.

5. We open the refuge to hunting during the hours stipulated under the State's hunting regulations. Hunters will unload all hunting firearms outside of legal hunting hours.

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B. Upland Game Hunting. We allow hunting of coyote (see C. Big Game Hunting), fox, raccoon, woodchuck, squirrel, porcupine, skunk, snowshoe hare, ring-necked pheasant, and ruffed grouse in accordance with State regulations, seasons, and bag limits, subject to the following conditions:

* * * * *

3. We open the refuge to hunting during the hours stipulated under State hunting regulations. Hunters must unload all hunting firearms (see § 27.42 of this chapter) and nock no arrows outside of legal hunting hours (½ hour before legal sunrise and ½ hour after legal sunset in the State of Maine).

* * * * *

5. Each hunter must wear hunter-orange clothing or material as specified by State hunting regulations.

6. We allow hunting of showshoe hare, ring-necked pheasant, and ruffed grouse with dogs during State hunting seasons in accordance with State regulations.

7. We prohibit dog training on the refuge.

C. Big Game Hunting. * * *

1. Condition B3 applies, and we prohibit night hunting.

2. We allow bear and coyote hunting with dogs during State hunting seasons. We prohibit dog training on the refuge.

* * * * *

4. Each hunter must wear hunter-orange clothing or material in accordance with State regulations.

* * * * *

■ 16. Amend § 32.39 Maryland by revising paragraphs A.9.i., A.9.ii., A.10.i., A.12., B.2., C.6., C.11., C.12., D.1., and D.4. through D.6., removing paragraphs D.9. and D.10., redesignating paragraphs D.11. through D.18. as paragraphs D.9. through D.16., and revising newly redesignated paragraphs D.15.i., D.15.iii., and D.16.i. under Patuxent Research Refuge to read as follows:

§ 32.39 Maryland.

* * * * *

Patuxent Research Refuge

A. Migratory Game Bird Hunting. * * *

* * * * *

9. * * *

i. You must be more than 50 yards (135 m) beyond the gate at Blue Heron Pond before hunting.

ii. You must be more than 50 yards (135 m) from the road beyond the barricade at Wood Duck Pond before hunting.

* * * * *

10. * * *

i. You must wear a solid-colored-fluorescent hunter orange that must be visible 360° while carrying-in and carrying-out equipment (e.g., portable blinds).

* * * * *

12. We prohibit hunting of goose, duck, and dove during the youth deer firearms hunts, deer firearms seasons, and the early deer muzzleloader season. The only exceptions are that Blue Heron Pond, Lake Allen, and Area Z will remain open for duck hunters and the Junior Waterfowl hunt day during the early muzzleloader season.

* * * * *

B. Upland Game Hunting. * * *

* * * * *

2. Hunters may possess only approved nontoxic shot while in the field (see § 32.2(k)), except for the use of .22-caliber rimfire rifles during the month of January only to hunt squirrel.

* * * * *

C. Big Game Hunting. * * *

* * * * *

6. We require bow hunters to wear either a cap of solid-fluorescent-orange color at all times or a vest or jacket containing back and front panels of at least 250 square inches (1,625 cm^2) of solid-fluorescent-orange color when moving to and from their vehicle to their deer stand or their hunting spot and while tracking or dragging out their deer. We do not require bow hunters to wear solid-colored-fluorescent hunter orange when positioned to hunt except during the North Tract Youth Firearms Deer Hunts, the muzzleloader seasons, and the firearms seasons, when they must wear it at all times.

* * * * *

11. We prohibit the use of dogs to hunt or track wounded deer.

12. If you wish to track wounded deer beyond 2 hours after legal sunset, you must gain consent from a refuge law enforcement officer. We prohibit tracking 3 hours after legal sunset. You must make a reasonable effort to retrieve the wounded deer. This may include next-day tracking except Sundays and Federal holidays.

* * * * *

D. Sport Fishing. * * *

1. We require all anglers, age 16 and older, to present their current Maryland State nontidal fishing license and complete the Fishing/Shrimping/Crabbing Application (FWS Form 3–2358). Anglers age 18 and older will receive a free Patuxent Research Refuge Fishing Vehicle Parking Pass. Organized groups must complete the Fishing/Shrimping/Crabbing Application (FWS Form 3–2358), and the group leader must stay with the group at all times while fishing.

* * * * *

4. Anglers must display a copy of the Fishing Vehicle Parking Pass in the vehicle windshield while fishing at Cash Lake.

5. We require anglers, ages 16 and 17, to have a parent or guardian cosign the Fishing/Shrimping/Crabbing Application (FWS Form 3–2358). We will not issue a Fishing Vehicle Parking Pass to anglers ages 16 and 17.

6. An adult age 21 or older possessing a Fishing Vehicle Parking Pass must accompany anglers age 17 or younger in the field; they must maintain visual contact with each other within a 50-yard (45 m) distance; and they may take 3 youths, age 15 or younger, to fish under their Fishing Vehicle Parking Pass.

* * * * *

15. * * *

i. Conditions D1 through D14 apply.

* * * * *

iii. Anglers age 18 and older must complete an Emergency Contact Information/warning/waiver form (PRR Fishing Form #1) prior to receiving a free North Tract Vehicle Access Pass. Anglers must display the North Tract Vehicle Access Pass in the vehicle windshield at all times and return the Pass to the North Tract Visitor Contact Station at the end of each visit.

* * * * *

16. * * *

i. Conditions D1 through D13 apply.

* * * * *

■ 17. Amend § 32.40 Massachusetts by removing paragraph A.2., revising paragraphs C.1. and C.2., redesignating paragraphs C.4. through C.11. as paragraphs C.5. through C.12, adding new paragraph C.4., revising newly redesignated paragraphs C.8., C.9., and C.11., and revising paragraph D. under Parker River National Wildlife Refuge.

These additions and revisions read as follows:

§ 32.40 Massachusetts.

* * * * *

Parker River National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

1. All hunters, regardless of age, must possess and carry a refuge permit (Quota Deer Hunt Application, FWS Form 3–2354). This is a quota hunt, and we will randomly select a limited number of hunters from those that apply. You may apply by mail from September 1 until October 1.

2. If selected from the random drawing, you must attend a refuge-specific hunter orientation session prior to the hunt. We will charge a fee of participating hunters.

* * * * *

4. We prohibit discharge of a firearm on or across the refuge road. You must unload hunting weapons when walking upon the refuge road.

* * * * *

8. We prohibit loaded hunting firearms (see § 27.42 of this chapter) on or within 150 feet (45 m) of the refuge road.

9. You must bring all deer to the refuge deer check station located at our Headquarters on the Plum Island Turnpike in Newburyport, Massachusetts.

* * * * *

11. We prohibit vehicular travel (emergency excepted) on refuge roads from ½ hour before legal sunrise until 8:30 a.m. Refuge and Sandy Point State Reservation hunters may enter or reenter the refuge until 2:30 p.m. during the refuge deer hunt.

* * * * *

D. Sport Fishing. We allow saltwater fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow saltwater fishing on the ocean beach and the surrounding waters of the Broad Sound with the following conditions:

i. We prohibit fishing during closures.

ii. Anglers are subject to State licensing requirements and catch limits.

iii. We allow persons using refuge fishing areas access from legal sunrise to legal sunset without a refuge permit. They are, however, subject to entrance fee requirements.

iv. Nelson Island is open to fishing from legal sunrise to legal sunset, except during waterfowl seasons, or other closures. We limit access to the trail, and fishing within 100 feet (30 m) on either side of the trail at the shoreline of Broad Sound.

v. The south-facing shoreline of Stage Island is open to fishing when accessed from the shore from Sandy Point State Reservation. We allow access from the Sandy Point State Reservation, along the shoreline below mean high tide, to a point 250 feet (73 m) beyond the terminus, or most western point, of the Stage Island peninsula known as Ipswich Bluff.

2. We require a Fishing Application (Fishing/Shrimping/Crabbing Application, FWS Form 3–2358) and application fee, as well as an entrance fee for night fishing and for the use of over-the-sand, surf-fishing vehicles (ORVs) with the following conditions:

i. We prohibit fishing in closed areas.

ii. Anglers must enter the refuge through the entrance gate and arrive prior to legal sunset.

iii. We generally allow fishing after legal sunset with a permit (vehicle sticker issued by the refuge office) sometime in mid-July until October 31 of the same year. Those persons are subject to additional listed environmental and/or emergency conditions.

iv. We will issue persons wishing access to the refuge beach with ORVs a separate Fishing/Shrimping/Crabbing Application (FWS Form 3–2358), generally valid between September 1 and October 31 of the same year. Those persons are subject to additional listed permit conditions. We may restrict ORV use due to beach, weather, tide, and other conditions.

■ 18. Amend § 32.41 Michigan by adding an entry in alphabetical order for Detroit River International Wildlife Refuge to read as follows:

§ 32.41 Michigan.

* * * * *

Detroit River International Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of duck, goose, rail, gallinule, coot, woodcock, and snipe on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit cutting of woody vegetation (see § 27.51 of this chapter) on the refuge for blinds.

2. All blinds must be portable; and you must remove all of your blinds, boats, and decoys (see § 27.93 of this chapter) from the refuge each day.

3. We prohibit the construction or use of permanent blinds, stands, platforms, or scaffolds (see § 27.92 of this chapter).

4. You may possess only approved nontoxic shot (see § 32.2(k)) while in the field.

5. We allow refuge access from 1½ hours prior to legal sunrise until 1 hour after legal sunset.

6. We prohibit the use of paint, flagging, reflectors, tacks, or other human-made materials to mark trails or hunting locations (see § 27.93 of this chapter).

7. We allow the use of hunting dogs, provided the dog is under the immediate control of the hunter at all times.

8. You must park all vehicles in designated parking areas.

9. We prohibit camping.

10. We allow hunting of waterfowl only on the Plum Creek Bay Unit of the refuge in accordance with State regulations subject to the following conditions:

i. Conditions A1 through A7 and A9 apply.

ii. Access to this unit is by boat only.

11. We allow hunting of waterfowl only on the Brancheau Unit of the refuge in accordance with State regulations subject to the following conditions:

i. You must obtain permits for this unit by entering the Michigan Department of Natural Resources daily drawing at the Point Mouilee State Game Area.

ii. You must possess a valid permit for the date you are hunting in the Brancheau Unit.

iii. Conditions A1, A2, A4, and A6 through A9 apply.

iv. You must remain with 75 feet (22.5 m) of your assigned blind or numbered post. We allow an exception for unarmed (hunting weapons) retrieval of waterfowl.

v. We prohibit boats. You may access all blinds or areas by walking.

vi. You may possess a maximum of 18 shells per hunter containing only approved nontoxic shot (see § 32.2(k)).

vii. We prohibit shot size larger than BBB.

B. Upland Game Hunting. We allow hunting of pheasant, squirrel, rabbit, fox, raccoon, and coyote on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A3, and A5 through A9 apply.

2. You may possess only approved nontoxic shot (see § 32.2(k)) while in the field with the following exception: while hunting fox, coyote, and raccoon in units where we allow it, hunters may use single-projectile shot such as bullets, slugs, or muzzleloader bullets containing lead. We prohibit the use of buckshot for any hunting on the refuge.

C. Big Game Hunting. We allow hunting of deer and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 through A3, A5, A6, A8, and A9 apply.

2. We prohibit the distribution of bait or hunting with the aid of bait, salt, minerals, or other ingestible attractant (see § 32.2(h)).

3. For deer hunting, we allow only single-projectile shot. We prohibit the use of buckshot for any hunting on the refuge.

4. For turkey hunting, you must possess only approved nontoxic shot (see § 32.2(k)) while in the field.

5. We allow only portable tree stands for deer hunting.

6. We allow only one tree stand per hunter per refuge unit.

7. We do not require hunters to remove tree stands at the end of each day's hunt. However, we strictly enforce State rules on tree stands.

D. Sport Fishing. [Reserved]

■ 19. Amend § 32.42 Minnesota by:

■ a. Revising paragraph A.4. under Agassiz National Wildlife Refuge;

■ b. Revising paragraph B.2. and adding paragraph B.3. under Glacial Ridge National Wildlife Refuge;

■ c. Revising paragraphs A.1., B.2., and B.3., removing paragraphs B.4. and B.5., revising the introductory text of paragraph C., removing paragraphs C.3 through C.6., revising the introductory text of paragraph D., and revising

paragraph D.4. under Minnesota Valley National Wildlife Refuge;

■ d. Revising paragraph B. under Minnesota Valley Wetland Management District; and

■ e. Revising paragraph C.7. and adding paragraph C.8. under Sherburne National Wildlife Refuge.

These additions and revisions read as follows:

§ 32.42 Minnesota.

* * * * *

Agassiz National Wildlife Refuge

A. Migratory Game Bird Hunting.

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4. We prohibit the construction or use of permanent blinds (see § 27.92 of this chapter).

* * * * *

Glacial Ridge National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

* * * * *

2. You may possess only approved nontoxic shot while in the field, including shot used for hunting wild turkey (see § 32.2(k)).

3. Condition A2 applies.

* * * * *

Minnesota Valley National Wildlife Refuge

* * * * *

A. Migratory Game Bird Hunting.

* * *

1. We require refuge authorization for refuge-specific special hunts.

* * * * *

B. Upland Game Hunting. * * *

* * * * *

2. We allow hunters to possess and use small-caliber rimfire rifles, .22 caliber and smaller, on designated areas of the refuge.

3. You may possess only approved nontoxic shotshells while in the field, including shotshells used for hunting wild turkey (see § 32.2(k)).

C. Big Game Hunting. We allow hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

* * * * *

D. Sport Fishing. We allow sport fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

* * * * *

4. We prohibit the taking of any turtle species by any method on the refuge (see § 27.21 of this chapter).

Minnesota Valley Wetland Management District

* * * * *

B. Upland Game Hunting. We allow upland game hunting throughout the District in accordance with State regulations subject to the following conditions:

1. Conditions A4 and A5 apply.

2. You may possess only approved nontoxic shot for hunting wild turkey (see § 32.2(k)).

* * * * *

Sherburne National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

* * * * *

7. You may possess only approved nontoxic shot while in the field, including shot used for hunting wild turkey (see § 32.2(k)).

8. Conditions A4 and A7 apply.

* * * * *

■ 20. Amend § 32.43 Mississippi by:

■ a. Revising paragraphs A., D.1., and D.2., removing paragraph D.4., redesignating paragraphs D.5. through D.9. as paragraphs D.4. through D.8. under Coldwater River National Wildlife Refuge;

■ b. Revising paragraphs A.1., A.3., and A.4., removing paragraph A.6., redesigating paragraphs A.7. through A.12. as paragraphs A.6. through A.11., adding new paragraph A.12., revising the introductory text of paragraph B., revising paragraphs B.1., B.3., B.5., C.1., and C.8., adding paragraphs C.9. and C.10., revising paragraphs D.1. and D.2., removing paragraph D.3., and redesignating paragraphs D.4. through D.8. as paragraphs D.3. through D.7. under Dahomey National Wildlife Refuge;

■ c. Revising paragraphs A.2. and A.3., adding paragraphs A.17. and A.18., and revising paragraphs B.1. and C.1. under Hillside National Wildlife Refuge;

■ d. Revising paragraphs B.2., B.3., and B.14., adding paragraph B.16., and revising paragraph C.1. under Holt Collier National Wildlife Refuge;

■ e. Revising paragraphs A.3. and A.4., adding paragraphs A.16. and A.17., and revising paragraphs B.1. and C.1. under Mathews Brake National Wildlife Refuge;

■ f. Revising paragraphs A.2. and A.3., adding paragraphs A.16. and A.17., and revising paragraphs B.1., C.1., and D.7. under Morgan Brake National Wildlife Refuge;

■ g. Revising the entry for ''Noxubee National Wildlife Refuge'' to read ''Sam D. Hamilton Noxubee National Wildlife Refuge'' and placing it in alphabetical order in this section, revising paragraphs A.1., A.3., and A.8., adding paragraph A.12., revising the introductory text of paragraph B., revising paragraphs B.4., B.7., B.8., and B.11., revising the introductory text of paragraph C., revising paragraphs C.1. and C.2., removing paragraph C.3., redesignating paragraphs C.4. through C.9. as paragraphs C.3. through C.8., revising newly redesignated paragraph C.8., and revising paragraphs D.1. and D.9. under Sam D. Hamilton Noxubee National Wildlife Refuge;

■ h. Revising paragraphs A.1. through A.3., A.10., and A.18., adding paragraph A.19., and revising paragraphs B.1., C.1., and D.7. under Panther Swamp National Wildlife Refuge;

■ i. Revising paragraphs A.1., A.3., and A.5., removing paragraph A.7., redesignating paragraphs A.8. through A.13. as paragraphs A.7. through A.12., adding new paragraph A.13., revising the introductory text of paragraph B., revising paragraphs B.1., B.3., B.5., and C.8., adding paragraphs C.9. and C.10., revising paragraphs D.1. and D.2., removing paragraph D.4., and redesignating paragraphs D.5. through D.9. as paragraphs D.4. through D.8 under Tallahatchie National Wildlife Refuge; and

■ j. Revising paragraphs A.1. through A.3., adding paragraphs A.16. and A.17., and revising paragraphs B.2., B.7., B.8., C.1., and C.12. under Yazoo National Wildlife Refuge.

These additions and revisions read as follows:

§ 32.43 Mississippi.

* * * * *

Coldwater River National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of migratory waterfowl and coot on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. All hunters must comply with all State hunter education requirements. All hunters age 16 and older must possess and carry a valid signed refuge hunting permit (name and address).

2. We restrict all public use to the period beginning 2 hours before legal sunrise and ending 2 hours after legal sunset. We prohibit entering or remaining on the refuge before or after hours.

3. We allow hunting of migratory game birds, including the Light Goose Conservation Order, only on Wednesdays, Fridays, Saturdays, and Sundays from ½ hour before legal sunrise and ending at 12 p.m. (noon). Hunters must remove all decoys, blind

materials (see § 27.93 of this chapter), and harvested waterfowl from the area no later than 1 p.m. each day.

4. Each hunter must obtain a daily Harvest Report Card (OMB 1018–0140) available at each refuge information station and follow the printed instructions on the card. You must display the card in plain view on the dashboard of your vehicle so that the personal information is readable. Prior to leaving the refuge, you must complete the reverse side of the card/form and deposit it at one of the refuge information stations. Include all game harvested; if you harvested no game, report ''0''. Hunters may possess only one Harvest Report Card at a time.

5. We close certain areas of the refuge for sanctuary or administrative purposes. We will mark such areas with ''No Hunting'' or ''Area Closed'' signs.

6. Waterfowl hunters may leave boats meeting all State registration requirements on the refuge water bodies throughout the waterfowl season. You must remove boats (see § 27.93 of this chapter) within 72 hours after the season closes.

7. All hunters, or persons on the refuge for any reason, must wear a minimum of 500 square inches (3,250 cm^2) of visible, unbroken, fluorescent-orange-colored material above the waistline. Waterfowl hunters must comply with this requirement while walking/boating to and from actual hunting area. We do not require fluorescent orange for turkey season, for hunting raccoons at night, or for waterfowl hunters while actually hunting.

8. We allow dogs on the refuge only when specifically authorized for hunting. We encourage the use of dogs to retrieve dead or wounded waterfowl. Dogs must remain under the immediate control of their handlers at all times (see § 26.21(b) of this chapter).

9. You must remove decoys, blinds, other personal property, and litter (see §§ 27.93 and 27.94 of this chapter) from the hunting area following each morning's hunt. We prohibit cutting or removing trees and other vegetation (see § 27.51 of this chapter). We prohibit the use of flagging, paint, blazes, tacks, or other types of markers.

10. We prohibit ATVs/UTVs (see § 27.31(f) of this chapter), horses, and mules on the refuge.

11. We prohibit the use or possession of alcoholic beverages while hunting on the refuge (see § 32.2(j)).

* * * * *

D. Sport Fishing. * * *

1. Condition A11 applies.

2. All anglers must possess and carry a valid, signed refuge fishing permit (name and address) certifying that they understand and will comply with all regulations.

* * * * *

Dahomey National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

1. All hunters must comply with all State hunter education requirements. All hunters age 16 and older must possess and carry a valid, signed refuge hunting permit (name and address).

* * * * *

3. We allow hunting of migratory game birds, including Light Goose Conservation Order, only on Wednesdays, Fridays, Saturdays, and Sundays from ½ hour before legal sunrise until 12 p.m. (noon). Hunters must remove all decoys, blind material (see § 27.93 of this chapter), and harvested waterfowl from the area no later than 1 p.m. each day.

4. Each hunter must obtain a Harvest Report Card (OMB 1018–0140) available at each refuge information station and follow the printed instructions on the card. Hunters must place the card in plain view on the dashboard of their vehicle so the personal information is readable. Prior to leaving the refuge, you must complete the reverse side of the card and deposit it at one of the hunter information stations. Include all game harvested, and if there is none, report ''0''. We prohibit hunters possessing more than one Harvest Report Card at a time.

* * * * *

12. We prohibit the use or possession of alcoholic beverages while hunting on the refuge (see § 32.2(j)).

B. Upland Game Hunting. We allow hunting of quail, squirrel, rabbit, and raccoon (raccoon by General Special Use Application and Permit [FWS Form 3–1383–G] only) on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A4, A5, A7, A8, A11, and A12 apply.

* * * * *

3. You may possess shotguns with approved nontoxic shotgun shot (see § 32.2(k)), .17, .22, .22-magnum rifles, and legal archery equipment.

* * * * *

5. We allow use of dogs, but they must remain under the immediate control of their handlers at all times (see § 26.21(b) of this chapter).

* * * * *

C. Big Game Hunting. * * *

1. Conditions A1, A4, A5, A8, A11, and A12 apply.

* * * * *

8. You may erect portable deer stands (see § 32.2(i)) 2 weeks prior to the opening of archery season on the refuge, and you must remove them by January 31 (see § 27.93 of this chapter). We prohibit hunters leaving their stands in the tree at the end of each hunting day. Hunters who wish to leave a stand on the refuge must chain the stand to the base of the tree and label it with the hunter's name and phone number legibly written on or attached to the stand. This does not reserve the site for their exclusive use. All hunting sites are on a first-come, first-served basis. We may confiscate and dispose of deer stands not in compliance with these regulations.

9. Hunters using a climbing tree stand must use a fall-arrest system manufactured to Treestand Manufacturers Association standards.

10. We prohibit cutting or removing trees and other vegetation (see § 27.51 of this chapter). We prohibit the use of flagging, paint, blazes, tacks, or other types of markers. We prohibit nailing deer stands and/or steps to trees and attaching any blind or stand to a tree by any metal object driven, screwed, or otherwise inserted into the tree (see § 32.2(i)).

9. *D. Sport Fishing.* * * *

1. Condition A12 applies.

2. All anglers must possess and carry a valid, signed refuge fishing permit (name and address) certifying that they understand and will comply with all regulations.

* * * * *

Hillside National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

* * * * *

2. Before hunting or fishing, all participants must display their User Information/Harvest Report Card (OMB 1018–0140) in plain view on the dashboard of their vehicle so that the card number is readable.

3. Failure to display the User Information/Harvest Report Card will result in the loss of the participant's annual refuge public use permit (name, address, and phone number).

* * * * *

17. For instances of lost or stolen public use permits, management may issue duplicates at their discretion, and we may charge a fee.

18. We allow retriever dogs while hunting migratory birds.

B. Upland Game Hunting. * * *

1. Conditions A1 through A10 and A17 apply.

* * * * *

C. Big Game Hunting. * * *

1. Conditions A1 through A10, A17, B5, and B8 apply.

* * * * *

Holt Collier National Wildlife Refuge

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B. Upland Game Hunting. * * *

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2. Before hunting or fishing, all participants must display their User Information/Harvest Report Card (OMB 1018–0140) in plain view on the dashboard of their vehicle so that the card number is readable.

3. Failure to display the User Information/Harvest Report Card (OMB 1018–0140) will result in the loss of the participant's annual refuge public use permit (name, address, and phone number).

* * * * *

14. We prohibit ATVs, horses, and mules.

* * * * *

16. For instances of lost or stolen public use permits, management may issue duplicates at their discretion, and we may charge a fee.

C. Big Game Hunting. * * *

1. Conditions B1 through B7, B9, and B13 through B16 apply.

* * * * *

Mathews Brake National Wildlife Refuge

A. Migratory Game Bird Hunting.

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3. All participants must display the User Information/Harvest Report Card (OMB 1018–0140) in plain view on the dashboard of their vehicle so that the card number is readable.

4. Failure to display the User Information/Harvest Report Card will result in the loss of the participant's annual refuge public use permit (name, address, and phone number).

* * * * *

16. For instances of lost or stolen public use permits, management may issue duplicates at their discretion, and the hunter may incur a fee.

17. We allow retriever dogs while hunting migratory birds.

B. Upland Game Hunting. * * *

1. Conditions A2 through A9, A15, and A16 apply.

* * * * *

C. Big Game Hunting. * * *

1. Conditions A1 through A9, A15, A16, and B5 through B7 apply.

* * * * *

Morgan Brake National Wildlife Refuge

A. Migratory Game Bird Hunting.

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2. Before hunting and fishing, all participants must display their User Information/Harvest Report Card (OMB 1018–0140) in plain view on the dashboard of their vehicle so that the card number is readable.

3. Failure to display the User Information/Harvest Report Card will result in the loss of the participant's annual refuge public use permit (name, address, and phone number).

* * * * *

16. For instances of lost or stolen public use permits, management may issue duplicates at their discretion, and the hunter may incur a fee.

17. We allow retriever dogs while hunting migratory birds.

B. Upland Game Hunting. * * *

1. Conditions A1 through A11 and A16 apply.

* * * * *

C. Big Game Hunting. * * *

1. Conditions A1 through A7, A9, A10, A16, and B5 through B7 apply.

* * * * *

D. Sport Fishing. * * *

* * * * *

7. Conditions A2 through A10 and A16 apply.

* * * * *

Panther Swamp National Wildlife Refuge

A. Migratory Game Bird Hunting.

* * *

1. Youth hunters age 15 and younger must possess and carry a hunter safety course card or certificate. Each youth hunter must remain within sight and normal voice contact of an adult age 21 or older. Each hunter age 16 and older must possess and carry a valid, signed refuge public use permit (name, address, and phone number) certifying that he or she understands and will comply with all regulations. One adult may supervise no more than one youth hunter.

2. Before hunting or fishing, all participants must display their User Information/Harvest Report Card (OMB 1018–0140) in plain view on the dashboard of their vehicle so that the card number is readable.

3. Failure to display the User Information/Harvest Report Card will result in the loss of the participant's annual public use permit.

* * * * *

10. We allow ATVs/UTVs only on designated trails (see § 27.31 of this chapter) (see refuge brochure map) from September 15 through February 28. Size limitations may apply (see refuge brochure).

* * * * *

18. For instances of lost or stolen public use permits, management may issue duplicates at their discretion, and the hunter may incur a fee.

19. We allow retriever dogs while hunting migratory birds.

B. Upland Game Hunting. * * *

1. Conditions A1 through A10 and A18 apply.

* * * * *

C. Big Game Hunting. * * *

1. Conditions A1 through A7, A9, A10, A18, and B6 through B8 apply.

* * * * *

D. Sport Fishing. * * *

* * * * *

7. Conditions A1 through A7, A10, and A18 apply.

Sam D. Hamilton Noxubee National Wildlife Refuge

A. Migratory Game Bird Hunting.

* * *

1. We require a $15 fee permit (name and address) for waterfowl hunting, and only two companions may accompany each permit holder. Permits are nontransferable, and each hunter may apply for only one permit. We do not guarantee preferred dates.

* * * * *

3. Hunts and hunt dates are available at refuge headquarters and specified in the refuge brochure. You must possess and carry a signed refuge hunt permit (signed brochure) when hunting.

* * * * *

8. Persons possessing, transporting, or carrying firearms on the refuge must comply with all provisions of State and local law. Persons may only use (discharge) firearms in accordance with refuge regulations (see § 27.42 of this chapter and specific refuge regulations in part 32).

* * * * *

12. We allow dogs for retrieval of migratory game birds.

B. Upland Game Hunting. We allow hunting of squirrel, rabbit, quail, opossum, and raccoon on designated areas of the refuge in accordance with State regulations subject to the following conditions:

* * * * *

4. We allow hunting of squirrel, raccoon, rabbit, quail, and opossum with dogs during designated hunts.

* * * * *

7. Conditions A3, A7, A8, and A10 apply.

8. We prohibit the use of ATVs, horses, and mules.

* * * * *

11. Valid permit holders (signed brochure) may take incidental species (coyote, beaver, nutria, and feral hog) during any hunt with those weapons legal during those hunts.

C. Big Game Hunting. We allow hunting of white-tailed deer and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A3, A5, A7, A8, A10, B8, B9, and B11 apply.

2. We require a $15 fee permit (name and address) for all refuge deer hunts. Hunters must sign this permit and have it in their possession at all times while hunting. Permits are nontransferable, and each hunter may apply for only one permit.

* * * * *

8. We will make special deer hunting blinds available for persons limited to the use of a wheelchair by General Special Use Application and Permit (FWS Form 3–1383–G). Contact the refuge office for information.

D. Sport Fishing. * * *

1. The sport fishing, boating, and bow fishing season extends from March 1 through October 31, except for the Noxubee River and borrow pit areas along Highway 25 that are open year-round. Persons must possess and carry a signed refuge fishing permit (signed brochure) when fishing.

* * * * *

9. We prohibit fishing tournaments on all refuge waters.

Tallahatchie National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

1. All hunters must comply with all State hunter education requirements. All hunters age 16 and older must possess and carry a valid, signed refuge hunting permit (name and address).

* * * * *

3. We allow hunting of migratory game birds, including Light Goose Conservation Order, only on Wednesdays, Fridays, Saturdays, and Sundays from ½ hour before legal sunrise and ending at 12 p.m. (noon). Hunters must remove all decoys, blind material (see § 27.93 of this chapter), and harvested waterfowl from the area no later than 1 p.m. each day.

* * * * *

5. Each hunter must obtain a daily User Information/Harvest Report Card (OMB–1018–0140) available at each refuge information station and follow the printed instructions on the card. You must display the card in plain view on the dashboard of your vehicle so that the personal information is readable. Prior to leaving the refuge, you must complete the reverse side of the card and deposit it at one of the refuge information stations. Include all game harvested, and if you harvest no game, report ''0.'' We prohibit hunters possessing more than one User Information/Harvest Report Card at a time.

* * * * *

13. We prohibit the use or possession of alcoholic beverages while hunting on the refuge (see § 32.2(j)).

B. Upland Game Hunting. We allow hunting of quail, squirrel, rabbit, and raccoon (raccoon by General Special Use Permit [FWS Form 3–1383–G] only) on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A4 through A6, A8, A9, and A11 through A13 apply.

* * * * *

3. You may possess shotguns only with approved nontoxic shotgun shot (see § 32.2(k)), .17, .22., .22-magnum rifles, and legal archery equipment.

* * * * *

5. Hunters may use dogs, but they must remain under the immediate control of their handlers at all times (see § 26.21(b) of this chapter).

* * * * *

C. Big Game Hunting. * * *

* * * * *

8. You may erect portable deer stands (see § 32.2(i)) 2 weeks prior to the opening of archery season on the refuge, and you must remove them by January 31 (see § 27.93 of this chapter). We prohibit hunters leaving their stands in the tree at the end of each hunting day. If they wish to leave the stands on the refuge, they may be chained to the base of the tree and labeled with the hunter's name and phone number legibly written on or attached to the stand. This does not reserve the site for their exclusive use. All hunting sites are on a first-come, first-served basis. We may confiscate and dispose of deer stands not in compliance with these regulations.

9. Hunters using a climbing tree stand must use a fall-arrest system manufactured to Treestand Manufacturers Association standards.

10. We prohibit cutting or removing trees and other vegetation (see § 27.51 of this chapter). We prohibit the use of flagging, paint, blazes, tacks, or other types of markers. We prohibit nailing deer stands and/or steps to trees and attaching any blind or stand to a tree by any metal object driven, screwed, or otherwise inserted into the tree (see § 32.2(i)).

