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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No.: FAA–2008–1292; Amendment No. 25–131]

RIN 2120–AJ35

Flightcrew Alerting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is amending the airworthiness standards for transport category airplanes concerning flightcrew alerting. These standards update definitions, prioritization, color requirements, and performance for flightcrew alerting to reflect changes in technology and functionality. This amendment adds additional alerting functions, and consolidates and standardizes definitions and regulations for flightcrew warning, caution, and advisory alerting systems. This action will result in harmonized standards between the FAA and the European Aviation Safety Agency.

DATES: This amendment becomes effective January 3, 2011.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this rule, contact Loran Haworth, FAA, Airplane and Flightcrew Interface Branch (ANM–111), Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1133; facsimile 425–227–1232; e-mail *Loran.Haworth@faa.gov.*

For legal questions concerning this rule, contact Doug Anderson, FAA, Office of the Regional Counsel (ANM–7), 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2166; facsimile 425–227–1007; e-mail *Douglas.Anderson@faa.gov.*

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart III, section 44701, "General requirements." Under that section, the FAA is charged with promoting safe flight of civil aircraft in air commerce by prescribing regulations and minimum standards in the interest of safety for the design and performance of aircraft that the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority. It prescribes new safety standards for the design and operation of transport category airplanes.

Background

Section 25.1322 of Title 14, Code of Federal Regulations (14 CFR), became effective February 1, 1977,[1] and has never been amended. Since it was issued there have been many advances in the design and technology of flight deck alerting devices. The new technologies associated with integrated visual, aural, and tactile flightcrew alerts and alert messaging are more effective in alerting the flightcrew and aiding them in decision making than the discrete colored lights for warning, caution, and advisory alerts prescribed in § 25.1322. The word "alert" in the above context is a generic term used to describe a flight deck indication meant to attract the attention of the flightcrew and identify a non-normal operational or airplane system condition. Warnings, cautions, and advisories are considered to be categories of alerts.

Because § 25.1322 is outdated and lacks content commensurate with state-of-the-art flight deck display technology, applicants have to perform additional work when showing compliance to that regulation. This results in additional work for the FAA, which has to generate issue papers and special conditions when applicants want to install advanced flight deck designs and current display technologies that are not addressed in § 25.1322.

[1] Published in the **Federal Register** (41 FR 55467) on December 20, 1976; Amendment No. 25–38.

Summary of the NPRM

The notice of proposed rulemaking (NPRM), Notice No. 09–05, published in the **Federal Register** on July 9, 2009 (74 FR 32810), is the basis for this final rule. The public comment period closed on September 8, 2009. In the NPRM, the FAA proposed to amend the airworthiness standards for flightcrew alerting in transport category airplanes. The proposed standards addressed regulations regarding definitions, prioritization, color requirements, and performance for flightcrew alerting. In the NPRM, the FAA also proposed to update the current standards to reflect the current technology and functionality for flightcrew alerting.

Summary of the Final Rule

The FAA is adopting this final rule to update the flightcrew alerting standards so they are relevant to the current technology. This includes adding additional alerting functions, and consolidating and standardizing definitions and regulations for flightcrew warning, caution, and advisory alerting systems. Adopting this rule also harmonizes flightcrew alerting standards between the FAA and the European Aviation Safety Agency (EASA). This rule will apply to applications for type certificates submitted after the effective date of the rule. This rule may also apply to applications for type design changes, including amended Type Certificates and Supplemental Type Certificates, submitted after the effective date of the rule, in accordance with § 21.101.

This final rule adopts the proposed rule with wording changes to improve clarity. Also, the order of certain paragraphs has been changed to improve the coherence of the rule.

Summary of Comments

The FAA received comments from 18 commenters, including civil aviation authorities, manufacturers, aviation associations, and the National Transportation Safety Board. All of the commenters generally supported the proposed changes to § 25.1322. Only the substantive comments are discussed below.

Discussion of the Final Rule

The FAA received comments on the following general areas of the proposal:

- Reserving and limiting the use of alerting colors red, amber, or yellow on the flight deck.
- Restricting the use of yellow to caution alerts only.
- Restricting the use of certain colors for advisory alerts.
- Weather displays and terrain awareness and warning system (TAWS) displays.
- Requiring cues from two different senses for warning and caution alerts.
- Identifying an alert and determining corrective action.
- Minimizing and preventing the effects of false and nuisance alerts.
- Suppressing the attention-getting component of an alert caused by failure of the alerting function.
- Requiring that an alert presentation be removed once the condition no longer exists.
- Presenting alerts on multi-color displays.
- Presenting alerts on monochromatic displays.
- Prioritizing alerts within a given category.
- Applying the changed product rule.
- Economic impact.

Below is a more detailed discussion of the rule, as it relates to the comments the FAA received to the NPRM.[2]

Reserving and Limiting the Use of Red, Amber, or Yellow on the Flight Deck

In the NPRM, the FAA proposed that visual alert indications shown on multi-color displays conform to the following color convention (proposed § 25.1322(d)):

(1) Red for warning alert indications;

(2) Amber or yellow for caution alert indications;

(3) Any color except red, amber, yellow, or green for advisory alert indications.

The FAA also proposed that the use of red, amber, and yellow be reserved for alerting functions and that the use of these colors for functions other than flightcrew alerting must be limited and not adversely affect flightcrew alerting (proposed § 25.1322(f)).

After review, commenters' greatest concern with the proposed rule was the restriction imposed on color usage in the flight deck. However, following comments and internal FAA review, the final rule text now combines two sentences into one, to further clarify the intent to limit the use of certain colors. The final rule text for § 25.1322(f) states: "Use of the colors red, amber, and yellow on the flight deck for functions other than flightcrew alerting must be limited and must not adversely affect flightcrew alerting." The final rule text is harmonized with EASA. Airbus commented that the FAA's proposal to limit the use of red to only warning alerts is too restrictive. Airbus stated that some system failures may require immediate response during certain operations but not in others, and that the color coding must always consider the worst case scenario. Airbus proposed that paragraph § 25.1322(f) be revised to add: "However, deviations are acceptable for: (i) The use of red for failure flags on primary flight display and navigation display that may require immediate crew awareness and response;"

The FAA has changed the final rule text; however, these changes do not align with Airbus' proposal. The purpose of this final rule is to update the current standards to provide an increased level of safety. The FAA notes the trend in flightcrew alerting is toward reducing nuisance alerts by using smarter alerting, where the alerting system has built-in logic and knows when to display the alerts. The rule will require that alerting functions be designed to minimize the effects of false and nuisance alerts and prevent the presentation of these alerts when they are inappropriate. Red flags are one way to present visual warning information. However, alert indications that are similar in presentation but have two different meanings can be confusing to the flightcrew. Airbus' suggested text sets up a situation where certain red flags require immediate flightcrew response, while other red flags do not. This creates an opportunity for pilot error in determining the significance of the flag (since it has more than one meaning) and will slow the flightcrew's response to the flagged alert. Such a result is against the purpose of the rule. Additional guidance on flags is found in advisory circular (AC) 25.1322–1.

Airbus also commented that red, amber, and yellow are used for graphical depictions of weather phenomena and terrain elevation. The limitation in the last sentence of proposed paragraph § 25.1322(f) may be interpreted (or misinterpreted) as not allowing the use of red, amber, or yellow for weather displays and TAWS. Airbus proposed that paragraph § 25.1322(f) be revised to add:

However, deviations are acceptable for: (ii) The use of red and amber for weather display, terrain hazard [TAWS] and TCAS [traffic collision avoidance system] sector, provided widely spread standards are used.

The FAA acknowledges that red, amber, and yellow have been used for weather radar, TAWS, and TCAS displays. However, the FAA does not agree that the suggestion to limit the use of these colors for alerts can be broadly interpreted as not allowing the use of red, amber, or yellow for weather radar, wind shear, TAWS, and TCAS. The FAA has guidance regarding colors that can be used on these specific displays in ACs and technical standard orders (TSO).[3] For example, AC 20–149 states that for flight information service-broadcast weather, red "should be associated with a need for immediate flightcrew awareness and/or conditions that represent serious near-term or serious potential threats to safety." Amber should be for flightcrew awareness of conditions that represent moderate near-term or moderate potential threats to safety. Also, AC 25–23 includes guidance stating that TAWS should be compliant with the requirements of § 25.1322 and use the color scheme specified in § 25.1322. The FAA guidance that recommends the use of red, amber, or yellow for indications other than alerts should be construed as FAA agreement that use of these colors comply with the published guidance of § 25.1322. Using these colors for indications other than alerts is acceptable if the use is limited and does not adversely affect flightcrew alerting. Paragraph (f) is intended to limit the use of these colors outside of flightcrew alerting features and functions in order to standardize their use within the flight deck, to protect their meaning, and to avoid diluting their attention-getting characteristics. However, it is not our intent to entirely prohibit their use for any other functions. If proposed for any

[2] The full text of each commenter's submission is available in the public docket.

[3] AC 20–149, *Safety and Interoperability Requirements for Initial Domestic Flight Information Service-Broadcast,* 8/31/2005. AC 25–23, *Airworthiness Criteria for the Installation Approval of a Terrain Awareness and Warning System (TAWS) for Part 25 Airplanes,* 5/22/2000. AC 25–11A, *Electronic Flight Deck Displays,* 06/21/2007. AC 25–12, *Airworthiness Criteria for the Approval of Airborne Windshear Warning Systems in Transport Category Airplanes,* 11/2/87. AC 20–131A, *Airworthiness Approval of Traffic Alert and Collision Avoidance Systems Aircraft Flight Information Services-Broadcast (FIS–B) Data Link Systems and (TCAS II) and Mode S Transponders,* 03/29/1993. AC 20–149, *Safety and Interoperability Requirements for Initial Domestic Flight Information Service-Broadcast,* 08/31/2005. TSO–C117, *Airborne Windshear Warning and Escape Guidance Systems for Transport Airplanes,* 01/10/1990. TSO–C147, *Traffic Advisory System (TAS) Airborne Equipment,* 4/16/1998. TSO–C151b, *Terrain Awareness and Avoidance System,* 12/17/2002. TSO–C157, *Aircraft Flight Information Services-Broadcast (FIS–B) Data Link Systems and Equipment,* 9/20/2004.

functions other than flightcrew alerting, an applicant would have to show an operational need to use these colors for other purposes. For example, using these colors for marketing or other non-safety related functions is typically not appropriate. Even if an applicant can show there is an operational need, using these colors for non-flightcrew alerting purposes would not be permitted if flightcrew alerting is adversely affected.

Consistent use and standardization for red, amber, and yellow is required to retain the effectiveness of flightcrew alerts. The flightcrew should not become desensitized to the meaning and importance of color coding for alerts. This rule will limit the frequency and use of red, amber, and yellow to flightcrew alerting-related functions in the flight deck. This limitation is also necessary to avoid desensitizing pilots to the urgency that should be associated with the meaning of these colors, which could increase the flightcrew's processing time, add to their workload, and increase the potential for flightcrew confusion or errors. Any proposed uses of these colors for non-alerting features or functions must show that they do not have any of these adverse effects.

Weather radar and TAWS displays are examples of displays that comply with this regulation. There is a demonstrated operational need for these systems to impart safety-related information—for example, when the nearby terrain presents a threat because it is near and at or above the airplane's flight trajectory—using these colors in a limited way. Additionally, the FAA has found that these displays do not adversely affect flightcrew alerting.

For future certification projects that require demonstrated compliance to this regulation, existing and previously-approved uses of these colors for features and functions other than flightcrew alerting will be evaluated under the criteria described above.

Boeing suggested adding "advisory" as an alert for functions other than flightcrew alerting that must not adversely affect flightcrew alerting. Boeing stated that the color for advisory alerts must be reserved for the same reason the colors for warning and caution alerts are being protected.

The FAA agrees that the final rule could include additional limitations regarding the use of certain colors in the flight deck. However, reserving the color used for advisory alerts was not included in the proposed rule because advisory alerts would further restrict available colors for other uses, the number of colors that can be distinguished under all foreseeable conditions is already a limited set, and advisory alerts do not require immediate awareness.

The guidance in AC 25–11A recommends as a best practice to use six colors or less in a typical deck to display all of the information necessary to safely operate the airplane. Since Boeing currently uses amber for both caution and advisory alerts, it has already limited the colors it uses for flightcrew alerting to two: Red for warning alerts, and amber for caution and advisory alerts. This allows Boeing to use four additional colors for flight deck displays. However, an unequal burden would be placed on those original equipment manufacturers that followed the FAA guidance in AC 25–11 [4] and used a color other than amber for advisory alerts. Those original equipment manufacturers would only have three additional colors to use throughout the flight deck because three colors are already reserved for flightcrew alerting: Red for warning, amber or yellow for caution, and whatever color they chose for advisory alerts. Although colors used for advisory alerts are not restricted in this rule, these alerts must still be colored so as to perform their intended function. The FAA will include guidance language in AC 25.1322–1 regarding restrictions on the colors that should be used for advisory alerts.

Boeing also commented that limiting the use of color for functions other than flightcrew alerting is beyond the scope of the proposed rule, and can even conflict with other rules, advisory material, and industry standards for the use of color. As an example, Boeing cited § 25.1549, *Powerplant and auxiliary power unit instruments,* which prescribes color requirements for the use of red and yellow on engine instruments.