D. Sport Fishing. * * *

1. Condition A13 applies.

2. All anglers must possess and carry a valid, signed refuge fishing permit (name and address) certifying that they understand and will comply with all regulations.

* * * * *

Yazoo National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

1. Youth hunters age 15 and under must possess and carry a hunter safety course card or certificate. Each youth hunter must remain within sight and normal voice contact of an adult age 21 or older. Each hunter age 16 and older must possess and carry a valid, signed refuge public use permit (name, address, and phone number) certifying that he or she understands and will comply with all regulations. One adult may supervise no more than one youth hunter.

2. Before hunting or fishing, all participants must display their User Information/Harvest Report Card (OMB 1018–0140) in plain view on the dashboard of their vehicle so that the card number is readable.

3. Failure to display the User Information/Harvest Report Card will result in the loss of the participant's annual refuge public use permit.

* * * * *

16. For instances of lost or stolen public use permits, management may issue duplicates at their discretion, and hunters may incur a fee.

17. We allow retriever dogs while hunting migratory birds.

B. Upland Game Hunting. * * *

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2. Conditions A1 through A9 and A16 apply.

* * * * *

7. We prohibit ATVs, horses, and mules.

8. We allow rabbit hunting on the Herron and Brown Tracts.

* * * * *

C. Big Game Hunting. * * *

1. Conditions A1 through A7, A9, A16, B6, B7, and B9 apply.

* * * * *

12. We allow archery deer hunting on the Brown Tract.

* * * * *

■ 21. Amend § 32.44 Missouri by removing paragraph B.3., and revising paragraphs C.4. through C.6., and removing paragraph C.7. under Big Muddy National Fish and Wildlife Refuge to read as follows:

§ 32.44 Missouri.

* * * * *

Big Muddy National Fish and Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

* * * * *

4. We restrict deer and turkey hunters on the Boone's Crossing Unit, including Johnson Island, to archery methods only.

5. The Cora Island Unit is open to deer hunting for archery methods only. We restrict hunting for other game to shotgun only with shot no larger than BB.

6. You may possess only approved nontoxic shot while hunting on the refuge (see § 32.2(k)); this includes turkey hunting.

* * * * *

■ 22. Amend § 32.45 Montana by:

■ a. Revising the entry for ''National Bison National Wildlife Refuge'' to read ''National Bison Range'', and revising paragraph D. under the newly titled National Bison Range;

■ b. Revising the entry for ''Nine-Pipe National Wildlife Refuge'' to read ''Ninepipe National Wildlife Refuge'', and revising paragraph D. under the newly titled Ninepipe National Wildlife Refuge;

■ c. Revising the entry for Northwest Montana Wetland Management District;

■ d. Revising paragraph D. under Pablo National Wildlife Refuge; and

■ e. Revising paragraph A.1., adding paragraphs A.4. and A.5., revising paragraphs C.2. through C.6., adding paragraphs C.7. through C.11., and revising paragraph D. under Red Rock Lakes National Wildlife Refuge;

These additions and revisions read as follows:

§ 32.45 Montana.

* * * * *

National Bison Range

* * * * *

D. Sport Fishing. We allow sport fishing on designated areas of the refuge in accordance with State laws and regulations and per Joint State and Confederated Salish and Kootenai Tribal regulations subject to the following conditions:

1. We allow public access by walk-in only. All anglers must remain within 100 feet (30 m) of the creek except they may use the canal road to access the creek.

2. We prohibit the use of lead or lead-based lures or sinkers.

3. We prohibit leaving or dumping any dead animal, fish or fish entrails, garbage, or litter on the refuge (see § 27.94 of this chapter).

Ninepipe National Wildlife Refuge

* * * * *

D. Sport Fishing. We allow sport fishing on designated areas of the refuge in accordance with State laws and regulations and per joint State and Confederated Salish and Kootenai Tribal regulations subject to the following conditions:

1. We prohibit the use of lead or lead-based tackle.

2. We prohibit the use of boats, float tubes, and other flotation devices.

3. You must remove ice fishing shelters and other personal property at the end of each day (see § 27.93 of this chapter).

4. We prohibit leaving or dumping any dead animal, fish or fish entrails, garbage, or litter on the refuge (see § 27.94 of this chapter).

* * * * *

Northwest Montana Wetland Management District

A. Migratory Game Bird Hunting. We allow migratory game bird hunting on Waterfowl Production Areas (WPAs) throughout the wetland district in accordance with State law (Flathead County WPAs) and per Joint State and Confederated Salish and Kootenai Tribal regulations (Lake Count WPAs) subject to the following conditions:

1. Hunters must remove all boats, decoys, portable blinds, boat blinds, and other personal property at the end of each day (see § 27.93 of this chapter).

2. Hunters must construct blinds, other than portable blinds, of native materials only. They must label all nonportable blinds with their name, Automated License System (ALS) number, address, and phone number. Construction and labeling of these blinds does not constitute exclusive use of the blind. Hunters must remove these blinds within 7 days of the close of the migratory game bird hunting season.

3. We prohibit the use or possession of alcoholic beverages while hunting (see § 32.2(j)).

B. Upland Game Hunting. We allow upland game hunting on Waterfowl Production Areas (WPAs) throughout the wetland district in accordance with State law (Flathead County WPAs) and per Joint State and Confederated Salish and Kootenai Tribal regulations (Lake County WPAs) subject to the following conditions:

1. Hunters may possess only approved nontoxic shot (see § 32.2(k)).

2. We prohibit hunting with a shotgun capable of holding more than three shells on all Lake County WPAs.

3. We prohibit the use or possession of alcoholic beverages while hunting (see § 32.2(j)).

C. Big Game Hunting. We allow big game hunting on Lake County Waterfowl Production Areas (WPAs) per Joint State and Confederated Salish and Kootenai Tribal regulations. We allow big game hunting on Flathead County WPAs in accordance with State regulations subject to the following conditions:

1. We allow portable tree stands and/or portable ground blinds; however, hunters must remove them daily (see § 27.93 of this chapter). We prohibit construction and/or use of tree stands or portable ground blinds from dimensional lumber. We prohibit the use of nails, wire, screws, or bolts to attach a stand to a tree or hunting from a tree into which a metal object has been driven (see § 32.2(i)).

D. Sport Fishing. We allow sport fishing on all Waterfowl Production Areas (WPAs) throughout the wetland district in accordance with State law (Flathead County WPAs) and per Joint State and confederated Salish and Kootenai Tribal regulations (Lake County WPAs) subject to the following condition: Anglers must remove all motorboats, boat trailers, vehicles, fishing equipment, and other personal property from the WPAs at the end of each day (see § 27.93 of this chapter).

Pablo National Wildlife Refuge

* * * * *

D. Sport Fishing. We allow sport fishing on designated areas of the refuge in accordance with State laws and per Joint State and Confederated Salish and Kootenai Tribal regulations subject to the following conditions:

1. We prohibit the use of lead or lead-based lures or sinkers.

2. We prohibit the use of boats, float tubes, and other flotation devices.

3. You must remove ice fishing shelters and other personal property at the end of each day (see § 27.93 of this chapter).

4. We prohibit leaving or dumping any dead animal, fish or fish entrails, garbage, or litter on the refuge (see § 27.94 of this chapter).

Red Rock Lakes National Wildlife Refuge

A. Migratory Game Bird Hunting.

* * *

1. We allow only goose, duck, and coot hunting in the area surrounding Lower Red Rock Lake. The north boundary is the east-west running fence line 1 mile (1.6 km) north of the River Marsh. The west boundary is the west boundary of the refuge. The south boundary is the South Valley Road and Sparrow Pond Trail. The east boundary is 50 yards (45 m) east of Odell Creek northward from Sparrow Pond Trail Bridge to Lower Red Rock Lake then continuing due north from the mouth of Odell Creek to the north boundary. (Consult the refuge manager prior to

hunting to learn the specific boundary of the hunting area.)

* * * * *

4. We prohibit the use of motorized decoys.

5. We prohibit camping along roadsides. We allow camping only in two established campgrounds. We restrict camping to 16 consecutive days within any 30-day period. We prohibit horses in the campgrounds. All bear attractants including, but not limited to, food, garbage, and carcasses, must be acceptably stored at night (unless in immediate use) and during the day if unattended.

* * * * *

C. Big Game Hunting. * * *

* * * * *

2. We restrict moose hunting to the willow fen area south of Elk Springs Creek, east of Upper Red Rock Lake and north and west of the South Valley Road, at the southeast corner of the refuge. We prohibit moose hunting in all other areas of the refuge.

3. We allow big game hunting (elk, white-tailed deer, mule deer, and pronghorn antelope) on the refuge except we prohibit big game hunting in the moose hunting area (willow fen area), in Alaska Basin (far east end of the refuge), on those areas of the refuge east of Elk Lake Road (Culver Pond/Widgeon Pond Area), and east of the willow fen.

4. We prohibit hunting near the Lakeview town site, near refuge headquarters, and on portions of Odell Creek Trail. We close those areas for protection of nearby residences. (Consult the refuge manager prior to hunting to learn the specific boundary of the closed areas.)

5. We limit the number of hunters per day during the ''general'' big game season for the area north of South Valley Road, south of Red Rock River Mash, west of Upper Red Rock Lake to the west refuge boundary. We close this area to hunting by other big game hunters during the general big game season. We select the hunters per day by annual lottery. (Consult the refuge manager to participate in the lottery.)

6. You may hire outfitters or ranchers for the retrieval of big game only. We prohibit outfitted or guided hunting on the refuge.

7. We prohibit retrieval of game from closed areas of the refuge without consent of a refuge employee.

8. We prohibit use of wheeled game carts or other mechanical transportation devices for game retrieval on portions of the refuge designated as Wilderness Area.

9. We prohibit horses north of South Valley Road except for the retrieval of big game. We only allow horses for back-country access to the Centennial Mountains south of South Valley Road. We require the use of certified weed-free hay or pellets in refuge parking lots and on refuge roads or trails.

10. We prohibit shooting and/or hunting until the hunter is more than 50 yards (45 m) from the center line of South Valley Road. We prohibit shooting from any refuge or county roadway.

11. Condition A5 applies.

D. Sport Fishing. We allow fishing on designated areas of the refuge in accordance with State fishing regulations subject to the following conditions:

1. We allow fishing on all refuge streams in accordance with State River and Stream regulations, unless closure is necessary to protect nesting trumpeter swans or Arctic grayling restoration efforts.

2. We allow fishing on Widgeon Pond and Culver Pond. These are open under State River and Stream regulations to fishing from the bank, except for necessary closures to protect nesting trumpeter swans or Arctic grayling restoration efforts.

3. We prohibit fishing on all other refuge waters.

4. We prohibit all means of fishing except the use of pole and line or rod and reel while fishing on the refuge.

5. We prohibit the use of felt-soled wading boots on all refuge waters.

6. We prohibit bait fishing and allow only artificial lures or flies when fishing refuge waters.

7. We prohibit the use or possession of lead sinkers or any lead fishing product while fishing.

8. We prohibit tubes and other flotation devices while fishing on Widgeon and Culver Ponds.

9. Condition A5 applies.

* * * * *

■ 23. Amend § 32.46 Nebraska by adding an entry for Rainwater Basin Wetland Management District and placing it in alphabetical order to read as follows:

§ 32.46 Nebraska.

* * * * *

Rainwater Basin Wetland Management District

A. Migratory Game Bird Hunting. We allow migratory game bird hunting on Waterfowl Production Areas (WPA) throughout the District, excluding McMurtrey Waterfowl Production Area in Clay County, in accordance with State regulations subject to the following conditions:

1. We prohibit the use of motorboats. We allow only nonpowered motorboats and those powered by electric motors (see § 27.32 of this chapter).

2. You must remove boats, decoys, portable blinds, other personal property, and any materials brought onto the area for blind construction at the end of each day (see §§ 27.93 and 27.94(a) of this chapter).

3. You may leave temporary blinds, other than portable blinds, constructed of natural vegetation found on site overnight. We prohibit bringing any type of live or dead vegetation onto the WPAs for any purpose at any time (see § 27.52 of this chapter). Construction of these temporary blinds does not constitute exclusive use of the blind (see § 27.92 of this chapter).

4. We prohibit exercising, running, training, or hunting with dogs from May 1 to July 31; and dogs must be on a leash during this time period. At all other times during the hunting season, dogs must be under the owner's immediate control (see § 26.21(b) of this chapter).

5. We prohibit camping and/or open fires (see § 27.95(a) of this chapter).

6. We restrict the use of all motorized vehicles, including ATVs and/or snowmobiles, to designated parking lots only (see § 27.31 of this chapter).

7. We prohibit the use of all firearms for target practice (see § 27.41 of this chapter).

8. We prohibit the use of horses for any purpose (see § 26.21(b) of this chapter).

B. Upland Game Hunting. We allow upland game hunting on Waterfowl Production Areas throughout the District, excluding McMurtrey WPA in Clay County, in accordance with State regulations subject to the following conditions:

1. Hunters may possess only approved nontoxic shot (see § 32.2(k)).

2. We prohibit the shooting or harvesting of black-tailed prairie dogs.

3. Conditions A4 through A8 apply.

C. Big Game Hunting. We allow big game hunting on Waterfowl Production Areas throughout the District, excluding McMurtrey WPA in Clay County, in accordance with State regulations subject to the following conditions:

1. We allow portable tree stands and/or portable ground blinds; however, you must remove them along with any other personal property at the end of each day (see §§ 27.93 and 27.94(a) of this chapter).

2. Conditions A3 through A8 apply.

D. Sport Fishing. We allow sport fishing on Waterfowl Production Areas throughout the District, excluding McMurtrey WPA in Clay County, in

accordance with State regulations subject to the following conditions;

1. You must remove all boats, boat trailers, vehicles, fishing equipment, and other personal property from the WPAs at the end of each day (see §§ 27.93 and 27.94(a) of this chapter).

2. Conditions A1 and A5 apply.

■ 24. Amend § 32.48 New Hampshire by:

■ a. Revising paragraph A.2., removing paragraph A.4., revising paragraphs C.3., C.10., and C.11., and removing paragraphs C.12. through C.17. under Great Bay National Wildlife Refuge; and

■ b. Revising the entry for ''Lake Umbagog National Wildlife Refuge'' to read ''Umbagog National Wildlife Refuge,'' placing the newly titled entry in alphabetical order within the section, and revising paragraphs A.1., A.3., A.4., B.3., B.5., B.6., C.1., C.2., and C.4. under Umbagog National Wildlife Refuge.

These revisions read as follows:

§ 32.48 New Hampshire.

* * * * *

Great Bay National Wildlife Refuge

A. Migratory Game Bird Hunting.

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2. We allow hunting within the refuge boundary upon navigable waters from within a boat. We prohibit access to land areas, mud flats, rocks, or marsh grass above mean high tide within the refuge. We prohibit hunters retrieving birds inland of the boundary signs.

* * * * *

C. Big Game Hunting. * * *

* * * * *

3. We require a fee for a Quota Deer Hunt Application (FWS Form 3–2354) which you must possess and carry. We draw, by lottery, 20 hunters for each day for a total of 40 hunters. We also draw 20 alternate hunters.

* * * * *

10. Refuge hunting regulations, as listed in the Hunter Information Package and map, will be in effect, and hunters must be in compliance with State law.

11. The refuge is located in Newington, New Hampshire, along the eastern shoreline of Great Bay. McIntyre Road borders the refuge to the east. The southern boundary begins approximately ¼ mile (.4 km) north of the intersection of Fabyan Point Road and McIntyre Road and continues west to the shoreline of Great Bay. The northern boundary begins approximately 150 feet (45 m) south of the intersection of McIntyre Road and Little Bay Road and continues west to the shoreline of Great Bay. The western boundary is the shoreline of Great Bay.

* * * * *

Umbagog National Wildlife Refuge

A. Migratory Game Bird Hunting.

* * *

1. You must wear hunter-orange clothing or material in accordance with State of Maine regulations for the season and/or species you are hunting.

* * * * *

3. You may use dogs to assist in hunting and retrieval of harvested birds. We prohibit dog training on the refuge.

4. We open the refuge to hunting during the hours stipulated under the State's hunting regulations. We close the refuge to night hunting. Hunters must unload all hunting firearms (see § 27.42 of this chapter) outside of legal hunting hours.

* * * * *

B. Upland Game Hunting. * * *

* * * * *

3. We open the refuge to hunting during the hours stipulated under the State's hunting regulations. We close the refuge to night hunting. Hunters must unload all hunting firearms (see § 27.42 of this chapter) and nock no arrows outside of legal hunting hours.

* * * * *

5. Condition A1 applies.

6. We allow hunting of snowshoe hare, ring-necked pheasant, and ruffed grouse with dogs during State hunting seasons. We prohibit dog training on the refuge.

C. Big Game Hunting. * * *

1. We open the refuge to hunting during the hours stipulated under the State's hunting regulations. We prohibit night hunting. Hunters must unload all hunting firearms (see § 27.42 of this chapter) and nock no arrows outside of legal hunting hours.

2. We allow bear and coyote hunting with dogs during State hunting seasons. We prohibit dog training on the refuge.

* * * * *

4. Each hunter must wear hunter-orange clothing or material in accordance with State of Maine regulations for the season and/or species you are hunting.

* * * * *

■ 25. Amend § 32.49 New Jersey by revising paragraph C.2., removing paragraph C.3., redesignating paragraphs C.4. through C.6. as paragraphs C.3. through C.5., and revising newly redesignated paragraph C.5. under Great Swamp National Wildlife Refuge.

These revisions read as follows:

§ 32.49 New Jersey.

* * * * *

Great Swamp National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

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2. In addition to the State permit, we require a Deer Hunting Permit (Big/Upland Game Hunt Application, FWS Form 3–2356) along with a fee, issued by the refuge. We must stamp this permit for validation.

* * * * *

5. Refuge hunting regulations, as listed in the ''Great Swamp National Wildlife Refuge Public Deer Hunt Map,'' will be in effect.

* * * * *

■ 26. Amend § 32.50 New Mexico by revising the entry for Bitter Lake National Wildlife Refuge to read as follows:

§ 32.50 New Mexico.

* * * * *

Bitter Lake National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of goose, duck, coot, mourning dove, and sandhill crane on designated areas of the refuge in accordance with State regulations and any special posting or publications subject to the following conditions:

1. On the North Tract (including Salt Creek Wilderness Area and the portion of the refuge located north of U.S. Highway 70), all hunting must be in accordance with State seasons and regulations.

2. On the Middle Tract (the portion of the refuge located between U.S. Highway 70 and U.S. Highway 380), we restrict hunting to goose, duck, sandhill crane, and American coot (no dove):

i. In the designated public hunting area;

ii. In the southern portion of the Tract that never approaches closer than 100 yards (90 m) to the public auto tour route;

iii. In the southern portion of the Tract only, we limit hunting to Tuesdays, Thursdays, and Saturdays during the period when the State seasons for that area are open simultaneously for most of these species; and

iv. All hunting must cease at 1 p.m. (local time) on each hunt day.

3. On the South Tract (the portion of the refuge located south of U.S. Highway 380), we allow hunting only during Special Hunts (hunters with disabilities and/or youth hunters age 17 and younger).

4. You may use only approved nontoxic shot while hunting (see § 32.2(k)).

5. We prohibit pit or permanent blinds and require removal of all waterfowl decoys and all temporary blinds/stands (see § 27.93 of this chapter).

6. We allow unleashed hunting and/or retrieving dogs on the refuge when hunters are legally present in areas where we allow hunters, only if the dogs are under the immediate control of hunters at all times (see § 26.21(b) of this chapter), and only to pursue species legally in season at that time.

7. We prohibit hunters and their dogs from entering closed areas for retrieval of game.

8. We do not require refuge or other special hunt permits other than those required by the State (e.g., sandhill crane permits).

9. Visit the refuge office or Web site, and/or refer to additional on-site brochures, leaflets, or postings for additional information.

B. Upland Game Hunting. We allow hunting of pheasant, quail, cottontail, and jack rabbit on designated areas of the refuge in accordance with State regulations and any special postings or publications subject to the following conditions:

1. On the North Tract (including Salt Creek Wilderness Area and the portion of the refuge located north of U.S. Highway 70), all hunting must be in accordance with State seasons and regulations with the specification that we allow rabbit hunting only during the season that is concurrently open for quail hunting within the State.

2. On the Middle Tract (the portion of the refuge located between U.S. Highway 70 and U.S. Highway 380), we allow only pheasant hunting:

i. In the designated public hunting area in the southern portion of the Tract;

ii. No closer than 100 yards (90 m) to the public auto tour route; and

iii. We limit hunting to Tuesdays, Thursdays, and Saturdays during the appropriate State season for that area.

3. On the South Tract (the portion of the refuge located south of U.S. Highway 380), we allow public hunting only during Special Hunts (hunters with disabilities and/or youth hunters age 17 and younger) as per State seasons and regulations.

4. Conditions A4 and A6 through A9 apply.

5. We prohibit the use of archery equipment at any time on the refuge except when hunting deer and hogs (see C. Big Game Hunting).

C. Big Game Hunting. We allow hunting of mule deer, white-tailed deer, and feral hog on designated areas of the refuge in accordance with State regulations and any special postings or publications subject to the following conditions:

1. We restrict all hunting to the North Tract (including Salt Creek Wilderness Area and the portion of the refuge located north of U.S. Highway 70) in accordance with State seasons and regulations, with the specification that you may hunt and take feral hog (no bag limit) only while legally hunting deer and only with the weapon legal for deer on that day in that area.

2. Conditions A4 and A7 through A9 apply.

3. We allow use of only portable blinds or stands and require daily removal of all blinds and stands (see § 27.93 of this chapter).

D. Sport Fishing. [Reserved]

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■ 27. Amend § 32.52 North Carolina by:

■ a. Removing paragraph A.5. and revising paragraph C.2. under Currituck National Wildlife Refuge;

■ b. Redesignating paragraphs C.2. through C.5. as paragraphs C.3. through C.6., and adding new paragraph C.2. under Mackay Island National Wildlife Refuge;

■ c. Adding paragraphs A.5. and A.6., and revising paragraphs B.1., C.1., and C.7. under Pee Dee National Wildlife Refuge; and

■ d. Revising the introductory text of paragraph A., revising paragraphs A.1., A.2., A.4., and A.6., revising the introductory text of paragraph B., and revising paragraphs B.4., B.5., C.2., C.3., C.5., C.7., C.9., D.2., and D.3. under Pocosin Lakes National Wildlife Refuge;

These additions and revisions read as follows:

§ 32.52 North Carolina.

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Currituck National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

* * * * *

2. Each hunter must pay an annual $15 hunt permit (signed brochure) fee.

* * * * *

Mackay Island National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

* * * * *

2. Each hunter must pay an annual $15 hunt permit (signed brochure) fee.

* * * * *

Pee Dee National Wildlife Refuge

A. Migratory Game Bird Hunting.

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5. We prohibit hunting on Sundays.

6. We prohibit the use of trail cameras. We define a trail camera as any unattended, self-powered photographic device that records photographic images.

B. Upland Game Hunting. * * *

1. Conditions A1 through A6 apply (with the following exception to condition A2: Each adult may supervise no more than one youth hunter).

* * * * *

C. Big Game Hunting. * * *

1. Conditions A1 through A6 apply (with the following exception to condition A2: Each adult may supervise no more than one youth hunter).

* * * * *

7. We prohibit placing a tree stand on the refuge more than 4 days prior to the opening day of the deer hunt in which hunters will be participating, except for participants of the youth deer hunt, who may place tree stands no more than 7 days prior to the hunt day. Archery hunters must remove the tree stands (see § 27.93 of this chapter) by the last day of that hunt. Muzzleloader and firearms hunters must remove tree stands by the day after the last day of that hunt.

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Pocosin Lakes National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of duck, goose, swan, dove, woodcock, rail, and snipe on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit hunting on the Davenport and Deaver tracts (which include the area surrounding the Headquarters/Visitor Center and Scuppernong River Interpretive Boardwalk), the Pungo Shop area, New Lake, refuge lands between Lake Phelps and Shore Drive, that portion of the Pinner Tract east of SR 1105, the portion of Western Road between the intersection with Seagoing Road and the gate to the south, and the unnamed road at the southern boundary of the refuge land located west of Pettigrew State Park's Cypress Point Access Area. We prohibit all public entry on Pungo Lake year-round. During November, December, January, and February, we prohibit all public entry on New Lake, Duck Pen Road (except that portion that forms the Duck Pen Wildlife Trail and Pungo Lake Observation point when the trail and observation point are open),

and the Pungo Lake, Riders Creek, and Dunbar Road waterfowl banding sites.

2. We require consent from refuge personnel to enter and retrieve legally taken game animals from closed areas including ''No Hunting Zones.'' We prohibit hunting firearms in all closed areas and No Hunting Zones.

* * * * *

4. We open the refuge for daylight use only (½ hour before legal sunrise to ½ hour after legal sunset), except that we allow hunters to enter and remain in open hunting areas from 2 hours before legal sunrise until 2 hours after legal sunset except on the Pungo Unit (see condition C6).

* * * * *

6. Persons may only use (discharge) firearms in accordance with refuge regulations (50 CFR 27.42 and specific regulations in part 32). We prohibit hunting, taking, and attempting to take any wildlife from a vehicle while the passenger area is occupied or when the engine is running, except that:

i. We allow hunting from ATVs and other similarly classed vehicles (where we authorize them) as long as they are stationary and the engine is turned off; and

ii. We allow hunting from boats (where we authorize them) when the motor is off and all forward momentum from a motor has ceased.

* * * * *

B. Upland Game Hunting. We allow hunting of quail, squirrel, raccoon, opossum, rabbit, beaver, nutria, and fox on designated areas of the refuge in accordance with State regulations subject to the following conditions:

* * * * *

4. We prohibit the hunting of raccoon and opossum during, 5 days before, and 5 days after the State bear seasons. Outside of these periods, we allow the hunting of raccoon and opossum at night but only while possessing a General Special Use Application and Permit (FWS Form 3–1383–G).

5. We allow those weapons authorized by the North Carolina Wildlife Resources Commission for taking upland game species except that we prohibit the use of rifles, other than .22-caliber rimfire rifles for hunting, and we prohibit the use of pistols for hunting.

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C. Big Game Hunting. * * *

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2. You may hunt spring turkey only if you possess and carry a valid permit (General Special Use Application and Permit, FWS Form 3–1383–G). These permits are valid only for the dates and areas shown on the permit. We require an application and a fee for those permits and hold a drawing, when necessary, to select the permittees.

3. We allow those weapons authorized by the North Carolina Wildlife Resources Commission for taking big game species except that we prohibit the use of rifles or pistols for hunting. We allow hunters to take feral hog in any area that is open to hunting deer using only those weapons authorized for taking deer. We also allow hunters to take feral hogs with shotgun, muzzleloader, bow and arrow, and crossbow on the Frying Pan area tracts whenever we open those tracts to hunting any game species with firearms.

* * * * *

5. We allow deer hunting with shotgun and muzzleloader on the Pungo Unit only while possessing a valid permit from the North Carolina Wildlife Resources Commission for the Pocosin Lakes National Wildlife Refuge Pungo Unit–either-sex deer special hunts that we hold in late September and October. We require a fee that validates the State permit to participate in these special hunts.

* * * * *

7. Prior to December 1, we allow deer hunting with archery equipment as described by the North Carolina Wildlife Resources Commission on the Pungo Unit during all State deer seasons, except during the muzzleloader season and except during the special hunts described in C5.

* * * * *

9. We allow the use of only portable deer stands (tree climbers, ladders, tripods, etc.). Hunters with a valid permit (State permit) for the special hunts described in condition C5 may install one deer stand on the Pungo Unit the day before the start of their hunt and leave it until the end of their hunt. Hunters must tag any stands left overnight on the refuge with their name, address, and telephone number. Hunters may use ground blinds, chairs, buckets, and other such items for hunting, but we require that you remove all of these items at the end of each day (see § 27.93 of this chapter).

* * * * *

D. Sport Fishing. * * *

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2. We prohibit boats on Pungo Lake. We prohibit leaving a boat anywhere on the refuge overnight.

3. We allow fishing only from ½ hour before legal sunrise until ½ hour after legal sunset.

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■ 28. Amend § 32.55 Oklahoma by adding paragraph A.10., revising paragraph B.2., adding paragraphs B.11., C.10., and C.11., and revising paragraphs D.2. and D.3. under Deep Fork National Wildlife Refuge. These additions and revisions read as follows:

§ 32.55 Oklahoma.

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Deep Fork National Wildlife Refuge

A. Migratory Game Bird Hunting.

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10. An adult at least age 18 must directly supervise youth age 14 or younger while hunting.

B. Upland Game Hunting. * * *

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2. We allow shotguns, .22- and .17-caliber rimfire rifles, and pistols for rabbit and squirrel hunting.

* * * * *

11. An adult at least age 18 must directly supervise youth hunters age 14 or younger while hunting.

C. Big Game Hunting. * * *

* * * * *

10. An adult at least age 18 must directly supervise youth age 14 or younger while hunting.

11. During the refuge archery deer season/hunt, we follow the archery legal means of taking found in the Oklahoma Department of Wildlife Conservation's annual official Hunting Guide. No person may use any firearm in conjunction with this hunt.

D. Sport Fishing. * * *

* * * * *

2. No person may use any firearm in conjunction with fishing.

3. We allow year-round fishing on the Deep Fork River and at the Montezuma Creek Fishing Area. We allow fishing on all other sloughs, farm ponds, and impoundments not connected to the River from March 1 through October 31.

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■ 29. Amend § 32.56 Oregon by:

■ a. Removing paragraph C.5. and redesignating paragraph C.6. as C.5. under Hart Mountain National Antelope Refuge;

■ b. Revising paragraph A. under Julia Butler Hansen Refuge for the Columbian White-Tailed Deer; and

■ c. Revising paragraph C. under William L. Finley National Wildlife Refuge.

These revisions read as follows:

§ 32.56 Oregon.

* * * * *

Julia Butler Hansen Refuge for the Columbian White-Tailed Deer

A. Migratory Game Bird Hunting. We allow hunting of goose, duck, coot, and

common snipe on the shorelines of refuge-owned portions of Crims, Price, Hunting, and Wallace Islands subject to the following conditions:

1. You may possess only approved nontoxic shot for hunting on the refuge (see § 32.2(k)).

2. We prohibit hunting along refuge-owned shorelines of Hunting and Price Islands where it parallels Steamboat Slough.

3. We prohibit permanent blinds. You must remove all personal property, including decoys and boats, by 1 hour after legal sunset (see §§ 27.93 and 27.94 of this chapter).

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William L. Finley National Wildlife Refuge

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C. Big Game Hunting. We allow deer hunting on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow restricted firearms and archery deer hunting on designated dates from ½ hour before legal sunrise until ½ hour after legal sunset. We post these refuge-specific regulations at self-service hunt kiosks.

2. We allow only shotguns using buckshot or slugs and muzzleloaders for the restricted firearms deer hunt during the designated dates.

3. You may harvest either-sex deer with appropriate State-issued tags.

4. We prohibit overnight camping or after-hours parking on the refuge.

5. We prohibit hunting from any refuge structure, observation blind, or boardwalk.

6. All hunters must complete a Big Game Harvest Report (FWS Form 3–2359), available at the self-service hunt kiosks, after each hunt day.

7. Hunters may use portable or climbing deer stands but must remove them from the refuge daily (see § 27.93 of this chapter).

8. Persons possessing, transporting, or carrying firearms on national wildlife refuges must comply with all provisions of State and local law. Persons may only use (discharge) firearms in accordance with refuge regulations (see § 27.42 of this chapter and specific refuge regulations in part 32).

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■ 30. Amend § 32.59 Rhode Island by:

■ a. Revising paragraph C. under Block Island National Wildlife Refuge;

■ b. Revising paragraph C. under Ninigret National Wildlife Refuge; and

■ c. Revising the heading of the entry for ''Pettaquamscutt Cove National Wildlife Refuge'' to read ''John H. Chafee National Wildlife Refuge'' and placing that newly titled entry in alphabetical order within the section.

§ 32.59 Rhode Island.

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Block Island National Wildlife Refuge

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C. Big Game Hunting. We allow hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We require hunters to submit a Big/Upland Game Hunt Application (FWS Form 3–2356) to be selected to hunt on the refuge. Hunting brochures containing hunting application procedures, seasons, bag limits, methods of hunting, maps depicting areas open to hunting, and the terms and conditions under which we issue hunting permits are available at the refuge administration office and on the refuge's Web site.

2. We require hunters to possess a valid State hunting license and all required stamps, a valid government-issued photo identification, and a valid hunting permit issued by the refuge at all times while on refuge property.

3. We prohibit hunters from taking any other wildlife.

4. We require hunters to notify a refuge representative if they need to enter a closed area to retrieve game.

5. We allow only shotguns (slugs only), muzzleloaders, and archery equipment to harvest deer.

6. We prohibit the use of any drug on any arrow for bow hunting, including crossbows, on national wildlife refuges (see § 32.2(g)). We prohibit archers possessing any arrows employing such drugs on any national wildlife refuge.

7. We prohibit the distribution of bait and/or hunting over bait (see § 32.2(h)).

8. We prohibit the use of nails, wire, screws, or bolts to attach a stand to a tree, or hunting from a tree into which a metal object has been driven to support a hunter (see § 32.2(i)).

9. We prohibit the use or possession of alcoholic beverages while hunting (see § 32.2(j)).

10. We prohibit the use of spotlights, automotive headlights, or other artificial light for the purpose of spotting, locating, or taking any animal. This regulation applies even if no weapons are in the vehicle.

11. Anytime State hunting regulations specify the requirement that hunters wear blaze-orange clothing, hunters must adhere to those regulations both in amount of blaze-orange clothing required and in specified seasons. For example, we require both archery and firearms hunters to wear blaze-orange clothing during the firearm seasons in areas open to both types of hunts.

12. We prohibit permanent tree stands. Hunters must remove all portable tree stands from the refuge daily (see § 27.93 of this chapter). The Service takes no responsibility for the loss or theft of tree stands left in the field.

13. Hunters must mark tree stands with owner information (name, address, and phone number). We allow only portable stands.

14. We will prohibit the use of motorized or nonmotorized vehicles on the refuge unless the refuge manager grants prior approval (e.g., accessibility for disabled individuals). This includes, but we do not limit it to, vehicles, all-terrain vehicles, dirt bikes, motorcycles, and bicycles.

15. We prohibit marking (including, but we do not limit it to, the use of flagging, bright eyes, tacks, and paint), cutting, and/or removal of trees or vegetation (see § 27.51 of this chapter).

16. We prohibit hunting in areas designated as closed.

17. We prohibit hunting within 100 feet (30 m) of a State, county, city roadway, or refuge trail.

18. We prohibit hunting with the use of firearms within 500 feet (150 m) of an occupied dwelling.

19. We prohibit archery deer hunting within 200 feet (60 m) of an occupied dwelling.

20. We prohibit the use of buckshot.

21. We prohibit hunters field dressing deer within 100 feet (30 m) of a road or trail.

22. We prohibit tracking later than 2½ hours after legal sunset. Hunters must make a reasonable effort to retrieve all wounded deer. This may include next-day tracking except on Federal holidays.

23. We prohibit deer drives or anyone taking part in any deer drive. We define a ''deer drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause deer to move in the direction of any person or persons who are part of the organized or planned hunt and known to be waiting for the deer.

24. Refuge hunting information and the Rhode Island Hunting and Trapping Abstract will inform hunters of both State and refuge regulations. Refuge-specific hunting regulations, as listed in the ''Block Island National Wildlife Refuge Hunting Regulations'' handout, will be in effect.

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Ninigret National Wildlife Refuge

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C. Big Game Hunting. We allow hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We require hunters to submit a Big/Upland Game Hunt Application (FWS Form 3–2356) to be selected to hunt on the refuge. Hunting brochures containing hunting application procedures, seasons, bag limits, methods of hunting, maps depicting areas open to hunting, and the terms and conditions under which we issue hunting permits are available at the refuge administration office and on the refuge's web site.

2. We require hunters to possess a valid State hunting license and all required stamps, a valid government-issued photo identification, and a valid hunting permit issued by the refuge at all times while on refuge property.

3. We prohibit hunters from taking any other wildlife.

4. We require hunters to notify a refuge representative if they need to enter a closed area to retrieve game.

5. We allow only shotguns (slugs only), muzzleloaders, and archery equipment to harvest deer.

6. We prohibit the use of any drug on any arrow for bow hunting, including crossbows, on national wildlife refuges (see § 32.2(g)). We prohibit archers possessing any arrows employing such drugs on any national wildlife refuge.

7. We prohibit the distribution of bait and/or hunting over bait (see § 32.2(h)).

8. We prohibit the use of nails, wire, screws, or bolts to attach a stand to a tree, or hunting from a tree into which a metal object has been driven to support a hunter (see § 32.2(i)).

9. We prohibit the use or possession of alcoholic beverages while hunting (see § 32.2(j)).

10. We prohibit the use of spotlights, automotive headlights, or other artificial light for the purposes of spotting, locating, or taking any animal. This regulation applies even if no weapons are in the vehicle.

11. Anytime State hunting regulations specify the requirement that hunters wear blaze-orange clothing, hunters must adhere to those regulations both in amount of blaze-orange clothing required and in specified seasons. For example, we require both archery and firearms hunters to wear blaze-orange clothing during the firearm seasons in areas open to both types of hunts.

12. We prohibit permanent tree stands. Hunters must remove all portable tree stands from the refuge daily (see § 27.93 of this chapter). The Service takes no responsibility for the loss or theft of tree stands left in the field.

13. Hunters must mark tree stands with owner information (name, address, and phone number). We allow only portable stands.

14. We will prohibit the use of motorized or nonmotorized vehicles on the refuge unless the refuge manager grants prior approval (e.g., accessibility for disabled individuals). This includes, but we do not limit it to, vehicles, all-terrain vehicles, dirt bikes, motorcycles, and bicycles.

15. We prohibit marking (including, but we do not limit it to, the use of flagging, bright eyes, tacks, and paint), cutting, and/or removal of trees or vegetation (see § 27.51 of this chapter).

16. We prohibit hunting in areas designated as closed.

17. We prohibit hunting within 100 feet (30 m) of a State, county, city roadway, or refuge trail.

18. We prohibit hunting on the Kettle Pond Unit within 200 feet (60 m) of the visitor center and parking lots.

19. We prohibit hunting with the use of firearms within 500 feet (150 m) of an occupied dwelling.

20. We prohibit archery deer hunting within 200 feet (60 m) of an occupied dwelling.

21. We prohibit the use of buckshot.

22. We prohibit hunters field dressing deer within 100 feet (30 m) of a road or trail.

23. We prohibit tracking later than 2½ hours after legal sunset. Hunters must make a reasonable effort to retrieve all wounded deer. This may include next-day tracking except we prohibit tracking on Federal holidays.

24. We prohibit deer drives or anyone taking part in any deer drive. We define a ''deer drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause deer to move in the direction of any person or persons who are part of the organized or planned hunt and known to be waiting for the deer.

25. Refuge hunting information and the Rhode Island Hunting and Trapping Abstract will inform hunters of both State and refuge regulations. Refuge-specific hunting regulations, as listed in the ''Ninigret National Wildlife Refuge Hunting Regulations'' handout, will be in effect.

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■ 31. Amend § 32.60 South Carolina by:
■ a. Revising paragraphs A.7., C.1., and C.3., adding paragraphs C.15. through C.20., and adding paragraphs D.7. through D.9. under Carolina Sandhills National Wildlife Refuge;
■ b. Removing paragraph C.15., redesignating paragraphs C.16. and C.17. as paragraphs C.15. and C.16., removing paragraph D.2., and redesignating paragraph D.3. as D.2. under Pinckney Island National Wildlife Refuge;
■ c. Revising the entry for Santee National Wildlife Refuge; and
■ d. Revising the introductory text for paragraph A., revising paragraphs A.2., A.7., and B.3., adding paragraph B.5., revising the introductory text of paragraph C., revising paragraphs C.1., C.2., C.5., C.10., C.14., and C.18., and adding paragraphs C.19. and C.20. under Waccamaw National Wildlife Refuge.

These additions and revisions read as follows:

§ 32.60 South Carolina.

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Carolina Sandhills National Wildlife Refuge

A. Migratory Game Bird Hunting.

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7. Legal shooting hours for September dove hunts are 12 p.m. (noon) to 6 p.m.

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C. Big Game Hunting. * * *

1. Conditions A1 through A5 and A8 apply (with the following exception for condition A4: Each adult may supervise no more than one youth hunter.).

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3. During deer and turkey hunts, we prohibit hunters from entering the refuge earlier than 4 a.m. and staying on the refuge later than 2 hours after legal sunset.

* * * * *

15. We prohibit the use of game and trail cameras.

16. We prohibit placing stands on the refuge more than 3 days prior to the opening day of each big game hunt period and leaving stands at the end of each hunt period.

17. We prohibit the use of a tree stand or climbing equipment without a safety belt or harness.

18. We prohibit the use of permanent, nonportable tree stands (see § 27.93 of this chapter).

19. We prohibit inserting a nail, screw, spike, or other metal object into a tree or hunting from a tree into which the hunter has inserted a metal object (see § 32.2(i)).

20. We prohibit baiting or hunting in the vicinity of bait (see § 32.2(h)).

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D. Sport Fishing. * * *

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7. At Mays and Honkers Lakes, the creel limit on largemouth bass is five fish per person per day. All bass must

be a minimum length of 12 inches (30 cm).

8. We designate Oxpen Lake as adult-youth fishing only. A youth (under age 16) must be actively fishing and accompanied by no more than two adults at least age 18. We prohibit adults fishing unless a youth accompanies them. The creel limit on channel catfish is five fish per person per day.

9. We prohibit the use or possession of alcoholic beverages while hunting (see § 32.2(j)).

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Santee National Wildlife Refuge

A. Migratory Game Bird Hunting. [Reserved]

B. Upland Game Hunting. We allow hunting of raccoon and opossum on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow hunters to use only weapons, firearms, and ammunition specifically authorized for each hunt.

2. All refuge hunters under age 16 must show proof of successfully completing a hunter education/safety course. A properly licensed adult at least age 21 must directly supervise (within sight and normal voice contact) hunters under age 16. An adult may supervise only one youth.

3. We require hunters to possess a refuge hunt permit (brochure signed by the hunter), a valid State hunting license, and photo identification while hunting.

4. Hunters must check all animals taken on the refuge at the check station prior to removing the animal from the refuge.

5. We require hunters to make a reasonable effort to retrieve wounded game. Hunters must obtain permission from refuge personnel to enter a ''No Hunting Zone'' or ''Closed Area'' for any purpose.

6. We allow vehicles only on established roads marked open for vehicular traffic. Hunters may travel roads marked ''Closed to all vehicles'' on foot or by bicycle. The speed limit for all roads is 15 mph. We prohibit blocking travel through refuge access gates or roads. We prohibit ATVs.

7. Hunters must unload and dismantle (or case) hunting firearms when transporting them in vehicles and boats during refuge hunts. We define a loaded firearm as having ammunition in the chamber or magazine. We will consider muzzleloaders unloaded if the percussion cap is not seated in the chamber.

8. We prohibit possession of bait, baiting, and/or hunting in the vicinity of bait (see § 32.2(h)).

9. We prohibit camping, overnight parking, open fires, and littering (see §§ 27.95(a) and 27.94 of this chapter).

10. We prohibit game and trail cameras.

11. We prohibit entry beyond ''Closed Area'' or ''No Hunting Zone'' signs. We prohibit discharging weapons within, into, or across a ''No Hunting Zone'' or ''Closed Area.''

12. We prohibit discharging a firearm from, on, or across any refuge road, or designated refuge foot trail.

13. We prohibit hunting from within 100 feet (30 m) of any roadway, whether open or closed to vehicular traffic, or from or within 300 yards (270 m) of any residence or designated hunter check station.

14. We prohibit use or possession of alcoholic beverages while hunting (see § 32.2(j)).

15. We prohibit man or dog drives, stalk hunting, and/or hunting from artificially pruned trees.

16. We allow hunting on each refuge unit only within specified hunt periods and only for raccoon or opossum, and white-tailed deer (see paragraph C. Big Game Hunting below).

17. We allow unlimited harvest of feral hog as an incidental take while hunting.

18. We allow use of dogs only for raccoon hunting. The dogs must wear a collar displaying the owner's name, address, and telephone number.

19. We allow take of raccoon and opossum only during night hunting. Special State regulations apply for night hunting.

20. We allow take of raccoon and opossum with a shotgun using nontoxic shot size no larger than #4 or a .22-caliber rimfire rifle. We prohibit possession of buckshot or slugs. We prohibit the use of all other weapons for hunting.

C. Big Game Hunting. We allow hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions B1 through B17 apply.

2. We prohibit the use of dogs during deer hunts. We prohibit night hunting.

3. We prohibit the use of nails, screws, or bolts to attach a tree stand to a tree or hunting from a tree where a metal object has been driven to support a hunter (see § 32.2(i)).

4. We prohibit destroying or cutting vegetation (see § 27.51 of this chapter). We prohibit the possession of axes, saws, machetes, or other tools used for cutting vegetation on the refuge while scouting or hunting.

5. We allow flagging only along the edges of roads and trails and at the tree in which the hunter places the stand. Hunters may use clothes pins with reflective tape to mark the path to the tree, but they must mark all pins and flagging with the hunter's full name, date, and phone number. Hunters must remove all flagging and pins at the end of the hunt; we will consider any flagging or pins found after the end of the hunt to be littering (see § 27.94 of this chapter), and we will remove them immediately.

6. We require hunters to wear 500 square inches (3,250 cm^2) of solid fluorescent-orange above the waist consisting of a hat and vest or jacket during all refuge big game firearm hunts.

7. Deer hunting must occur from elevated deer stands; we prohibit ground blinds. We allow only one stand per hunter, and the hunters must clearly mark stands with their full name, date, and phone number.

8. We allow scouting on both the Pine Island and Cuddo Units during periods when these units are open to general public access. We allow vehicles only on roads designated as open for vehicular traffic. All other roads and trails are open to walk-in or bicycle traffic. We prohibit hunting weapons and dogs during scouting activities.

9. Hunters may place stands, cloth pins, and flagging only on respective hunt areas on the Friday and Saturday immediately prior to each hunt (from 8 a.m. until 5 p.m.) and must remove them by 8:30 p.m. on the last day of each hunt. We will confiscate any stands found within the designated hunt areas outside of allowed periods.

10. We will open access roads, closed to the general public for driving, only during each deer hunt and on the Friday and Saturday prior to each hunt.

11. We will open hunting areas from 5 a.m. until 8:30 p.m. during designated hunt periods. We require all hunters to check out at the hunter check station by 8:30 p.m.

12. We open the Plantation Islands (Cuddo Unit) to hunting only from 5 a.m. until 2:30 p.m. All hunters hunting Plantation Islands must indicate on the check-in sheet that they are hunting on an island.

13. Shooting hours are from ½ hour before legal sunrise until ½ hour after legal sunset.

14. The refuge conducts one lottery draw hunt (using Quota Deer Hunt Application FWS 3–2354) for the Family, Friends, and Kids (Family Friendly) hunts conducted on the Bluff Unit of the refuge. Contact the refuge office for dates, application information, and more information about this special hunt opportunity.

D. Sport Fishing. We allow fishing on the refuge in accordance with State regulations subject to the following conditions:

1. A valid State fishing license and a signed refuge fishing permit (signed brochure) must be in each angler's possession while fishing on the refuge.

2. We allow public fishing on all four refuge units. We open waters of Lake Marion within refuge boundaries for fishing 24 hours a day, except in areas posted as ''Closed Areas'' or closed for migratory bird management. We allow fishing only on the inland ponds and canals during times the refuge units are open for general public access or as posted.

3. Cantey Bay (Bluff Unit), Black Bottom (Cuddo Unit), and Savannah Branch (Pine Island Unit) are only open to public access, including boating and fishing, from March 1 through October 31.

4. We limit access to the interior freshwater canals and ponds to canoes or kayaks, or by foot or bicycle travel only. We prohibit use of internal combustion engines on interior ponds and canals.

5. We prohibit littering, camping and/or overnight parking, open fires, swimming or wading, collecting or searching for or taking of any items of antiquity, and overnight mooring of boats (see §§ 27.62, 27.94, 27.95(a) of this chapter). We allow pets only in designated areas, and they must remain on a leash or within vehicles/vessels.

6. We prohibit fishing or boating within 100 feet (30 m) of any nesting bird or bird rookeries within refuge boundaries.

7. We prohibit commercial fishing, air-thrust boats, hovercraft, airboats, and personal watercraft within the waters of and/or boundary of the refuge.

8. We prohibit fishing at night, except by boat in Lake Marion. We prohibit bank fishing and fishing within interior ponds, canals, and impoundments at night.

9. We prohibit nighttime access to boat launching areas.

* * * * *

Waccamaw National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of duck, goose, coot, woodcock, and snipe on designated areas of the refuge in accordance with State regulations subject to the following conditions:

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2. Each youth hunter age 15 and younger must remain within sight, within normal voice contact, and under the supervision of an adult age 21 or older. We do not require youth hunters to have a hunter education card, but they must possess the refuge hunting regulations permit. The supervising adult must comply with all State and Federal hunting license requirements and possess a signed refuge hunting regulations permit (signed brochure). Each supervising adult may supervise no more than two youths.

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7. We allow use of retrieving dogs only while hunting. We require dogs to wear a collar displaying the owner's name, address, and phone number.

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B. Upland Game Hunting. * * *

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3. We require nontoxic shot no larger than #2 in shotguns when hunting. We allow .22-caliber rimfire rifles.

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5. We require the use of dogs for hunting raccoon and opossum.

C. Big Game Hunting. We allow hunting of white-tailed deer, feral hog, and turkey on designated areas of the refuge. The State of South Carolina does not classify feral hog as big game; however, for the purpose of hunting regulations, we put feral hog in the big game category. We allow big game hunting on the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A9, A10, B2, and B4 apply.

2. We allow hunting for designated species only on days designated annually by the refuge, within the State season, and according to refuge unit-specific regulations.

* * * * *

5. We prohibit blow guns and drugged arrows (see § 32.2(g)). We allow muzzleloading rifles that use only a single projectile on the muzzleloader hunts. We prohibit buckshot, rimfire ammunition, and full-metal-jacketed military ammunition.

* * * * *

10. The refuge limit on deer is two antlered bucks per year. Hunters can harvest up to three antlerless deer per year during coinciding State doe days or by using personal doe tags.

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14. We allow only one portable tree stand per hunter, and the hunter must clearly mark it with their full name and phone number. We prohibit placing deer stands on the refuge more than 3 days prior to the opening day of a hunting session. Hunters must remove stands from the refuge no later than 3 days after each refuge big game hunt (see § 27.93 of this chapter).

* * * * *

18. We prohibit possession of bait, distribution of bait, or hunting over a baited area (see § 32.2(h)).

19. We allow crossbows only during the big game hunting sessions where we allow muzzleloaders and modern weapons. We may also allow them during special hunts if we determine they are appropriate.

20. Each youth hunter age 15 and younger must remain within sight, within normal voice contact, and under supervision of an adult age 21 or older, and must possess the refuge hunting regulations permit (signed brochure). We do not require youth hunters who are sitting in the same hunting stand as the supervising adult to possess a hunter education card. We require youth hunters who are sitting in a hunting stand by themselves to possess a valid hunter education card. The supervising adult must comply with all State and Federal hunting license requirements and possess a signed refuge hunting regulations permit. Each supervising adult may supervise a maximum of one youth.

* * * * *

■ 32. Amend § 32.61 South Dakota by revising the entry for LaCreek National Wildlife Refuge and placing that entry in alphabetical order to read as follows:

§ 32.61 South Dakota.

* * * * *

LaCreek National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow the hunting of goose, duck, coot, common snipe, sandhill crane, American crow, and mourning dove only within the Little White River Recreation Area in accordance with State regulations.

B. Upland Game Hunting. We allow the hunting of ring-necked pheasant and sharp-tailed grouse on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Hunters may remain on the refuge no longer than ½ hour after legal sunset.

2. You must park vehicles in a designated hunter parking area.

3. Hunters must access and exit the hunting area only from a designated hunter parking area.

4. We prohibit hunting with the aid of a motor vehicle.

C. Big Game Hunting. We allow hunting of white-tailed and mule deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We require a State permit for muzzleloader deer hunting.

2. All archery deer hunters must possess and carry a refuge permit (signature required).

3. Deer hunters may enter the refuge 1½ hours before legal sunrise and remain no longer than 1½ hours after legal sunset.

4. Hunters may leave portable tree stands and free-standing elevated platforms on the refuge from the first Saturday after August 25 through February 15. Hunters must remove all other personal property by the end of the day (see § 27.93 of this chapter).

5. Portable tree stands and free-standing elevated platforms must bear the name and address of the owner or user, or that person's current hunting license number. The labeling must be legible from the ground.

6. We close the refuge to archery hunting during refuge firearm seasons.

7. Conditions B2 through B4 apply.

D. Sport Fishing. We allow sport fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Areas open for fishing include: Pools 3, 4, 7, and 10, the Little White River Recreation Area, and the Cedar Creek Trout Ponds. We prohibit fishing in all other areas of the refuge.

2. We allow boat use only on Pools 3, 4, 7, and 10, and the Little White River Recreation Area.

3. We prohibit the use of internal combustion motors in Pools 3, 4, 7, and 10.

4. We prohibit the use or possession of live minnows or bait fish in Pools 3, 4, 7, and 10 and the Cedar Creek Trout Ponds.

5. We will open designated fishing areas from ½ hour before legal sunrise to ½ hour after legal sunset, except the Little White River Recreation Area.

* * * * *

■ 33. Amend § 32.62 Tennessee by:

■ a. Revising paragraphs A.1., A.2., and A.4. through A.7., removing paragraph A.8., redesignating paragraphs A.9. and A.10. as paragraphs A.8. and A.9., revising newly redesignated paragraph A.9., adding new paragraphs A.10. through A.12., revising paragraphs B.1., B.4., and B.5., removing paragraph B.7., redesignating paragraph B.8. as paragraph B.7., adding new paragraph B.8., and revising paragraphs C.1., C.4., and D.6. under Chickasaw National Wildlife Refuge;

■ b. Revising the introductory text of paragraph A., revising paragraphs A.1., A.2., A.4., A.5., A.7., A.8., and A.10., adding paragraphs A.11. and A.12., revising paragraphs B.1. and B.2., removing paragraph B.6., redesignating paragraph B.7. as B.6., adding new paragraphs B.7. and B.8., and revising paragraphs C.1., C.4., and D.9. under Hatchie National Wildlife Refuge;

■ c. Revising paragraphs B.1. through B.5., B.9., and B.10., adding paragraphs B.13. through B.16., revising paragraph C.1., revising the introductory text of paragraph D., and adding paragraphs D.4. through D.7. under Lake Isom National Wildlife Refuge;

■ d. Revising paragraphs A.1., A.2., and A4. through A.7., removing paragraph A.8., redesignating paragraphs A.9. through A.11. as paragraphs A.8. through A.10., revising newly redesignated paragraph A.9., adding new paragraphs A.11. through A.13., revising paragraphs B.1., B.4., and B.5., removing paragraph B.7., redesignating paragraphs B.8. and B.9. as paragraphs B.7. and B.8., adding new paragraph B.9., revising paragraphs C.1. and C.4., and adding paragraph D.8. under Lower Hatchie National Wildlife Refuge; and

■ e. Revising paragraphs B.1. through B.5., B.9., and B.10., adding paragraphs B.13. through B.16., revising paragraphs C.1., C.4., and C.5., revising the introductory text of paragraph D., and adding paragraphs D.5. through D.8. of Reelfoot National Wildlife Refuge.

These additions and revisions read as follows:

§ 32.62 Tennessee.

* * * * *

Chickasaw National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

1. The refuge is a day-use area only. We close the refuge from legal sunset to legal sunrise, with the exception of legal hunting/fishing activities.

2. We prohibit the use of all motorized off-road vehicles (e.g., ATVs, UTVs) on the refuge (see § 27.31(f) of this chapter).

* * * * *

4. You must possess and carry a signed refuge permit (signed refuge brochure) and comply with all permit provisions and other applicable State and Federal law.

5. We allow hunting for duck, goose, coot, and merganser from ½ hour before legal sunrise to 12 p.m. (noon) CST. We allow hunters to access the refuge no more than 2 hours before legal sunrise.

6. Mourning dove, woodcock, and snipe seasons close during all firearms, youth, and muzzleloader deer seasons.

7. You may use only portable blinds, and you must remove all boats, blinds, and decoys (see § 27.93 of this chapter) from the refuge by 1 p.m. CST daily.

* * * * *

9. You may possess only approved nontoxic shot while hunting with a shotgun (see § 32.2(k)).

10. We prohibit cutting of holes, lanes, or other manipulation of vegetation (e.g., cutting bushes and trees, mowing, herbicide use, and other actions) or hunting from manipulated areas (see § 27.51 of this chapter).

11. We prohibit use or possession of alcoholic beverages while hunting on refuge lands (see § 32.2(j)).

12. We prohibit hunting over or the placement of bait (see § 32.2(h)). Baiting means the direct or indirect placing, exposing, depositing, or scattering of any salt, grain, powder, liquid, or other feed substance to attract game.

B. Upland Game Hunting. * * *

1. Conditions A1 through A4 and A8 through A12 apply.

* * * * *

4. Squirrel, rabbit, and quail seasons close during all firearms, youth, and muzzleloader deer seasons.

5. Raccoon and opossum seasons close Friday and Saturday nights during all firearms, youth, and muzzleloader deer hunts and seasons, including the Friday night prior to any hunt or season that opens on a Saturday morning.

* * * * *

8. We prohibit trapping.

C. Big Game Hunting. * * *

1. Conditions A1 through A4, A8, A10 through A12, B6, and B7 apply.

* * * * *

4. Hunters may possess lead-rifled slugs while deer hunting on the refuge (see § 32.2(k)).

* * * * *

D. Sport Fishing. * * *

* * * * *

6. We prohibit use or possession of alcoholic beverages while fishing on refuge lands and waters (see § 32.2(j)).

* * * * *

Hatchie National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of duck, goose, coot, merganser, mourning dove, woodcock, and snipe on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. The refuge is a day-use area only. We close the refuge from legal sunset to legal sunrise, with the exception of legal hunting/fishing activities.

2. We prohibit use of all motorized off-road vehicles (e.g., ATVs, UTVs) on the refuge (see § 27.31(f) of this chapter).

* * * * *

4. You must possess and carry a signed refuge permit (signed refuge brochure) and comply with all permit

provisions and other applicable State and Federal laws.

5. We allow waterfowl hunting only on Tuesdays, Thursdays, and Saturdays. We allow hunting for duck, goose, coot, and merganser from ½ hour before legal sunrise until 12 p.m. (noon) CST. We allow hunters to access the refuge no earlier than 2 hours before legal sunrise.

* * * * *

7. You may use only portable blinds, and you must remove all boats, blinds, and decoys (see § 27.93 of this chapter) from the refuge by 1 p.m. CST daily.

8. We prohibit use or possession of alcoholic beverages while hunting on refuge lands (see § 32.2(j)).

* * * * *

10. You may possess only approved nontoxic shot while hunting with a shotgun (see § 32.2(k)).

11. We prohibit cutting of holes, lanes, or other manipulation of vegetation (e.g., cutting bushes and trees, mowing, herbicide use, and other actions) or hunting from manipulated areas (see § 27.51 of this chapter).

12. We prohibit hunting over or the placement of bait (see § 32.2(h)). Baiting means the direct or indirect placing, exposing, depositing, or scattering of any salt, grain, powder, liquid, or other feed substance to attract game.

B. Upland Game Hunting. * * *

1. Conditions A1 through A4 and A8 through A12 apply.

2. We allow hunters to access the refuge no earlier than 2 hours before legal sunrise to no later than 2 hours after legal sunset, with the exception of raccoon and opossum hunters. We will allow access to those hunters from legal sunset to legal sunrise.

* * * * *

7. We prohibit camping and fires on the refuge.

8. We prohibit trapping.

C. Big Game Hunting. * * *

1. Conditions A1 through A4, A8, A10 through A12, and B5 through B7 apply.

* * * * *

4. Hunters may possess lead-rifled slugs while deer hunting on the refuge (see § 32.2(k)).

* * * * *

D. Sport Fishing. * * *

* * * * *

9. We prohibit use or possession of alcoholic beverages while fishing on refuge lands and waters (see § 32.2(j)).

Lake Isom National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

1. The refuge is a day-use area only. We close the refuge from legal sunset to legal sunrise, with the exception of legal hunting activities.

2. We prohibit the use of all motorized off-road vehicles (e.g., ATVs, UTVs) on the refuge (see § 27.31(f) of this chapter).

3. We set season dates and bag limits annually and publish them in the refuge brochure available at the refuge office.

4. You must possess and carry a signed refuge permit (signed refuge brochure) and comply with all permit provisions and other applicable State and Federal laws.

5. We allow hunters to access the refuge no earlier than 2 hours before legal sunrise to no later than 2 hours after legal sunset, with the exception of raccoon and opossum hunters. We will allow access to those hunters from legal sunset to legal sunrise.

* * * * *

9. We prohibit use or possession of alcoholic beverages while hunting on refuge lands (see § 32.2(j)).

10. You may possess only approved nontoxic shot while hunting with a shotgun (see § 32.2(k)).

* * * * *

13. We prohibit cutting of holes, lanes, or other manipulation of vegetation (e.g., cutting bushes and trees, mowing, herbicide use, and other actions) or hunting from manipulated areas (see § 27.51 of this chapter).

14. We prohibit hunting over or the placement of bait (see § 32.2(h)). Baiting means the direct or indirect placing, exposing, depositing, or scattering of any salt, grain, powder, liquid, or other feed substance to attract game.

15. We do not open for spring squirrel season on the refuge.

16. We prohibit trapping.

C. Big Game Hunting. * * *

1. Conditions B1 through B6 and B8 through B14 apply.

* * * * *

D. Sport Fishing. We allow sport fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

* * * * *

4. We allow fishing only with pole and line or rod and reel.

5. We prohibit possession of unauthorized fishing gear, including trotlines, limblines, juglines, yo-yos, nets, spears, and snag hooks while fishing on the refuge.

6. We allow use of a bow and arrow or a gig to take nongame fish on refuge waters.

7. We prohibit use or possession of alcoholic beverages while fishing on refuge lands and waters (see § 32.2(j)).

Lower Hatchie National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

1. The refuge is a day-use area only. We close the refuge from legal sunset to legal sunrise, with the exception of legal hunting/fishing activities.

2. We prohibit the use of all motorized off-road vehicles (e.g., ATVs, UTVs) on the refuge (see § 27.31(f) of this chapter).

* * * * *

4. You must possess and carry a signed refuge permit (signed refuge brochure) and comply with all permit provisions and other applicable State and Federal law.

5. We allow hunting for duck, goose, coot, and merganser from ½ hour before legal sunrise to 12 p.m. (noon) CST. We allow hunters to access the refuge no earlier than 2 hours before legal sunrise.

6. Mourning dove, woodcock, and snipe seasons close during all firearms, youth, and muzzleloader deer seasons.

7. You may use only portable blinds, and you must remove all boats, blinds, and decoys (see § 27.93 of this chapter) from the refuge by 1 p.m. CST daily.

* * * * *

9. You may possess only approved nontoxic shot while hunting with a shotgun (see § 32.2(k)).

* * * * *

11. We prohibit cutting of holes, lanes, or other manipulation of vegetation (e.g., cutting bushes and trees, mowing, herbicide use, and other actions) or hunting from manipulated areas (see § 27.51 of this chapter).

12. We prohibit use or possession of alcoholic beverages while hunting on refuge lands (see § 32.2(j)).

13. We prohibit hunting over or the placement of bait (see § 32.2(h)). Baiting means the direct or indirect placing, exposing, depositing, or scattering of any salt, grain, powder, liquid, or other feed substance to attract game.