The FAA has determined that limiting the use of red, amber, and yellow on the flight deck for functions other than alerting is within the scope of this rule. The FAA's intent is to limit the widespread use of red, amber, and yellow in the flight deck so when a pilot sees one of these colors the pilot can quickly identify that indication as an alert. Similar wording was recommended in the ARAC final report. As explained above, the proposed rule stated that the use of red, amber, or yellow for functions other than flightcrew alerting must be limited and must not "adversely affect" flightcrew alerting. Section 25.1322(f) of the final rule has been revised to emphasize that use of the colors red, amber, and yellow on the flight deck for functions other than flightcrew alerting must be limited and must not adversely affect flightcrew alerting.

Regarding Boeing's comment that limiting the use of color for functions other than flightcrew alerting might conflict with other rules, specifically § 25.1549 on engine instruments, neither proposed nor final § 25.1322 would prohibit compliance with the color requirements of § 25.1549. The required use of red and yellow in that section is consistent with the warning and caution criteria of this rule.

Requiring That Yellow Only Be Used for Caution Alerts

Proposed § 25.1322(d)(2) would have required that amber or yellow be used for caution alerts. Airbus stated that this proposed requirement was too restrictive. The color yellow is extensively used in all Airbus flight decks, but not for alerting purposes. Yellow is used to distinguish between displays that indicate systems and operations are normal and displays that indicate there is a problem.

One reason the FAA proposed to limit the use of yellow was that amber and yellow are visually similar—research studies, discussed in the original version of AC 25–11, indicate high color confusion between yellow and amber. Further, yellow is already used to indicate cautionary ranges on some electronic and mechanical displays. The ARAC final report also made the same recommendation to limit the use of yellow. In addition, the original version of AC 25–11 included a statement that "the extensive use of the color yellow for other than caution/abnormal information is discouraged." The guidance in AC 25–11A states: "Use of the color yellow for functions other than flightcrew alerting should be limited and should not adversely affect flightcrew alerting." Therefore, Airbus may continue to use yellow to indicate normal operation and airplane system conditions, but only if use of this color is limited and Airbus can demonstrate that there is no adverse effect on flightcrew alerting. The intent of the proposed rule is retained in this final rule but the text has been revised for clarity.

Restricting the Use of Certain Colors for Advisory Alerts

Proposed § 25.1322(d)(3) would have prohibited the use of red, amber, yellow, or green for advisory alerts. Boeing and Airbus objected to the inclusion of amber and yellow in this proposed restriction and provided the following reasons:

[4] AC 25–11, *Transport Category Airplanes Electronic Display Systems,* 16 July 1987.

(1) There are no known incidents or accidents that can be attributed to the inability of the flightcrew to distinguish between caution and advisory alerts.

(2) There are a limited number of display colors available for use on flight deck displays.

(3) The use of certain colors for advisory level alerts is already widespread in the aviation industry.

(4) If an advisory alert is presented in any color other than amber or yellow the flightcrew would not perceive the alert as non-normal.

Boeing suggested that, instead of prohibiting the use of certain colors, there should be a requirement that the alert categories be readily distinguishable from each other. Boeing and Airbus both agreed that red should not be used for advisory alerts.

The FAA concurs with the reasons provided by the commenters and has removed the restriction. The final rule allows the use of amber or yellow for advisory alerts, as was allowed in the ARAC final report. However, in AC 25.1322, the FAA will recommend that a separate and distinct color be used when possible. The AC will also recommend that, if color is not used to distinguish between caution and advisory alerts, any alternate coding technique must meet the general requirements of § 25.1322(a)(2) so the flightcrew can readily and easily detect the difference between caution and advisory alerts.

Using Green for Advisory Alerts

The FAA received several comments regarding the use of the color green. Cessna recommended that green be used for advisory alerts and that green should be mentioned in the final rule. Embraer asked that the requirements clearly address the use of the color green. Airbus stated that prohibiting green for advisory alerts is too restrictive. The General Aviation Manufacturers Association (GAMA) wanted to retain the use of green to indicate that systems are safely operating. GAMA requested that the proposed rule be changed to specify that green must be used to identify a safe operation and that in some instances yellow may also be used for non-cautionary alerts.

The FAA finds the suggestion to use green for normal operation and system conditions to be outside the scope of this final rule. Alerts are associated with non-normal operation or system conditions, not normal conditions. The FAA's original intent in the proposed requirements for § 25.1322 was to address only non-normal operation or system conditions. The final rule text has been revised for clarity and § 25.1322(a)(1)(i) now states that flightcrew alerts must "[i]dentify non-normal operation or airplane system conditions * * *."

Further, the FAA already provides a recommendation for using green to indicate that systems are normal in AC 25–11A, Table 11 (recommended colors).

Limiting the Colors That Can Be Used for Weather Displays and TAWS Displays

Airbus and a private citizen commented that the color "green" should be allowed for weather displays, TAWS, and TCAS. Airbus proposed that red, amber, yellow, and green should be allowed for weather displays and TAWS displays with no restrictions or limitations. Airbus also commented that magenta is used in the weather radar system to provide "turbulence ahead" alerts and in TAWS for advisory alerts. The private citizen stated that the definition within the color radar guidance calls the various colors "warnings," including the use of green for a "minimum warning."

As previously mentioned, Table 11 in AC 25–11A lists recommended colors for certain functions. Table 12 in AC 25–11A provides specific colors for certain display features. The color magenta is typically used for an instrument landing system deviation pointer, and for a selected heading and active route/flight plan. Green is typically used to indicate engaged modes and normal conditions, current data, and values. As adopted, § 25.1322(e) requires that red be used for warning alerts, yellow or amber for caution alerts, and any other color except red and green for advisory alerts.

This final rule will not allow the use of magenta for a warning or caution category alert. However, magenta can be used on weather displays for awareness of turbulence and heavy rain. Green can also be used on a weather display and typically indicates areas of light rainfall. The FAA could not find any references to using green for "minimum warning." Section 25.1322 does not allow use of the color green for a non-normal alert Use of the colors green and magenta for awareness on a weather display is acceptable if it is within the manufacturer's color philosophy to use these colors for that purpose.

A consistent and standardized color usage is desirable to ensure the pilot understands the urgency of an alert based on its color. The manufacturer and the FAA should evaluate inconsistencies in color usage to ensure that these do not lead to confusion or errors, and do not adversely impact the intended function of the system(s) involved. Color usage should adhere to the color coding guidance in AC 25–11A.

The FAA has tasked ARAC with updating the guidance in AC 25–11A for weather displays in transport category airplanes. To meet this goal, ARAC has re-convened the ASHWG, which is working with industry and professional organizations.[5] For weather displays, TAWS, TCAS, or any other piece of flight deck equipment, other regulations (for example, § 25.1309(c)) determine whether any particular flight deck indication serves the function of an alert (for example, whether it identifies "non-normal" operation). If a flight deck indication is determined to be an alert, this indication must then comply with the requirement of § 25.1322.

WSI Corporation, a company that provides a subscription service for aviation weather information, commented that the proposed rule would not standardize color usage for the presentation of datalink radar, warm fronts, and low pressure systems. WSI stated that the proposed rule language would slow the adoption of proven technology or create non-standard presentations of weather phenomena, because designers would each have their own interpretation of what is meant by a display that does "not adversely affect flightcrew alerting."

The FAA understands this commenter's concern regarding non-standard presentations on weather displays. The FAA did not intend to use § 25.1322 to standardize color usage for datalink radar, warm fronts, or low pressure system displays. The FAA does intend to include guidance on how to comply with the requirement that using red, amber, and yellow on the flight deck for functions other than flightcrew alerting must be limited and must not adversely affect flightcrew alerting. If an applicant chooses to use alerting colors for non-alerting functions, that applicant is responsible for showing that the use of these colors is limited, meets an operational need, and does not cause an adverse effect on flightcrew alerting. The determination of what is considered adverse depends not only on the actual display but also on how the display is integrated on the flight deck. The adverse effect associated with using alerting colors for non-alerting functions is that the flightcrew may spend extra time to determine whether a flightcrew alert actually occurred and, if so, its meaning. In general, use of alerting

[5] One organization is SAE Technical Committee G–10, Aerospace Behavioral Engineering Technology.

colors for non-alerting purposes would be considered adverse effects when such use: (1) Interferes with the flightcrew's ability to identify non-normal operation or airplane system conditions, (2) slows the flightcrew's awareness of and response to an alert, (3) slows the flightcrew's ability to determine the appropriate actions, and (4) interferes with the flightcrew's ability to readily and easily detect and understand the alert under all foreseeable operation conditions. Since several factors determine whether using alerting colors for non-alerting purposes will have an adverse effect, evaluations during simulations or flight tests will usually be required. Alerting components found on weather displays must follow the requirements in this final rule. As previously mentioned, ARAC is currently tasked with developing recommendations for a revision to AC 25–11A that will address guidance for weather displays in transport category airplanes.

Requiring Cues From Two Different Senses for Warning and Caution Alerts

Proposed § 25.1322(a)(1) would have required attention-getting cues through at least two different senses. Cessna agreed that warning alerts should have two sensory cues. However, it did not agree that all caution alerts must require two sensory alerts. Cessna also stated that the priority of the alert should determine if two sensory alerts are necessary (for example, safety of flight issue).

The FAA's reason for the two sensory alerts requirement is that both warning and caution alerts require immediate flightcrew awareness, and adding the requirement for getting attention through a second sense helps to ensure flightcrew awareness. The two sensory alerts requirement is supported by ARAC recommendation and by the NTSB's comments to the NPRM. The final rule retains this safety requirement.

Identifying Alerts and Determining Corrective Action

The Air Line Pilots Association, International, and Boeing commented that the term "[d]etermine corrective action" in proposed § 25.1322(a)(2) could be interpreted three different ways. It could be a requirement (1) to provide specific instructions on the alerting display; (2) that the alert determine the correct action, or (3) that the flightcrew determine the correct action or respond to an alert condition. These commenters stated that the alert should "help" the flightcrew determine the correct action.

Although the FAA believes that the proposed language in § 25.1322(a) implies flightcrew decision-making rather than a reduction in pilot decision-making or authority, we have clarified and reorganized § 25.1322(a) in the final rule. Section 25.1322(a)(1) requires that flightcrew alerts provide the flightcrew with the information needed to (1) identify non-normal operation or airplane system conditions, and (2) determine the appropriate actions, if any. The FAA did not incorporate the commenters' suggestions to include the words "help" or "allow" in the final rule because those words would weaken the requirement that the system needs to provide sufficient information for the flightcrew to make an informed decision. Also, the FAA and industry acknowledge that, in some situations, time-critical alerts must be direct.

Deleting the Words "Less Urgent" in the Definition of Caution Alert

The text for § 25.1322(b)(2) proposed that alerts conform to a prioritization hierarchy that included a caution alert for conditions that require immediate flightcrew awareness and less urgent flightcrew response. A private citizen, Boeing, and EASA recommended removing the words "less urgent," or as an alternative define what this term means.

The FAA agrees with the commenters' suggestions and § 25.1322(b)(2) has revised the caution alert to require immediate flightcrew awareness and subsequent flightcrew response.

Minimizing and Preventing the Effects of False and Nuisance Alerts

Proposed § 25.1322(c) required the presentation of alerts be designed to minimize nuisance effects and, specifically, (1) permit each occurrence of attention-getting cues to be acknowledged and suppressed, (2) prevent the presentation of an inappropriate or unnecessary alert, (3) remove the alert when the condition no longer exists, and (4) provide a means to suppress an attention-getting component of an alert caused by a failure of the alerting system that interferes with the flightcrew's ability to safely operate the airplane.

EASA and Cessna expressed concern that inappropriate or unnecessary alerts could not be fully prevented and that the requirement to "prevent" might be too stringent. GAMA was concerned that the term "minimize" would set a continually moving regulatory target and requested that the FAA clarify the intent of this requirement.

In response to EASA and Cessna, the FAA's intent was to emphasize that features to prevent inappropriate or unnecessary alerts should be a part of the design process for how to present alerts. In response to GAMA, the FAA will include methods of compliance for "minimizing" nuisance effects in AC 25.1322–1. GAMA is correct in assuming that, as future methods and technologies become more capable of minimizing the effects of false and nuisance alerts, the FAA will expect industry to use best practices to minimize these effects.

In the final rule, the FAA moved the requirements of proposed § 25.1322(c) to a new paragraph § 25.1322(d) and added the words "the effects of false and" to the introductory sentence. That introductory sentence now states "[t]he alert function must be designed to minimize the effects of false and nuisance alerts. In particular, it must be designed to: (1) Prevent the presentation of an alert that is inappropriate or unnecessary." This rule text was harmonized with EASA.

Suppressing the Attention-Getting Component of an Alert Caused by Failure of the Alerting Function

Proposed § 25.1322(c)(4) requires the flightcrew alerting system provide a means to suppress an attention-getting component of an alert caused by a failure of the alerting system that interferes with the flightcrew's ability to safely operate the airplane. Airbus and Embraer asked what part of the alert would be suppressed, the attention-getting component or the alert itself? Embraer also asked:

- How does the FAA propose to alert the crew of failure of the alerting system itself?
- Does this refer to global suppression or suppression of a single event?

The scenario that the FAA envisioned when proposing this requirement is when an alert's attention-getting component (for example, continuous aural alerts or continuous flashing lights) interferes with the flightcrew's ability to safely operate the airplane. Manufacturers must provide a means, through their design, to suppress the attention-getting component(s). This rule did not envision a complete failure of the alerting system, just the interference of attention-getting components due to the failure of an alerting function. If a more-thorough alerting system failure triggers the need to inform the flightcrew, the equipment manufacturers are responsible for determining how the flightcrew will be alerted.