B. Upland Game Hunting. * * *

1. Conditions A1 through A4 and A8 through A13 apply.

* * * * *

4. Squirrel, rabbit, and quail seasons close during all firearms, youth, and muzzleloader deer seasons.

5. Raccoon and opossum seasons close Friday and Saturday nights during all firearms, youth, and muzzleloader deer hunts and seasons, including the Friday night prior to any hunt or season that opens on a Saturday morning.

* * * * *

9. We prohibit trapping.

C. Big Game Hunting. * * *

1. Conditions A1 through A4, A8, A10 through A13, and B6 through B8 apply.

* * * * *

4. Hunters may possess lead-rifled slugs while deer hunting on the refuge (see § 32.2(k)).

* * * * *

D. Sport Fishing. * * *

* * * * *

8. We prohibit use or possession of alcoholic beverages while fishing on refuge lands and waters (see § 32.2(j)).

Reelfoot National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

1. The refuge is a day-use area only. We close the refuge from legal sunset to legal sunrise, with the exception of legal hunting/fishing activities.

2. We prohibit the use of all motorized off-road vehicles (e.g., ATVs, UTVs) on the refuge (see § 27.31(f) of this chapter).

3. We set season dates and bag limits annually and publish them in the refuge brochure available at the refuge office.

4. You must possess and carry a signed refuge permit (signed refuge brochure) and comply with all permit provisions and other applicable State and Federal law.

5. We allow hunters to access the refuge no earlier than 2 hours before legal sunrise to no later than 2 hours after legal sunset, with the exception of raccoon and opossum hunters. We will allow access to those hunters from legal sunset to legal sunrise.

* * * * *

9. We prohibit use or possession of alcoholic beverages while hunting on refuge lands (see § 32.2(j)).

10. You may possess only approved nontoxic shot while hunting with a shotgun (see § 32.2(k)).

* * * * *

13. We prohibit cutting of holes, lanes, or other manipulation of vegetation (e.g., cutting bushes and trees, mowing, herbicide use, and other actions) or hunting from manipulated areas (see § 27.51 of this chapter).

14. We prohibit hunting over or the placement of bait (see § 32.2(h)). Baiting means the direct or indirect placing, exposing, depositing, or scattering of any salt, grain, powder, liquid, or other feed substance to attract game.

15. We do not open for spring squirrel season on the refuge.

16. We prohibit trapping.

C. Big Game Hunting. * * *

1. Conditions B1 through B6 and B8 through B14 apply.

* * * * *

4. Hunters may possess lead-rifled slugs while deer hunting on the refuge (see § 32.2(k)).

5. We allow the use of only portable blinds and tree stands on the refuge. You must remove blinds, tree stands, and all other personal equipment (see § 27.93 of this chapter) from the refuge at the end of each day's hunt.

* * * * *

D. Sport Fishing. We allow sport fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

* * * * *

5. We allow fishing only with pole and line or rod and reel.

6. We prohibit possession of unauthorized fishing gear, including trotlines, limblines, juglines, yo-yos, nets, spears, and snag hooks while fishing on the refuge.

7. We allow use of a bow and arrow or a gig to take nongame fish on refuge water.

8. We prohibit use or possession of alcoholic beverages while fishing on refuge lands and waters (see § 32.2(j)).

* * * * *

■ 34. Amend § 32.63 Texas by:

■ a. Revising paragraph C.1. and adding paragraph C.11. under Balcones Canyonlands National Wildlife Refuge; and

■ b. Revising the entry under Hagerman National Wildlife Refuge; and

■ c. Revising paragraphs C.6. and C.8. under Laguna Atascosa National Wildlife Refuge.

These revisions and additions read as follows:

§ 32.63 Texas.

* * * * *

Balcones Canyonlands National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

1. Conditions A1, A4, A5, and A8 through A11 apply.

* * * * *

11. Hunters must be at least age 12. A Texas-licensed adult (age 21 or older), who has successfully completed a Hunter Education Training Course, must accompany hunters between ages 12 and 17 (inclusive). We exempt those persons born prior to September 2, 1971, from the Hunter Education Training Course requirement. We define accompanied as being within normal voice contact of an adult. This adult may supervise no more than two hunters.

* * * * *

Hagerman National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of mourning dove in the month of September on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You must possess and carry a signed refuge brochure (which serves as your Migratory Game Bird/Upland Game permit). The permit is available free of charge at the refuge headquarters.

2. We require the hunter to self check-in and check out.

3. We allow only shotguns for hunting.

4. You may possess shot for hunting no larger than #4 in the hunting area.

5. Hunters may possess only approved nontoxic shot while in the field (see § 32.2(k)).

6. We prohibit hunting within 150 feet (45 m) of any Day Use Area or walking trail.

7. We prohibit target practice or any nonhunting discharge of firearms.

8. We prohibit falconry.

9. We allow retriever dogs, but the dogs must be under the control of the handler at all times (see § 26.21(b) of this chapter).

10. We prohibit airboats, hovercraft, and personal watercraft (jet skis, wave runner, jet boats, etc.) year-round on refuge waters.

11. We prohibit building or hunting from permanent blinds.

12. We prohibit blocking of gates and roads (see § 27.31(h) of this chapter).

13. We prohibit ATVs.

14. We prohibit horses.

15. We prohibit glass containers.

16. We prohibit use or possession of alcoholic beverages while hunting (see § 32.2(j)).

17. We prohibit hunting over feeders or feed (see § 32.2(h)).

B. Upland Game Hunting. We allow hunting of squirrel and rabbit in the months of February and September on designated areas of the refuge in accordance with State regulations subject to the following conditions: Conditions A1 through A17 apply.

C. Big Game Hunting. We allow hunting of white-tailed deer, feral hog, and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We require a limited hunt permit (Big/Upland Game Hunting Application, FWS Form 3–2356) for archery deer, feral hog, and spring turkey hunts. For additional information on how to apply, contact the refuge headquarters at 903–786–2826.

2. Conditions A2, A5 through A7, and A11 through A17 apply.

3. We restrict hunt participants for quota hunts to those drawn for and in possession of a limited hunt permit. The permits are nontransferable. Hunt dates and application procedures will be available annually at the refuge headquarters.

4. We allow limited hunts for feral hog (March), archery deer (November, December), and spring turkey (April). We allow muzzleloaders, bow and arrow, and shotguns for feral hog and spring turkey hunts. You may possess and use only lead free, nontoxic (steel, bismuth, copper, or tungsten) bullets, slugs, and shot (00 buck for hogs, no shell larger than No. 4 shot size for turkey).

5. We require all hunters to check-in, show proof of personal identification, and produce a valid limited hunt permit (see C1) prior to the hunt.

6. We limit each hunter to one stand which the hunter may place on the refuge during the day preceding each hunt. Hunters must remove all stands by legal sunset on the last day of each hunt (see §§ 27.93 and 27.94 of this chapter).

7. We prohibit the use of nonbiodegradable flagging, blazing, tacks, nails, or other trail marking devices to locate stands or for any other purpose.

8. Hunters must check all game harvested during limited hunts at the refuge check station the same day of the kill and prior to leaving the refuge for the day.

9. We prohibit crossbows except by special permit (General Special Use Application and Permit FWS Form 3–1383–G) issued on a case-by-case basis by the refuge manager to accommodate hunter accessibility needs.

10. We divide the refuge into six hunting units, and we may rotate areas open to hunting annually. We allow hunting only on designated days and only on areas identified annually by the refuge.

11. We require proof of completion of a bow hunter education course for all archery hunting.

12. We require annual successful completion of an archery proficiency test with a score of 80 percent or higher for all deer and turkey hunt permit holders.

13. Hunting is from stands, blinds, or by stalking only.

14. We prohibit cutting of trees or limbs greater than 1 inch (2.5 cm).

15. We will close the hunt units to public entry the day prior to each hunt segment.

16. We will allow hunters with valid limited permits to place hunt stands on trees the day before their hunt segment begins, but they must first check-in at the hunter check station. They may not enter any hunt unit until 8 a.m., and they must leave the unit by 2 p.m. We will disqualify anyone in violation from hunting.

17. There is no bag or size limit on the harvesting of feral hogs.

18. We prohibit scouting the day prior to and during each hunt segment.

19. We require hunters to wear a safety harness while hunting in elevated stands.

D. Sport Fishing. We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Lake Texoma and connected streams are open to fishing year-round. We require a valid State of Texas or Lake Texoma fishing license as per State regulations.

2. Conditions A10, and A12 through A15 apply.

3. You may bank and wade fish with pole and line, rod and reel, or hand line year-round in all areas open to public fishing.

4. We allow fishing in refuge ponds March 15 through September 30 annually. We require a valid State of Texas or Lake Texoma fishing license as per State regulations.

5. Anglers may not use any glass containers, plastic jugs, or plastic bottles as floats.

6. We prohibit discarding any type of fishing line.

7. You may take bait only for personal use while fishing in refuge waters in accordance with Texas State law. We prohibit removal of bait from the refuge for commercial sales or use.

8. We prohibit fishing from bridges.

9. We allow the use of bow and arrow to take nongame fish on refuge waters.

10. We prohibit limb lines, throw lines, jug lines, seine nets, and yo-yos.

11. We prohibit taking frog, turtle, and mussel from refuge lands and waters (see § 27.21 of this chapter).

12. We prohibit entry into refuge impoundments and ponds by any means (i.e., foot, boat, other floating device), for any purpose, year-round.

13. We prohibit boats and all other floating devices on all open waters of Lake Texoma, except Big Mineral Creek from October 1 through March 14 annually.

14. At the point where Big Mineral Creek joins Lake Texoma, Big Mineral Creek becomes a year-round no-wake zone to the end of upstream navigable waters.

15. From October 1 through March 14, we allow only nonmotorized boats in Big Mineral Creek from the point where it joins Lake Texoma to the upstream end of navigable waters. This includes any type of gas or electric motor that is onboard and capable of use. We allow launching only from L Pad Road or by hand at the Big Mineral Day Use Area.

Laguna Atascosa National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

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6. We define youth hunters as ages 9 through 16. A Texas-licensed adult hunter, age 21 or older who has successfully completed a Hunter Education Training Course or is exempt, must accompany the youth hunter. We exempt those persons born prior to September 2, 1971, from the Hunter Education Training course requirement. We define accompanied as being within normal voice contact of the adult. Each adult hunter may supervise only one youth hunter.

* * * * *

8. We allow a scouting period prior to the commencement of the refuge deer hunting season. A permitted hunter and a limit of two nonpermitted individuals may enter the hunt units during the scouting period. We allow access to the units during the scouting period from 1½ hours before legal sunrise to legal sunset. You must clearly display the refuge-issued Hunter Vehicle Validation Tag/Scouting Permit (available from the refuge office) face up on the vehicle dashboard when hunting and scouting.

* * * * *

■ 35. Amend § 32.64 Utah by:

■ a. Revising paragraphs A. and B., and adding paragraphs D.2. through D.4. under Bear River Migratory Bird Refuge; and

■ b. Revising paragraph B.3., adding paragraph B.4., revising paragraphs C.3., C.4., C.6., and C.7., and adding paragraphs C.8. and C.9. under Ouray National Wildlife Refuge.

These additions and revisions read as follows:

§ 32.64 Utah.

* * * * *

Bear River Migratory Bird Refuge

A. Migratory Game Bird Hunting. We allow hunting of goose, duck, coot, and tundra swan on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit hunting or shooting within 100 yards (90 m) of refuge roads, parking areas, and observation platforms.

2. You may possess only approved nontoxic shot while in the field (see § 32.2(k)).

3. We allow only portable blinds and blinds made from natural vegetation. We prohibit the construction or use of permanent blinds and/or pits for blinds (see § 27.92 of this chapter).

4. You must remove boats, decoys, portable blinds, and other personal property from the refuge at the end of

each day (see §§ 27.93 and 27.94 of this chapter).

5. We allow airboats only in Refuge Unit 9 and Block C.

6. You may possess only 10 shells while hunting on or within 50 feet (15 m) from the center of Unit 1A or 2C dike.

7. We prohibit hunters or dogs to enter closed areas to retrieve downed birds.

8. We prohibit the consumption or possession of alcoholic beverages while hunting (see § 32.2(j)).

9. We are closed for spring and extended season goose hunts.

10. You must possess a valid State permit to hunt swans on the refuge.

11. We prohibit all commercial guiding and outfitter activities on the refuge.

12. We prohibit entering the refuge hunting units prior to the opening day of waterfowl season.

13. We prohibit archery hunting on the refuge.

14. You may enter the refuge 2 hours before legal sunrise and must exit the refuge by 2 hours after legal sunset.

15. You may park only in designated areas.

16. We allow only legally licensed vehicles on the refuge. We prohibit use of unlicensed off-highway vehicles and all-terrain vehicles on the refuge.

17. We prohibit fires, camping, and overnight RV parking on the refuge.

18. You may discharge firearms only during legal hunting activities. We prohibit target shooting.

19. Persons possessing, transporting, or carrying firearms on national wildlife refuges must comply with all provisions of State and local law. Persons may only use (discharge) hunting firearms in accordance with refuge regulations (see § 27.42 of this chapter and part 32).

20. You must abide by all terms and conditions in the refuge hunting brochure.

B. Upland Game Hunting. We allow hunting of pheasants on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit hunting or taking of pheasants with a shotgun of any description capable of holding more than three shells, unless it is plugged with a one-piece filler incapable of removal without disassembling the gun, so its total capacity does not exceed three shells.

2. Condition A2 applies.

* * * * *

D. Sport Fishing. * * *

* * * * *

2. You may fish only in designated areas west of the Auto Tour Road access gate from legal sunrise to legal sunset.

3. We prohibit fishing from refuge bridges and water control structures.

4. You must remove all fishing equipment, personal property, and trash from the refuge at the end of each day (see §§ 27.93 and 27.94 of this chapter).

* * * * *

Ouray National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

* * * * *

3. You may possess only approved nontoxic shot while in the field (see § 32.2(k)).

4. We allow turkey hunting for youth hunters only during the youth-only and general turkey seasons. We are closed for all limited-entry turkey hunts.

C. Big Game Hunting. * * *

* * * * *

3. You may use portable tree stands and hunting blinds that do not require drilling or nailing into a tree (see § 32.2(i)). You must remove all tree stands and blinds no later than the last day of the hunting season for which you have a permit (see § 27.93 of this chapter).

4. We allow any-legal-weapon elk hunting for youth, disabled, and depredation pool hunters only prior to October 1. We allow additional youth, disabled, and depredation-pool elk hunts after October 1 according to refuge and State regulations.

* * * * *

6. We are closed for the general season any-legal-weapon (rifle) and muzzleloader bull elk hunts.

7. We allow any-legal-weapon elk hunting during limited late season antlerless elk hunts starting on December 1.

8. We prohibit the use of bait or hunting over bait (see § 32.2(i)).

9. We prohibit the use of trail or game cameras.

* * * * *

■ 36. Amend § 32.66 Virginia by:

■ a. Revising paragraphs C.1. through C.4., C.8. through C.10., and C.15., and adding paragraphs C.18. and C.19. under James River National Wildlife Refuge;

■ b. Revising the introductory text of paragraph A., and revising paragraphs A.1. and A.2. under Plum Tree Island National Wildlife Refuge;

■ c. Revising paragraphs C.1. through C.8. and C.12., and adding paragraph C.16. of Presquile National Wildlife Refuge; and

■ d. Revising paragraphs C.1. through C.3., C.11., and C.15., and adding paragraph C.16. of Rappahannock River Valley National Wildlife Refuge;

These additions and revisions read as follows:

§ 32.66 Virginia.

* * * * *

James River National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

1. We require hunters to possess and carry a refuge hunting permit (contains date selected to hunt and permit number), along with their State hunting license while on refuge property. We require hunters to display a vehicle permit (contains date selected to hunt and permit number) provided by the refuge on the dashboard of their vehicle while on the refuge so that the permit is visible through the windshield.

2. We require firearm hunters to complete and sign a Quota Deer Hunt Application (FWS Form 3–2354) and provide the application and hunt fee to the hunt administrator at the Refuge Hunter Check Station on the morning of each hunt on a first-come-first-served basis. The hunt administrator will then provide the applicant a one-day refuge hunting permit.

3. We require persons who wish to hunt during the refuge's archery season to obtain a refuge hunting permit through a lottery administered by the Virginia Department of Game and Inland Fisheries. We notify successful applicants by mail or email, and if we receive the hunting fee by the date identified in the mailing, we mail refuge hunting permits to successful applicants.

4. We allow archery, muzzleloader, and shotgun hunting on designated days as indicated on refuge hunting permits.

* * * * *

8. We require hunters during archery-only seasons to wear, in a visible manner, a minimum of 100 square inches (645 cm^2) of solid-colored-hunter-orange clothing or material while moving to and from their stand and/or hunting location.

9. We require hunters during firearms and muzzleloader seasons to wear in a conspicuous manner on head, chest, and back a minimum of 400 square inches (2,600 cm^2) of solid-colored-hunter-orange clothing or material.

10. We require that hunters during firearms and muzzleloader seasons remain within 100 feet (30 m) of their assigned stand while hunting.

* * * * *

15. An adult age 21 or older, possessing and carrying a valid hunting license and refuge hunting permit, must accompany and directly control youth

hunters ages 12 to 17. We prohibit persons under age 12 to hunt on the refuge.

* * * * *

18. We require hunters to unload hunting bows, crossbows, muzzleloaders, and shotguns while in or around vehicles or on refuge roads (see § 27.42 of this chapter). We define unloaded as: arrows or bolts removed from bow or crossbow, primer removed from muzzleloader or shotgun shell removed from chamber of shotgun.

19. We require hunters during archery-only seasons to sign in and out at the Hunter Sign-In/Sign-Out stations, and record deer harvest information on the Big Game Harvest Report (FWS Form 3–2359).

* * * * *

Plum Tree Island National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of migratory waterfowl, gallinule, and coot on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We require hunters to possess and carry a refuge hunting permit (see condition A2 below) along with their State hunting license and stamps, while hunting migratory game birds on the refuge. We open the Cow Island unit of the refuge only to migratory game bird hunting. We close all other areas of the refuge to all public entry.

2. We require migratory game bird hunters to obtain a permit through a lottery administered by the Virginia Department of Game and Inland Fisheries. We mail permits to successful applicants.

* * * * *

Presquile National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

1. We require big game hunters to obtain a permit through a lottery administered by the Virginia Department of Game and Inland Fisheries. We require a fee to obtain a refuge hunting permit. We will notify successful applicants by mail or email, and if we receive the hunting fee by the date identified in the mailing, we will mail refuge hunting permits to successful applicants.

2. We require hunters to possess a refuge hunting permit (contains date selected to hunt and permit number), along with their State hunting license, while on refuge property.

3. We require stand hunting only. Stand hunting means the use of portable hunting blinds, portable tree stands, or stationary ground hunting. We prohibit the use of nails, screws, bolts, or screw-in steps. We prohibit damage to trees (see § 32.2(i)). Hunters must remove stands and blinds daily (see § 27.93 of this chapter).

4. We prohibit the use of ''man drives,'' defined as individual or group efforts intended to ''push'' or ''jump'' deer for the purposes of hunting.

5. We allow shotgun hunting on designated days as indicated on refuge hunting permits, in the State hunting guide, and on the refuge Web site, *http://www.fws.gov/northeast/presquile/*.

6. We allow the take of two deer of either sex per day.

7. We prohibit dogs.

8. We prohibit the discharge of a weapon within 300 feet (90 m) of any building.

* * * * *

12. An adult age 21 or older, possessing and carrying a valid hunting license and refuge hunting permit, must accompany and directly control youth hunters ages 12 to 17. We prohibit persons younger than age 12 to hunt on the refuge.

* * * * *

16. We require hunters to unload hunting bows, crossbows, muzzleloaders, and shotguns while in or around vehicles or on refuge roads (see § 27.42 of this chapter). We define unloaded as: arrows or bolts removed from bow or crossbow, primer removed from muzzleloader, or shotgun shell removed from chamber of shotgun.

* * * * *

Rappahannock River Valley National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

1. We require big game hunters to obtain a permit through a lottery administered by the Virginia Department of Game and Inland Fisheries. We require a fee to obtain a refuge hunting permit (signed and dated sheet). We will notify successful applicants by mail or email, and if we receive the hunting fee by the date identified in the mailing, we will mail refuge hunting permits to successful applicants. We offer walk-in registration to fill hunting slots not filled during the lottery process.

2. We require hunters to possess a refuge hunting permit (contains date selected to hunt and permit number), along with their State hunting license, while on refuge property. We require hunters to display a vehicle permit (contains date selected to hunt and permit number) provided by the refuge on the dashboard of their vehicle while on the refuge so that the permit is visible through the windshield.

3. We require stand hunting only. Stand hunting means the use of portable hunting blinds, portable tree stands, or stationary ground hunting. We prohibit the use of nails, screws, bolts, or screw-in steps. We prohibit damage to trees (see § 32.2(i)). Hunters must remove stands and blinds daily (see § 27.93 of this chapter). We prohibit deer drives, still hunting, and roaming.

* * * * *

11. Persons possessing, transporting, or carrying firearms on the refuge must comply with all provisions of State and local law. Persons may only use (discharge) firearms in accordance with refuge regulations (see § 27.42 of this chapter).

* * * * *

15. We prohibit the discharge of hunting firearms or archery equipment within 300 feet (90 m) of any building. We prohibit the discharge of hunting firearms or archery equipment in or across a refuge road as marked on the refuge hunt maps.

16. We require hunters to unload hunting bows, crossbows, muzzleloaders, and shotguns while in or around vehicles or on refuge roads (see § 27.42 of this chapter). We define unloaded as: arrows or bolts removed from bow or crossbow, primer removed from muzzleloader, or shotgun shell removed from chamber of shotgun.

* * * * *

37. Amend § 32.67 Washington by:

■ a. Revising paragraph A.1., removing paragraph A.6., and revising paragraph C.3. under Columbia National Wildlife Refuge; and

■ b. Revising the entry for Hanford Reach National Monument/Saddle Mountain National Wildlife Refuge.

The revisions read as follows:

§ 32.67 Washington.

* * * * *

Columbia National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

1. We prohibit overnight parking and/or camping.

* * * * *

C. Big Game Hunting. * * *

* * * * *

3. We allow hunting with shotgun, muzzleloader, and archery only.

* * * * *

Hanford Reach National Monument/ Saddle Mountain National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of goose, duck, coot, dove, and snipe on designated areas of the Monument/Refuge in accordance with State regulations subject to the following conditions:

1. We prohibit overnight camping and/or parking.

2. You may possess only approved nontoxic shot for hunting (see § 32.2(k)).

3. We prohibit discharge of any firearm within ¼ mile (396 m) of any maintained building or Federal facility, such as, but not limited to, a structure designed for storage, human occupancy, or shelter for animals.

4. We allow only portable blinds and temporary blinds constructed of nonliving natural materials. Hunters must remove all decoys and other equipment (see § 27.93 of this chapter) at the end of each day.

5. We allow only nonmotorized boats and boats with electric motors on the WB–10 Pond (Wahluke Lake) and with walk-in access only.

6. We close all islands within the Columbia River to all access.

B. Upland Game Hunting. We allow hunting of pheasant, quail, grey partridge, and chukar partridge on designated areas of the Monument/ Refuge in accordance with State regulations subject to the following conditions: Conditions A1, A2, A3, and A6 apply.

C. Big Game Hunting. We allow hunting of deer and elk on designated areas of the Monument/Refuge in accordance with State regulations subject to the following conditions:

1. We allow sport hunting of deer and elk on designated areas of the Monument/Refuge.

i. Conditions A1, A2, A3, and A6 apply.

ii. We allow hunting with shotgun, muzzleloader, and archery only.

2. We allow population control hunting of elk on the Rattlesnake Unit of the Monument/Refuge.

i. Condition A1 applies, and we also prohibit smoking.

ii. We require elk population control hunters to participate in a Service-directed, hunt-specific training session each year prior to hunting and receive a Service-provided permit (signed brochure) that hunters must carry at all times.

iii. We allow hunting with modern firearms only.

iv. We allow authorized vehicles only on designated roads and only in designated parking areas.

v. We prohibit the use of bicycles and carts.

vi. We allow hunting Monday through Friday only.

vii. All hunt assistants must be under the supervision of the permitted hunter at all times.

viii. We allow foot access only beyond designated roads and parking areas.

ix. We prohibit retrieval of animals outside the hunt area without prior Service approval.

x. All hunt assistants must check-in and out and be under the supervision of the permitted hunter at all times.

D. Sport Fishing. We allow fishing on the Wahluke and Ringold Units in accordance with State regulations subject to the following conditions:

1. Conditions A1, A5, and A6 apply.

2. We allow access from legal sunrise to legal sunset, except that we allow access to the Wahluke Unit's White Bluffs boat launch from 2 hours before legal sunrise until 2 hours after legal sunset for launch and recovery activities only.

* * * * *

■ 38. Amend § 32.68 West Virginia by revising paragraph A.2., adding paragraph A.9., revising paragraph B.1., removing paragraph B.2., redesignating paragraphs B.3. through B.6. as paragraphs B.2. through B.5., revising paragraph C.1., and removing paragraph C.12. under Canaan Valley National Wildlife Refuge.

This addition and these revisions read as follows:

§ 32.68 West Virginia.

* * * * *

Canaan Valley National Wildlife Refuge

A. Migratory Game Bird Hunting.

* * *

* * * * *

2. We allow hunting on refuge lands with the following exceptions: the area surrounding the refuge headquarters, safety zones, areas marked as no hunting zones, areas marked as closed to all public entry, and areas within 500 feet (150 m) of any dwelling in accordance with State regulations.

* * * * *

9. We close the Research Natural Area except for deer hunting, which we allow for management purposes.

B. Upland Game Hunting. * * *

1. Conditions A1 (Upland/Small Game/Furbearer Report, FWS Form 3–2362), A2, A4, A6, A7, and A9 apply.

* * * * *

C. Big Game Hunting. * * *

1. Conditions A1 (Big Game Harvest Report, FWS Form 3–2359), A2, A4, A6, A7, A9, and B3 apply.

* * * * *

Dated: August 30, 2012.

Rachel Jacobson,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2012–22099 Filed 9–10–12; 8:45 am]

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Part V

Department of Commerce

Patent and Trademark Office

37 CFR Part 42
Changes to Implement Derivation Proceedings; Final Rule

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 42

[Docket No. PTO–P–2011–0086]

RIN 0651–AC74

Changes To Implement Derivation Proceedings

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The United States Patent and Trademark Office (Office or USPTO) is revising the rules of practice to implement the provisions of the Leahy-Smith America Invents Act (AIA) that create a new derivation proceeding to be conducted before the Patent Trial and Appeal Board (Board). These provisions of the AIA will take effect on March 16, 2013, eighteen months after the date of enactment, and apply to applications for patent, and any patent issuing thereon, that are subject to first-inventor-to-file provisions of the AIA.

DATES: *Effective Date:* The changes in this final rule take effect on March 16, 2013.

FOR FURTHER INFORMATION CONTACT: Michael P. Tierney, Lead Administrative Patent Judge; Sally G. Lane, Administrative Patent Judge; Sally C. Medley, Administrative Patent Judge; Richard Torczon, Administrative Patent Judge; and Joni Y. Chang, Administrative Patent Judge, Board of Patent Appeals and Interferences, (will be renamed as Patent Trial and Appeal Board on September 16, 2012), by telephone at (571) 272–9797.

SUPPLEMENTARY INFORMATION:

Executive Summary: Purpose: On September 16, 2011, the AIA was enacted into law (Pub. L. 112–29, 125 Stat. 284 (2011)). The purpose of the AIA and these regulations is to establish a more efficient and streamlined patent system. The preamble of this notice sets forth in detail the procedures by which the Board will conduct new administrative proceedings called derivation proceedings. Derivation proceedings were created to ensure that the first person to file the application is actually a true inventor. This new proceeding will ensure that a person will not be able to obtain a patent for an invention that he did not actually invent. If a dispute arises as to which of two applicants is a true inventor (as opposed to who invented it first), it will be resolved through a derivation proceeding conducted by the Board. This final rule provides a set of rules relating to Board trial practice for derivation proceedings.

Summary of Major Provisions: Consistent with section 3 of the AIA, this final rule sets forth: (1) The requirements for a petition to institute a derivation proceeding; (2) the standards for showing of sufficient grounds to institute a derivation proceeding; (3) the standards for instituting a derivation proceeding; (4) the standards and procedures for conducting a derivation proceeding; and (5) the procedures for arbitration and settlement (subpart E of 37 CFR part 42).

Costs and Benefits: This rulemaking is *not* economically significant, but is significant, under Executive Order 12866 (Sept. 30, 1993), as amended by Executive Order 13258 (Feb. 26, 2002) and Executive Order 13422 (Jan. 18, 2007).

Background: To implement the changes set forth in sections 3, 6, 7, and 18 of the AIA that are related to administrative trials and judicial review of Board decisions, the Office published the following notices of proposed rulemaking: (1) *Rules of Practice for Trials before the Patent Trial and Appeal Board and Judicial Review of Patent Trial and Appeal Board Decisions,* 77 FR 6879 (Feb. 9, 2012), to provide a consolidated set of rules relating to Board trial practice for *inter partes* review, post-grant review, derivation proceedings, and the transitional program for covered business method patents, and judicial review of Board decisions by adding new parts 42 and 90 including a new subpart A to title 37 of the Code of Federal Regulations (RIN 0651–AC70); (2) *Changes to Implement Inter Partes Review Proceedings,* 77 FR 7041 (Feb. 10, 2012), to provide rules specific to *inter partes* review by adding a new subpart B to 37 CFR part 42 (RIN 0651–AC71); (3) *Changes to Implement Post-Grant Review Proceedings,* 77 FR 7060 (Feb. 10, 2012), to provide rules specific to post-grant review by adding a new subpart C to 37 CFR part 42 (RIN 0651–AC72); (4) *Changes to Implement Transitional Program for Covered Business Method Patents,* 77 FR 7080 (Feb. 10, 2012), to provide rules specific to the transitional program for covered business method patents by adding a new subpart D to 37 CFR part 42 (RIN 0651–AC73); (5) *Transitional Program for Covered Business Method Patents—Definition of Technological Invention,* 77 FR 7095 (Feb. 10, 2012), to add a new rule that sets forth the definition of technological invention for determining whether a patent is for a technological invention solely for purposes of the transitional program for covered business method patents (RIN 0651–AC75); and (6) *Changes to Implement Derivation Proceedings,* 77 FR 7028 (Feb. 10, 2012), to provide rules specific to derivation proceedings by adding a new subpart E to 37 CFR part 42 (RIN 0651–AC74).

Additionally, the Office published a Patent Trial Practice Guide for the proposed rules in the **Federal Register** to provide the public an opportunity to comment. *Practice Guide for Proposed Trial Rules,* 77 FR 6868 (Feb. 9, 2012) (Request for Comments) (''Practice Guide'' or ''Office Patent Trial Practice Guide''). The Office also hosted a series of public educational roadshows, across the country, regarding the proposed rules for the implementation of AIA.

In response to the notices of proposed rulemaking and the Office Patent Trial Practice Guide notice, the Office received 251 submissions offering written comments from intellectual property organizations, businesses, law firms, patent practitioners, and individuals. The comments provided support for, opposition to, and diverse recommendations on the proposed rules. The Office appreciates the thoughtful comments, and has considered and analyzed the comments thoroughly. The Office's responses to the comments are provided in the Response to Comments section, *infra,* in the 83 separate responses based on the topics concerning derivation raised in the 251 comments received.

In light of the comments, the Office has made appropriate modifications to the proposed rules to provide clarity and to take into account the interests of the public, patent owners, patent challengers, and other interested parties, with the statutory requirements and considerations, such as the effect of the regulations on the economy, the integrity of the patent system, the efficient administration of the Office, and the ability of the Office to complete the proceedings timely. The Office has decided to proceed with several separate final rules to implement the changes set forth in sections 3, 6, 7, and 18 of the AIA that are related to administrative trials and judicial review of Board decisions. This final rule adopts the proposed changes, with modifications, set forth in the *Changes to Implement Derivation Proceedings* (77 FR 7028).

Differences Between the Final Rule and the Proposed Rule

The major differences between the rules as adopted in this final rule and the proposed rules are as follows:

The final rule clarifies that the phrase ''same or substantially the same

invention'' means patentably indistinct (§ 42.401). The final rule also clarifies that the phrase ''the first publication'' means either a patent or an application publication under 35 U.S.C. 122(b), including a publication of an international application designating the United States as provided by 35 U.S.C. 374.

To follow closely the statutory language in 35 U.S.C. 135(a), as amended, the final rule clarifies that a petition for a derivation proceeding must be filed within the one-year period beginning on the date of the first publication of a claim to an invention that is the same or substantially the same as the earlier application's claim to the allegedly derived invention (§ 42.403).

As to the content of the petition, the final rule clarifies the petition must show that the petitioner has at least one claim that is the same or substantially the same as the invention disclosed to the respondent (§ 42.405(a)(2)(ii)). The final rule also clarifies that the petition must demonstrate that the inventor from whom the claimed invention was allegedly derived did not authorize the filing of the earlier application claiming the derived invention (§ 42.405(b)(2)). Further, the final rule clarifies that the petition must show why the respondent's claimed invention is the same or substantially the same as the invention disclosed to the respondent (§ 42.405(b)(3)(i)).

As to mode of service, the final rule eliminates the requirement that the petitioner must contact the Board to discuss alternate modes of service when the petitioner cannot effect service of the petition and supporting evidence (§ 42.406(b)). Instead, the final rule clarifies that: (1) Upon agreement of the parties, service may be made electronically; (2) personal service is not required; and (3) service may be by EXPRESS MAIL® or by means at least as fast and reliable as EXPRESS MAIL® (§ 42.406(b)).

Discussion of Relevant Provisions of the AIA

Section 3(i) of the AIA amends 35 U.S.C. 135 to provide for derivation proceedings and to eliminate the interference practice as to applications and patents having an effective filing date on or after March 16, 2013 (with a few exceptions). Derivation proceedings will be conducted in a manner similar to *inter partes* reviews and post-grant reviews. Unlike patent interferences, derivations will be conducted in a single phase without the use of a ''count.'' An inventor seeking a derivation proceeding must file an application. 35 U.S.C. 135(a). An inventor, however, may copy an alleged deriver's application, make any necessary changes to reflect accurately what the inventor invented, and provoke a derivation proceeding by filing a petition and fee timely.

In particular, 35 U.S.C. 135(a), as amended, provides that an applicant for patent may file a petition to institute a derivation proceeding in the Office. As amended, 35 U.S.C. 135(a) provides that the petition must state with particularity the basis for finding that a named inventor in the earlier application derived the claimed invention from an inventor named in the petitioner's application and, without authorization, filed the earlier application. The petition must be filed within one year of the first publication by the earlier applicant of a claim to the same or substantially the same invention, made under oath, and be supported by substantial evidence. As amended, 35 U.S.C. 135(a) further provides that if the Director determines that the petition demonstrates that the standards for instituting a derivation proceeding are met, the Director may institute a derivation proceeding and that the determination of whether to institute a derivation proceeding is final and nonappealable. A derivation is unlikely to be instituted, even where the Director thinks the standard for instituting a derivation proceeding is met, if the petitioner's claim is not otherwise in condition for allowance. *Cf. Brenner* v. *Manson,* 383 U.S. 519, 528 n.12 (1966); *accord Ewing* v. *Fowler Car Co.,* 244 U.S. 1, 7 (1917).

As amended, 35 U.S.C. 135(b) provides that, once a derivation proceeding is instituted, the Board will determine whether a named inventor in the earlier application derived the claimed invention from a named inventor in the petitioner's application and, without authorization, filed the earlier application. As amended, 35 U.S.C. 135(b) also provides that the Board may correct the naming of the inventor of any application or patent at issue in appropriate circumstances, and that the Director will prescribe regulations for the conduct of derivation proceedings, including requiring parties to provide sufficient evidence to prove and rebut a claim of derivation.

As amended, 35 U.S.C. 135(c) provides that the Board may defer action on a petition for derivation proceeding for up to three months after a patent is issued from the earlier application that includes a claim that is the subject of the petition. That section further provides that the Board also may defer action on a petition for a derivation proceeding or stay the proceeding after it has been instituted until the termination of a proceeding under chapter 30, 31, or 32 involving the patent of the earlier applicant.

As amended, 35 U.S.C. 135(d) provides that a decision that is adverse to claims in an application constitutes the final refusal of the claims by the Office, while a decision adverse to claims in a patent constitutes cancellation of the claims, if no appeal or other review of the decision has been taken or had. As amended, 35 U.S.C. 135(d) provides that a notice of such claim cancellation must be endorsed on the patent.

Section 3(i) of the AIA further adds two new provisions, 35 U.S.C. 135(e) and (f). New paragraph (e) of 35 U.S.C. 135 provides that the parties to a derivation proceeding may terminate the proceeding by filing a written statement reflecting the agreement of the parties as to the correct inventors of the claimed invention in dispute. Moreover, 35 U.S.C. 135(e) provides that the Board must take action consistent with the agreement, unless the Board finds the agreement to be inconsistent with the evidence of record. Further, 35 U.S.C. 135(e) provides that the written settlement or understanding of the parties must be filed with the Director and, at the request of a party, will be treated as business confidential information, will be kept separate from the file of the involved patents or applications, and will be made available only to Government agencies on written request, or to any person on a showing of good cause.

New paragraph (f) of 35 U.S.C. 135 allows the parties to a derivation proceeding to determine the contest, or any aspect thereof, by arbitration within a time specified by the Director, and provides that the arbitration is governed by the provisions of title 9, to the extent that title is not inconsistent with 35 U.S.C. 135. Further, 35 U.S.C. 135(f) provides that the parties must give notice of any arbitration award to the Director, that the award is not enforceable until such notice is given, and that the award, as between the parties to the arbitration, is dispositive of the issues to which it relates but does not preclude the Director from determining the patentability of the claimed inventions involved in the proceeding. The Director delegates the authority to the Board to resolve patentability issues that arise during derivation proceedings when there is good cause to do so.

Discussion of Specific Rules

This final rule provides new rules to implement the provisions of the AIA for instituting and conducting derivation proceedings before the Board. As amended, 35 U.S.C. 135(b) provides that the Director will prescribe regulations setting forth standards for the conduct of derivation proceedings. This final rule adds a new subpart E to 37 CFR part 42 to provide rules specific to derivation proceedings.

Additionally, the Office in a separate final rule has added part 42, including subpart A (RIN 0651–AC70), that includes a consolidated set of rules relating to Board trial practice. More specifically, subpart A of part 42 sets forth the policies, practices, and definitions common to all trial proceedings before the Board. The rules adopted in this final rule and discussion below reference the rules in subpart A of part 42. Furthermore, the Office in other separate final rules adds a new subpart B to 37 CFR part 42 to provide rules specific to *inter partes* review, a new subpart C to 37 CFR part 42 to provide rules specific to post-grant review, and a new subpart D to 37 CFR part 42 to provide rules specific to transitional program covered business method patents (RIN 0651–AC71 and RIN 0651–AC75).

Title 37 of the Code of Federal Regulations, Chapter I, Part 42, Subpart E, entitled ''Derivation'' is added as follows:

Section 42.400: Section 42.400 sets forth policy considerations for derivation proceedings.

Section 42.400(a) provides that a derivation proceeding is a trial and subject to the rules set forth in subpart A.

Section 42.400(b) delegates to the Board the Director's authority to resolve patentability issues when there is good cause to do so. *See* the last sentence of 35 U.S.C. 135(f), as amended. For example, an issue of claim indefiniteness (35 U.S.C. 112) might need to be resolved before derivation can be substantively addressed on the merits. Resolution of such issues promotes procedural efficiency, and may even encourage party settlement, by providing clear guidance on the scope of the contested issues.

Section 42.401: Section 42.401 sets forth definitions specific to derivation proceedings, in addition to definitions set forth in § 42.2 of this part.

Definitions:

Agreement or *understanding under 35 U.S.C. 135(e):* The definition reflects the terminology used in 35 U.S.C. 135(e) to describe a settlement between parties to a derivation proceeding.

Applicant: The definition makes it clear that reissue applicants are considered applicants, and not patentees, for purposes of a derivation proceeding.

Application: The definition makes it clear that a reissue application is an application, not a patent, for purposes of a derivation proceeding. Specifically, the definition includes both an application for an original patent and an application for a reissued patent.

The first publication: The definition makes it clear that the phrase means either a patent or an application publication under 35 U.S.C. 122(b), including a publication of an international application designating the United States as provided by 35 U.S.C. 374.

Petitioner: The definition of petitioner incorporates the statutory requirement (35 U.S.C. 135(a), as amended) that the petitioner be an applicant.

Respondent: The definition of respondent identifies the respondent as the party other than the petitioner.

Same or substantially the same invention: The definition makes it clear that the phrase means patentably indistinct.

Section 42.402: Section 42.402 provides who may file a petition for a derivation proceeding.

Section 42.403: Section 42.403 provides that a petition for a derivation proceeding must be filed within the one-year period beginning on the date of the first publication of a claim to an invention that is the same or substantially the same as the respondent's earlier application's claim to the invention. Such publication may be the publication by the USPTO of an application for patent or by the World Intellectual Property Organization (WIPO) of an international application designating the United States. As amended, 35 U.S.C. 135(a) provides that a petition for instituting a derivation proceeding may only be filed within the one-year period of the first publication to a claim to an invention that is the same or substantially the same as the earlier application's claim to the invention. The rule is consistent with 35 U.S.C. 135(a), as amended, because the earlier application's first publication of the allegedly derived invention triggers the one-year bar date. While the statute's use of the phrase ''a claim'' is ambiguous inasmuch as it could include the petitioner's claim as a trigger, such a broad construction could violate due process. For example, the petitioner could be barred by publication of its own claim before it had any knowledge of the respondent's application. Such problems may be avoided if the trigger for the deadline is publication of the respondent's claim.

Section 42.404: Section 42.404 provides that a fee must accompany the petition for a derivation proceeding and that no filing date will be accorded until payment is complete.

Section 42.405: Section 42.405 identifies the content of a petition to institute a derivation proceeding. The rule is consistent with 35 U.S.C. 135(b), as amended, which authorizes the Director to prescribe regulations setting forth standards for the conduct of derivation proceedings, including requiring parties to provide sufficient evidence to prove and rebut a claim of derivation.

Section 42.405(a) requires a petition to demonstrate that the petitioner has standing. To establish standing, a petitioner, at a minimum, must timely file a petition that shows that at least one claim of the petitioner's application is the same or substantially the same as the respondent's claimed invention and as the invention disclosed to the respondent by the inventor in the petitioner's application. This requirement ensures that a party has standing to file the petition and helps prevent spuriously instituted derivation proceedings. This rule also ensures that the petitioner has taken steps to obtain patent protection for the same or substantially same invention, thus promoting the useful arts by participating in the patent system. Facially improper standing would be a basis for denying the petition without proceeding to the merits of the decision.

Section 42.405(b) requires that the petition identify the precise relief requested. The petition must provide sufficient information to identify the application or patent subject to a derivation proceeding. The petition must also demonstrate that the claimed invention in the subject application or patent was derived from an inventor named in the petitioner's application and that the inventor named in the petitioner's application did not authorize the filing of the earliest application claiming the derived invention. The petitioner must further show why the claim is the same or substantially the same as the invention disclosed to the respondent. For each of the respondent's targeted claims, the petitioner must likewise identify how the claim to the allegedly derived invention is to be construed. Where the claim to be construed contains a means-plus-function or step-plus-function limitation as permitted under 35 U.S.C. 112(f), the construction of the claim must identify the specific portions of the specification that describe the

structure, material, or acts corresponding to each claimed function. The rule provides an efficient means for identifying the legal and factual basis supporting a *prima facie* case of relief and provides the opponent with a minimum level of notice as to the basis for the allegations of derivation.

Section 42.405(c) provides that a derivation showing is not sufficient unless it is supported by substantial evidence and at least one affidavit addressing communication and lack of authorization, consistent with 35 U.S.C. 135(a), as amended. The showing of communication must be corroborated.

Section 42.406: Section 42.406 provides requirements for the service of a petition in addition to the requirements set forth in § 42.6(e).

Section 42.406(a) requires that the petitioner serve the respondent at the correspondence address of record. A petitioner may also attempt service at any other address known to the petitioner as likely to effect service. Once a patent has issued, communications between the Office and the patent owner often suffer. *Ray* v. *Lehman,* 55 F.3d 606 (Fed. Cir. 1995) (patentee's failure to maintain correspondence address contributed to failure to pay maintenance fee and therefore expiration of the patent). While the rule requires service at the correspondence address of record, in many cases, the petitioner will already be in communication with the owner of the earlier application at a better service address than the official correspondence address.

Section 42.407: Section 42.407(a) provides requirements for a complete petition. As amended, 35 U.S.C. 135(b) provides that the Director establish regulations concerning the standards for the conduct of derivation proceedings. Further, 35 U.S.C. 135(a), as amended, provides that a derivation proceeding may be instituted where the Director determines that a petition demonstrates that the standards for instituting a derivation proceeding are met. Consistent with the statute, the rule requires that a complete petition be filed along with the fee and that it be served at the correspondence address of record for the earlier application.

Section 42.407(b) provides petitioners a one-month time frame to correct defective petitions to institute a derivation proceeding, unless the statutory deadline in which to file a petition for derivation has expired. In determining whether to grant a filing date, the Board will review the petitions for procedural compliance. Where a procedural defect is noted, *e.g.,* failure to state the claims being challenged, the Board will notify the petitioner that the petition was incomplete and identify any non-compliance issues.

Section 42.408: Section 42.408 provides that an administrative patent judge institutes and may reinstitute a derivation proceeding on behalf of the Director.

Section 42.409: Section 42.409 makes it clear that an agreement or understanding filed under 35 U.S.C. 135(e) would be a settlement agreement for purposes of § 42.74.

Section 42.410: Section 42.410 provides for arbitration of derivation proceedings. Section 42.410(a) provides that parties to a derivation proceeding may determine such contest, or any aspect thereof, by arbitration, except that nothing shall preclude the Office from determining the patentability of the claimed inventions involved in the proceeding. The rule is consistent with 35 U.S.C. 135(f) because it permits arbitration, but does not displace the Office from determining issues of patentability during the course of the proceeding. Section 42.410(b) provides that the Board will not set a time for, or otherwise modify the proceeding for, an arbitration unless the listed procedural requirements are met.

Section 42.411: Section 42.411 provides that an administrative patent judge may decline to institute or continue a derivation proceeding between an application and a patent or another application that are commonly owned. Common ownership in a derivation proceeding is a concern because it can lead to manipulation of the process, such as requesting the Board to resolve an inventorship dispute within the same company. The rule is stated permissively because not all cases of overlapping ownership would be cause for concern. The cases of principal concern involve a real party-in-interest with the ability to control the conduct of more than one party.

Section 42.412: Section 42.412 provides for public availability of Board records.

Response to Comments

The Office received 251 written submissions of comments from intellectual property organizations, businesses, law firms, patent practitioners, and individuals. The comments provided support for, opposition to, and diverse recommendations on the proposed rules. The Office appreciates the thoughtful comments, and has considered and analyzed the comments thoroughly. The Office's responses to the comments that are directed to the consolidated set of rules relating to Board trial practice and judicial review of Board decisions are provided in a separate final rule (RIN 0651–AC70). In addition, the Office's responses to comments that are directed to *inter partes* review proceedings (77 FR 7041), post-grant review proceedings (77 FR 7060), and transitional post-grant review proceedings for covered business method patents (77 FR 7080) are provided in another separate final rule (RIN 0651–AC71), and the Office's responses to the comments that are directed to the definitions of the terms ''covered business method patent'' and ''technological invention'' are provided in a third separate final rule (RIN 0651–AC75).

The Office's responses to comments that are directed to derivation proceedings (77 FR 7028) are provided as follows:

Procedure; pendency (§ 42.400)

Comment 1: One comment suggested that the use of the word ''proceeding'' in the proposed derivation rules is in conflict with how ''proceeding'' is defined in proposed § 42.2. As such, the suggestion is for § 42.400(b) to reference the ''trial'' and not the ''proceeding'' or to separately define the term ''derivation proceeding'' to exclude any preliminary proceeding.

Response: Section 42.2 defines ''proceeding'' as a trial or a preliminary proceeding. The term ''derivation proceeding'' includes a preliminary proceeding or a trial, and thus it is consistent with § 42.2. Redefining the term ''derivation proceeding'' to exclude a preliminary proceeding would result in an inconsistency with § 42.2. There may be, based on the specific facts of a given case, a need to resolve a patentability issue prior to determining whether to institute a derivation proceeding. Thus, to facilitate flexibility, the Office adopts proposed § 42.400(b) without any modifications.

Definitions (§ 42.401)

Comment 2: One comment suggested that the Office define ''substantially the same'' to mean ''not patentably distinct'' or ''mere obvious variants.'' Still another comment suggested that a claim is the ''same or substantially the same'' invention if: (i) the claim recites an invention that would be anticipated by or obvious over the allegedly derived invention; and (ii) the allegedly derived invention would be anticipated by or obvious over the invention defined by that claim. Lastly, one comment suggested providing more guidance as to whether ''substantially the same'' will be evaluated based on the ''two-way

obviousness'' test or some other standard.

Response: Section 42.401, as adopted in this final rule, provides that the ''same or substantially the same means patentably indistinct.'' The final rule makes clear that in determining whether a petitioner has at least one claim that is the same or substantially the same as a respondent's claimed invention (§ 42.405), the petitioner must show that the respondent's claim is anticipated by or obvious over the petitioner's claim.

Comment 3: One comment suggested that the definition of ''respondent'' should clarify that the term means ''the assignee of record or any subsequent legal or equitable owner of the earlier-filed application in a proceeding under 35 U.S.C. 135.'' The comment proposed that such a definition would also clarify that the deadline for filing a petition to institute a derivation proceeding is one year from the earliest publication of the respondent's claim.

Response: Section 42.401 defines ''respondent'' to mean a party other than the petitioner. Section 42.2 defines a ''party,'' such as in a derivation proceeding, as any applicant or assignee of the involved application. Moreover, § 42.8 requires a party involved in a proceeding to identify the real party-in-interest for the party. Lastly, the deadline for filing a petition to institute a derivation proceeding is one year from the first publication of the respondent's claim. Accordingly, the suggestion of setting forth a definition of the term ''respondent'' expressly in the rule is not adopted.

Comment 4: One comment noted that proposed § 42.405(c) requires a derivation showing to be supported by ''at least one affidavit addressing communication of the derived invention.'' The comment suggested that the term ''communication of the derived invention'' should be added to the definitions as ''knowledge of the claimed invention, or at least so much of the claimed invention as would have made it obvious to one of ordinary skill in the art, obtained directly or indirectly from a named inventor, and prior to the filing date, of the earlier-filed patent.''

Response: Section 42.405(b)(3)(i) requires a petitioner to show, for each of the respondent's claims, why the claimed invention is the same or substantially the same as (*i.e.,* patentably indistinct from) the invention disclosed to the respondent. This requirement means that the respondent's claimed invention need not be identical to the invention disclosed to the respondent. Moreover, § 42.405(b)(2) provides that the invention disclosed to the respondent must be disclosed prior to the filing of the ''earlier application.'' The Office agrees that the communication of the invention need not be direct.

Comment 5: One comment suggested that the rule should provide a definition for the phrase ''the first publication of a claim'' to clarify that merely presenting a new claim in an application after it has been published under 35 U.S.C. 122(b) does not constitute the first publication of that new claim. In particular, the comment suggested a definition that specifies that a claim presented in an application or issued in a patent which defines an invention that is patentably distinct from a claim that was earlier published in the corresponding application or patent is the date of the first publication of that patentably distinct claim.

Response: The Office agrees that the first publication of a claim is the publication date of the application published under 35 U.S.C. 122(b) that includes that claim, or the issue date of the patent that includes that claim. Section 42.401, as adopted in this final rule, provides that ''the first publication'' means either a patent or an application publication under 35 U.S.C. 122(b), including a publication of an international application designating the United States as provided by 35 U.S.C. 374. In the situation where an application is published under 35 U.S.C. 122(b) with an originally filed claim and subsequently issued as a patent with a new claim that is patentably distinct from the originally filed claim, the first publication of the new patentably distinct claim is the issue date of the patent. Notably, the first publication of the new patentably distinct claim is not the publication date of the originally filed claim and it is not the date that the new patentably distinct claim is presented in the published application. The Office believes that the examples in the preamble provide sufficient clarity, and additional guidance will be provided to the public as decisions are rendered.

Comment 6: One comment suggested that the definitions should be revised to make clear that a petitioner can seek a derivation proceeding against either a pending application or an issued patent.

Response: Section 42.405(b)(1) provides that a petitioner may request to institute a derivation proceeding against an application or a patent.

Comment 7: One comment suggested adding to the end of the definition for application ''where the application contains or contained at any time a claim that has an effective filing date on or after March 16, 2013, or contains a specific reference under 35 U.S.C. 120, 121, or 365(c) to any patent or application that contains or contained such a claim at any time.''

Response: The suggested language appears to come from section 3(n) of the AIA and would be required by law already.

Who may file a petition for a derivation proceeding (§ 42.402)

Comment 8: One comment suggested that a petition should be granted even when the true inventor has not filed a patent application because the true inventor may misunderstand that his or her invention is a mere modification of the prior art. The comment further suggested that the MPEP should mention that the petition for the derivation proceeding should be granted by filing the latter patent application at the time of filing the petition for the derivation proceeding, even when the true inventor has not filed his or her patent application.

Response: The true inventor must be named in the petitioner's application. Section 3(i) of the AIA amends 35 U.S.C. 135 to provide for derivation proceedings. The statute, among other things, specifies that the petition shall set forth with particularity the basis for finding that an inventor named in an earlier application derived the claimed invention from an inventor named in the petitioner's application. *See* 35 U.S.C. 135(a), as amended. Therefore, the Office will not grant a petition when the true inventor is not named in the petitioner's application.

Time for Filing (§ 42.403)

Comment 9: One comment suggested that the rule on timing for filing should track the literal language of the statute because the proposed rule defines a different period than does the statute (one that does not include the date of first publication).

Response: This comment has been adopted. Section 42.403, as adopted in this final rule, includes that a petition for a derivation proceeding ''must be filed within the one-year period beginning on the date of the first publication.''

Comment 10: Several comments suggested changes to the rules to define or specify what constitutes a ''first publication.'' For example, one comment suggested that public availability of a claim through the Office's PAIR system does not constitute first publication. Still, several comments suggested that ''first publication'' refers not only to U.S. application publication, but also PCT international application publication in English designating the United States, and where an application

has not published, the date of the first publication is the date of the issuance of the patent. Yet another comment suggested incorporating the preamble language from the proposed rules regarding ''first publication'' into the rule. Lastly, one comment suggested that the Office consider a petition process that would allow an applicant to petition for waiver of the rule in the interests of justice in certain exceptional circumstances, *i.e.,* when a deriver's claims are filed in a non-English language country and a subsequently filed PCT application has no translation.

Response: This comment has been adopted in part. Section 42.401, as adopted in this final rule, provides that ''the first publication'' means either a patent or an application publication under 35 U.S.C. 122(b), including a publication of an international application designating the United States as provided by 35 U.S.C. 374. Therefore, the first publication of a claim may be the publication by the USPTO of an application for patent, a U.S. patent, or a WIPO publication of an international application designating the United States. The public availability of a claim through the Office's PAIR system (*e.g.,* a new claim filed in a published application) does not constitute the first publication of a claim, as such publication is not an application publication under 35 U.S.C. 122(b). As to the comments regarding WIPO publication of an international application, 35 U.S.C. 374, as amended, deems a WIPO publication of an international application designating the United States as a publication under 35 U.S.C. 122(b) without any English language requirement. Therefore, the first publication of a claim may be a WIPO publication of an international application designating the United States that is published in a non-English language.

Comment 11: Several comments suggested that the rule make clear that the one-year period is calculated from publication of the respondent's claims, and not publication of the petitioner's claims. One comment suggested that the statute is ambiguous in defining the event that will trigger the one-year statutory bar for filing. Still another comment suggested that the proposed rule in combination with the supplementary information indicates that the window-opening date is the date of first publication by the deriver, but that that is contrary to the statutory language. Lastly, one comment suggested that the rule does not make clear which publication (the earlier or later-filed claim) is meant to trigger the one-year bar date.

Response: The rule is consistent with the language of 35 U.S.C. 135(a), as amended. The preamble of this final rule clarifies that the one-year period is calculated from publication of the respondent's claim. The statute's use of the phrase ''a claim'' is ambiguous. The Office recognizes that if the phrase is interpreted to include the petitioner's claim as a trigger, such a broad construction could violate due process. For example, the petitioner could be barred by publication of its own claim before it had any knowledge of the respondent's application. The Office believes that the Congress did not intend to prevent a true inventor from seeking a derivation proceeding in such situation. To resolve the ambiguity in the statute, the Office interprets the statute to mean that the trigger for the deadline is publication of the respondent's claim. This interpretation is reasonable, as the identified problems may be avoided if the trigger for the deadline is publication of the respondent's claim. Accordingly, the Office's interpretation is consistent with the statute and ensures that the first person to file the application is actually a true inventor.

Comment 12: One comment asked whether the time bar for filing a derivation includes the one-year anniversary date of the date of publication.

Response: The time period for filing a derivation petition includes the one-year anniversary date of the date of publication. For example, if the publication occurs on January 7, 2014, then the petition must be filed before January 8, 2015. If the one-year period expires on a Saturday, Sunday, or Federal holiday within the District of Columbia, the petition may be filed on the next succeeding business day. 35 U.S.C. 21(b). For example, if the publication occurs on July 3, 2014, then the petition must be filed before July 7, 2015 (July 3, 2015, being a Federal holiday; July 4, 2015, being a Saturday; and July 5, 2015, being a Sunday).

Comment 13: One comment suggested that the rules should make it clear whether potentially derived claims that are first presented and published in a continuing application will be deemed to relate back to an initial parent application that was published more than a year before the publication of the case in which the potentially derived claims are presented and published.

Response: Consistent with 35 U.S.C. 135(a), the one-year time period begins on the first publication date of a claim to an invention that is the same or substantially the same as the earlier application's claim to the invention, rather than the publication of a parent application (unless the publication of the parent application contains such a claim).

Comment 14: One comment requested clarification on how the Office intends to treat derivation petitions filed when a petitioner's claim is not otherwise in condition for allowance.

Response: A derivation petition filed in an application that is not otherwise in condition for allowance may be accorded a filing date under § 42.407 and considered timely filed if the petition complies with the statutory and rule requirements. Generally, once the petition has been accorded a filing date, the Office will hold the petition until the petitioner's claim is otherwise in condition for allowance.

Comment 15: One comment requested clarification on what proceedings are available when one application or patent has a post-AIA effective filing date and another party's application or patent has a pre-AIA effective filing date. The comment further requested that the proposed rules be amended by: (i) confirming that the earlier party could seek declaration of an interference, and the latter party could petition for derivation proceedings to be instituted; and (ii) indicating what action the Office would take when both types of proceedings are requested. The comment also recommended that when both types of proceedings are properly requested, the Office initiate the interference proceeding and handle the derivation issues as part of the interference.

Response: The Office appreciates the suggestion that in such situations the Office initiate the interference proceeding and handle the derivation issues as part of the interference. The Office will consider requests for interference proceedings and/or petitions to institute a derivation proceeding in light of the statutory provisions and the facts of the particular case. For instance, if both subject applications have issued as patents and neither is pending before the Office, the Office will not declare an interference, nor institute a derivation proceeding, between two patents. *See* 35 U.S.C. 291. In the situation where the application that has a post-AIA effective filing date is pending before the Office, the applicant of such application may file a petition for a derivation proceeding under 35 U.S.C. 135(a), as amended, if appropriate. *See* § 3(n)(1) of the AIA.

Comment 16: One comment explained that section 3(n) of the AIA is confusing with regard to the ''effective date'' stating ''patent or application'' when referring to the effective date in general,

and ''claim'' when referring to interfering patents. The comment further explained that continuation-in-part patent applications or patents may contain claims that fall on either side of the March 16, 2013 date, and then all claims would not be subject to the provisions of AIA. The comment seeks clarification from the Office.

Response: Under section 3(n)(1) of the AIA, the first-inventor-to-file provisions of the AIA apply to any application that previously contained, or currently contains, a claim that has an effective filing date on or after March 16, 2013. Therefore, the first-inventor-to-file provisions apply to all of the claims in a continuation-in-part application that satisfies that standard. Additional information is provided in a separate rulemaking and guidance notice concerning the first-inventor-to-file provisions. *See e.g., Changes to Implement the First Inventor to File Provisions of the Leahy-Smith America Invents Act* (Notice of proposed rulemaking) (RIN 0651–AC77). Additional guidance will also be provided to the public as decisions are rendered and as they become available.

Content of Petition (§ 42.405)

Comment 17: Several comments expressed concern over the language of proposed § 42.405(a)(2)(ii). One comment suggested deleting proposed § 42.405(a)(2)(ii) requiring the ''not patentably distinct'' showing, because the statutory term ''substantially the same'' encompasses the ''not patentably distinct'' term and paragraphs (a)(2)(i) and (a)(2)(ii) of proposed § 42.405 are therefore redundant. The comment further suggested deletion of proposed § 42.405(b)(3)(i) for the same reason. Another comment requested clarification as to whether a patent would be allowed if based on a novel and nonobvious improvement to what was disclosed.

Response: In light of these comments, the Office has modified the proposed rules. Section 42.405, as adopted in this final rule, uses the standard of ''same or substantially the same,'' and § 42.401, as adopted in this final rule, defines ''same or substantially the same'' to mean patentably indistinct. In particular, § 42.405(a)(2)(ii), as adopted in this final rule, requires the petitioner to show that it has a claim that is the same or substantially the same as the invention that was actually disclosed to the respondent. Section 42.405(b)(3)(i), as adopted in this final rule, requires a showing that each of the respondent's claims to the derived invention is the same or substantially the same as the invention that was disclosed to the respondent. Where a respondent's claim is directed to subject matter that is not the same or substantially the same as what was disclosed, there would be insufficient basis upon which to institute a proceeding.

Comment 18: A comment suggested that proposed § 42.405(b) should be revised to require *prima facie* evidence in the form of sworn testimony or other documentary evidence to demonstrate that: (i) Each allegedly derived claimed invention was derived from an inventor named in the petitioner's application; and (ii) the inventor or inventors from whom the allegedly derived claimed invention was derived did not authorize the filing of the earliest-filed application claiming such invention.

Response: The final rule clarifies that a showing must be made that the filing of the earliest filed application claiming the allegedly derived invention was not authorized by the petitioner. *See* § 42.405(b). Documentary evidence alone is not sufficient. As provided in § 42.205(c), at least one affidavit that addresses the communication of the allegedly derived invention and lack of authorization for the respondent to file the earliest-filed application must accompany the petition. Documentary evidence may be sufficient as corroborative evidence depending on the facts of the proceeding.

Comment 19: One comment suggested that the rules should require that the petition disclose the entirety of the petitioner's case and effectively serve as the petitioner's main ''trial brief.''

Response: Petitioners are encouraged to set forth their entire case and supporting evidence in their petitions, lest the petitioner risk a determination by the Board not to institute the derivation proceeding. *See* §§ 42.405 and 42.108(b). For instance, under § 42.405(c), a derivation showing is not sufficient unless it is supported by substantial evidence, including at least one affidavit addressing communication of the allegedly derived invention and lack of authorization that, if unrebutted, would support a determination of derivation. The showing of communication must be corroborated. Requiring such a showing prior to any institution of a proceeding is consistent with the Office's goal of avoiding institution of proceedings that lack merit and additional costs on both a respondent and a petitioner unnecessarily.

Comment 20: Several comments suggested that proposed § 42.405 requires too much detailed information and should only require identification of the basis of the contention and the evidence to support the contention. One comment suggested that the validity of a claim of derivation may be resolved in the derivation proceeding itself and need not be conclusively determined on the face of the petition. Another comment stated that the requirements for a sufficient showing to institute a proceeding seem onerous and that the more onerous burden should lie in proving derivation.