Where failure of the alerting function interferes with the flightcrew's ability to safely operate the airplane, the proposed rule did not specify global suppression or suppression of a single event because such suppression (global or single event) would depend on the particular system design and trigger for the false alert. The intent of the rule is to suppress only the attention-getting component that may cause pilot distraction. The final rule was not changed in response to this comment.

Removing the Presentation of an Alert When the Condition No Longer Exists

Proposed § 25.1322(c)(3) would require that an alert be removed when the condition that initiated the alert no longer exists. Airbus commented that this proposed requirement should be flexible enough to allow some tolerances or exceptions, notably when data or parameters required to determine the condition are not available. Airbus also proposed that paragraph § 25.1322(c)(3) be modified to require confirmation that the condition no longer exists, except if justified.

The FAA has determined that the alerting function that created the alert should be intelligent enough to remove the alert when the condition no longer exists and there is no longer any need for pilot awareness or action. If for any reason, including loss of data, the systems on the airplane are unable to determine that the condition associated with the alert no longer exists, but the alert persists, the pilot should usually assume that the condition still exists. We believe an alert that is no longer relevant would add clutter to the display and could confuse and distract the flightcrew from attending to other alerts. The commenter did not provide and we are not aware of any situation that would justify retaining an alert when the condition no longer exists. The proposal is adopted without change.

Presenting Alerts on Multi-Color Displays

Proposed § 25.1322(d) would require visual alert indications that are shown on multi-color displays to conform to the following color convention:

(1) Red for warning alert indications.

(2) Amber or yellow for caution alert indications.

(3) Any color except red, amber, yellow, or green for advisory alert indications.

EASA commented that using color for alert should be standard; and the term "alert" is already defined as an indication and the words "that are shown on multi-color displays" should be removed. In addition, EASA commented that using color for alerts should be the standard. Boeing commented that the ARAC recommendation purposefully refrained from specific technological implementations such as lights, color displays, monochromatic displays, head-up displays (HUDs), and tactile and aural devices. The ARAC recommendation was based on functions, not specific technology. Proposed § 25.1322(d) deviated from the ARAC recommendations in a way that would have unintended effects contrary to the overall objective of an improved minimum safety standard. For example: Master warning and caution lights are not on a multi-color display and yet the color requirements must still apply.

Language from the ARAC final report is shown below:

"(d) Alerts must conform to the following color convention for visual alert indications:

(1) Red for warning alert indications.

(2) Amber/yellow for caution alert indications.

(3) Any color except red or green for advisory alert indications."

The FAA and EASA agree with the commenter that this proposal would not allow for alerts on monochromatic HUDs, even though certain time-critical alerts on HUDs are in use today. However, the FAA believes there is a safety benefit for appropriately-designed alerts appearing on HUDs, and modified ARAC recommendation to allow for alerts appearing on HUDs and monochromatic displays. Although the FAA and EASA reached agreement on harmonized language for multi-color capable and monochromatic displays for visual alerts, the FAA now recognizes that this agreed-to language does not fully address alerting functions such as master caution and master warning lights, which are also considered monochromatic displays since they are capable of providing only a single alerting color.

In response to these comments, the FAA revised paragraph § 25.1322(e) in this final rule to emphasize the use of color for alerts and to also address single-color displays that provide alerting colors (for example, master warning and master caution alerts). The revised rule text also renders the regulation less technology-specific.

Presenting Alerts on Monochromatic Displays

Proposed § 25.1322(e) required visual alert indications shown on monochromatic displays use display coding techniques such that the flightcrew can clearly distinguish between warning, caution, and advisory alert categories.

EASA stated that the use of color for alerts should be the standard, and other techniques should be considered only in cases where color is not possible (for example, monochromatic displays and HUDs).

The FAA agrees with EASA; however, if color use is not possible to indicate, separate, and standardize between alert categories, other coding techniques must be used that are as effective as the color standard. The FAA does not want to prescribe coding techniques (other than color) that may be used by applicants to distinguish the alert categories. However, the coding must meet all of the applicable requirements in this final rule to ensure the alerts are readily and easily detectable and intelligible by the flightcrew, including conditions which present multiple alerts (§ 25.1322 (a)(2)).

Boeing stated that if alerts were made visually distinctive by category on a head-down display (HDD), and were duplicated on a monochromatic display, then the duplicate alert on the monochromatic display does not need to be distinguishable by category. For example, if the presentation of an alert on HDDs was distinctive so as to easily identify its category of alert, then the duplicate alert on monochromatic HUDs does not need to be visually distinctive. Other alert information presented simultaneously, such as aural alerts, presence of master lights, and visual information on HDDs, provides sufficient cues to the flightcrew to determine the correct response and urgency of response.

The FAA disagrees with Boeing's comment "that alerts need not be visually distinctive so the alert category can be easily determined" on the HUD. It is a key requirement of the visual alert indication to distinguish its category, regardless of whether the presentation is head-up or head-down. The safety objective for visual alert indications is that they clearly signify the urgency of the alert and the need for immediate intervention, if applicable. A visual alert indication that does not distinguish the alert category (for example, warning, caution, or advisory) would fail to properly convey its urgency. The FAA does not expect a pilot using the HUD to also scan the head-down primary flight display, so the pilot may miss what is only on the head-down display. If the visual indication of the head-down primary flight display distinguishes the alert category, but the indication on the HUD does not, it fails to meet the safety objective for this rule.

The FAA revised § 25.1322(e)(2) in the final rule to clearly state that visual alert indications must conform to the prescribed color convention unless it is not possible to comply with the convention. The additional language was needed to address the situation where a monochromatic display is capable of providing only a single alerting color, such as red for a master warning, or yellow or amber for a master caution light. Adding this language also makes the regulation less technology-specific, as recommended by ARAC and commenters.

Prioritizing Alerts Within a Given Category

Proposed § 25.1322(b) would have required that alerts conform to a prioritization hierarchy based on category, but it did not require alerts to be prioritized within a given category. EASA commented that this additional prioritization should be required. EASA also suggested that the information in proposed § 25.1322(b) be reorganized and moved to a new § 25.1322(c)(1).

The FAA agrees with both suggestions. For alerts to perform their intended function as required by § 25.1301,[6] they must be prioritized when more than one alert is displayed at the same time. The FAA has revised new § 25.1322(c)(1) to require that alerts be prioritized with a given category. A typical example of prioritizing alerts within categories is the time-critical warning alert which, to meet its intended function, must have higher priority on a display than a general warning alert. This change to the final rule strengthens the case for prioritizing alerts within categories that was part of the original ARAC recommendations. Guidance for this additional prioritization is available in AC 25.1322–1.

Economic Impact

GAMA and a private citizen commented on the Regulatory Flexibility Analysis. They suggested that the rule would affect other organizations in addition to the five transport category airplane manufacturers discussed in the Analysis. They commented that the proposed rule contained new regulations which would apply to organizations that design and certify equipment installations in the flight deck under supplemental type certificate (STC) approvals and design components for installation in the flight deck under the FAA's technical standard order (TSO) program. Additionally, the regulations would affect modification shops that use the field approval process for installing equipment in the flight deck. Both GAMA and a private citizen recommended that the FAA address these affected organizations with respect to cost, benefit, and small business impact.

GAMA also commented that neither the proposed regulation, nor the associated guidance material, discussed issues related to the Changed Product Rule (14 CFR 21.101) and how modifications to the flight deck which affect or contain alerting functions should be addressed. GAMA was particularly concerned about the effect of changing an existing alerting scheme as a result of a minor change in the flight deck.

The FAA disagrees. This rule applies only to type certificate applications for transport category airplanes submitted after the rule's effective date and to certain amended type certificate (TC) and supplemental TC (STC) applications submitted after that date.

Modification shops are not permitted to obtain field approvals for significant product-level changes, so we do not anticipate any direct impact of this rule on that type of business. A minor change to the flight deck would not be considered a significant product-level change, so updating the existing alerting scheme would not be required for minor changes.

There may be some future applications for STC approval of significant product-level design changes that would affect flightcrew alerting. The FAA expects that the requirements of § 21.101 will determine which future design changes would need to have the certification bases updated to include the requirements in this final rule. The FAA addressed these additional costs of updating a certification basis in the economic evaluation for § 21.101.[7]

Unfunded Mandates Assessment

GAMA commented that this rule may generate an unfunded mandate. The FAA calculated the cost of this rule and it does not create an unfunded mandate.

Regulations Affecting Intrastate Aviation in Alaska

GAMA commented that this rule would directly impact the cost of installing flight decks in existing airplanes which operate in support of commerce and the public benefit in Alaska. The FAA has determined that this rule will not affect any existing airplanes.

Harmonizing Rule Text Between the FAA and EASA

Boeing and Airbus expressed concern because the proposed rule deviated in some areas from the ARAC recommendations and there might be conflicts between the FAA and EASA regulations. The FAA and EASA have harmonized on the rule text. The principles behind the ARAC recommendations were closely followed.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there is no current or new requirement for information collection associated with this amendment.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate

[6] 14 CFR 25.1301, *Function and Installation.*

[7] 14 CFR 21.101, *Designation of applicable regulations* (commonly known as the Changed Product Rule).

likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule. We suggest readers seeking greater detail read the full regulatory evaluation, a copy of which we have placed in the docket for this rulemaking.

In conducting these analyses, the FAA determined that this final rule: (1) Has benefits that justify its costs; (2) is not an economically "significant regulatory action: as defined in section 3(f) of Executive Order 12866; (3) is "significant" as defined in DOT's Regulatory Policies and Procedures; (4) will not have a significant economic impact on a substantial number of small entities; (5) will not create unnecessary obstacles to the foreign commerce of the United States; and (6) will not impose an unfunded mandate on State, local, or tribal governments, or on the private sector, by exceeding the threshold identified above. These analyses are summarized below.

Total Benefits and Costs of This Rule

The estimated cost of this final rule over the 20-year analysis period is $7.7 million ($4.1 million present value). The estimated potential benefits of this final rule over the 20-year analysis period, consists of preventing at least 10 serious injuries worth $8.3 million ($4.4 million present value).

Persons Potentially Affected by This Rule

- Manufacturers of future part 25 airplanes.
- Manufacturers of future instrument panel avionics for future part 25 airplanes.

Assumptions

Discount rates—7%.

Analysis period—2010 through 2029 (twenty years).

Changes From the NPRM to the Final Rule

There were no substantive changes made to the Regulatory Evaluation, Regulatory Flexibility Analysis, or Unfunded Mandates Assessment as a result of comments received on the NPRM.

Benefits of This Rule

For future part 25 airplanes, we estimated that the rule changes would avoid about 10 serious injuries over a 20-year period. The resulting benefits include averted fatalities and injuries, loss of airplanes, investigation cost, and collateral damages. The total benefits are about $4.4 million in present value terms.

Costs of This Rule

There are no additional manufacturing or operating costs associated with this rule; however, there are additional design and certification costs to future part 25 airplane manufacturers. The average cost estimate per new airplane certification is $0.7 million. The estimated number of new certifications annually is 0.55. When the average cost estimate per new airplane certification ($0.7 million) is multiplied by the estimated annual number of new certifications (0.55), the estimated annuals costs are $385,000. When summed over the 20-year analysis period the total cost of this rule is about $4.1 million in present value terms.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration." The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

Section 603 of the Act requires agencies to prepare and make available for public comment a final regulatory flexibility analysis (FRFA) describing the impact of final rules on small entities. Section 603(b) of the Act specifies the content of a FRFA. Each FRFA must contain:

- A description of the reasons why action by the agency is being considered;
- A succinct statement of the objectives of, and legal basis for, the final rule;
- A description and an estimate of the number of small entities to which the rule will apply;
- A description of the projected reporting, record keeping 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;
- An identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap, or conflict with the final rule.
- Each final regulatory flexibility analysis shall also contain a description of any significant alternatives to the final rule which accomplish the stated objectives of applicable statutes and which minimizes any significant economic impact of the final rule or small entities.

GAMA and a private citizen commented on the initial regulatory flexibility analysis. The FAA's responses to these comments were responded to earlier in the "Summary of Comments" section of this preamble. The FAA believes this final rule will not have a significant impact on a substantial number of small entities because all United States transport-aircraft category manufacturers exceed the Small Business Administration small-entity criteria of 1,500 employees. In addition, the alerting system design firms contacted by the FAA for preparation of the initial regulatory evaluation did not consider that they would incur any additional costs as a result of the proposed rule.

Therefore, as the FAA Administrator, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Analysis

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a

legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The FAA notes the purpose is to ensure the safety of the American public, and has assessed the effects of this rule to ensure it does not exclude imports that meet this objective. As a result this rule is not considered as creating an unnecessary obstacle to foreign commerce.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation with the base year 1995) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of $143.1 million in lieu of $100 million.

This final rule does not contain such a mandate. The requirements of Title II do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have federalism implications.

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the FAA, when modifying its regulations in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish appropriate regulatory distinctions. In the NPRM, we requested comments on whether the proposed rule should apply differently to intrastate operations in Alaska. We received one comment from GAMA stating that this rule will directly impact the cost of installing flight decks in existing airplanes which operate in support of commerce and the public benefit in Alaska. We have determined that this rule will not affect any existing airplanes and, based on the administrative record of this rulemaking, there is no need to make any regulatory distinctions applicable to intrastate aviation in Alaska.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 312(f) and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a "significant energy action" under the executive order because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Availability of Rulemaking Documents

You can get an electronic copy of rulemaking documents using the Internet by—

1. Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);
2. Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/* or
3. Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html*.