Response: The Office agrees that the ultimate question of whether an invention was derived from the petitioner is decided only after a derivation proceeding is instituted and completed. Further, the Office has taken into account the statutory requirements and the burden on the parties. As amended, 35 U.S.C. 135(a) requires that the petition be supported by substantial evidence and that the petition and evidence demonstrate that the standards for instituting a derivation proceeding are met. The rule is consistent with the statute and the Office's goal of avoiding institution of costly proceedings that lack merit.

Comment 21: Several comments suggested deleting the final sentence of proposed § 42.405(c), because corroboration should only be required after initiation of a derivation proceeding and an opportunity for discovery. One comment suggested expanded discovery for derivations, since the alleged deriver is likely to have information unavailable to the petitioner.

Response: The nature of derivation proceedings requires the Board to make credibility determinations based on the evidence presented. Requiring corroboration at the outset provides a greater likelihood that credible testimony is presented by the petitioner and is consistent with the Office's goal of avoiding institution of costly proceedings that lack merit. This is true even where testimony from someone other than the inventor is presented to support the allegation of derivation. Discovery prior to institution is not provided by the rules as it is the alleged inventor who conceived and communicated the conception of the invention to the alleged deriver and is in the best position to offer testimony or other evidence regarding the conception and communication. Further, it is well settled that an inventor's testimony must be corroborated.

Comment 22: Several comments suggested that requiring the petitioner to offer a proposed claim interpretation is burdensome as the petitioner already has reason to provide claim interpretation where necessary to set forth a sufficient showing, especially as to claim terms at issue.

Response: The Office believes that the petitioner's claim construction requirement is not unduly burdensome and that it will improve the efficiency of the proceeding. In particular, the petitioner's claim construction will help to provide sufficient notice to the respondent regarding what the petitioner believes to have been derived, and will assist the Board in analyzing whether a *prima facie* showing of derivation has been made. During a proceeding, a claim of an application or unexpired patent will be given its broadest reasonable construction in light of the specification of the patent in which it appears. This means that the words of the claim will be given their plain meaning unless the plain meaning is inconsistent with the specification. *In re Zletz,* 893 F.2d 319, 321 (Fed. Cir. 1989). In the absence of a special definition in the specification, a claim term is presumed to take on its ordinary and customary meaning, a meaning that the term would have to a person of ordinary skill in the art. *In re Am. Acad. of Sci. Tech Ctr.,* 367 F.3d 1359, 1364 (Fed. Cir. 2004). Therefore, petitioners are not required to define every claim term, but rather merely provide a statement that the claim terms are presumed to take on their ordinary and customary meaning, and point out any claim term that has a special meaning and the definition in the specification.

Comment 23: One comment suggested that § 42.405 should indicate that its requirements are in addition to those of proposed §§ 42.8 and 42.22 if that is the Office's intent.

Response: The Office notes that proposed § 42.405(b) expressly provides that ''[i]n addition to the requirements of §§ 42.8 and 42.22, the petition must: * * *'' Therefore, the Office assumes that the comment supports the proposed provision and adopts the language without any modification. As such, § 42.405, as adopted in this final rule, expressly provides that the petitioner also must comply with §§ 42.8 and 42.22. § 42.405(b).

Comment 24: One comment suggested that, because derivation requires a showing of earlier conception by the party alleging derivation, the rule should require the petition include at least one affidavit addressing conception, and corroboration of the conception.

Response: Derivation requires both earlier conception by the party alleging derivation as well as communication of the conception. Thus, by requiring demonstration of derivation, the rule necessarily requires a showing of earlier conception as well as corroboration of that earlier conception. § 42.405(c).

Comment 25: Several comments expressed concern about the lack of a ''count'' that defines the derived subject matter or a separate phase that allows for a time to define what is included as derived subject matter and time for dealing with other issues such as inventorship disputes where possible joint inventorship is an issue.

Response: Derivation proceedings are distinct from interferences such that a ''count'' may lead to confusion. In a derivation proceeding, a petitioner must make a showing as to each of the respondent's claims that it believes is derived subject matter. § 42.405(b)(3)(i). Specifically, the petitioner must demonstrate that the respondent acquired knowledge of the claimed invention from the petitioner. Hence, the ''acquired knowledge,'' which the petitioner must define as part of its proof, determines the scope of subject matter that would have been anticipated or obvious from the acquired knowledge. Other issues, such as inventorship issues, can be raised by authorized motion. § 42.20. The Board will set a schedule for the filing of any authorized motions. § 42.25.

Comment 26: Several comments asked for clarification as to a respondent's burden. One comment suggested that the Office should study the possibility of imposing a certain degree of burden of proof on the respondent as well as on the petitioner and should provide examples of what type of evidence is admissible. Another comment asked for examples of what would be sufficient rebuttal evidence under § 42.405(c).

Response: Under the AIA, the first party to file an application to an invention that is otherwise patentable is entitled to the patent. 35 U.S.C. 102. A petitioner seeking to change the status quo by petitioning for a derivation proceeding appropriately is charged with the burden of proof. 35 U.S.C. 135(a), as amended. The showing must be sufficient such that the petitioner would prevail if a respondent did not provide any rebuttal of the showing. A respondent may submit rebuttal evidence in an opposition under § 42.23. Sufficiency of rebuttal evidence will be considered and given appropriate weight on a case-by-case basis after institution of a proceeding.

Comment 27: Several comments suggested that the phrase ''invention disclosed to the respondent'' is undefined. One comment also suggested that standing should be based on the ''claimed invention'' rather than a vague concept of the invention.

Response: In view of the comments, § 42.405(b)(2), as adopted in this final rule, provides ''a claimed invention'' rather than ''an invention.'' The AIA requires that the Board in a derivation proceeding determine whether an inventor named in the earlier application derived the claimed invention from an inventor named in the petitioner's application. 35 U.S.C. 135(a). The AIA also requires that a petitioner provide substantial evidence supporting its allegations of derivation. In instituting a derivation proceeding, the Board is to determine whether a petition meets standards for institution. *Id.* Consistent with the statute, the rules provide that substantial evidence of derivation include a showing that the invention in question was disclosed to the earlier filer, *i.e.,* the respondent. *See* § 42.405. For instance, § 42.405(a)(2) requires that the petition must show that the petitioner's claim is the same or substantially the same as the invention disclosed to the respondent, and that the petitioner's claim is the same or substantially the same as the respondent's claimed invention.

Comment 28: Several comments expressed concern about the corroboration requirement. One comment suggested that the corroboration requirement for the showing of communication is an outdated requirement in a digital age where verification of the authenticity of an electronic communication can be proven by other means than submission of a statement of a purportedly corroborating witness. Another comment asked for examples of sufficient corroboration.

Response: The rule does not limit the form that corroboration must take. In the instance where an inventor has testified that a communication has occurred, it may be appropriate to corroborate the testimony with proof of an electronic communication. The Board expects to consider each situation on a case-by-case basis and to use a ''rule of reason'' in determining whether corroboration is sufficient. For example, communications with the respondent or with the Office, both of which are independent determination of authenticity.

Comment 29: One comment asked for clarification of whether one affidavit addressing communication will be enough to be considered ''substantial evidence'' of derivation, or whether something additional will be required, whether corroboration of communication also must be shown via an affidavit, and whether evidence of a written communication is required.

Response: Under § 42.405(c), a derivation showing is not sufficient unless it is supported by substantial evidence, including at least one affidavit

addressing communication of the derived invention and lack of authorization that, if unrebutted, would support a determination of derivation. Whether a petition makes a sufficient showing of derivation will be decided on a case-by-case basis. The submission of one affidavit addressing the communication and the lack of authorization is a minimum requirement but is not a guarantee that a proceeding will be instituted. The Board will look at the substance and credibility of all of the evidence submitted in determining whether to institute a proceeding. The rules do not require that corroboration be in the form of an affidavit or written communication. The Board expects to apply a ''rule of reason'' when accessing sufficiency of corroboration.

Comment 30: Several comments suggested that a petitioner should not be required to have patentable subject matter in order for a proceeding to be instituted. One noted that various circumstances could make a claim unpatentable to the petitioner, yet patentable to others, such as intervening prior art. Thus, this requirement is contrary to the basic reason for derivations. One comment suggested that proposed § 42.408 should be revised to provide that the Office may act on a petition if either party has an allowable claim to the subject matter at issue or at either or both parties' request, and that a petitioner should be required to update the status of the claims after notice that the Office intends to consider the petition.

Response: Prior to instituting a proceeding that is both costly and time-consuming to the parties and the Office, a determination will be made to ensure that each party is claiming subject matter that is actually patentable but for the potential derivation issue. While ordinarily a derivation will not be instituted when none of petitioner's claims are in condition for allowance, the rule does not preclude institution in such a situation, and each situation will be evaluated on its particular facts. *See* 35 U.S.C. 135(a), as amended.

Comment 31: One comment suggested that proposed § 42.405(a)(2) should be deleted, since requiring a showing that petitioner has at least one claim that is the same or substantially the same as respondent's invention is contrary to the AIA and 35 U.S.C. 135, as amended. Specifically, neither the AIA nor 35 U.S.C. 135 impose any limitations as to the claims in the petitioner's application. In contrast, 35 U.S.C. 291(a) states that ''[t]he owner of a patent may have relief by civil action against the owner of another patent that claims the same invention.'' More specifically, the comment recommended that the Office should not impose a requirement for claiming the same invention in the situation in which Congress expressly did not do so.

Response: As amended, 35 U.S.C. 135(b) requires the Director to prescribe regulations setting forth standards for the conduct of derivation proceedings, including requiring parties to provide sufficient evidence to prove and rebut a claim of derivation. Further, 35 U.S.C. 135(a), as amended, provides that a petition to institute a derivation proceeding may be filed only within the one-year period beginning on the date of the first publication of a claim to an invention that is the same or substantially the same as the allegedly derived invention. Section 42.405(a)(2) applies the same standard as set forth in 35 U.S.C. 135(a): ''the same or substantially the same.'' A petitioner is not required to claim the same invention, since it may have a claim that is substantially the same as the respondent's claimed invention. As discussed in the preamble, § 42.405(a)(2) also ensures that the petitioner has taken steps to obtain patent protection for the same or substantially same invention, thus promoting the useful arts. Therefore, § 42.405(a)(2) is consistent with 35 U.S.C. 135, as amended.

Comment 32: One comment suggested that the Office should not require the petitioner to have at least one claim that is the same or substantially the same as the respondent's claimed invention because this requirement may unfairly deny a petitioner the remedy of cancellation or refusal of a respondent's claim.

Response: As amended, 35 U.S.C. 135(a) requires that a party must be an applicant for a patent as a prerequisite for filing a petition for a derivation proceeding. Under § 42.405(a)(2), a petitioner must show that it has a claim that is both: (1) the same or substantially the same as the respondent's claim; and (2) the same or substantially the same as the invention that was actually disclosed to the respondent. This rule is therefore consistent with the statutory requirement that a petitioner be an applicant for patent.

Comment 33: One comment stated that the proposed rules fail to address various complexities, such as whether the petitioner is required to amend its claims to match the respondent's claims in order to continue the proceeding in the situation where a respondent amends its claim to avoid derivation issues.

Response: Whenever the Board determines that a petition demonstrates that the standards for institution of a derivation proceeding (*e.g.,* the requirements set forth in § 42.405) are met, the Board may institute a derivation proceeding. Each situation will be evaluated on its particular facts. The requirements of §§ 42.405(a) and (b) must be met even where a respondent is an applicant and is in a position to amend the claims.

Comment 34: One comment requested clarification as to whether a lack of authorization must also be corroborated.

Response: Section 42.405(c) requires an affidavit addressing the lack of authorization. While the rule does not specifically require corroboration of the testimony regarding a lack of authorization, testimony is more credible when it is corroborated. Moreover, inventor testimony must be corroborated by independent evidence. The Board plans to use a ''rule of reason'' standard for evaluating whether corroboration of such testimony is sufficient.

Service of Petition (§ 42.406)

Comment 35: One comment suggested that the rule should allow for deferred service of supporting evidence due to trade secret material that may be included.

Response: The rules provide for the protection of confidential information such as trade secrets. In particular, § 42.55 allows a petitioner filing confidential information with a petition to file a concurrent motion to seal with a proposed protective order as to the confidential information. The petitioner may serve the confidential information under seal. The patent owner may only access the sealed confidential information prior to the institution of the trial by agreeing to the terms of the proposed protective order or obtaining relief from the Board. In addition, after denial of a petition to institute a trial or after final judgment in a trial, a party may file a motion to expunge confidential information from the record. § 42.56.

Comment 36: One comment requested clarification regarding the circumstances under which a petitioner will be deemed to have not been able to have effected actual service and suggests service through Express Mail or by means at least as fast and reliable, or by party agreement through facsimile or electronically. The comment also suggested that proposed § 42.406 be rewritten as follows: ''(a) The petition and supporting evidence must be served at the correspondence address of record for the earlier application or subject

patent. The petitioner may additionally serve the petition and supporting evidence on the respondent at any other address known to the petitioner as likely to effect service. Service must be made in accordance with § 42.6(e)(4) in a manner that provides for confirmation of delivery. (b) If the petitioner cannot confirm delivery at the correspondence address of record for the subject application or patent, the petitioner must immediately contact the Board to discuss alternate modes of service.'' (Emphasis deleted.)

Response: The comment has been adopted. Section 42.406, as adopted in this final rule, expressly provides that, upon agreement of the parties, service may be made electronically, and service may be made by EXPRESS MAIL® or by means at least as fast and reliable as EXPRESS MAIL®. Further, § 42.406, as adopted in this final rule, does not include the requirement for contacting the Board when the petitioner cannot effect service.

Filing Date (§ 42.407)

Comment 37: Several comments suggested that a petitioner be allowed time to cure an incomplete petition. One comment suggested allowing the petitioner one month to complete an incomplete request if the petition was filed at least two months before the statutory deadline. Another comment suggested that the period for correction be changed to the later of one month from the notice of incomplete request or the expiration of the statutory deadline. Another comment further suggested that the proposed rule should be modified to provide that if a petition affords notice sufficient to identify the application with which a derivation proceeding is sought and sufficient to identify the petitioner's application, the petition be accorded a filing date which can be preserved by completing the remaining requirements within one month after notice of the defects and upon payment of a surcharge. One comment suggested a petitioner be given two months from the notice of an incomplete request to cure, even if the statutory deadline would not be met. One comment suggested that the language of proposed § 42.407 should be clarified to provide that a filing date will be accorded a petition for a derivation proceeding provided that all the elements of § 42.407 (and § 42.405) are present in the petition.

Response: The Office may not waive the one-year filing requirement for a derivation petition that is set in 35 U.S.C. 135(a), as amended. The Board generally will accord a filing date and accept minor deficiencies that do not impact the Board's ability to determine whether to institute a derivation proceeding or the respondent's ability to file an opposition. It is important to note that petitioners should make every effort to complete their petitions accurately. While the Board may accept minor omissions or mistakes, certain omissions or mistakes may nonetheless impact the Board's determination under § 42.405(c).

Comment 38: One comment suggested that the rule refers to an incomplete ''request'' in some places but refers to an incomplete ''petition'' in other places and that the word ''petition'' should be used throughout.

Response: This comment has been adopted. Specifically, § 42.407(b), as adopted in this final rule, uses the term incomplete petition rather than incomplete request.

Comment 39: One comment asked for clarification as to whether the Office will mail a Notice indicating that a petition meets the statutory requirements and how long it would take for such a notice to be mailed.

Response: The Board plans to process the petitions and accord the filing date as soon as practical. A notice will be provided to the petitioner as quickly as resources allow, indicating whether a filing date has been accorded.

Institution of Derivation Proceeding (§ 42.408)

Comment 40: One comment suggested that the rule include a provision for routine discovery to include cross-examination of inventors, since the inventors' oaths or declarations can be considered to be affidavit testimony.

Response: The Board does not anticipate allowing for the deposition of inventors as routine discovery unless an affidavit of an inventor is relied upon by a party. § 42.51(b)(1). When a party wishes to obtain the testimony of an inventor and the parties cannot agree amongst themselves to such discovery, the party requesting such discovery may seek the relief by authorized motion. §§ 42.20(a) and 42.51(b)(2).

Comment 41: One comment suggested that the rules should include an option that permits a petitioner to withdraw the petition or to withdraw from the derivation proceeding.

Response: A party may file a request for adverse judgment under § 42.73(b). It is expected that a request to terminate made by both parties would be granted, unless the request is contrary to the evidence of record. 35 U.S.C. 135(e). Under § 42.72, the Board may terminate a trial without rendering judgment where appropriate.

Comment 42: One comment asked whether there is a requirement that ''the suggestion could not have been made in the original petition,'' and if not, whether the Office foresees any ''legitimate'' excuses for a petitioner who is aware of patent or application to fail to include it in an original petition.

Response: Under § 42.408(b), a petitioner may suggest the addition of a patent or application to the derivation proceeding, but must explain why the suggestion could not have been made in the original petition.

Settlement Agreement (§ 42.409)

Comment 43: One comment stated that § 42.74(c), which applies to § 42.409, appears to give undue access to a settlement party's business confidential information. The comment further noted that the rule does not appear to provide an opportunity to notify the parties to the settlement agreement of the request to make available or contemplate a public redacted version of the settlement, and it does not address what is required of ''a showing of good cause.''

Response: As amended, 35 U.S.C. 135(e) requires a settlement agreement or understanding be treated as business confidential information and be kept separate from the file of the involved patents or applications. Section 42.74 is consistent with the statutory requirements. Whether good cause has been shown will depend upon the particular facts of the request. However, based on the experience of the Board, it is not expected that such requests will be frequent and that the grant of any such request would be a rare occurrence.

Public Availability of Board Records (§ 42.412)

Comment 44: One comment suggested merging § 42.412 with § 42.14, because it is unclear whether § 42.412 is intended to apply to derivation proceedings alone or to Board decisions and records in general.

Response: Both §§ 42.14 and 42.412 apply to derivation proceedings. Section 42.412 is specific to derivation proceedings and addresses situations particular to having an application involved in the proceeding. For example, the rule specifies that the record of a Board proceeding is available to the public, unless a patent application not otherwise available to the public is involved.

Comment 45: One comment stated that § 42.412(b)(1) does not give any consideration to the possibility that a motion or portions of the record may contain business confidential

information, and suggested the Office should consider adding a provision like § 42.74(c) (''Request to keep separate'') and, in addition, or alternatively, provide the disclosing party an opportunity to redact business confidential information prior to disclosure.

Response: The rules provide for the protection of confidential information such as trade secrets. In particular, § 42.55 allows a petitioner filing confidential information with a petition to file, concurrent with the filing of the petition, a motion to seal with a proposed protective order as to the confidential information. The petitioner may serve the confidential information under seal. In addition, after denial of a petition to institute a trial or after final judgment in a trial, a party may file a motion to expunge confidential information from the record. § 42.56.

Comment 46: One comment asked if the Office will provide public notice of a finding of derivation in the involved patent/patent application and in other patents/applications that are either (i) related by priority, or (ii) directed to the derived subject matter.

Response: A final decision will be entered in the file of any application or patent involved in the proceeding. Where the decision is adverse to any claims in an application, the Office will finally refuse those claims. Where the decision is adverse to the claims of a patent, the effected claims will be cancelled and notice of said cancellation shall be endorsed on copies of the patent distributed after such cancellation. 35 U.S.C. 135(d).

Correction of Inventorship

Comment 47: Several comments suggested that the rules should specify the relief that may be requested and granted in an instituted derivation proceeding. In particular, one of the comments recommended the following to be included in the rules: (1) Correcting the inventorship of the earlier-filed application by adding the name of an inventor of the later-filed application; (2) correcting the inventorship of the earlier-filed application by removing or changing a named inventor; and (3) permitting the petitioner to claim the benefit under 35 U.S.C. 120 to the earlier-filed application.

Response: The comments have been adopted to the extent that §§ 1.48 and 1.324 have been revised to provide for correction of inventorship in a contested case before the Board. In particular, § 1.48(i) provides that, in a contested case, a request for correction of inventorship in an application must be in the form of a motion under § 42.22, and the motion must also comply with the requirements of § 1.48(a). Similarly, § 1.324(d) provides that, in a contested case, a request for correction of inventorship in a patent must be in the form of a motion under § 42.22, and the motion must also comply with the requirements of § 1.324. As to claiming the benefit of an earlier-filed application, a party may file a motion to amend under § 42.22, but such a motion must also comply with the requirements of § 1.78.

Comment 48: One comment sought clarification on the procedure for correcting inventorship in a derivation proceeding, and on the circumstances where the Board will exercise its authority to correct the naming of the inventor in the application or patent at issue.

Response: The procedure for an applicant or patent owner to file a request for correction of inventorship is set forth in §§ 1.48(i), 1.324(d), and 42.22. Under 35 U.S.C. 135(b), as amended, the Board will determine in an instituted derivation proceeding whether an inventor named in the earlier application derived the claimed invention from an inventor named in the petitioner's application. When making this determination, if the Board finds the inventorship to be incorrect in an involved application or patent, the Board may correct the inventorship in such an application or patent depending on the facts of the particular case, such as whether there is an agreement of the parties as to the correct inventors of the claimed invention in dispute.

Comment 49: One comment suggested that the Office should accept the parties' determinations on the inventorship of the involved applications as conclusive unless it has reasons to believe that the parties' determinations are incorrect.

Response: The Office may accept the parties' determinations depending on the particular facts of each case, such as whether the records in the proceeding are consistent with the parties' determinations. *See also* 35 U.S.C. 135(e).

Comment 50: One comment suggested that, in the situation where the parties agree among themselves as to the inventorship of the involved claims, they must inform the Office of the correct inventorship of each surviving involved claim, not simply the correct inventorship of each surviving involved application or patent. The comment further suggested that if the Board determines the inventorship of the involved claims, its decision will recite the correct inventorship of each surviving involved claim, not simply the correct inventorship of each surviving involved application or patent.

Response: The Board may require such information or provide such information in its decision depending on the particular facts of each case, such as whether the agreement or determination is consistent with the evidence on record.

Comment 51: One comment suggested that, if the parties agree among themselves as to the inventorship of the involved claims, they should not be required to submit evidence supporting their determinations.

Response: The Board may require evidence of the correct inventorship of the involved claims depending on the particular facts of the case, such as whether the agreement is inconsistent with the evidence or record.

Comment 52: One comment suggested that the Office should provide that each party to a derivation proceeding may amend the inventorship named in its involved application or patent.

Response: The Office agrees that a party in a derivation proceeding may file a motion to correct the inventorship of its involved application or patent. §§ 1.48, 1.324, and 42.22. Any request to correct the inventorship of an application or patent accompanying such a motion must also comply with the appropriate requirements in part 1 of the CFR (*e.g.,* § 1.48).

Deferring Action on a Derivation Petition

Comment 53: One comment requested clarification on the statement in the preamble that a derivation is unlikely to be instituted if the petitioner's claim is not otherwise in condition for allowance, and suggested that the Office should allow an applicant to file a petition for derivation before the statutory deadline and then hold such a petition in abeyance until the petitioner's claim is otherwise in condition for allowance.

Response: At the time of filing a petition, the petitioner's application is not required to be otherwise in condition for allowance. The statement in the preamble is directed to when the Office will institute a derivation proceeding, as opposed to when an applicant is required to file the petition. The statement is consistent with 35 U.S.C. 135(a), as amended, that provides that whenever the Office determines that a petition demonstrates that the standards for instituting a derivation proceeding are met, the Office may institute a derivation proceeding. Thus, an applicant may file a derivation petition that complies with the statutory

and rule requirements in an application that is not otherwise in condition for allowance.

Comment 54: One comment recommended that, in normal situations, the Office should not defer action on petitions for derivation. The comment also suggested that the rules should set forth expressly the rare circumstances where the Board would defer action on a petition for derivation.

Response: As provided by 35 U.S.C. 135(c), as amended, the Board may defer action on a petition for derivation up to three months after a patent has been issued with a claim that is directed to the subject matter in dispute. Other circumstances may similarly warrant deferring action on the petition; the Board will consider the particular facts of each case in determining whether to defer action on a petition for derivation. The Office does not believe it is necessary to set forth expressly in the rules all of the circumstances where the Board will defer action on a petition for derivation to limit the Board's discretion and flexibility as provided in 35 U.S.C. 135(c), as amended. As discussed previously, a derivation is unlikely to be instituted if the petitioner's claim is not otherwise in condition for allowance.

Other Suggestions

Comment 55: One comment suggested that the Board has authority to enter a ''split decision.'' The comment provided the following example: the Board may determine that the inventors named in the first involved application are correct as to one or more claims in the first application and the inventors named in the second involved application are correct as to one or more claims in the second application.

Response: The Office agrees that the Board has the authority under the AIA to enter a split decision in appropriate situations. As amended, 35 U.S.C. 135(b) provides that the Board shall determine, in an instituted derivation proceeding, whether an inventor named in the earlier application derived the claimed invention from an inventor named in the petitioner's application and, without authorization, filed the earlier application claiming that invention. Further, the statute provides that in appropriate circumstances, the Board may correct the naming of the inventor in any application or patent at issue. Thus, the statutory provisions do not preclude the Board from rendering a decision that determines the correct inventorship as to the claims in an involved application or patent.

Comment 56: One comment noted that if a party to a derivation proceeding wishes to establish unpatentability of its opponent's claims based on a ground other than derivation, it must file a petition to institute a review as authorized by the AIA.

Response: The Office agrees that if a party wishes to challenge a patent claim on a ground other than derivation, the party may file a petition to institute an *inter partes* review, post-grant review, or covered business method patent review, where appropriate.

Comment 57: One comment suggested that the rules should facilitate having the same Board panel handle various proceedings that involve the same matter.

Response: The AIA and rules provide that the Board may consolidate multiple proceedings involving the same patent before the Office. *See, e.g.,* 35 U.S.C. 315(d), as amended, and § 42.122. Therefore, the Board may take into account whether there are multiple proceedings involving the same patent or matter.

Comment 58: One comment suggested that the Office should consider italicizing or capitalizing defined terms in the rules to alert practitioners that the terms have been separately defined.

Response: The defined terms are italicized in §§ 42.2 and 42.401, and the terms are used in other rules consistent with the definitions. Therefore, the Office has not adopted the suggestion to italicize or capitalize defined terms throughout the rules.

Comment 59: One comment suggested that the issue of whether the petitioner's claim is entitled to the benefit of the filing date of any priority application should be decided in the derivation proceeding.

Response: In general, the Board will resolve any issue related to a priority claim during a derivation proceeding if it is necessary for the Board to determine whether an inventor named in the earlier application derived the claimed invention from an inventor named in the petitioner's application and, without authorization, filed the earlier application claiming that invention. The examining corps, however, is not precluded from determining issues related to a priority claim when the application is under its jurisdiction before a derivation proceeding has been instituted involving the application, or after the derivation proceeding has been terminated.

Comment 60: One comment recommended that the rules should set forth the standard that ''the subject matter defined by the target claim would have been either anticipated by or obvious over the subject matter defined by the targeting claim.'' Another comment requested clarification on whether the Office intends to use what is known as an ''obviousness-type'' standard for conducting the derivation proceeding.

Response: The Office agrees with the comments that the rule should set forth the standard for instituting a derivation proceeding. Section 42.401, as adopted in this final rule, defines ''same or substantially the same invention'' as patentably indistinct. In addition, the rule provides that the petition must, for each of the respondent's claims to the derived invention, show why the claimed invention is the same or substantially the same as the invention disclosed to the respondent. § 42.405(b).

Comment 61: One comment suggested the rules should provide that any involved application containing claims with inventorship that was determined to be correct should be returned to the examining corps for further appropriate action.

Response: The procedure for returning an application to the examining corps after the termination of a derivation proceeding will be similar to the existing process for *ex parte* appeals and contested cases.

Comment 62: One comment recommended that a patent owner who wishes to request a derivation proceeding must file a reissue application within the time period allowed by statute.

Response: Consistent with 35 U.S.C. 135(a), as amended, § 42.403 provides that an applicant for patent may file a petition to institute a derivation proceeding in the Office. Further, as provided in § 42.401, the definition of ''applicant'' includes a reissue applicant. A patent owner, thus, may file a petition to institute a derivation proceeding in an application for reissue of its patent. Alternatively, a patent owner may also seek relief in other method, such as filing a civil action under 35 U.S.C. 291 or a petition for a derivation proceeding in a continuing application claiming the benefit of the filing date of the application that resulted in the patent.

Comment 63: One comment suggested that the Office should consider the following hypothetical situation: (1) True inventor A invents, and then discloses to B; (2) B (*e.g.,* a magazine reporter) publishes a description of A's invention, but does not file a patent application; (3) C reads B's publication, and files a patent application; (4) A then files a patent application, after C's filing date, but less than one year after A's disclosure to B. The comment further suggested that A should be permitted to

compel discovery from nonparty B and party C to establish the flow of information from A to B to C, thereby to show derivation.

Response: Based on the fact pattern in the comment, the publication by B of A's invention is prior art to Application C. Therefore, the claims in Application C would be subject to a rejection based on B's publication as anticipated or obvious. Since Application C is not allowable over the publication by B, discovery of B to establish the flow of information would not appear to be necessary.

Comment 64: One comment requested clarification on the situation where a deriver files an application subsequent to the true inventor. In particular, the comment asked whether the Office would reject the deriver's claim based on the true inventor's earlier-filed application.

Response: For the situation described in the comment, the publication of the true inventor's application will be prior art against the deriver's application. If the true inventor's application is not published, the Office may allow the true inventor's earlier-filed application in the appropriate situation, and then reject the claims of the deriver based on the patent of the true inventor's earlier-filed application.

Comment 65: One comment requested clarification on whether an applicant may overcome a rejection based on an earlier-filed application by filing an affidavit showing derivation without filing a petition to institute a derivation proceeding.

Response: Where a patent or patent application publication merely discloses, rather than claims, the subject matter used in making a rejection, it is appropriate to file an affidavit consistent with 35 U.S.C. 102(b), as amended by the AIA. *See* proposed § 1.130, *Changes to Implement the First Inventor to File Provisions of the Leahy-Smith America Invents Act* (Notice of proposed rulemaking) (RIN 0651–AC77).

Comment 66: One comment requested clarification on how the Office intends to treat information regarding derivation in the light of the fact that 35 U.S.C. 102, as amended by the AIA, does not include the provision set forth in 35 U.S.C. 102(f), in effect before the enactment of the AIA.

Response: The Office will apply the relevant statutory provisions (*e.g.,* 35 U.S.C. 101) and case law to determine whether the evidence regarding derivation is sufficient to demonstrate that the named inventor is not the true inventor, and make a rejection if appropriate.

Rulemaking Considerations

The rulemaking considerations for the series of final rules for implementing the administrative patent trials as required by the AIA have been considered together and are based upon the same assumptions, except where differences between the regulations and proceedings that they implement require additional or different information. Notably, this final rule is directed to specific procedures for derivation proceedings.

A. Administrative Procedure Act (APA)

This final rule revises the rules of practice concerning the procedure for requesting a derivation, and the trial process after institution of such a proceeding. The changes being adopted in this notice do not change the substantive criteria of patentability. These changes involve rules of agency practice, standards, and procedure and/or interpretive rules. *See Bachow Commc'ns Inc.* v. *F.C.C.,* 237 F.3d 683, 690 (D.C. Cir. 2001) (rules governing an application process are procedural under the Administrative Procedure Act); *Inova Alexandria Hosp.* v. *Shalala,* 244 F.3d 342, 350 (4th Cir. 2001) (rules for handling appeals were procedural where they did not change the substantive standard for reviewing claims); *Nat'l Org. of Veterans' Advocates* v. *Sec'y of Veterans Affairs,* 260 F.3d 1365, 1375 (Fed. Cir. 2001) (rule that clarifies interpretation of a statute is interpretive); *JEM Broad. Co., Inc.* v. *F.C.C.,* 22 F.3d 320, 328 (D.C. Cir. 1994) (The rules are not legislative because they do not ''foreclose effective opportunity to make one's case on the merits''). Section 3(i) of the AIA requires the Director to prescribe regulations for implementing the new proceeding.