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this rulemaking.

Anyone is able to search the electronic form of all 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 DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://DocketsInfo.dot.gov*.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. If you are a small entity and you have a question regarding this document, you may contact your local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. You can find out more about SBREFA on the Internet at *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/*.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements, Safety, Transportation.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends Chapter I of Title 14, Code of Federal Regulations as follows:

PART 25—TITLE AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

■ 1. The authority citation for part 25 continues to read as follows:

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

■ 2. Revise § 25.1322 to read as follows:

§ 25.1322 Flightcrew alerting.

(a) Flightcrew alerts must:

(1) Provide the flightcrew with the information needed to:

(i) Identify non-normal operation or airplane system conditions, and

(ii) Determine the appropriate actions, if any.

(2) Be readily and easily detectable and intelligible by the flightcrew under all foreseeable operating conditions, including conditions where multiple alerts are provided.

(3) Be removed when the alerting condition no longer exists.

(b) Alerts must conform to the following prioritization hierarchy based on the urgency of flightcrew awareness and response.

(1) Warning: For conditions that require immediate flightcrew awareness and immediate flightcrew response.

(2) Caution: For conditions that require immediate flightcrew awareness and subsequent flightcrew response.

(3) Advisory: For conditions that require flightcrew awareness and may require subsequent flightcrew response.

(c) Warning and caution alerts must:

(1) Be prioritized within each category, when necessary.

(2) Provide timely attention-getting cues through at least two different senses by a combination of aural, visual, or tactile indications.

(3) Permit each occurrence of the attention-getting cues required by paragraph (c)(2) of this section to be acknowledged and suppressed, unless they are required to be continuous.

(d) The alert function must be designed to minimize the effects of false and nuisance alerts. In particular, it must be designed to:

(1) Prevent the presentation of an alert that is inappropriate or unnecessary.

(2) Provide a means to suppress an attention-getting component of an alert caused by a failure of the alerting function that interferes with the flightcrew's ability to safely operate the airplane. This means must not be readily available to the flightcrew so that it could be operated inadvertently or by habitual reflexive action. When an alert is suppressed, there must be a clear and unmistakable annunciation to the flightcrew that the alert has been suppressed.

(e) Visual alert indications must:

(1) Conform to the following color convention:

(i) Red for warning alert indications.

(ii) Amber or yellow for caution alert indications.

(iii) Any color except red or green for advisory alert indications.

(2) Use visual coding techniques, together with other alerting function elements on the flight deck, to distinguish between warning, caution, and advisory alert indications, if they are presented on monochromatic displays that are not capable of conforming to the color convention in paragraph (e)(1) of this section.

(f) Use of the colors red, amber, and yellow on the flight deck for functions other than flightcrew alerting must be limited and must not adversely affect flightcrew alerting.

Issued in Washington, DC, on October 20, 2010.

J. Randolph Babbitt,

Administrator.

[FR Doc. 2010–27629 Filed 11–1–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 30751; Amdt. No. 490]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

DATES: *Effective Date:* 0901 UTC, November 18, 2010.

FOR FURTHER INFORMATION CONTACT: Harry Hodges, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, DC, on October 22, 2010.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, November 18, 2010.

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

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

■ 2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINTS

[Amendment 490 Effective Date November 18, 2010]

From	To	MEA
§ 95.1001 Direct Routes–U.S. Color Routes		
§ 95.6138 Blue Federal Airway B38 is Amended to Delete		
HAINES, AK NDB	U.S. CANADIAN BORDER	10000

From	To	MEA	MAA
§ 95.3000 Low Altitude RNAV Routes			
§ 95.3225 RNAV Route T225 is Amended To Read in Part			
TANANA, AK VOR/DME	REEBA, AK FIX	4000	17500
REEBA, AK FIX	*FAIRBANKS, AK VORTAC	5000	17500
*4700—MCA FAIRBANKS, AK VORTAC, W BND			
§ 95.3229 RNAV Route T229 is Amended To Read in Part			
*FAIRBANKS, AK VORTAC	REEBA, AK FIX	5000	17500
*4700—MCA FAIRBANKS, AK VORTAC, W BND.			
REEBA, AK FIX	TANANA, AK VOR/DME	4000	17500

From	To	MEA
§ 95.6001 VICTOR ROUTES–U.S.		
§ 95.6003 Vor Federal Airway V3, is Amended To Read in Part		
#DOLPHIN, FL VORTAC	#FORT LAUDERDALE, FL VOR/DME	2100
#FORT LAUDERDALE R–213 UNUSABLE, USE DOLPHIN R–037.		
#FORT LAUDERDALE, FL VOR/DME	#PALM BEACH, FL VORTAC	2000
#FORT LAUDERDALE R–006 USUSABLE, USE PALM BEACH R–189.		
§ 95.6008 VOR Federal Airway V8 is Amended To Read in Part		
GRAND JUNCTION, CO VOR/DME	*SQUAT, CO FIX	**10500
*11700—MRA.		
*11700—MCA SQUAT, CO FIX, NE BND.		
**9600—MOCA.		
*SQUAT, CO FIX	RIFLE, CO VOR/DME	13200
*11700—MCA SQUAT, CO FIX, NE BND.		
RIFLE, CO VOR/DME	KREMMLING, CO VOR/DME	13400
§ 95.6056 VOR Federal Airway V56 is Amended To Read in Part		
FAYETTEVILLE, NC VOR/DME	*ROZBO, NC FIX	2000
*3100—MRA.		
*ROZBO, NC FIX	WALLO, NC FIX	2000
*3100—MRA.		
§ 95.6063 VOR Federal Airway V63 is Amended To Read in Part		
#WAUSAU, WI VORTAC	##RHINELANDER, WI VORTAC	*4000
*4000—GNSS MEA.		
#WAUSAU R–005 UNUSABLE BYD 10 NM. GNSS REQUIRED BEYOND 10 NM.		
##RHINELANDER R–185 UNUSABLE BYD 10 NM. GNSS REQUIRED BEYOND 10 NM.		
§ 95.6133 VOR Federal Airway V133 is Amended To Read in Part		
BARRETTS MOUNTAIN, NC VOR/DME	MULBE, NC FIX	5400
MULBE, NC FIX	STOVE, VA FIX	7200
STOVE, VA FIX	PINEE, WV FIX	*13000
*7000—MOCA.		
*7000—GNSS MEA.		
PINEE, WV FIX	CHARLESTON, WV VORTAC	*7000
*5000—MOCA.		
*5000—GNSS MEA.		
§ 95.6140 VOR Federal Airway V140 is Amended To Read in Part		
*KENYA, WV FIX	BLUEFIELD, WV VORTAC	5400

From	To	MEA
*13000—MRA.		
§ 95.6177 VOR Federal Airway V177 is Amended To Read in Part		
#WAUSAU, WI VORTAC *3600—MOCA. *4500—GNSS MEA. #WAUSAU R–310 UNUSABLE BYD 10 NM, GNSS REQUIRED BYD 10 NM.	BAITS, WI FIX	*4500
BAITS, WI FIX *3100—MOCA. *10000—GNSS MEA.	HAYWARD, WI VOR/DME	*10000
§ 95.6187 VOR Federal Airway V187 is Amended To Read in Part		
ROCK SPRINGS, WY VOR/DME *10000—MOCA. *10000—GNSS MEA.	RIVERTON, WY VOR/DME	*12000
§ 95.6197 VOR Federal Airway V197 is Amended To Read in Part		
PARADISE, CA VORTAC #MTA V264 E TO V197 NW 11800.	#POMONA, CA VORTAC	4500
POMONA, CA VORTAC *10000—MCA HASSA, CA FIX, NW BND.	*HASSA, CA FIX	6500
HASSA, CA FIX *8700—MCA PALMDALE, CA VORTAC, SE BND.	*PALMDALE, CA VORTAC	10500
§ 95.6216 VOR Federal Airway V216 Is Amended To Read In Part		
#JANESVILLE, WI VOR/DME *GNSS MEA, GNSS REQUIRED.. #JANESVILLE R–073 UNSUABLE, GNSS REQUIRED.	WIPED, WI FIX	*3000
WIPED, WI FIX *GNSS MEA, GNSS REQUIRED.	PETTY, WI FIX	*4000
PETTY, WI FIX *GNSS MEA, GNSS REQUIRED.	SQUIB, MI FIX	*7000
SQUIB, MI FIX *3000—GNSS MEA.	MUSKEGON, MI VORTAC	*4000
§ 95.6220 VOR Federal Airway V220 is Amended To Read in Part		
SLOLM, CO FIX	RIFLE, CO VOR/DME	12400
RIFLE, CO VOR/DME	MEEKER, CO VOR/DME	12400
§ 95.6223 VOR Federal Airway V223 is Amended To Read in Part		
*HANEY, VA FIX *7000—MRA.	FLUKY, VA FIX	2600
§ 95.6259 VOR Federal Airway V259 Is Amended To Read in Part		
GRAND STRAND, SC VORTAC *3000—MRA.	*CLETA, SC FIX	2000
*CLETA, SC FIX *3000—MRA.	FLORENCE, SC VORTAC	2000
§ 95.6286 VOR Federal Airway V286 is Amended To Read in Part		
#ELKINS, WV VORTAC #ELKINS R–105 UNUSABLE BYD 32 BLW 9000.	DERIN, WV FIX	5700
DERIN, WV FIX *6900—MOCA. *6900—GNSS MEA.	TEAKK, VA FIX	*9000
TEAKK, VA FIX *5800—MOCA. *5800—GNSS MEA.	CASANOVA, VA VORTAC	*6500
CASANOVA, VA VORTAC *2300—MOCA.	FLUKY, VA FIX	*3000
§ 95.6328 VOR Federal Airway V328 is Amended To Read in Part		
SNAKY, WY FIX *10000—GNSS MEA	CELIA, CO FIX	*12000

From	To	MEA
CELIA, CO FIX	HAYDEN, CO VOR/DME	10000
§ 95.6345 VOR Federal Airway V345 is Amended To Read in Part		
#HAYWARD, WI VOR/DME *6000—MRA. *10000—MCA GRASS, WI FIX, SW BND. **3000—MOCA. **4000—GNSS MEA. #HAYWARD UNUSABLE BELOW 10000.	*GRASS, WI FIX	**10000
§ 95.6374 VOR Federal Airway V374 is Amended To Read in Part		
*GAYEL, NY FIX # *5500—MRA. **4300—MOCA. **GNSS MEA, GNSS REQUIRED. #BINGHAMTON R–129 UNUSABLE. GNSS REQUIRED.	BINGHAMTON, NY VORTAC	**6000
§ 95.6375 VOR Federal Airway V375 is Amended To Read in Part		
*HANEY, VA FIX *7000—MRA.	FLUKY, VA FIX	2600
§ 95.6519 VOR Federal Airway V519 is Amended To Read in Part		
GLADE SPRING, VA VOR/DME *13000—MRA.	*TELOC, VA FIX	6900
*TELOC, VA FIX *13000—MRA.	BLUEFIELD, WV VORTAC	6100
§ 95.6440 Alaska VOR Federal Airway V440 is Amended To Read in Part		
U.S. CANADIAN BORDER *4200—MOCA. *8000—GNSS MEA.	LATCH, AK FIX	*12000
LATCH, AK FIX	BIORKA ISLAND, AK VORTAC.	
	NW BND	4500
	SW BND	12000
§ 95.6488 Alaska VOR Federal Airway V488 is Amended To Read in Part		
TANANA, AK VOR/DME	*REEBA, AK FIX.	
	E BND	**7000
	W BND	**4000
*7000—MRA. **4000—MOCA.		
*REEBA, AK FIX *7000—MRA. **5000—MOCA.	GOLLY, AK FIX	**7000
GOLLY, AK FIX *4700—MCA FAIRBANKS, AK VORTAC, W BND.	*FAIRBANKS, AK VORTAC	5000
§ 95.6531 Alaska VOR Federal Airway V531 is Amended To Read in Part		
*FAIRBANKS, AK VORTAC *4700—MCA FAIRBANKS, AK VORTAC, W BND.	GOLLY, AK FIX	5000

From	To	MEA	MAA
§ 95.7001 JET ROUTES **§ 95.7095 Jet Route J95 is Amended To Read in Part**			
DEER PARK, NY VOR/DME	GAYEL, NY FIX	18000	45000
GAYEL, NY FIX *GNSS MEA, GNSS REQUIRED. #BINGHAMTON R–129 UNUSABLE. GNSS REQUIRED.	#BINGHAMTON, NY VORTAC	*18000	45000

Airway Segment		Changeover Points	
From	To	Distance	From
§ 95.8003 VOR Federal Airway Changeover Points V7 is Amended to Modify Changeover Point			
SEMINOLE, FL VORTAC	WIREGRASS, AL VORTAC	53	SEMINOLE
ALASKA V440 is Amended to Modify Changeover Point			
SANDSPIT, VORTAC	BIORKA ISLAND, AK VORTAC	119	SANDSPIT
ALASKA V488 is Amended to Modify Changeover Point			
TANANA, AK VOR/DME	FAIRBANKS, AK VORTAC	40	TANANA
§ 95.8005 Jet Routes Changeover Points J501 is Amended to Add Changeover Point			
SANDSPIT, VORTAC	BIORKA ISLAND, AK VORTAC	99	SANDSPIT

[FR Doc. 2010–27654 Filed 11–1–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2010–0813]

RIN 1625–AA08

Special Local Regulations for Marine Events; Wrightsville Channel, Wrightsville Beach, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations for the swim portions of "Beach 2 Battleship Full and Half Iron Distance Triathlon," to be held on the waters adjacent to Wrightsville Beach, North Carolina. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic on Banks, Motts, and Wrightsville Channels during the swimming portion of this event.