Accordingly, prior notice and opportunity for public comment are not required pursuant to 5 U.S.C. 553(b) or (c) (or any other law). *See Cooper Techs. Co.* v. *Dudas,* 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), does not require notice and comment rulemaking for ''interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice'') (quoting 5 U.S.C. 553(b)(A)). The Office, however, published these proposed changes for comment as it sought the benefit of the public's views on the Office's proposed implementation of these provisions of the AIA. *See Changes to Implement Derivation Proceedings,* 77 FR 7028 (Feb. 10, 2012) (notice of proposed rulemaking).

The Office received one written submission of comments from the public regarding the Administrative Procedure Act. Each component of that comment directed to the APA is addressed below.

Comment 67: One comment suggested that almost all of the proposed regulations were legislative and not interpretive rules. That leads the USPTO to omit required steps in the rulemaking process.

Response: At the outset, it should be noted that the Office did not omit any steps in the rulemaking process. Even though not legally required, the Office published notices of proposed rulemaking in the **Federal Register**, solicited public comment, and fully considered and responded to comments received. Although the Office sought the benefit of public comment, these rules are procedural and/or interpretive. *Stevens* v. *Tamai,* 366 F3d. 1325, 1333–34 (Fed. Cir. 2004) (upholding the Office's rules governing the procedure in patent interferences). The final written decisions on patentability which conclude the proceedings will not be impacted by the regulations, adopted in this final rule, as the decisions will be based on statutory patentability requirements, *e.g.,* 35 U.S.C. 101 and 102.

Comment 68: One comment suggested that, even if the rules are merely procedural, reliance on *Cooper Technologies. Co.* v. *Dudas* was not appropriate and therefore notice and comment was required.

Response: These rules are consistent with the AIA requirements to prescribe regulations to set forth standards and procedures. The rules are procedural and/or interpretive. *Stevens* v. *Tamai,* 366 F.3d at 1333–34 (upholding the Office's rules governing the procedure in patent interferences). The Office nevertheless published notices of proposed rulemaking in the **Federal Register**, solicited public comment, and fully considered and responded to comments received. In the notices of proposed rulemaking and this final rule, the Office cites *Cooper Technologies. Co* v. *Dudas,* 536 F.3d 1330, 1336–37 (Fed. Cir. 2008), for the proposition that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), does not require notice and comment rulemaking for ''interpretive rules, general statement of policy, or rules of agency organization, procedure or practice.'' The Office's reliance on *Cooper Technologies* is appropriate and remains an accurate statement of administrative law. In any event, the Office sought the benefit of public comment on the proposed rules and has

fully considered and responded to the comments received.

B. Final Regulatory Flexibility Act Analysis

The Office estimates that 50 petitions for seeking institution of a derivation (derivation petitions) will be filed in fiscal year 2013. In fiscal year 2014, it is estimated that 50 derivation petitions will be filed. In fiscal year 2015, it is estimated that 50 derivation petitions will be filed.

The Office expects the number of newly declared interferences to decrease as some parties file *inter partes* review petitions rather than file reissue applications of their own earlier filed patents. Parties filing such reissue applications may seek a review of another party's issued patent in an interference proceeding. The Office estimates that no more than 50 derivation petitions will be filed annually during FY 2013–2015.

The Office has reviewed the percentage of applications and patents for which an interference was declared in fiscal year 2010. Applications and patents known to be owned by a small entity represent 19.62% of applications and patents for which interference was declared in FY 2010. Based on the assumption that the same percentage of applications and patents owned by small entities will be involved in a derivation proceeding, 20 small entity-owned applications or patents (50 multiplied by 0.1962, and then multiplied by two (one for the petitioner plus one for the alleged deriver since either the petitioner and alleged deriver may be owned by a small entity)) would be affected by derivation proceedings annually during fiscal years 2013–2015.

1. Description of the Reasons That Action by the Office Is Being Considered

The Office is revising the rules of practice to implement derivation provisions of the AIA, which take effect March 16, 2013. Pub. L. 112–29, § 3(n), 125 Stat. 284, 293 (2011). The AIA requires the Office to issue regulations to implement the new derivation proceedings.

2. Statement of the Objectives of, and Legal Basis for, the Final Rules

The final rule is part of a series of rules that implement the new administrative trials authorized by the AIA. Specifically, this final rule adopts regulations setting forth standards and procedures for conducting derivation proceedings, including requiring parties to provide sufficient evidence to prove and rebut a claim of derivation.

3. Statement of Significant Issues Raised by the Public Comments in Response to the IRFA and the Office's Response to Such Issues

The Office published an IRFA analysis to consider the economic impact of the proposed rules on small entities. *See Changes to Implement Derivation Proceedings,* 77 FR 7028, 7032–36 (Feb. 10, 2012). The Office received one written submission of comments from the public concerning the Regulatory Flexibility Act. Each component of that submission directed to the Regulatory Flexibility Act is addressed below.

Comment 69: One comment argued that non-office costs and burden should include the burden on small entity patent owners, petitioners, and licensees, as well as settlement burdens, disruption of businesses, or effects on investment, business formation, or employment. The comment further argued that prophylactic application steps (*e.g.,* filing of reissue applications) were not considered and that the offsets for *inter partes* reexamination's elimination were not appropriate.

Response: As explained in the notice of proposed rulemaking, the Office notes that *inter partes* reexamination is the appropriate baseline for estimating economic impacts, because the use or outcome of the prior reexamination process and the new review trial are largely the same. *See* OMB Circular A4, (e)(3). The Office estimated that the same number of patents would be subject to *inter partes* review as would have been subject to *inter partes* reexamination. The comment did not argue that this estimate was unreasonable and did not provide an alternative estimate. Considering the similarities in the grounds of review and the number of patents subject to the proceedings, the Office anticipates that the existing *inter partes* reexamination process, if not eliminated for new filings, would have had similar impacts on the economy as the new review proceedings, and therefore the impacts noted in the comment would simply replace existing analogous impacts and effects in *inter partes* reexamination. The comment argues that no offset for the replaced process should be considered, although OMB guidance provides otherwise. *See* OMB Circular A4. Additionally, although the comment argues that the new proceedings may result in patent owners taking additional prophylactic measures that would have their own burdens for small businesses, any patent owner motivated by the regulations adopted in this final rule to take prophylactic application steps would similarly have been motivated to take those steps under the former *inter partes* reexamination regime. Thus, the burdens on small entity patent owners, petitioners, and licensees, as well as settlement burdens, disruption of businesses, or effects on investment, business formation, or employment that are caused by the final rules would have been similarly caused by the former *inter partes* reexamination proceedings as the same effects and impacts are caused by the two types of proceedings.

Additionally, the Office's estimates of the burden on small entities are likely overstated. As noted in the notice of proposed rulemaking, the Office anticipates that the current significant overlap between district court litigation and *inter partes* reexamination may be reduced by improvement in the coordination between the two processes. *See Rules of Practice for Trials Before the Patent Trial and Appeal Board and Judicial Review of Patent Trial and Appeal Board Decisions,* 77 FR at 6903. Similarly, it is anticipated that the public burden will be reduced because the longer duration of the *inter partes* reexamination process will be reduced owing to the anticipated shorter duration of the new procedure. *Id.*

Comment 70: One comment indicated that the underlying data for the 98.7 hours of judge time for an *inter partes* review proceeding was not provided.

Response: Based on the Office's experience involving similar proceedings, the Office estimates that, on average, an *inter partes* review proceeding will require 35 hours of judge time to make a decision on institution, 20 hours of judge time to prepare for and conduct hearings, 60 hours of judge time to prepare and issue a final decision, and 15 hours of judge time to prepare and issue miscellaneous interlocutory decisions. It is also estimated that 2.5% of proceedings will settle before a decision of whether to institute is made, and another 2.5% of proceedings will terminate by patent owners filing a default judgment motion after institution. The Office estimates that 10% of proceedings will not be instituted and another 20% of proceedings will settle after institution. In settled cases it is estimated that 50% of the anticipated motions will not be filed. It should be appreciated that cases that terminate prior to the need to render a decision on institution, that do request an oral hearing, or do not require a final decision because of an earlier termination, result in an average judge time per proceeding which is less than the time needed to perform all possible steps in a proceeding.

4. Description and Estimate of the Number of Affected Small Entities

A. *Size Standard and Description of Entities Affected.* The Small Business Administration's (SBA) small business size standards applicable to most analyses conducted to comply with the Regulatory Flexibility Act are set forth in 13 CFR 121.201. These regulations generally define small businesses as those with fewer than a specified maximum number of employees or less than a specified level of annual receipts for the entity's industrial sector or North American Industry Classification System (NAICS) code. As provided by the Regulatory Flexibility Act, and after consultation with the Small Business Administration, the Office formally adopted an alternate size standard as the size standard for the purpose of conducting an analysis or making a certification under the Regulatory Flexibility Act for patent-related regulations. *See Business Size Standard for Purposes of United States Patent and Trademark Office Regulatory Flexibility Analysis for Patent-Related Regulations,* 71 FR 67109, 67112 (Nov 20, 2006), 1313 *Off. Gaz. Pat. Office* 60, 63 (Dec. 12, 2006). This alternate small business size standard is SBA's previously established size standard that identifies the criteria entities must meet to be entitled to pay reduced patent fees. *See* 13 CFR 121.802. If patent applicants identify themselves on a patent application as qualifying for reduced patent fees, the Office captures this data in the Patent Application Location and Monitoring (PALM) database system, which tracks information on each patent application submitted to the Office.

Unlike the SBA small business size standards set forth in 13 CFR 121.201, the size standard for USPTO is not industry-specific. Specifically, the Office's definition of small business concern for Regulatory Flexibility Act purposes is a business or other concern that: (1) meets the SBA's definition of a ''business concern or concern'' set forth in 13 CFR 121.105; and (2) meets the size standards set forth in 13 CFR 121.802 for the purpose of paying reduced patent fees, namely, an entity: (a) whose number of employees, including affiliates, does not exceed 500 persons; and (b) which has not assigned, granted, conveyed, or licensed (and is under no obligation to do so) any rights in the invention to any person who made it and could not be classified as an independent inventor, or to any concern which would not qualify as a non-profit organization or a small business concern under this definition. *See Business Size Standard for Purposes of United States Patent and Trademark Office Regulatory Flexibility Analysis for Patent-Related Regulations,* 71 FR at 67112 (Nov 20, 2006), 1313 *Off. Gaz. Pat. Office* at 63 (Dec. 12, 2006).

B. *Overview of Estimates of Number of Entities Affected.* The rules will apply to any small entity that either files a petition for derivation proceeding, or owns a patent application or patent subject to such review. As discussed above (and incorporated here), the Office anticipates that 50 petitions for derivation proceedings will be filed in fiscal year 2013. In fiscal year 2014, it is estimated that 50 petitions for derivation proceedings will be filed. In fiscal year 2015, it is estimated that 50 petitions for derivation proceedings will be filed.

The Office has reviewed the percentage of applications and patents for which an interference was declared in fiscal year 2010. Applications and patents known to be owned by a small entity represent 19.62% of applications and patents for which interference was declared in FY 2010. Based on the assumption that the same percentage of applications and patents owned by small entities will be involved in a derivation proceeding, 20 small entity-owned applications or patents would be affected by a derivation proceeding annually during fiscal years 2013–2015.

The USPTO estimates that 2.5% of patent applicants or patent owners will file a request for adverse judgment prior to a decision to institute and that another 2.5% will file a request for adverse judgment or fail to participate after institution. Specifically, an estimated two patent applicants or patent owners will annually file a request for adverse judgment or fail to participate after institution in derivation. Based on the percentage of small entity-owned patent applications or patents that were the subject of an interference declared in FY 2010 (19.62%), it is estimated that one small entity will file such a request or fail to participate after institution in derivation proceedings annually.

The Office predicts that it will institute ten derivation proceedings annually based on petitions seeking derivation filed in fiscal years 2013–2015. This estimate is based on the low number of interference proceedings declared, as well as the limited number of eligible applications.

During fiscal year 2011, the Office issued 21 decisions following a request for reconsideration of a decision on appeal in *inter partes* reexamination. The average time from original decision to decision on reconsideration was 4.4 months. Thus, the decisions on reconsideration were based on original decisions issued from July 2010 until June 2011. During this time period, the Office mailed 63 decisions on appeals in *inter partes* reexamination. *See* BPAI Statistics—Receipts and Dispositions by Technology Center, *available at http://www.uspto.gov/ip/boards/bpai/stats/receipts/index.jsp* (monthly data). Based on the assumption that the same rate of reconsideration (21 divided by 63 or 33.333%) will occur, the Office estimates that 13 requests for reconsideration (40 decisions not to institute times 33.333%) will be filed. Based on the percentage of small entity-owned patent applications or patents that were the subject of an interference declared in fiscal year 2010 (19.62%), it is estimated that five small entities (13 multiplied by 19.62% multiplied by two (for both parties)) will file a request for a reconsideration of a decision dismissing the petition for derivation annually during FY 2013–2015. Further, the Office estimates that it will issue six final written decisions for derivation proceedings. Applying the same 33.333% rate, the Office estimates two requests for reconsideration (six multiplied by 33.333%) will be filed annually based on the final written decisions. Therefore, the Office estimates an annual total of 15 (13 plus 2) requests for reconsideration.

The Office reviewed motions, oppositions, and replies in a number of contested trial proceedings before the trial section of the Board. The review included determining whether the motion, opposition, and reply were directed to patentability grounds and non-priority non-patentability grounds. This series of final rules adopts changes to permit parties to agree to certain changes from the default process between themselves without filing a motion with the Board. Based on the changes in the final rules, the estimate of the number of motions has been revised downward so that it is now anticipated that derivation proceedings will have an average of 20 motions, oppositions, and replies per trial after institution. Settlement is estimated to occur in 20% of instituted trials at various points of the trial. In trials that are settled, it is estimated that only 50% of the noted motions, oppositions, and replies would be filed. The Office envisions that most motions will be decided during an initial conference call or shortly thereafter.

After a trial has been instituted but prior to a final written decision, parties to a review or derivation proceeding may request an oral hearing. It is anticipated that five requests for oral hearings will be filed annually during

FY 2013–2015 based on the number of requests for oral hearings in *inter partes* reexamination and the stated desirability for oral hearings during the legislative process. Based on the percentage of small entity-owned patent applications or patents that were the subject of an interference declared in FY 2010 (19.62%), it is estimated that two small entities (five multiplied by 19.62% multiplied by two) will file a request for oral hearing in derivation proceedings annually during fiscal years 2013–2015.

Parties to a derivation proceeding may file requests to treat a settlement as business confidential, and requests for adverse judgment. A written request to make a settlement agreement available may also be filed. Parties to derivation proceedings may also file arbitration agreements and awards. Given the short time period set for conducting trials, it is anticipated that the alternative dispute resolution options will be infrequently used. The Office estimates that two requests to treat a settlement as business confidential; two requests for adverse judgment, default adverse judgment, or settlement notices; and two arbitration agreements and awards, will be filed annually based on petitions filed during fiscal years 2013–2015. The Office also estimates that two requests to make a settlement available will be filed annually in petitions filed during fiscal years 2013–2015. Based on the percentage of small entity-owned patent applications or patents that were the subject of an interference declared in fiscal year 2010 (19.62%), it is estimated that one small entity (two multiplied by 19.62% multiplied by two) will file a request to treat a settlement as business confidential, one small entity will file a request for adverse judgment, default adverse judgment notice, or settlement notice, and one small entity will file an arbitration agreement and award in the derivations instituted annually based on petitions filed during fiscal years 2013–2015.

Parties to a derivation proceeding may seek judicial review of the final decision of the Board. Historically, 33% of examiners' decisions in *inter partes* reexamination proceedings have been appealed to the Board. Based on this rate, it is estimated that four notices of appeal (six multiplied by 33% multiplied by two) will be filed annually based on petitions in the new derivation proceedings filed during fiscal years 2013–2015. Furthermore, based on the percentage of small entity-owned patent applications or patents that were the subject of an interference declared in fiscal year 2010 (19.62%), it is estimated that annually one small entity (four notices of appeal multiplied by 19.62%) will seek judicial review of final decisions of the Board in the derivation proceedings instituted during fiscal years 2013–2015.

5. Description of the Reporting, Recordkeeping, and Other Compliance Requirements of the Final 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

Based on the trends of declared contested cases in fiscal year 2011, it is anticipated that petitions for derivation will be filed across all technologies with approximately 16% in electrical technologies, approximately 17% in mechanical technologies, and the remaining 67% in chemical technologies and design. A derivation petition is likely to be filed by an entity practicing in the same or similar field as the patent. Therefore, it is anticipated that 16% of the petitions for review will be filed in the electronic field, 17% in the mechanical field, and 67% in the chemical or design fields.

Preparation of the petition would require analyzing the patent claims, locating evidence supporting arguments of communication, and preparing the petition seeking review of the patent. The procedures for petitions to institute a derivation proceeding include those set forth in §§ 42.5, 42.6, 42.8, 42.11, 42.13, 42.20, 42.21, 42.22, 42.24(a)(4), 42.63, 42.65, and 42.402 through 42.406.

The skills necessary to prepare a petition seeking a derivation proceeding and to participate in a trial before the Patent Trial and Appeal Board would be similar to those needed to prepare a request for *inter partes* reexamination, and to represent a party in an *inter partes* reexamination before the Patent Trial and Appeal Board. The level of skill is typically possessed by a registered patent practitioner having devoted professional time to the particular practice area, typically under the supervision of a practitioner skilled in the particular practice area. Where authorized by the Board, a non-registered practitioner may be admitted *pro hac vice,* on a case-by-case basis based on the facts and circumstances of the trial and party, as well as the skill of the practitioner.

The cost of preparing a petition for *inter partes* review is anticipated to be the same as the cost for preparing a request for *inter partes* reexamination. The American Intellectual Property Law Association's *AIPLA Report of the Economic Survey 2011* reported that the average cost of preparing a request for *inter partes* reexamination was $46,000. Based on the work required to file and prepare such request, the Office considers the reported cost as a reasonable estimate. Accordingly, the Office estimates that the cost of preparing a petition for *inter partes* review will be $46,000.

The cost of preparing a petition for post-grant or covered business method patent review is estimated to be 33.333% higher than the cost of preparing a petition for *inter partes* review, because the petition for post-grant or covered business method patent review may seek to institute a proceeding on additional grounds such as subject matter eligibility. Therefore, the Office estimates that the cost of preparing a petition for post-grant or covered business method patent review will be $61,333. It is expected that petitions for derivation would have the same complexity and cost as a petition for post-grant review because derivation proceedings raise issues of conception and communication, which have similar complexity to the issues that can be raised in a post-grant review, *i.e.,* public use, sale and written description. Thus, the Office estimates that the cost of preparing a petition for derivation will also be $61,333.

If the Office decides not to institute a trial, the petitioner may file a request for reconsideration of the Office's decision. It is anticipated that a request for reconsideration will require 80 hours of professional time to prepare and file at a cost of $29,680.

Following institution of a trial, the parties may be authorized to file various motions, *e.g.,* motions to amend and motions for additional discovery. Where a motion is authorized, an opposition may be authorized, and where an opposition is authorized, a reply may be authorized. The procedures for filing a motion include those set forth in §§ 42.6, 42.8, 42.11, 42.13, 42.21, 42.22, 42.24(a)(5), 42.51, 42.52, 42.53, 42.54, 42.63, 42.64, 42.65, 42.121, 42.221, 42.123, and 42.223. The procedures for filing an opposition include those set forth in §§ 42.6, 42.8, 42.11, 42.13, 42.21, 42.23, 42.24(b), 42.51, 42.52, 42.53, 42.54, 42.63, 42.64, 42.65, 42.107, 42.120, 42.207, and 42.220. The procedures for filing a reply include those set forth in §§ 42.6, 42.8, 42.11, 42.13, 42.21, 42.23, 42.24(c), 42.51, 42.52, 42.53, 42.54, 42.63, and 42.65. As discussed previously, the Office estimates that the average derivation proceeding will have 20 motions, oppositions, and replies after institution. The Office envisions that most motions will be decided in a conference call or shortly thereafter.

After a trial has been instituted, but prior to a final written decision, the parties to a derivation proceeding may request an oral hearing. The procedure for filing requests for oral argument is set forth in § 42.70. The *AIPLA Report of the Economic Survey 2011* reported that the third quartile cost of an *ex parte* appeal with an oral argument is $12,000, while the third quartile cost of an *ex parte* appeal without an oral argument is $6,000, and the mean billing rate for professional time of $371 per hour for attorneys in private firms (*see* page 8). In view of the reported costs, which the Office finds reasonable, and the increased complexity of an oral hearing with multiple parties, it is estimated that the cost per party for oral hearings is $6,800, or 18.3 hours of professional time ($6,800 divided by $371), or $800 more than the reported third quartile cost for an *ex parte* oral hearing.

Parties to a review or derivation proceeding may file requests to treat a settlement as business confidential, requests for adverse judgment, and arbitration agreements and awards. A written request to make a settlement agreement available may also be filed. The procedures to file requests that a settlement be treated as business confidential are set forth in §§ 42.74(c) and 42.409. The procedures to file requests for adverse judgment are set forth in § 42.73(b). The procedures to file arbitration agreements and awards are set forth § 42.410. The procedures to file requests to make a settlement agreement available are set forth in § 42.74(c)(2). It is anticipated that requests to treat a settlement as business confidential will require two hours of professional time, or $742. It is anticipated that requests for adverse judgment will require one hour of professional time, or $371. It is anticipated that arbitration agreements and awards will require four hours of professional time, or $1,484. It is anticipated that a settlement agreement will require 100 hours of professional time, or $37,100 if the parties are not also in litigation over the patent and one hour, or $371 if the parties are in litigation. It is estimated that one of the two settlement agreements will be between parties that are not otherwise in litigation over the alleged derived subject matter, and the other settlement agreement will be between parties that are in litigation over alleged derived subject matter. It is anticipated that requests to make a settlement agreement available will require one hour of professional time, or $371. The requests to make a settlement agreement available will also require payment of a fee of $400 specified in § 42.15(d). The fee is the same as that currently set forth in § 41.20(a) for petitions to the Chief Administrative Patent Judge.

6. Description of Any Significant Alternatives to the Final Rules Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact of the Rules on Small Entities

Size of petitions and motions: The Office considered whether to apply a page limit in the administrative trials and what an appropriate page limit would be. The Office does not currently have a page limit on *inter partes* reexamination requests. The *inter partes* reexamination requests from October 1, 2010, to June 30, 2011, averaged 246 pages. Based on the experience of processing *inter partes* reexamination requests, the Office finds that the very large size of the requests has created a burden on the Office that hinders the efficiency and timeliness of processing the requests, and creates a burden on patent owners. The quarterly reported average processing time from the filing of a request to the publication of a reexamination certificate ranged from 28.9 months to 41.7 months in fiscal year 2009, from 29.5 months to 37.6 months in fiscal year 2010, and from 31.9 to 38.0 months in fiscal year 2011. *See* Reexaminations—FY 2011, *available at http://www.uspto.gov/patents/Reexamination_operational_statistic_through_FY2011Q4.pdf.*

By contrast, the Office has a page limit on the motions filed in contested cases, except where parties are specifically authorized to exceed the limitation. The typical contested case proceeding is subject to a standing order that sets a 50-page limit for motions and oppositions on priority, a 15-page limit for miscellaneous motions (§ 41.121(a)(3)) and oppositions (§ 41.122), and a 25-page limit for other motions (§ 41.121(a)(2)) and oppositions to other motions. In typical proceedings, replies are subject to a 15-page limit if directed to priority, 5-page limit for miscellaneous issues, and 10-page limit for other motions. The average contested case was terminated in 10.1 months in fiscal year 2009, 12 months in fiscal year 2010, and 9 months in fiscal year 2011. The percentage of contested cases terminated within 2 years was 93.7% in fiscal year 2009, 88.0% in fiscal year 2010, and 94.0% in fiscal year 2011. *See* BPAI Statistics—Performance Measures, *available at http://www.uspto.gov/ip/boards/bpai/stats/perform/index.jsp.*

Comparing the average time period for terminating a contested case, during fiscal years 2009 through 2011, 10.0 to 12.0 months, with the average time period, for completing an *inter partes* reexamination during that same time period, 28.9 to 41.7 months, indicates that the average contested case takes from 24% (10.0/41.7) to 42% (12.0/28.9) of the time of the average *inter partes* reexamination. While several factors contribute to the reduction in time, limiting the size of the requests and motions is considered a significant factor. Section 42.24 would provide page limits for petitions, motions, oppositions, and replies. 35 U.S.C. 316(b), as amended, and 35 U.S.C. 326(b) provide considerations that are to be taken into account when prescribing regulations including the integrity of the patent system, the efficient administration of the Office, and the ability to complete the trials timely. The page limits set forth in these rules are consistent with these considerations.

Federal courts routinely use page limits in managing motions practice as ''[e]ffective writing is concise writing.'' *Spaziano* v. *Singletary,* 36 F.3d 1028, 1031 n.2 (11th Cir. 1994). Many district courts restrict the number of pages that may be filed in a motion including, for example, the District of Delaware, the District of New Jersey, the Eastern District of Texas, the Northern, Central, and Southern Districts of California, and the Eastern District of Virginia.

Federal courts have found that page limits ease the burden on both the parties and the courts, and patent cases are no exception. *Eolas Techs., Inc.* v. *Adobe Sys., Inc.,* No. 6:09–CV–446, at 1 (E.D. Tex. Sept. 2, 2010) (''The Local Rules' page limits ease the burden of motion practice on both the Court and the parties.''); *Blackboard, Inc.* v. *Desire2Learn, Inc.,* 521 F. Supp. 2d 575, 576 (E.D. Tex. 2007) (The parties ''seem to share the misconception, popular in some circles, that motion practice exists to require Federal judges to shovel through steaming mounds of pleonastic arguments in a Herculean effort to uncover a hidden gem of logic that will ineluctably compel a favorable ruling. Nothing could be further from the truth.''); *Broadwater* v. *Heidtman Steel Prods., Inc.,* 182 F. Supp. 2d 705, 710 (S.D. Ill. 2002) (''Counsel are strongly advised, in the future, to not ask this Court for leave to file any memoranda (supporting or opposing dispositive motions) longer than 15 pages. The Court has handled complicated patent cases and employment discrimination cases in which the parties were able to limit their briefs supporting and opposing summary judgment to 10 or 15 pages.'' (Emphasis omitted)).

The Board's contested cases experience with page limits in motions practice is consistent with that of the Federal courts. The Board's use of page limits has shown it to be beneficial without being unduly restrictive for the parties. Page limits have encouraged the parties to focus on dispositive issues, and reduce costs for the parties and the Board.

The Board's contested cases experience with page limits is informed by its use of different approaches over the years. In the early 1990s, page limits were not routinely used for motions, and the practice suffered from lengthy and unacceptable delays. To reduce the burden on the parties and on the Board and thereby reduce the time to decision, the Board instituted page limits in the late 1990s for every motion. Page limit practice was found to be effective in reducing the burdens on the parties and improving decision times at the Board. In 2006, the Board revised the page limit practice and allowed unlimited findings of fact and generally limited the number of pages containing argument. Due to abuses of the system, the Board recently reverted back to page limits for the entire motion (both argument and findings of fact).

The Board's current page limits are consistent with the 25-page limits in the Northern, Central, and Southern Districts of California, and the Middle District of Florida, and exceed the limits in the District of Delaware (20), the Northern District of Illinois (15), the District of Massachusetts (20), the Eastern District of Michigan (20), the Southern District of Florida (20), and the Southern District of Illinois (20).

In a typical proceeding before the Board, a party may be authorized to file a single motion for unpatentability based on prior art, a single motion for unpatentability based upon failure to comply with 35 U.S.C. 112, lack of written description, and/or enablement, and potentially another motion for lack of compliance with 35 U.S.C. 101, although a 35 U.S.C. 101 motion may be required to be combined with the 35 U.S.C. 112 motion. Each of these motions is currently limited to 25 pages in length, unless good cause is shown that the page limits are unduly restrictive for a particular motion.

A petition requesting the institution of a trial proceeding would be similar to motions currently filed with the Board. Specifically, petitions to institute a trial seek a final written decision that the challenged claims are unpatentable, where derivation is a form of unpatentability. Accordingly, a petition to institute a trial based on prior art would, under current practice, be limited to 25 pages, and by consequence, a petition raising unpatentability based on prior art and unpatentability under 35 U.S.C. 101 and/or 112 would be limited to 50 pages.

Petitions to institute derivation proceedings raise a subset of issues that are currently raised in contested cases in a motion for judgment on priority of invention. Currently, motions for judgment on priority of invention, including issues such as conception, corroboration, and diligence, are generally limited to 60 pages. Thus, the 60-page limit is considered sufficient in all but exceptional cases.

The final rule provides that petitions to institute a trial must comply with the stated page limits but may be accompanied by a motion that seeks to waive the page limits. The petitioner must show in the motion how a waiver of the page limits is in the interests of justice. A copy of the desired non-page limited petition must accompany the motion. Generally, the Board will decide the motion prior to deciding whether to institute the trial.

Current Board practice provides a limit of 25 pages for other motions and 15 pages for miscellaneous motions. The Board's experience is that such page limits are sufficient for the parties filing them and do not unduly burden the opposing party or the Board. Petitions to institute a trial would generally replace the current practice of filing motions for unpatentability, as most motions for relief are expected to be similar to the current contested cases miscellaneous motion practice. Accordingly, the 15-page limit is considered sufficient for most motions but may be adjusted where the limit is determined to be unduly restrictive for the relief requested.

Section 42.24(b) provides page limits for oppositions filed in response to motions. Current practice for other contested cases provides an equal number of pages for an opposition as its corresponding motion. This is generally consistent with motions practice in Federal courts. The rule is consistent with the practice for other contested cases.

Section 42.24(c) provides page limits for replies. Current practice for other contested cases provide a 15-page limit for priority motion replies, a 5-page limit for miscellaneous (procedural) motion replies, and a 10-page limit for all other motions. The rule is consistent with current contested case practice for procedural motions. The rule provides a 15-page limit for reply to petitions requesting a trial, which the Office believes is sufficient based on current practice. Current contested case practice has shown that such page limits do not unduly restrict the parties and, in fact, have provided sufficient flexibility to parties to not only reply to the motion but also help to focus on the issues. Thus, it is anticipated that default page limits would minimize the economic impact on small entities by focusing on the issues in the trials.

Discovery: The Office considered a procedure for discovery similar to the one available during district court litigation. Discovery of that scope has been criticized sharply, particularly when attorneys use discovery tools as tactical weapons, which hinder the ''just, speedy, and inexpensive determination of every action and proceedings.'' *See* introduction to *An E-Discovery Model Order, available at http://www.cafc.uscourts.gov/images/stories/announcements/Ediscovery_Model_Order.pdf.* Accordingly, this alternative would have been inconsistent with objectives of the AIA that the Director, in prescribing rules for the *inter partes* review, post-grant review, and covered business method patent review, consider the effect of the rules on the economy, the integrity of the patent system, the efficient administration of the Office, and the ability of the Office to complete the instituted proceedings timely.

Additional discovery increases trial costs and increases the expenditures of time by the parties and the Board. The Board's experience in contested cases, however, is that such showings are often lacking and authorization for additional discovery is expected to be limited. While an interests-of-justice standard will be employed in granting additional discovery in *inter partes* reviews and derivation proceedings, the post-grant and covered business method patent reviews will employ a good cause standard in granting additional discovery. Parties may, however, agree to additional discovery amongst themselves.

To promote effective discovery, the rule requires a showing that additional requested discovery would be productive in *inter partes* reviews and derivation proceedings. An interests-of-justice standard for additional discovery applies to *inter partes* reviews and derivation proceedings. This standard is consistent with the considerations identified in 35 U.S.C. 316(b) and 135(b), as amended, including the efficient administration of the Board and the Board's ability to complete trials timely. Further, the interests-of-justice standard is consistent with 35 U.S.C. 316(a)(5), as amended, which states that discovery other than depositions of

witnesses submitting affidavits and declarations be what is otherwise necessary in the interests-of-justice.