DATES: This rule is effective from 7 a.m. until 11 a.m. on November 13, 2010.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2010–0813 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0813 in the "Keyword" box, and then clicking "Search." This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail BOSN3 Joseph M. Edge, Coast Guard Sector North Carolina, Atlantic Beach, NC; telephone (252) 247–4525, e-mail *Joseph.M.Edge@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On September 15, 2010, we published a Notice of proposed rulemaking (NPRM) entitled Special Local Regulations for Marine Events, Wrightsville Channel; Wrightsville Beach, NC in the **Federal Register** (75 FR 56024). We received no comments on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date would be contrary to public interest, since immediate action is needed to ensure the public's safety. In addition, delaying the effective date is unnecessary. The purpose of a delayed effective date is to give the public time to prepare for compliance with the final rule. Because the final rule has not changed from the proposed rule the public is already aware of the rule in its final form, and additional delay to accommodate compliance is unnecessary.

Basis and Purpose

On November 13, 2010, the Wilmington YMCA will sponsor the "Beach 2 Battleship Full and Half Iron Distance Triathlon" on the waters of Banks, Motts and Wrightsville Channels adjacent to Wrightsville Beach, North Carolina. The swim portion of the event will consist of two groups of 750 swimmers entering Banks Channel southwest of the Coast Guard Station and swimming northeast along Wrightsville Channel and Motts Channel to Seapath Marina. A fleet of spectator vessels are expected to gather near the event site to view the competition. To provide for the safety of the participants, spectators and other transiting vessel, the Coast Guard will temporarily restrict vessel traffic in the event area during this event.

Discussion of Comments and Changes

The Coast Guard did not receive comments in response to the Notice of proposed rulemaking (NPRM) published in the **Federal Register**. Accordingly, the Coast Guard is establishing temporary special local regulations on specified waters of Banks Channel including the waters of Wrightsville Channel adjacent to Wrightsville Beach, North Carolina.

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.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs

and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

Although this regulation prevents traffic from transiting a portion of Banks, Motts, and Wrightsville Channels during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect. Extensive advance notification will be made to the maritime community via marine information broadcast, area newspapers, local radio and television stations so mariners can adjust their plans accordingly. Additionally, the regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level of safety deemed necessary. Vessel traffic will be able to transit the regulated area between races, when the Coast Guard Patrol Commander deems it is safe to do so.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

The rule will affect the following entities, some of which may be small entities: The owners of operators of vessels intending to transit this section of Banks, Motts and Wrightsville Channel, from 7 a.m. to 11 a.m. on November 13, 2010.

This rule will not have a significant economic impact on substantial number of small entities for the following reasons. Although the regulated area will apply to Banks, Motts and Wrightsville Channels, traffic may be allowed to pass through the regulated area with the permission of the Coast Guard Patrol Commander. In the case where the Patrol Commander authorizes passage through the regulated area, vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the swim course. The Patrol Commander will allow non-participating vessels to transit the event area after all swimmers are safely clear of navigation channels and vessel traffic areas. Before the enforcement period, the Coast Guard will issue maritime advisories so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), in the NPRM we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

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.

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).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

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.

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.

Protection of Children

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

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.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order 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.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling

procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

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 that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded under figure 2–1, paragraph (34)(h), of the Instruction. This rule involves implementation of regulations in 33 CFR Part 100 that apply to organized marine events on the navigable waters of the United States that may have potential for negative impact on the safety or other interest of waterway users and shore side activities in the event area. The category of water activities includes but is not limited to sail boat regattas, boat parades, power boat racing, swimming events, crew racing, and sail board racing.

Under figure 2–1, paragraph (34)(h), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 100

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

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

PART 100—REGATTAS AND MARINE PARADES

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

Authority: 33 U.S.C. 1233.

■ 2. Add a temporary § 100.35–T05–0813 to read as follows:

§ 100.35–T05–0813 Wrightsville Channel, Wrightsville Beach, NC.

(a) *Regulated area.* The regulated area is established for the waters of Banks, Motts and Wrightsville Channels, adjacent to Wrightsville Beach, NC, from the southern tip of Wrightsville Beach approximate position latitude 34°11′15″ N, longitude 077°48′51″ W, thence northeast to Seapath Marina, Wrightsville Beach, NC. Approximate position latitude 34°11′45″ N, longitude 077°48′27″ W. All coordinates reference Datum NAD 1983.

(b) *Definitions.* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector North Carolina.

(2) *Official Patrol* means any person or vessel assigned or approved by Commander, Coast Guard Sector North Carolina with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Participant* includes all swimmers and support vessels participating in the "Beach 2 Battleship Full and Half Iron Distance Triathlon" under the auspices of the marine event permit issued to the event sponsor and approved by Commander, Coast Guard Sector North Carolina.

(c) *Special local regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander. No person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area must:

(i) Stop the vessel immediately when directed to do so by any Official Patrol and then proceed only as directed.

(ii) All persons and vessels shall comply with the instructions of the Official Patrol.

(iii) When authorized to transit the regulated area, all vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the swim course.

(d) *Enforcement Period.* This section will be enforced from 7 a.m. to 11 a.m. on November 13, 2010.

Dated: October 15, 2010.

A. Popiel,

Captain, U.S. Coast Guard, Captain of the Port North Carolina.

[FR Doc. 2010–27590 Filed 11–1–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[USCG–2010–0693]

RIN 1625–AA11

Regulated Navigation Area; Greenville Bridge Demolition, Lower Mississippi River Mile 531.3, AR, MS

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule.

SUMMARY: The Coast Guard is establishing a regulated navigation area (RNA) for all waters of the Lower Mississippi River beginning at mile 528 and ending at mile 535 extending the entire width of the waterway in Arkansas and Mississippi. Vessels will not be permitted to be in this area at certain times during the demolition of the Greenville Bridge, Lower Mississippi River Mile 531.3. Additionally, vessels will not be allowed to meet or pass in the RNA and must proceed at a minimum safe speed. This RNA is needed to protect personnel and vessels from the potential safety hazards during the demolition of the Greenville Bridge, Lower Mississippi River Mile 531.3.

DATES: This rule is effective in the CFR from November 2, 2010 through November 1, 2012. This rule is enforceable with actual notice for the purposes of enforcement from October 22, 2010 through November 1, 2012.

ADDRESSES: You may submit comments identified by docket number USCG–2010–0693 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" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0693 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0693 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary

rule, call or e-mail Chief Warrant Officer David Bear, Sector Lower Mississippi River Waterways Management Branch, Coast Guard; telephone 866–777–2784, e-mail: *David.M.Bear@USCG.MIL.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation

You are welcome 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.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2010–0693), 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 (via *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 via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand delivery, 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 e-mail 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 "Proposed Rule" and insert "USCG–2010–0693" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change this rule based on your comments.

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,* click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–XXXX–XXXX" and click "Search." Click the "Open Docket Folder" in the "Actions" column. 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. We have an agreement with the Department of Transportation to use the Docket Management Facility.

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).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four 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**.

Regulatory Information

The Coast Guard is issuing this temporary interim rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it would be impracticable and contrary to the public interest due to the amount of notification received by the Coast Guard and the contractually imposed demolition timeline. The new Greenville Bridge was completed and opened to traffic July 28, 2010 about a year behind schedule. The Coast Guard received notice of the demolition plan and required timeline for the old bridge in late July 2010 and promptly completed its required review and approval of the plan by mid August 2010, leaving insufficient time to complete the NPRM process before the initial demolition start date. Delaying or rescheduling the demolition is impracticable because the Mississippi Department of Transportation contract requires complete removal by early June 2011 and the delayed new bridge completion has already caused demolition delays. Therefore, sufficient time to publish a NPRM is not available and immediate action is needed to protect the personnel, vessels and mariners associated with and/or present during the demolition process.

Under 5 U.S.C. 553(d)(3), based on the contractually imposed timeline and the notification received by the Coast Guard good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The demolition timeline presented to the USCG requires immediate action and a delayed effective date would be contrary to the public interest. Delaying or rescheduling the demolition to provide 30 days notice also is impracticable because the Mississippi Department of Transportation contract requires complete removal by early June 2011 and the delayed new bridge completion has already caused demolition delays. By making the rule effective immediately upon publication and enforceable with actual notice upon signature the required demolition of the old bridge structure can continue under the applicable contract and the personnel, vessels, and mariners associated with and/or present during demolition will be protected. We will accept public comments on this temporary interim rule and, if they indicate a need for modification of the rule, we will take further regulatory action.

Background and Purpose

The legal basis for this rulemaking is the Coast Guard's authority to establish regulated navigation areas, under 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; Public Law 107–295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1. A RNA is a water area within a defined boundary for which regulations for vessels navigating within the area have been established, to control vessel traffic in a place determined to have hazardous conditions. 33 CFR 165.10; U.S.C.G.

Commandant Instruction Manual M16704.3A, 1–6.

The purpose of this rule is to establish a RNA for all waters of the Lower Mississippi River beginning at mile 528 and ending at mile 535 extending the entire width of the waterway, to protect personnel and vessels, both transiting the waterway and conducting the work, from the potential safety hazards involved in the demolition of the Greenville Bridge, Lower Mississippi River Mile 531.3. Vessels will not be permitted to be in this area during certain phases of the demolition of the Greenville Bridge, Lower Mississippi River Mile 531.3. Due to the demolition, the waterway will have to be closed or partially restricted to traffic at certain times depending on how the demolition is proceeding.

The RNA will allow for the safe and orderly movements in and through the demolition area.

Discussion of Rule

During enforcement periods under this rule, all vessels are required to transit the RNA at the minimum safe speed and may be prohibited from transiting all waters of the Lower Mississippi River beginning at mile 528 and ending at mile 535 extending the entire width of the waterway. Enforcement periods include, but are not limited to:

(1) Any time structural parts of the bridge are being removed, dismantled or demolished, where a reasonable risk to passing vessels or personnel exists.

(2) Any time passing vessels pose a danger to the personnel and vessels conducting the demolition work.

(3) During the setting and use of explosives to demolish the bridge support piers.

(4) During the lowering of the middle 420 feet of main span to barges for transport to the Arkansas shore for dismantling. This will take approximately 24 hours and is currently scheduled for mid-November depending on how preparation work progresses.

Minimum safe speed will be required of all vessels transiting the area when lifting, positioning or surveying work is being conducted.

All vessels transiting the area must:

(1) Announce their intentions of entering the RNA;

(2) Avoid meeting or passing another vessel in the RNA;

(3) Not anchor, stop, remain or drift without power at anytime in the RNA; and

(4) Continually monitor VHF–FM channel 13 on their radio-telephone while operating in, near or approaching the RNA.

The RNA will remain in effect through November 1, 2012. Currently there is only one scheduled closure of the water way for a 24 hour period during the removal of the main span. And, for any closure that will last longer than 4 hours notice will be given a minimum of 7 days before the scheduled closure, unless an emergent situation exists. All other closures should be less than 2 hours, and only when necessary. Notice for closure lasting over 2 hours but less than 4 hours will be given at least 72 hours before the closure.

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.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. This rule is temporary and limited in nature regulating only during the actual demolition of the Greenville Bridge, Lower Mississippi River, Mile 531.3, creating no undue delay to vessel traffic in the area.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some which may be small entities: owners or operators or vessels intending to transit the Lower Mississippi River from mile 528 to mile 535 during the demolition periods. This rule will not have a significant economic impact on those entities or a substantial number of any small entities for the following reasons. This rule will only be in effect through November 1, 2012. The Coast Guard will issue maritime advisories widely available to the users of the river at least 72 hours before to the closure of the waterway for any extended period (2 hours or more). Vessels will be able to transit the waterway during the vast majority of the demolition period.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

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.

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).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

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 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

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.

Protection of Children

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

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.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order 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.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

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 (32)(a), of the Instruction. This rule involves the final stages of a bridge replacement on essentially the same alignment or location. The new structure has been completed and opened to the public. This RNA is being established to help facilitate the safe removal of the old structure. Under figure 2–1, paragraph (32)(a), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. A new temporary § 165.T10–0693 is added to read as follows:

§ 165.T10–0693 Regulated Navigation Area; Greenville Bridge Demolition, Lower Mississippi River, Mile 531.3.

(a) *Regulated Navigation Area.* The following is a regulated navigation area (RNA): All waters of the Lower Mississippi River beginning at mile 528 and ending at mile 535 extending the entire width of the waterway.

(b) *Applicability.* This section applies to all vessels and craft operating on the waters of the Mississippi in or near the RNA or approaching the RNA with intentions of transiting the RNA.

(c) *Effective Dates.* This rule is effective in the CFR from November 2, 2010 through November 1, 2012. This rule is effective with actual notice for purposes of enforcement from October 22, 2010 through November 1, 2012.

(d) *Definitions.* As used in this section:

COTP means Captain of the Port, Lower Mississippi River;

Closure means any time this RNA is enforced and normal traffic is halted from proceeding in or through the RNA due to operations that could pose potential safety hazards involved in the demolition of the Greenville Bridge;

Demolition means the removal, staging or preparation thereof, of any part of the old Greenville Bridge, Lower Mississippi River, Mile 531.3;

Designated representative includes any commissioned, warrant, or petty officer of the U.S. Coast Guard designated by the COTP Lower Mississippi to authorize entry into the RNA;

Downbound means the vessel is traveling with the current;

Site representative means the person so designated by the demolition contractor (Granite Construction Company) or the bridge owner (Mississippi Department of Transportation) whose responsibility it is to inform vessels in the vicinity of the demolition work of any possible hazards or encroachments to the waterway;

Upbound means the vessel is traveling against the current; and

Vessel or craft means any waterborne manmade object designed to convey people or goods.

(e) *Regulations.* During closure, in accordance with the general regulations in § 165.23 of this part:

(1) Entry into this zone by vessels or mariners is prohibited unless authorized by the COTP Lower Mississippi River or a designated representative. They may be contacted on VHF–FM channel 16 or by telephone at (866) 777–2784;

(2) All persons and vessels shall comply with the instructions of the COTP Lower Mississippi River and designated representatives;

(3) Minimum safe speed will be required of all vessels transiting the RNA;

(4) Vessels shall not meet or pass in the RNA;

(5) No vessel shall anchor, stop, remain or drift without power at any time in the RNA;

(6) All vessels shall continually monitor VHF–FM channel 13 on their radio-telephone while operating in, near, or approaching the RNA;

(7) Before entering the RNA, downbound vessels shall make a broadcast in the blind on VHF–FM channel 13 announcing their estimated time of arrival at the upriver start of the RNA at mile 535 to ensure that there are no upbound vessels within the RNA and in sufficient time that:

(i) If there are vessels in the RNA the downbound vessel shall adjust its speed so as to avoid a meeting situation in the RNA.

(ii) If the RNA is temporarily closed to vessel traffic the downbound vessel can take all way off and hold station or push in upriver of mile 535.

(iii) The site representative can pass any pertinent information that would aid the vessel in the safe transit of the demolition site. If the Commander, Eighth Coast Guard District determines that hazardous conditions exist, a towboat (tug) shall be provided by the contractor or bridge owner to assist vessels through the bridge on demand; and

(8) Before entering the RNA, upbound vessels shall make a broadcast in the blind on VHF–FM channel 13 announcing their estimated time of arrival at the downriver start of the RNA at mile 528 to ensure that there are no downbound vessels within the RNA and in sufficient time that:

(i) If there are vessels in the RNA the upbound vessel shall adjust its speed so as to avoid a meeting situation in the RNA.

(ii) If the RNA is temporarily closed to vessel traffic the upbound vessel can take all way off and hold station or push in downriver of mile 528.

(iii) The site representative can pass any pertinent information that would aid the vessel in the safe transit of the demolition site. If the Commander, Eighth Coast Guard District determines that hazardous conditions exist, a towboat (tug) shall be provided by the contractor or bridge owner to assist vessels through the bridge on demand.

(f) *Informational Broadcasts.* The Captain of the Port, Lower Mississippi River will inform the public as soon as practical when closures are expected via Broadcast Notice to Mariners. Notice for any closure that will last longer than 4 hours will be given a minimum of 7 days before the scheduled closure, unless an emergent situation exists. Notice for any closure that will last longer than 2 hours but less than 4 hours will be given at least 72 hours before the closure. Broadcast Notice to Mariners will be broadcast every two hours while the RNA is closed to traffic. Additionally, a schedule of known closures will be published in the Eighth District Local Notice to Mariners and at *http://homeport.uscg.mil.* Select "LOWER MISSISSIPPI RIVER (MEMPHIS)" under the Port Directory tab. The schedule will appear under the Notice to Mariners subcategory.

Dated: October 22, 2010.

Peter Troedsson,

Captain, U.S. Coast Guard, Acting Commander, Eighth Coast Guard District.

[FR Doc. 2010–27587 Filed 11–1–10; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–R09–OAR–2010–0718; FRL–9219–7]

Determinations of Attainment by the Applicable Attainment Date for the Hayden, Nogales, Paul Spur/Douglas PM_{10} Nonattainment Areas, Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA has determined that the Hayden, Nogales, and Paul Spur/Douglas nonattainment areas in Arizona attained the National Ambient Air Quality Standard (NAAQS) for particulate matter with an aerodynamic diameter of less than or equal to a nominal ten micrometers (PM_{10}) by the applicable attainment date of December 31, 1994. On the basis of this determination, EPA concludes that these three "moderate" nonattainment areas are not subject to reclassification by operation of law to "serious." Lastly, on the basis of a review of more recent ambient monitoring data, EPA has determined that the Hayden, Nogales, and Paul Spur/Douglas nonattainment areas are not currently attaining the PM_{10} standard.

DATES: This action is effective on January 3, 2011 without further notice, unless EPA receives adverse comment by December 2, 2010. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2010–0718, by one of the following methods:

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

2. *E-mail: tax.wienke@epa.gov.*

3. *Mail or deliver:* Wienke Tax, Air Planning Office, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Wienke Tax at *telephone number:* (415) 947–4192; *e-mail address: tax.wienke@epa.gov,* or the above EPA, Region IX address.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever "we", "us" or "our" are used, we mean EPA. Information is organized as follows:

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I. Background

A. PM_{10} NAAQS

The NAAQS are levels for certain ambient air pollutants set by EPA to protect public health and welfare. PM_{10}, or particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers, is among the ambient air pollutants for which EPA has established health-based standards. On July 1, 1987 (52 FR 24634), EPA promulgated two primary standards for PM_{10}: A 24-hour standard of 150 micrograms per cubic meter (μg/m³) and an annual PM_{10} standard of 50 μg/m³. EPA also promulgated secondary PM_{10} standards that were identical to the primary standards.

Effective December 18, 2006, EPA revoked the annual PM_{10} standard but retained the 24-hour PM_{10} standard. 71 FR 61144 (October 17, 2006). The 24-hour PM_{10} standard is attained when the expected number of days per calendar year with a 24-hour concentration in excess of the standard (referred to herein as "exceedance"), as determined in accordance with 40 CFR part 50, appendix K, is equal to or less than one.[1] *See* 40 CFR 50.6 and 40 CFR part 50, appendix K.

B. Designation and Classification of PM_{10} Nonattainment Areas

Areas meeting the requirements of section 107(d)(4)(B) of the Clean Air Act (CAA or "Act") were designated nonattainment for PM_{10} by operation of law and classified "moderate" upon enactment of the 1990 Clean Air Act Amendments. These areas included all former Group I PM_{10} planning areas identified in 52 FR 29383 (August 7, 1987), as further clarified in 55 FR 45799 (October 31, 1990), and any other areas violating the NAAQS for PM_{10} prior to January 1, 1989. A **Federal Register** notice announcing the areas designated nonattainment for PM_{10} upon enactment of the 1990 Amendments, known as "initial" PM_{10} nonattainment areas, was published on March 15, 1991 (56 FR 11101) and a subsequent **Federal Register** document correcting the description of some of these areas was published on August 8, 1991 (56 FR 37654).

As former "group I" areas, the Hayden/Miami[2] and Paul Spur/Douglas[3] areas were included in the list of initial moderate PM_{10} nonattainment areas. Nogales, a former "Group II" area, was included in the initial list of moderate PM_{10} nonattainment areas based on monitored violations of the PM_{10} NAAQS prior to January 1, 1989.[4] Later in 1991, we codified the PM_{10} nonattainment designations and moderate area classifications in 40 CFR part 81. See 56 FR 56694 (November 6, 1991). For "moderate" nonattainment areas such as the three Arizona areas that are the subject of this document, CAA section 188(c) of the 1990 Amended Act establishes an attainment date of December 31, 1994. The designations, classifications, and boundaries of these three Arizona nonattainment areas are codified at 40 CFR 81.303.

C. How does EPA make attainment determinations?

Section 188(b)(2) of the Act requires EPA to determine within six months of the applicable attainment date whether, based on air quality data, PM_{10} nonattainment areas attained the PM_{10} NAAQS by that date. Generally, EPA determines whether an area's air quality is meeting the PM_{10} NAAQS based upon complete (minimum of 75 percent of scheduled PM_{10} samples recorded), quality-assured data gathered at established state and local air monitoring stations (SLAMS) and national air monitoring stations (NAMS) in the nonattainment area and entered into the EPA Air Quality System (AQS) database. Data from air monitors operated by State/local/tribal agencies in compliance with EPA monitoring requirements must be submitted to AQS. EPA relies primarily on data in AQS when determining the attainment status of an area. See 40 CFR 50.6; 40 CFR part 50, appendix J; 40 CFR part 53; 40 CFR part 58, appendix A. EPA will also consider air quality data from other air monitoring stations in the nonattainment area provided that the stations meet the Federal monitoring requirements for SLAMS, including the quality assurance and quality control criteria in 40 CFR part 58, appendix A. 40 CFR 58.14 (2006) and 58.20 (2007);[5] 71 FR 61236, 61242 (October 17, 2006). All valid data are reviewed to determine the area's air quality status in accordance with 40 CFR part 50, appendix K.

Attainment of the 24-hour PM_{10} standard is determined by calculating the expected number of exceedances of the standard in a year. The 24-hour PM_{10} standard is attained when the expected number of exceedances averaged over a three-year period is less than or equal to one at each monitoring site within the nonattainment area. Generally, three consecutive years of air quality data are required to show attainment of the 24-hour PM_{10}

[1] An exceedance is defined as a daily value that is above the level of the 24-hour standard (150 μg/m³) after rounding to the nearest 10 μg/m³ (*i.e.,* values ending in 5 or greater are to be rounded up). Thus, a recorded value of 154 μg/m³ would not be an exceedance since it would be rounded to 150 μg/m³ whereas a recorded value of 155 μg/m³ would be an exceedance since it would be rounded to 160 μg/m³. *See* 40 CFR part 50, appendix K, section 1.0.

[2] On March 28, 2007, EPA approved a request by the State of Arizona to split the Hayden/Miami PM_{10} nonattainment area into two separate PM_{10} nonattainment areas. *See* 72 FR 14422 (March 28, 2007). In our March 28, 2007 direct final rule, we also determined that the Miami PM_{10} nonattainment area had attained the PM_{10} NAAQS. In today's action, we have determined that the Hayden PM_{10} nonattainment area attained the PM_{10} NAAQS by the applicable attainment date. The Hayden planning area straddles Gila and Pinal counties at the confluence of the Gila and San Pedro rivers in east central Arizona. The nonattainment area covers roughly 700 miles of mountainous terrain. Cities and towns within this area include Kearney (population roughly 2,800), Hayden (population roughly 800), and Winkelman (population roughly 400).

[3] The Paul Spur/Douglas planning area covers approximately 220 square miles along the border with Mexico within Cochise County. Cities and towns within this area include Douglas (population roughly 20,000) and Pirtleville (population roughly 1,500). The population of Agua Prieta, Mexico, which lies just across the border from Douglas is roughly 70,000.

[4] The Nogales planning area covers approximately 70 square miles along the border with Mexico within Santa Cruz County. The only significant population center in this area is the city of Nogales with a population of roughly 21,000. The population of Nogales, Mexico, which lies just across the border from Nogales, Arizona is roughly 160,000.

[5] EPA promulgated amendments to the ambient air monitoring regulations in 40 CFR parts 53 and 58 on October 17, 2006. *See* 71 FR 61236. The requirements for Special Purpose Monitors were revised and moved from 40 CFR 58.14 to 40 CFR 58.20.

standard. See 40 CFR part 50 and appendix K.[6]

To demonstrate attainment of the 24-hour PM_{10} standard at a monitoring site, the monitor must provide sufficient data to perform the required calculations in 40 CFR part 50, appendix K. The amount of data required varies with the sampling frequency, data capture rate and the number of years of record. In all cases, three years of representative monitoring data that meet the 75 percent criterion of the previous paragraph should be utilized, if available, and would suffice. More than three years may be considered, if all additional representative years of data meeting the 75 percent criterion are utilized. Data not meeting these criteria may also suffice to show attainment; however, such exceptions must be approved by the appropriate Regional Administrator in accordance with EPA guidance. *See* 40 CFR part 50, appendix K, section 2.3.

D. What PM_{10} planning has occurred for the Hayden, Nogales, and Paul Spur/Douglas PM_{10} Nonattainment Areas?

Along with the new designations, classifications, and attainment dates, the CAA as amended in 1990 also established new planning requirements. All initial moderate PM_{10} nonattainment areas had the same applicable attainment date of December 31, 1994. States containing initial moderate PM_{10} nonattainment areas were required to develop and submit to EPA by November 15, 1991, a state implementation plan (SIP) revision providing for implementation of reasonably available control measures (RACM) for the control of PM_{10}, and either a demonstration that the plan would provide for attainment by the applicable attainment date (December 31, 1994) or a demonstration that attainment by such date was impracticable. *See* CAA section 189(a).