Good cause and interests-of-justice are closely related standards, but the interests-of-justice standard is slightly higher than good cause. While a good cause standard requires a party to show a specific factual reason to justify the needed discovery, under the interests-of-justice standard, the Board would look at all relevant factors. Specifically, to show good cause, a party would be required to make a particular and specific demonstration of fact. Under the interests-of-justice standard, the moving party would also be required to show that it was fully diligent in seeking discovery and that there is no undue prejudice to the non-moving party. The interests-of-justice standard covers considerable ground, and in using such a standard, the Board expects to consider whether the additional discovery is necessary in light of the totality of the relevant circumstances.

The Office sets forth a default scheduling order to provide limited discovery as a matter of right and provide parties with the ability to seek additional discovery on a case-by-case basis. In weighing the need for additional discovery, should a request be made, the Board would consider the economic impact on the opposing party. This will tend to limit additional discovery where a party is a small entity.

Pro Hac Vice: The Office considered whether to allow counsel to appear *pro hac vice.* In certain instances, highly skilled, but non-registered, attorneys have appeared satisfactorily before the Board in contested cases. The Board may recognize counsel *pro hac vice* during a proceeding upon a showing of good cause. The Board may impose conditions in recognizing counsel *pro hac vice,* including a requirement that counsel acknowledge that counsel is bound by the Office's Code of Professional Responsibility. Proceedings before the Office can be technically complex. The grant of a motion to appear *pro hac vice* is a discretionary action taking into account the specifics of the proceedings. Similarly, the revocation of *pro hac vice* is a discretionary action taking into account various factors, including incompetence, unwillingness to abide by the Office's Code of Professional Responsibility, prior findings of misconduct before the Office in other proceedings, and incivility.

The Board's past practice has required the filing of a motion by a registered patent practitioner seeking *pro hac vice* representation based upon a showing of: (1) How qualified the unregistered practitioner is to represent the party in the proceeding when measured against a registered practitioner, and (2) whether the party has a genuine need to have the particular unregistered practitioner represent it during the proceeding. This practice has proven effective in the limited number of contested cases where such requests have been granted. The rule allows for this practice in the new proceedings authorized by the AIA.

The rules provide a limited delegation to the Board under 35 U.S.C. 2(b)(2) and 32 to regulate the conduct of counsel in Board proceedings. The rules delegate to the Board the authority to conduct counsel disqualification proceedings while the Board has jurisdiction over a proceeding. The rules also delegate to the Chief Administrative Patent Judge the authority to make final a decision to disqualify counsel in a proceeding before the Board for the purposes of judicial review. This delegation would not derogate from the Director the prerogative to make such decisions, nor would it prevent the Chief Administrative Patent Judge from further delegating authority to an administrative patent judge.

The Office considered broadly permitting practitioners not registered to practice by the Office to represent parties in trial as well as categorically prohibiting such practice. A prohibition on the practice would be inconsistent with the Board's experience, and more importantly, might result in increased costs to parties, particularly where a small entity has selected its district court litigation team and subsequently a patent review is filed after litigation efforts have commenced. Alternatively, broadly making the practice available would create burdens on the Office in administering the trials and in completing the trial within the established timeframe, particularly if the selected practitioner does not have the requisite skill. In weighing the desirability of admitting a practitioner *pro hac vice,* the economic impact on the party in interest will be considered, which will tend to increase the likelihood that a small entity could be represented by a non-registered practitioner. Accordingly, the alternatives to eliminate *pro hac vice* practice or to permit it more broadly would have been inconsistent with the efficient administration of the Office and the integrity of the patent system.

Default Electronic Filing: The Office considered a paper filing system and a mandatory electronic filing system (without any exceptions) as alternatives to the requirement that all papers are to be electronically filed, unless otherwise authorized.

Based on the Office's experience, a paper-based filing system increases delay in processing papers, delay in public availability, and the chance that a paper may be misplaced or made available to an improper party if confidential. Accordingly, the alternative of a paper-based filing system would have been inconsistent with objectives of the AIA that the Director, in prescribing rules for *inter partes* review, post-grant review, and covered business method patent review, consider the effect of the rules on the economy, the integrity of the patent system, the efficient administration of the Office, and the ability of the Office to complete the instituted proceedings timely.

An electronic filing system (without any exceptions) that is rigidly applied would result in unnecessary cost and burdens, particularly where a party lacks the ability to file electronically. By contrast, with the option, as adopted, it is expected that the entity size and sophistication will be considered in determining whether alternative filing methods would be authorized.

7. Identification, to the Extent Practicable, of All Relevant Federal Rules Which May Duplicate, Overlap, or Conflict With the Final Rules

The following rules also provide processes involving patent applications and patents:

37 CFR 1.99 provides for the submission of information after publication of a patent application during examination by third parties.

37 CFR 1.171–1.179 provide for applications to reissue a patent to correct errors, including where a claim in a patent is overly broad.

37 CFR 1.291 provides for the protest against the issuance of a patent during examination.

37 CFR 1.321 provides for the disclaimer of a claim by a patentee.

37 CFR 1.501 and 1.502 provide for *ex parte* reexamination of patents. Under these rules, a person may submit to the Office prior art consisting of patents or printed publications that are pertinent to the patentability of any claim of a patent, and request reexamination of any claim in the patent on the basis of the cited prior art patents or printed publications. Consistent with 35 U.S.C. 302–307, *ex parte* reexamination rules provide a different threshold for institution, require the proceeding to be conducted by an examiner with a right of appeal to the Patent Trial and Appeal

Board, and allow for limited participation by third parties.

37 CFR 1.902–1.997 provide for *inter partes* reexamination of patents. Similar to *ex parte* reexamination, *inter partes* reexamination provides a procedure in which a third party may request reexamination of any claim in a patent on the basis of the cited prior art patents and printed publication. The *inter partes* reexamination practice will be eliminated, except for requests filed before the effective date, September 16, 2012. *See* section 6(c)(3)(C) of the AIA.

Other countries have their own patent laws, and an entity desiring a patent in a particular country must make an application for patent in that country, in accordance with the applicable law. Although the potential for overlap exists internationally, this cannot be avoided except by treaty (such as the Paris Convention for the Protection of Industrial Property, or the Patent Cooperation Treaty (PCT)). Nevertheless, the Office believes that there are no other duplicative or overlapping foreign rules.

C. Executive Order 12866 (Regulatory Planning and Review)

This rulemaking has been determined to be significant for purposes of Executive Order 12866 (Sept. 30, 1993), as amended by Executive Order 13258 (Feb. 26, 2002) and Executive Order 13422 (Jan. 18, 2007).

The Office estimates that the aggregate burden of the rules for implementing the new derivation procedure is approximately $2.1 million annually for fiscal years 2013–2015. The USPTO considered several factors in making this estimate.

Based on the petition and other filing requirements for instituting a derivation proceeding, the USPTO initially estimated the burden of the rules on the public to be $11,622,674.90 annually in fiscal years 2013–2015, which represents the sum of the estimated total annual (hour) respondent cost burden ($11,601,874.90) plus the estimated total annual non-hour respondent cost burden ($20,800.00) provided in Item (O)(II) of the Rulemaking Considerations section of the following final rule: *Rules of Practice for Trials before the Patent Trial and Appeal Board and Judicial Review of Patent Trial and Appeal Board Decisions* (RIN 0651–AC70). However, since the AIA also eliminates interference practice as to applications and patents that have an effective filing date on or after March 16, 2013 (with a few exceptions), the burden of the rules should be offset by the eliminations of those proceedings and their associated burdens.

The public burden due to a reduction in the number of interferences declared, from 64 to 51, is estimated at $9,484,400 annually based on the assumption that the current percentage of interferences decided in the preliminary phase (80%) will continue on the lower number of proceedings instituted and based on cost to the public. To calculate this public burden due to a reduction in the number of interferences declared ($9,484,400), the Office used the following information. The average public burden for a two-party interference decided in the preliminary phase reported in the *AIPLA Report of the Economic Survey 2011* is $644,000 (if decided in the preliminary phase) and $1,262,000 (if decided after the preliminary phase). It is estimated that had the AIA not been enacted, 52 interferences would have been decided in the preliminary phase, and 12 would have been decided after the preliminary phase, equating to a public burden of $48,632,000 ((52 multiplied by $644,000 equals $33,488,000), plus (12 multiplied by $1,262,000 equals $15,144,000) for a total of $48,632,000). It is estimated that 51 interferences will be instituted in fiscal years 2013–2015, at an average public burden of $767,600 (80% of $644,000 plus 20% of $1,262,000) per interference, or a total of $39,147,600 (51 multiplied by $767,600). Accordingly, it is estimated that burden to the public due to the reduction of interferences would be the total public burden for interferences of $48,632,000 minus total public burden for estimated interferences for fiscal years 2013–2015 of $39,147,600, or $9,484,400.

Therefore, the estimated aggregate burden of the rules for implementing the new derivation proceedings is $2,138,274.90 ($11,622,674.90 minus $9,484,400) in fiscal years 2013–2015.

The Office received one written submission of comments from the public regarding Executive Order 12866. Each component of that comment directed to Executive Order 12866 is addressed below.

Comment 71: One comment suggested that the proposed rules would have been classified more appropriately as significant under section 3(f)(4) of Executive Order 12866 because the proposed rules raise novel legal or policy issues arising out of legal mandates.

Response: As stated in the notice of proposed rulemaking and in this final rule, the Office of Management and Budget designated the proposed rules as significant under Executive Order 12866, but not economically significant. The comment does not present what aspect(s) of the rule is believed to present novel legal or policy issues.

Comment 72: One comment suggested that the costs, including any prophylactic application steps resulting from the new proceedings, were not calculated appropriately when the Office offsets the new burdens with those removed by elimination of the ability to file new *inter partes* reexamination under Executive Order 12866. The comment suggested that when appropriately calculated, the cost would exceed the $100 million threshold for declaring the proposed rules significant under section 3(f)(1).

Response: As stated in the notice of proposed rulemaking and in this final rule, the Office of Management and Budget designated the proposed rules as significant, but not economically significant, under Executive Order 12866, The baseline costs that the Office used to determine the increased burden of the proposed rules properly included the burden on the public to comply with *inter partes* reexamination because those burdens existed before the statutory change, and that process was eliminated and replaced by the process adopted by the AIA as implemented in this final rule. *See* OMB Circular A4, section (e)(3). *See also* response to Comment 69.

Comment 73: One comment argued the $80,000,000 burden estimate is so close to the $100,000,000 threshold, that the Office should assume that it is likely that the proposed rules would have a $100,000,000 impact, particularly in view of the difficulties in estimating burden. One comment suggested that the Office should have conducted a Regulatory Impact Analysis.

Response: While the comment was submitted in response to the notice of proposed rulemaking for derivation proceedings, it is directed to the aggregate burden for all administrative trials. As stated in the notice of proposed rulemaking and in this final rule, the Office of Management and Budget designated the proposed rules as significant, but not economically significant under Executive Order 12866. The comment did not indicate what aspect of the estimate was likely to be wrong. Additionally, $80,000,000 is twenty percent below the $100,000,000 threshold, and the Office's estimate did not take into account the reduction in burden due to decreased litigation. Thus, the Office's estimate is likely an overstatement of the estimated basis.

D. Executive Order 13563 (Improving Regulation and Regulatory Review)

The Office has complied with Executive Order 13563. Specifically, the Office has, to the extent feasible and applicable: (1) Made a reasoned determination that the benefits justify the costs of the rule; (2) tailored the rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole, and provided on-line access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

E. Executive Order 13132 (Federalism)

This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

F. Executive Order 13175 (Tribal Consultation)

This rulemaking will not: (1) Have substantial direct effects on one or more Indian tribes; (2) impose substantial direct compliance costs on Indian tribal governments; or (3) preempt tribal law. Therefore, a tribal summary impact statement is not required under Executive Order 13175 (Nov. 6, 2000).

G. Executive Order 13211 (Energy Effects)

This rulemaking is not a significant energy action under Executive Order 13211 because this rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under Executive Order 13211 (May 18, 2001).

H. Executive Order 12988 (Civil Justice Reform)

This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Feb. 5, 1996). This rulemaking carries out a statute designed to lessen litigation. *See* H.R. Rep. No. 112–98, at 45–48.

I. Executive Order 13045 (Protection of Children)

This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (Apr. 21, 1997).

J. Executive Order 12630 (Taking of Private Property)

This rulemaking will not effect a taking of private property or otherwise have taking implications under Executive Order 12630 (Mar. 15, 1988).

K. Congressional Review Act

Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801–808), prior to issuing any final rule, the United States Patent and Trademark Office will submit a report containing the final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the Government Accountability Office. The changes in this notice are not expected to result in an annual effect on the economy of 100 million dollars or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this notice is not expected to result in a ''major rule'' as defined in 5 U.S.C. 804(2).

L. Unfunded Mandates Reform Act of 1995

The changes set forth in this notice do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of 100 million dollars (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of 100 million dollars (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. *See* 2 U.S.C. 1501–1571.

M. National Environmental Policy Act

This rulemaking will not have any effect on the quality of the environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. *See* 42 U.S.C. 4321–4370h.

N. National Technology Transfer and Advancement Act

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions which involve the use of technical standards.

O. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3549) requires that the USPTO consider the impact of paperwork and other information collection burdens imposed on the public. This rulemaking involves information collection requirements which are subject to review by OMB under the Paperwork Reduction Act. The collection of information involved in this final rule has been submitted to OMB under OMB control number 0651–0069 when the notice of proposed rulemaking was published. The Office published the title, description, and respondent description of the information collection, with an estimate of the annual reporting burdens, in the following notices of proposed rulemaking, *Changes to Implement Derivation Proceedings,* 77 FR 7028 (Feb. 10, 2012) (RIN 0651–AC74), and *Rules of Practice for Trials before the Patent Trial and Appeal Board and Judicial Review of Patent Trial and Appeal Board Decisions,* 77 FR 6879 (Feb. 9, 2012) (RIN 0651–AC70).

The Office received two comments and made minor revisions to the requirements in the rule, as well as the burden estimates, as outlined below. Accordingly, the Office resubmitted the proposed revision to the information collection requirements under 0651–0069, and OMB approved on July 16, 2012. The information collection requirements under 0651–0069 are available at OMB's Information Collection Web site (*www.reginfo.gov/public/do/PRAMain*).

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

The Office received two written submissions of comments regarding the Paperwork Reduction Act. Each component of those comments directed to the Paperwork Reduction Act is addressed below.

Comment 74: One comment suggested that *inter partes* reexamination is a very poor proxy for these proceedings because there have been very few completed proceedings relative to all filing of *inter partes* reexaminations from 2001 to 2011, and the comment claims that the completed proceedings are only the least complex of proceedings which the comment alleges result in a sampling bias.

Response: While only 305 *inter partes* reexamination proceedings have resulted in a certificate, the comment is not correct that only the least complex of proceedings have been completed. The number of filings of *inter partes* reexamination has increased considerably in the last three full years. *See Rules of Practice for Trials before the Patent Trial and Appeal Board and Judicial Review of Patent Trial and Appeal Board Decisions,* 77 FR at 6893. For example, in the last three years 824 were filed, or 64.5% of the 1,278 requests filed from 2001 to 2011. Considering that the average time from filing to certificate for the 305 certificates was 36.2 months and the median pendency was 32.9 months, it would have been more appropriate for the comment to consider the 305 certificates that have issued compared with the filings from 2001 to 2008. During that time period there were 467 requests filed: 14 requests were subsequently denied a filing date, 53 requests were denied on the merits, 246 had concluded with a certificate by September 30, 2011, and 154 were still pending on September 30, 2011. Of the 154 that were still pending, only one was before the examiner after a non-final rejection, only three had an action closing prosecution as the last action, and only three had a right of appeal notice as the last action. Most of the 154 proceedings were subject to appeal proceedings or were in the publication process. Accordingly, *inter partes* reexamination is an appropriate proxy.

Comment 75: One comment suggested that for matters not concurrently in litigation, the Office's two-hour estimate for public burden of settlement under the Paperwork Reduction Act was unreasonably low by a factor of 30–100, and must include the costs to arrive at the settlement in addition to the cost of submitting the agreement to the Office. The comment asserted that this burden is fully cognizable under the Paperwork Reduction Act.

Response: This comment was adopted in part. For *inter partes* and post-grant review proceedings where the parties are not also in district court litigation regarding the patent, the burden estimate has been increased to 100 hours per settlement, as suggested as the highest estimate in the comment. Based partially on historical data for *inter partes* reexamination, it is estimated that 30% of reviewed patents will not be subject to concurrent litigation.

By statute, any petitioner seeking review of a covered business method must also be in litigation regarding the patent or have been charged with infringement. The comment only argued that for parties not in litigation, the cost of settlement was too low.

Therefore, this portion of the comment is not pertinent to this rulemaking and is not adopted.

Any petitioner seeking review of a covered business method under the transitional program, however, is also in concurrent litigation. Thus, the estimated burden for settlement in those proceedings has not been revised in view of the comment.

Comment 76: Two comments requested that the Office set forth the basis for the number of petitions for review.

Response: As discussed above in item B, the Office considered the actual number of *inter partes* reexamination requests filed during FY 2001–2011 and the anticipated number of requests in FY 2012, the number of such requests of patents classified in Class 705, the number of interferences, and the differences between reexamination and the new review. The Office estimated the number of reviews based on the historical data on the number of filings in the most analogous proceedings. *See Transitional Program for Covered Business Method Patents—Definition of Technological Invention,* 77 FR at 7097.

Comment 77: One comment suggested that a projection for at least three years of growth in future filings is necessary because the Paperwork Reduction Act clearance is for three years. The comment also seeks disclosure of USPTO's estimation models.

Response: The suggestion has been adopted. The Office estimates moderate aggregate growth for petitions seeking *inter partes* review and post-grant review, as set forth in item B above. Further, the Office estimates no growth for petitions seeking review under the transitional program for covered business method patents during the three-year period. Calculations for these numbers are provided in the supporting statement for this collection. In 2013, the number of eligible patents will include patents which are currently in litigation. In subsequent years, the number of eligible patents is expected to be reduced, because some proceedings will have been settled, while others will have been stayed pending a review. At the same time, as experience in the procedure becomes more widespread, the public would more likely seek a review. Because these two factors offset each other, the Office anticipates zero growth for petitions for the covered business method patent review.

Comment 78: Two comments noted that the distribution of claims for the review was not disclosed during the comment period. The comment asserts that failure to disclose underlying data in the notice of proposed rulemaking violates the Paperwork Reduction Act (and other requirements).

Response: The distribution of claims for which review will be requested was estimated based on the number of claims for which *inter partes* reexamination was requested in the first 60 requests filed during the second quarter of FY 2011, as that data was the most timely when the proposed rule notices were drafted. That data was publicly available when the notice of proposed rulemaking was published and remains available today. *See http://portal.uspto.gov/external/portal/pair.* A summary of that publicly available data is as follows: 40 of the 60 proceedings requested review of 20 or fewer claims; eight of the 60 requested review of between 21 and 30 claims; three of the 60 requested review of between 31 and 40 claims; six of the 60 requested review of between 41 and 50 claims; one of the 60 requested review of between 51 and 60 claims; one of the 60 requested review of between 61 and 70 claims; and one of the 60 requested review of between 91 and 100 claims. A second group of 20 proceedings filed after September 15, 2011, were reviewed to determine if the change to the statutory threshold resulted in a clear change in the number of claims for which review was requested. A summary of that data is as follows: 13 of 20 requested review of 20 or fewer claims; three of 20 requested review of between 21 and 30 claims; three of 20 requested review of between 31 and 40 claims; and one of 20 requested review of 53 claims.

Comment 79: One comment suggested that the estimate of the number of post-grant review proceedings should be doubled based on the analysis of the University of Houston of patent cases from 2005–2009. According to the comment, this analysis shows that for every 15 decisions involving printed prior art grounds, there were 13 decisions involving public use, ''on sale,'' or 35 U.S.C. 112.

Response: The suggestion is not adopted. While the Office agrees that many decisions involved public use, ''on sale,'' or 35 U.S.C. 112, the

comment and the analysis by the University of Houston did not consider which decisions did not include a prior art grounds, but did include a public use, ''on sale,'' or 35 U.S.C. 112 ground. Only the subset of decisions including the newly available grounds could be used appropriately in estimating an increased rate of post-grant review filings relative to *inter partes* review. The comment also did not address how the limited filing window relative to the filing of district court litigation for post-grant review would be addressed appropriately if the University of Houston study served as a basis for the estimates.

Comment 80: One comment suggested that the hourly rate for practitioners should be raised from $340 (the median hourly rate from the AIPLA economical survey referenced in the notice of proposed rulemaking) to $500. The comment asserts that using the median hourly rate from the AIPLA Economic Survey of $340 is analytically wrong and that, at a minimum, the higher mean rate of $371 from that survey should be used.

Response: The suggestion is adopted in part. The Office has adopted a mean hourly rate of $371 from the AIPLA Economic Survey, rather than the median hourly rate of $340 from that survey. The suggestion of a $500 hourly rate cannot be adopted because the comment did not provide any data to support the validity of the hourly rate suggested and the Office believes, based on its experience, that $371 is a better estimate of the average hourly rate.

Comment 81: The comments suggested that reliance on the AIPLA economic survey was inappropriate as the survey is flawed. The comment asserts that the survey is unreliable for estimating paperwork burden under the Information Quality Act.

Response: In providing estimates of burden hours, the USPTO sometimes referenced the AIPLA economic survey report, as a benchmark for the estimates. While the costs reported in the survey were considered, the Office, in estimating the cost of the collection, also considered the work required to prepare and file the submissions.

Under the USPTO's Information Quality Guidelines (IQG), the AIPLA economic survey report is not a ''dissemination'' of information. The Guidelines state that ''dissemination'' means an ''agency initiated or sponsored distribution of information to the public.'' USPTO's IQG, Section IV, A, 1. Subsection (a) further defines ''agency initiated distribution of information to the public'' to mean ''information that the agency distributes or releases which reflects, represents, or forms any part of the support of the policies of the agency.'' *Id.* at Section IV, A, 1, a. The USPTO did not distribute or release the AIPLA economic survey report.

Likewise, the AIPLA economic survey report does not qualify as an ''agency sponsored distribution of information'' under Subsection (b) of the Guidelines, which ''refers to situations where the agency has directed a third party to distribute or release information, or where the agency has the authority to review and approve the information before release.'' *Id.* at Section IV, A, 1, b. The USPTO did not commission the report, had no input into the structure of the report and does not rely exclusively upon the results of the report to arrive at estimates. No correction of the documents is required because the Office utilized the AIPLA economic survey report in formulating some burden estimations. No correction is required under the Information Quality Act.

Comment 82: One comment suggested that the regulations imposed a substantial paperwork burden without a valid OMB Control Number.

Response: OMB has approved OMB Control number 0651–0069 for this rulemaking.

Comment 83: One comment suggested that the USPTO's estimates systematically ignore burdens and costs associated with the attorney's client company.

Response: See response to Comment 69.

List of Subjects in 37 CFR Part 42

Administrative practice and procedure, Inventions and patents, Lawyers.

Amendments to the Regulatory Text

For the reasons stated in the preamble, the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office amends 37 CFR part 42 as follows:

PART 42—TRIAL PRACTICE BEFORE THE PATENT TRIAL AND APPEAL BOARD

■ 1. The authority citation for 37 CFR Part 42 is revised to read as follows:

Authority: 35 U.S.C. 2(b)(2), 6, 21, 23, 41, 135, 311–319, 321–329 and Leahy-Smith America Invents Act, Pub. L. 112–29, sections 3(i), 6, and 18, 125 Stat. 284, 289–90, 299–313, and 329–331 (2011).

■ 2. A new subpart E is added to read as follows:

Subpart E—Derivation

Sec.

General

42.400 Procedure; pendency
42.401 Definitions.
42.402 Who may file a petition for a derivation proceeding.
42.403 Time for filing.
42.404 Derivation fee.
42.405 Content of petition.
42.406 Service of petition.
42.407 Filing date.

Instituting Derivation Proceeding

42.408 Institution of derivation proceeding.

After Institution of Derivation Proceeding

42.409 Settlement agreements.
42.410 Arbitration.
42.411 Common interests in the invention.
42.412 Public availability of Board records.

Subpart E—Derivation

General

§ 42.400 Procedure; pendency

(a) A derivation proceeding is a trial subject to the procedures set forth in subpart A of this part.

(b) The Board may for good cause authorize or direct the parties to address patentability issues that arise in the course of the derivation proceeding.

§ 42.401 Definitions.

In addition to the definitions in § 42.2, the following definitions apply to proceedings under this subpart:

Agreement or *understanding under 35 U.S.C. 135(e)* means settlement for the purposes of § 42.74.

Applicant includes a reissue applicant.

Application includes both an application for an original patent and an application for a reissued patent.

First publication means either a patent or an application publication under 35 U.S.C. 122(b), including a publication of an international application designating the United States as provided by 35 U.S.C. 374.

Petitioner means a patent applicant who petitions for a determination that another party named in an earlier-filed patent application allegedly derived a claimed invention from an inventor named in the petitioner's application and filed the earlier application without authorization.

Respondent means a party other than the petitioner.

Same or substantially the same means patentably indistinct.

§ 42.402 Who may file a petition for a derivation proceeding.

An applicant for patent may file a petition to institute a derivation proceeding in the Office.

§ 42.403 Time for filing.

A petition for a derivation proceeding must be filed within the one-year period beginning on the date of the first publication of a claim to an invention that is the same or substantially the same as the earlier application's claim to the allegedly derived invention.

§ 42.404 Derivation fee.

(a) A derivation fee set forth in § 42.15(c) must accompany the petition.

(b) No filing date will be accorded to the petition until payment is complete.

§ 42.405 Content of petition.

(a) *Grounds for standing.* The petition must:

(1) Demonstrate compliance with §§ 42.402 and 42.403; and

(2) Show that the petitioner has at least one claim that is:

(i) The same or substantially the same as the respondent's claimed invention; and

(ii) The same or substantially the same as the invention disclosed to the respondent.

(b) In addition to the requirements of §§ 42.8 and 42.22, the petition must:

(1) Provide sufficient information to identify the application or patent for which the petitioner seeks a derivation proceeding;

(2) Demonstrate that a claimed invention was derived from an inventor named in the petitioner's application, and that the inventor from whom the invention was derived did not authorize the filing of the earliest application claiming such invention; and

(3) For each of the respondent's claims to the derived invention,

(i) Show why the claimed invention is the same or substantially the same as the invention disclosed to the respondent, and

(ii) Identify how the claim is to be construed. Where the claim to be construed contains a means-plus-function or step-plus-function limitation as permitted under 35 U.S.C. 112(f), the construction of the claim must identify the specific portions of the specification that describe the structure, material, or acts corresponding to each claimed function.

(c) *Sufficiency of showing.* A derivation showing is not sufficient unless it is supported by substantial evidence, including at least one affidavit addressing communication of the derived invention and lack of authorization that, if unrebutted, would support a determination of derivation. The showing of communication must be corroborated.

§ 42.406 Service of petition.

In addition to the requirements of § 42.6, the petitioner must serve the petition and exhibits relied upon in the petition as follows:

(a) The petition and supporting evidence must be served on the respondent at the correspondence address of record for the earlier application or subject patent. The petitioner may additionally serve the petition and supporting evidence on the respondent at any other address known to the petitioner as likely to effect service.

(b) Upon agreement of the parties, service may be made electronically. Service may be by EXPRESS MAIL® or by means at least as fast and reliable as EXPRESS MAIL®. Personal service is not required.

§ 42.407 Filing date.

(a) *Complete petition.* A petition to institute a derivation proceeding will not be accorded a filing date until the petition satisfies all of the following requirements:

(1) Complies with §§ 42.404 and 42.405, and

(2) Service of the petition on the correspondence address of record as provided in § 42.406.

(b) *Incomplete petition.* Where the petitioner files an incomplete petition, no filing date will be accorded, and the Office will dismiss the petition if the deficiency in the petition is not corrected within the earlier of either one month from notice of the incomplete petition, or the expiration of the statutory deadline in which to file a petition for derivation.

Instituting Derivation Proceeding

§ 42.408 Institution of derivation proceeding.

(a) An administrative patent judge institutes, and may as necessary reinstitute, the derivation proceeding on behalf of the Director.

(b) *Additional derivation proceeding.* The petitioner may suggest the addition of a patent or application to the derivation proceeding. The suggestion should make the showings required under § 42.405 and explain why the suggestion could not have been made in the original petition.

After Institution of Derivation Proceeding

§ 42.409 Settlement agreements.

An agreement or understanding under 35 U.S.C. 135(e) is a settlement for the purposes of § 42.74.

§ 42.410 Arbitration.

(a) Parties may resort to binding arbitration to determine any issue. The Office is not a party to the arbitration. The Board is not bound by, and may independently determine, any question of patentability.

(b) The Board will not set a time for, or otherwise modify the proceeding for, an arbitration unless:

(1) It is to be conducted according to Title 9 of the United States Code;

(2) The parties notify the Board in writing of their intention to arbitrate;

(3) The agreement to arbitrate:

(i) Is in writing;

(ii) Specifies the issues to be arbitrated;

(iii) Names the arbitrator, or provides a date not more than 30 days after the execution of the agreement for the selection of the arbitrator;

(iv) Provides that the arbitrator's award shall be binding on the parties and that judgment thereon can be entered by the Board;

(v) Provides that a copy of the agreement is filed within 20 days after its execution; and

(vi) Provides that the arbitration is completed within the time the Board sets.

(c) The parties are solely responsible for the selection of the arbitrator and the conduct of the arbitration.

(d) The Board may determine issues the arbitration does not resolve.

(e) The Board will not consider the arbitration award unless it:

(1) Is binding on the parties;

(2) Is in writing;

(3) States in a clear and definite manner each issue arbitrated and the disposition of each issue; and

(4) Is filed within 20 days of the date of the award.

(f) Once the award is filed, the parties to the award may not take actions inconsistent with the award. If the award is dispositive of the contested subject matter for a party, the Board may enter judgment as to that party.

§ 42.411 Common interests in the invention.

The Board may decline to institute, or if already instituted the Board may issue judgment in, a derivation proceeding between an application and a patent or another application that are commonly owned.

§ 42.412 Public availability of Board records.

(a) *Publication.* (1) *Generally.* Any Board decision is available for public inspection without a party's permission if rendered in a file open to the public pursuant to § 1.11 of this chapter or in

an application that has been published in accordance with §§ 1.211 to 1.221 of this chapter. The Office may independently publish any Board decision that is available for public inspection.

(2) *Determination of special circumstances.* Any Board decision not publishable under paragraph (a)(1) of this section may be published or made available for public inspection if the Director believes that special circumstances warrant publication and a party does not petition within two months after being notified of the intention to make the decision public, objecting in writing on the ground that the decision discloses the objecting party's trade secret or other confidential information and stating with specificity that such information is not otherwise publicly available.

(b) *Record of proceeding.* (1) The record of a Board proceeding is available to the public, unless a patent application not otherwise available to the public is involved.

(2) Notwithstanding paragraph (b)(1) of this section, after a final Board decision in or judgment in a Board proceeding, the record of the Board proceeding will be made available to the public if any involved file is or becomes open to the public under § 1.11 of this chapter or an involved application is or becomes published under §§ 1.211 to 1.221 of this chapter.

Dated: September 4, 2012.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2012–22204 Filed 9–10–12; 8:45 am]

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To authorize the Architect of the Capitol to establish battery recharging stations for privately owned vehicles in parking areas under the jurisdiction of the House of Representatives at no net cost to the Federal Government. (Aug. 16, 2012; 126 Stat. 1303)

H.R. 3670/P.L. 112–171

To require the Transportation Security Administration to comply with the Uniformed Services Employment and Reemployment Rights Act. (Aug. 16, 2012; 126 Stat. 1306)

H.R. 4240/P.L. 112–172

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S. 3510/P.L. 112–173

To prevent harm to the national security or endangering the military officers and civilian employees to whom internet publication of certain information applies, and for other purposes. (Aug. 16, 2012; 126 Stat. 1310)

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