1. Hayden PM_{10} Nonattainment Area

By November 15, 1991, States were required to submit SIP revisions addressing certain CAA requirements for initial PM_{10} nonattainment areas. The State of Arizona relied upon a SIP revision ("Final PM_{10} State Implementation Plan for the Hayden Group I Area," September 1989) (herein referred to as the "1989 Hayden PM_{10} Plan") that it had submitted on October 16, 1989 to meet the requirements of the CAA as amended in 1990 for the Hayden/Miami moderate PM_{10} nonattainment area. *See* letter from Edward Z. Fox, Director, Arizona Department of Environmental Quality (ADEQ), to Daniel W. McGovern, Regional Administrator, EPA Region IX, dated February 3, 1992. The inventory in the 1989 Hayden PM_{10} Plan identifies the ASARCO copper smelter and related sources, such as the smelter stack, copper ore tailings, ore crushing, the slag dump, road dust, smelter building fugitives, and copper ore, as the principal sources of PM_{10} emissions in the Hayden portion of the Hayden/Miami PM_{10} nonattainment area.

In 1994, we proposed a limited approval and limited disapproval of the 1989 Hayden PM_{10} Plan. *See* 59 FR 36116 (July 15, 1994). In our 1994 proposed action, we identified deficiencies in the 1989 Hayden PM_{10} Plan including the failure of the plan to address the Miami portion of the Hayden/Miami PM_{10} nonattainment area and the failure to meet the general monitoring requirements for the entire nonattainment area. (As noted above in footnote 2, we have since approved ADEQ's request to split the Hayden and Miami portions of the area into separate PM_{10} nonattainment areas.) We have not finalized our 1994 proposed limited approval/limited disapproval or otherwise taken action on the 1989 Hayden PM_{10} Plan.

2. Nogales PM_{10} Nonattainment Area

Arizona did not submit the required moderate PM_{10} plan by the November 15, 1991 deadline for the Nogales nonattainment area, and on December 16, 1991, we made a finding of failure to submit the moderate PM_{10} plan for Nogales. *See* letter from Daniel W. McGovern, Regional Administrator, EPA Region IX, to Fife Symington, Governor of Arizona, dated December 16, 1991. *See* 57 FR 19906 (May 8, 1992). In response, on June 14, 1993, ADEQ submitted the "Final State Implementation Plan for the Nogales PM_{10} Nonattainment Area," June 1993 (herein referred to as the "1993 Nogales PM_{10} Plan"), to EPA as a SIP revision. We found the plan to be complete and notified the State of our finding by letter dated November 30, 1993.

The 1993 Nogales PM_{10} Plan identifies emissions sources located in Mexico as the principal sources affecting ambient PM_{10} concentrations in the area, and includes an analysis which concludes that the plan would be adequate to attain the PM_{10} NAAQS but for emissions emanating from outside the United States. Section 179B ("International Border Areas") of the CAA provides EPA with the authority to approve such a demonstration. We have not taken action to approve or disapprove the 1993 Nogales PM_{10} Plan.

3. Paul Spur/Douglas PM_{10} Nonattainment Area

Similar to the situation in Hayden, the State of Arizona relied upon a SIP revision ("Final PM_{10} State Implementation Plan for the Paul Spur Group I Area," July 1990) (herein referred to as the "1990 Paul Spur PM_{10} Plan") that it had submitted prior to the CAA Amendments of 1990 (in this instance, June 25, 1990) to meet the requirements of the CAA as amended in 1990 for the Paul Spur portion of the Paul Spur/Douglas moderate PM_{10} nonattainment area. *See* letter from Edward Z. Fox, Director, ADEQ, to Daniel W. McGovern, Regional Administrator, EPA Region IX, dated February 3, 1992. The 1990 Paul Spur PM_{10} Plan identifies the lime plant located at Paul Spur as the only significant source of emissions in the immediate vicinity and includes control measures for this source of emissions.

ADEQ did not submit the required plan for the Douglas portion of the Paul Spur/Douglas nonattainment area by the November 15, 1991 deadline, and thus, on December 16, 1991, we made a finding of failure to submit a moderate PM_{10} plan for Douglas portion of Paul Spur/Douglas PM_{10} nonattainment area. See letter from Daniel W. McGovern, Regional Administrator, EPA Region IX, to Fife Symington, Governor of Arizona, dated December 16, 1991. See 57 FR 19906 (May 8, 1992). In response, on June 17, 1993, ADEQ submitted the "Final State Implementation Plan for the Douglas PM_{10} Nonattainment Area," April 1993 (herein referred to as the "1993 Douglas PM_{10} Plan"), to EPA as a SIP revision. We found the plan to be complete by letter dated November 30, 1993. Similar to the Nogales plan, the 1993 Douglas PM_{10} plan identifies emissions sources located in Mexico as the principal sources of emissions affecting ambient PM_{10} concentrations in the area, and includes an analysis which concludes that the plan would be adequate to attain the PM_{10} NAAQS but for emissions emanating from outside the United States.

A decade later, and based on a number of years of ambient data showing that the standard had been attained, ADEQ withdrew the 1993 Douglas PM_{10} Plan. *See* letter from Stephen A. Owens, Director, ADEQ, to Wayne Nastri, Regional Administrator, EPA Region IX, dated December 22, 2004. Recently, ADEQ revoked the 2004 withdrawal of the 1993 Douglas PM_{10} Plan; thus, once again, the plan is subject to EPA approval or disapproval

[6] Because the annual PM_{10} standard was revoked effective December 18, 2006, *see* 71 FR 61144 (October 17, 2006), this document discusses only attainment of the 24-hour PM_{10} standard.

action as a revision to the Arizona SIP. *See* letter from Benjamin H. Grumbles, Director, ADEQ, to Jared Blumenfeld, Regional Administrator, EPA Region IX, dated September 13, 2010. We have not taken action to approve or disapprove either the 1990 Paul Spur PM_{10} Plan or the 1993 Douglas PM_{10} Plan.

II. EPA's Analysis

A. What does the air quality data show as of the December 31, 1994 attainment date?

ADEQ is responsible for monitoring ambient air quality outside the metropolitan areas in Arizona. ADEQ submits monitoring network plan reports to EPA on an annual basis. These reports discuss the status of the air monitoring network, as required under 40 CFR part 58. Beginning in 2007, EPA reviews these annual plans for compliance with the applicable reporting requirements in 40 CFR 58.10. With respect to PM_{10}, we have found that ADEQ's annual network plans meet the applicable requirements under 40 CFR part 58. *See* EPA letters to ADEQ concerning ADEQ's annual network plan reports for years 2007, 2008, and 2009 that have been placed in the docket for this rulemaking. Furthermore, we concluded in our *Technical System Audit Report* (September 2010) for ADEQ's ambient air quality monitoring program (a copy of which has been placed in the docket) that ADEQ's ambient air monitoring network currently meets or exceeds the requirements for the minimum number of monitoring sites designated as SLAMS for all of the criteria pollutants, and that all of the monitoring sites are properly located with respect to monitoring objectives, spatial scales and other siting criteria.

1. Hayden PM_{10} Nonattainment Area

ADEQ has operated a PM_{10} monitor at the Old Town Jail site, which is near the center of the Town of Hayden, for many years, including the period 1992 through 1994. The Old Town Jail monitoring site is part of the ADEQ's SLAMS network and is located roughly one-half mile west of the ASARCO smelter. During the 1992–1994 period, ADEQ used a filter-based method (low-volume dichotomous monitor) to monitor ambient PM_{10} concentrations, sampling PM_{10} concentrations every sixth day. The Old Town Jail monitor was sited to provide PM_{10} concentration data at a neighborhood scale [7] for the purpose of determining source impacts from ASARCO operations. Table 1 below summarizes the PM_{10} concentration data collected at the Old Town Jail site over the 1992–1994 period.

TABLE 1—SUMMARY OF PM_{10} MONITORING DATA, HAYDEN NONATTAINMENT AREA, 1992–1994 [a]

Monitoring site	Highest 24-hour PM_{10} concentration (μg/m³)			Expected exceedances per year
	1992	1993	1994	1992–1994
Hayden Old Jail	85	68	67	0.0

PM_{10} NAAQS = 150 μg/m³.

[a] *Source:* AQS QuickLook report dated June 23, 2010.

As noted above, to be considered "complete," valid measurements must be made for 75% of all the scheduled sampling dates in each quarter of the year, and generally, three years of representative monitoring data that meet the 75 percent criterion should be utilized, where available.

During the 1992–1994 period, the data collected by ADEQ meets the completeness criterion for all quarters except for the fourth quarter of year 1994, when the number of valid samples was one short of constituting a complete quarter. EPA may find that data not meeting the completeness criterion suffice to show attainment. *See* 40 CFR part 50, appendix K, section 2.3(b). Relevant considerations that we take into account when evaluating whether data not meeting the completeness criterion would suffice include, but are not limited to, monitoring site closures/moves, monitoring diligence, consistency and levels of the valid concentration measurements that are available, and nearby concentrations. *See, e.g.,* considerations taken into account for analogous circumstances involving evaluating of ambient lead (Pb) concentrations at 40 CFR part 50, appendix F, section 4(d).

In this instance, we find that data that is available is sufficient to determine whether the area attained the standard by the applicable attainment date. First, we note the large extent to which the maximum monitored levels during the 1992–1994 period (67 to 85 μg/m³—*see* table 1 above) fall below the applicable standard (150 μg/m³). We also note that 11 of the 12 quarters in question were complete (based on the 75% criterion), and that the one quarter that did not meet the criterion was but one sample short. Further, we have reviewed the monitoring data for year 1995, which is comprised of four quarters of data meeting the completeness criterion, and during which the maximum 24-hour concentration was, at 108 μg/m³, well below the standard, providing further evidence that the area attained by the applicable attainment date.

Based on our rationale presented above, we find the available data sufficient to determine whether the Hayden nonattainment area met the PM_{10} standard by December 31, 1994 (*i.e.,* the applicable attainment date), and based on our review of the air quality data during the three-year period ending with the December 31, 1994 attainment date (and summarized above in table 1), we find that the expected number of exceedances per year for the Hayden PM_{10} nonattainment area for 1992 to 1994 was 0 days per year. With less than an annual expected exceedance rate for the 24-hour PM_{10} NAAQS of 1.0, these data represent attainment of the standard. Therefore, EPA has determined that the Hayden PM_{10} nonattainment area attained the PM_{10} NAAQS by the applicable attainment date.

2. Nogales PM_{10} Nonattainment Area

ADEQ has operated a PM_{10} monitor at the Nogales Post Office site (300 North Morley Avenue) for many years, including the period 1992 through 1994. The Nogales Post Office monitoring site is part of the ADEQ's SLAMS network

[7] In this context, "neighborhood scale" refers to conditions throughout some reasonably homogeneous urban sub-region with dimensions of a few kilometers. *See* 40 CFR part 58, appendix D, section 4.6.

and is located roughly 0.4 mile north of the border with Mexico. During year 1994, ADEQ also collected a total of 120 samples of 24-hour-average ambient PM_{10} concentrations at three additional locations in Nogales, all of which were located north of the Post Office Site.

During the 1992–1994 period, ADEQ used a filter-based method (low-volume dichotomous monitor) to monitor ambient PM_{10} concentrations in the Nogales area. At the Nogales Post Office site, the sampling schedule was every sixth day. The Nogales Post Office monitor was sited to provide PM_{10} concentration data at a neighborhood scale for the purpose of determining population exposure. Table 2 below summarizes the PM_{10} concentration data collected in the Nogales area over the 1992–1994 period.

TABLE 2—SUMMARY OF PM_{10} MONITORING DATA, NOGALES NONATTAINMENT AREA, 1992–1994[a]

Monitoring site	Highest 24-hour PM_{10} concentration (μg/m³)	Expected exceedances per year		
		1992	1993	1992–1994
Nogales Post Office	153	119	116	0.0
885 North Carrillo Place	.....	.....	52	.....
156 West Mariposa Road	.....	.....	59	.....
1852 North Mastick Way	.....	.....	83	.....

PM_{10} NAAQS = 150 μg/m³. The 153 μg/m³ concentration measured in 1992 does not represent an exceedance due to rounding conventions. *See* footnote 1 of this document for a description of the rounding conventions. Measurements at the North Carrillo, West Mariposa, and North Mastick sites were not collected in 1992 or 1993.

[a] *Source:* AQS QuickLook report dated June 23, 2010.

As noted above, to be considered "complete," valid measurements must be made for 75% of all the scheduled sampling dates in each quarter of the year, and generally, three years of representative monitoring data that meet the 75 percent criterion should be utilized, where available.

During the 1992–1994 period, 150 samples were collected at the Nogales Post Office site out of a total of 183 scheduled sample days. However, on a quarter-by-quarter basis, a number of quarters (one in 1992, three in 1993, and 1 in 1994) failed to meet the 75% completeness criterion. For three of the quarters that failed to meet the 75% criterion, the criterion was missed by a single sample day, and for the two other quarters that failed to meet the 75% criterion, the criterion was missed by two sample days. In summary, a substantial amount of data was collected during the quarters that failed to meet the 75% criterion, but not enough to meet the test. As noted above for the Hayden area, EPA may find that data not meeting the completeness criterion suffice to show attainment. *See* 40 CFR part 50, appendix K, section 2.3(b).

Like Hayden, again, we find that data is available and sufficient to determine whether the Nogales area attained the standard by the applicable attainment date. First, despite a number of quarters that did not meet the 75% criterion, we note that a substantial amount of data was collected; and, other than two samples taken in year 1992 (1st high of 153 μg/m³ and 2nd high of 147 μg/m³), the ambient concentrations that were collected were consistently well below the 150 μg/m³ standard. Second, we take note of the supplemental ambient PM_{10} monitoring data collected by ADEQ during 1994 showing ambient concentrations at sites north of the Post Office site well below the 150 μg/m³ standard (the maximum was 83 μg/m³—*see* table 2, above). Lastly, we have reviewed the monitoring data for year 1995, which is comprised of 53 samples out of a total number of scheduled sample days of 61, and during which the maximum 24-hour concentration was, at 123 μg/m³, well below the standard, providing further evidence that the area attained by the applicable attainment date.

Based on our rationale presented above, we find the available data sufficient to determine whether the Nogales nonattainment area met the PM_{10} standard by December 31, 1994 (*i.e.,* the applicable attainment date), and based on our review of the air quality data during the three-year period ending with the December 31, 1994 attainment date (and summarized above in table 2), we find that the expected number of exceedances per year for the Nogales PM_{10} nonattainment area for 1992 to 1994 was 0 days per year. With less than an annual expected exceedance rate for the 24-hour PM_{10} NAAQS of 1.0, these data represent attainment of the standard. Therefore, EPA has determined that the Nogales PM_{10} nonattainment area attained the PM_{10} NAAQS by the applicable attainment date.

3. Paul Spur/Douglas PM_{10} Nonattainment Area

ADEQ has operated PM_{10} monitors near the lime plant at Paul Spur ("Paul Spur monitor") and within the City of Douglas ("Douglas monitor") for many years, including the period 1992 through 1994. Both sites are part of the ADEQ's SLAMS network. The Paul Spur monitor is located near the intersection of Paul Spur Road and State Route 80. During the 1992–1994 period, the Douglas monitor was located at 15th Street Park, approximately one mile north of the border with Mexico. In 1998, ADEQ re-located the Douglas monitor to its current location, the Red Cross building just across from the park on 15th Street.

During the 1992–1994 period, ADEQ used a filter-based method (low-volume dichotomous monitor) to monitor ambient PM_{10} concentrations at both the Paul Spur and Douglas sites, sampling PM_{10} concentrations every sixth day. The Paul Spur monitor was sited to provide PM_{10} concentration data at a middle scale[8] for the purpose of determining source impacts from the chemical lime plant. The Douglas monitor was sited to provide PM_{10} concentration data at a neighborhood scale for the purpose of determining population exposure. Table 3 below summarizes the PM_{10} concentration data collected at the Paul Spur and Douglas monitors over the 1992–1994 period.

[8] In this context, "middle scale" refers to conditions characteristic of areas from 100 meters to several kilometers. *See* 40 CFR part 58, appendix D, section 4.6.

TABLE 3—SUMMARY OF PM_{10} MONITORING DATA, PAUL SPUR/DOUGLAS NONATTAINMENT AREA, 1992–1994 [a]

Monitoring site	Highest 24-hour PM_{10} concentration (μg/m3)			Expected exceedances per year
	1992	1993	1994	1992–1994
Paul Spur Chemical Lime Plant	132	69	77	0.0
Douglas (15th Street Park)	138	66	96	0.0

PM_{10} NAAQS = 150 μg/m³.

[a] *Source:* AQS QuickLook report dated June 23, 2010.

As noted above, to be considered "complete," valid measurements must be made for 75% of all the scheduled sampling dates in each quarter of the year, and generally, three years of representative monitoring data that meet the 75 percent criterion should be utilized, where available.

During the 1992–1994 period, the data collected by ADEQ meets the completeness criterion for all quarters at both the Paul Spur and Douglas monitors except for the second quarter of year 1992 at the Paul Spur monitor and the fourth quarter of year 1992 at both monitors. During the second quarter of 1992, the Paul Spur monitor was two samples short of the 75% criterion, and in the fourth quarter of 1992, both monitors were one sample short of the criterion. As noted for Hayden and Nogales, EPA may find that data not meeting the completeness criterion suffice to show attainment. *See* 40 CFR part 50, appendix K, section 2.3(b).

In this instance, we find that the available data is sufficient to determine whether the area attained the standard by the applicable attainment date. First, we note the large extent to which the maximum monitored levels during the 1992–1994 period (132 μg/m³ at the Paul Spur monitor and 138 μg/m³ at the Douglas monitor—see table 3 above) fall below the applicable standard (150 μg/m³). We also note that 10 of the 12 quarters in question were complete (based on the 75% criterion) at the Paul Spur monitor and 11 of the 12 quarters in question were complete at the Douglas monitor, and that the quarters that did not meet the criterion were but one or two samples short. Further, we have reviewed the monitoring data for year 1995, which is comprised of three quarters of data meeting the completeness criterion at the Paul Spur monitor and four quarters of data meeting the completeness criterion at the Douglas site, and during which the maximum 24-hour concentration was, at 77 μg/m³, (Paul Spur) and 63 μg/m³ (Douglas), well below the standard, providing further evidence that the area attained by the applicable attainment date.

Based on our rationale presented above, we find the available data sufficient to determine whether the Paul Spur/Douglas nonattainment area met the PM_{10} standard by December 31, 1994 (*i.e.,* the applicable attainment date), and based on our review of the air quality data during the three-year period ending with the December 31, 1994 attainment date (and summarized above in table 3), we find that the expected number of exceedances per year for the Paul Spur/Douglas PM_{10} nonattainment area for 1992 to 1994 was 0 days per year. With less than an annual expected exceedance rate for the 24-hour PM_{10} NAAQS of 1.0, these data represent attainment of the standard. Therefore, EPA has determined that the Paul Spur/Douglas PM_{10} nonattainment area attained the PM_{10} NAAQS by the applicable attainment date.

B. Does more recent air quality data also show attainment?

1. Hayden PM_{10} Nonattainment Area

Since 1994, ADEQ has continued to operate a PM_{10} monitor at the Old Town Jail in Hayden. ADEQ has, however, changed monitoring methods, and, for a while, operated a second monitor for precision measurement (audit) purposes. Since the second quarter of 2009, ADEQ has operated a single TEOM (*i.e.,* tapered element oscillating microbalance) monitor on a continuous-running basis at the Old Town Jail site in Hayden. In addition, since 2003, the Pinal County Air Quality Control District (AQCD) has operated a PM_{10} hi-volume sampler on an every sixth day schedule along the Florence-Kelvin Highway near Riverside, Arizona, in the western portion of the Hayden PM_{10} nonattainment area ("Riverside monitor").

While not all years since 1994 have complete data (based on the 75% criterion), only one exceedance (158 μg/m³ in 1997) at the Hayden site was monitored until year 2006, when ADEQ added the TEOM working in parallel with the one-day-in-six partisol sampler at the Old Town Jail site. In 2006 and 2007, four and five exceedances were measured by the TEOM, respectively. ADEQ did not operate the TEOM in 2008, and in 2009, ADEQ resumed operation of the TEOM beginning in the second quarter. Only one exceedance (225 μg/m³) was measured by the TEOM over the final three quarters of 2009. Meanwhile, ADEQ continued operating the partisol sampler over the 2006–2008 period but discontinued the sampler after the end of the first quarter of 2009. At the Riverside monitor, Pinal County AQCD has measured no exceedances of the PM_{10} standard, and maximum 24-hour PM_{10} concentrations measured there are well below the standard.

During the most recent three-year calendar period (2007–2009), at the Hayden monitoring site, neither the partisol sampler nor the TEOM provide a complete data set for the purpose of determining whether the area is currently attaining the standard. The partisol sampler provides data for 9 of the 12 quarters, while the TEOM provides data for 7 of the 12 quarters. Based on the partisol sampler, this incomplete data set suggests that the area is currently attaining the standard because no exceedances were measured. The samples collected using the TEOM, however, suggest otherwise, with a total of six exceedances over the discontinuous course of its operation. Based on the TEOM, six exceedances over the course of this period of time is sufficient for us to conclude that the Hayden PM_{10} nonattainment area is not currently attaining the standard. In 2010, through the first two quarters, the TEOM has not recorded any exceedances; if this trend continues, then, next year, based on 2008–2010 data, the current attainment status of the Hayden area may change once again.

2. Nogales PM_{10} Nonattainment Area

Since 1994, ADEQ has continued to operate a PM_{10} monitoring site at the Post Office in Nogales, but has replaced the dichot sampler with a partisol sampler, and has added a continuous-

running beta attenuation monitor (BAM).

The data from AQS indicates that, while the area attained the standard by the applicable attainment date, ambient PM_{10} concentrations worsened in the late 1990's to the point where exceedances under current conditions have been measured nearly every year. Based on the past three calendar years (2007–2009) of complete quality-assured data, we find that the annual expected exceedance rate for the 24-hour PM_{10} NAAQS for the Nogales area is 9.7 (based on the BAM). Based on the partisol sampler, the annual expected exceedance rate for the 24-hour PM_{10} NAAQS of 4.2, but the higher of the two samplers is used to determine whether the area is attaining the standard. Because the annual expected exceedance rate for the area (9.7) is greater than 1.0, we conclude that the area is not currently attaining the PM_{10} standard.

EPA's determination that the Nogales area is not currently attaining the PM_{10} standard does not result in reclassification of this "moderate" area to "serious" by operation of law because such reclassification is tied to air quality conditions "as of the attainment date," (*see* CAA sections 179(c)(1) and 188(b)(2)), and, as discussed in section II.A.2 of this document, we have concluded that the Nogales area attained the standard by the attainment date. We do, however, plan to address the PM_{10} planning needs for the Nogales area over the next few years. We also note that the Nogales planning area has been designated as nonattainment for the 2006 24-hour NAAQS for fine particles (generally referring to particles less than or equal to 2.5 micrometers in diameter, $PM_{2.5}$) (74 FR 58688, November 13, 2009), which has triggered a separate air quality planning process.

3. Paul Spur/Douglas PM_{10} Nonattainment Area

Since 1994, ADEQ has continued to operate PM_{10} monitoring sites near the Paul Spur Chemical Lime Plant ("Paul Spur monitor") and in the City of Douglas ("Douglas monitor"). At the Paul Spur monitoring site, ADEQ replaced the dichot sampler with a partisol sampler, and added a second partisol sampler for precision measurement purposes. Both monitors continue to run on a one-day-in-six monitoring schedule. At the Douglas monitoring site, ADEQ replaced the dichot sampler with a partisol sampler and, in 1998, re-located the monitor to a nearby location, the Red Cross building just across from the park on 15th Street, where it continues to operate today.

The data from AQS indicates that only two exceedances of the PM_{10} standard have been measured in the Paul Spur/Douglas nonattainment area over the past 15 years. Both were measured at the Paul Spur monitoring site. One exceedance, 206 $\mu g/m^3$, was measured in 2003 and the other (159 $\mu g/m^3$) was measured in 2008.[9] Based on the past three calendar years (2007–2009) of complete quality-assured data, we find that the annual expected exceedance rate for the 24-hour PM_{10} NAAQS for the Paul Spur/Douglas area is 2.0 (which is calculated by taking into account the one-day-in-six monitoring schedule).[10] Because the annual expected exceedance rate for the area (2.0) is greater than 1.0, we conclude that the area is not currently attaining the PM_{10} standard.

EPA's determination that the Paul Spur/Douglas area is not currently attaining the PM_{10} standard does not result in reclassification of this "moderate" area to "serious" by operation of law because such reclassification is tied to air quality conditions "as of the attainment date," (see CAA sections 179(c)(1) and 188(b)(2)), and, as discussed in section II.A.3 of this document, we have concluded that the Paul Spur/Douglas area attained the standard by the attainment date. We do, however, plan to address the PM_{10} planning needs for the Paul Spur/Douglas area over the next few years.

III. EPA's Final Action

Under section 188(b)(2) of the Clean Air Act, and based on sufficient, quality-assured data, we find that the Hayden, Nogales, and Paul Spur/Douglas PM_{10} nonattainment areas attained the 24-hour PM_{10} NAAQS by the applicable attainment date, December 31, 1994. On the basis of this determination, EPA concludes that these three "moderate" nonattainment areas are not subject to reclassification to "serious" by operation of law. This action is not a redesignation to attainment under CAA section 107(d)(3) because we have not yet approved maintenance plans for these areas as meeting the requirements of section 175A of the CAA or determined that the areas have met the other CAA requirements for redesignation.

On the basis of a review of more recent ambient monitoring data, EPA has determined that the Hayden, Nogales, and Paul Spur/Douglas nonattainment areas are not currently attaining the PM_{10} standard. EPA's determination that the Hayden, Nogales, and Paul Spur/Douglas areas are not currently attaining the PM_{10} standard does not result in reclassification of these "moderate" areas to "serious" by operation of law because such reclassification is tied to air quality conditions "as of the attainment date," (*see* CAA sections 179(c)(1) and 188(b)(2)), and EPA has determined that both areas attained the standard by the applicable attainment date.

We are publishing this rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal should adverse comments be filed. This action will be effective January 3, 2011, without further notice unless the EPA receives relevant adverse comments by December 2, 2010.

If we receive such comments, then we will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. We will not institute a second comment period. Parties interested in commenting should so at this time. If no such comments are received, the public is advised that this rule will be effective on January 3, 2011 and no further action will be taken on the proposed rule.

IV. Statutory and Executive Order Reviews

This action merely makes a determination based on air quality data and does not impose any additional Federal requirements. 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.*);

[9] Both of these exceedances were flagged by ADEQ as exceptional events, but EPA has not concurred on the flags.

[10] The collocated (audit) monitor measured two exceedances during 2008, but on both sample-days, the primary monitor also took valid samples, and thus, the measurements from the co-located samplers are not used to report air quality from the site. *See* 40 CFR part 58, appendix A, section 3.2.5.

• 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 it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 3, 2011. 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Particulate matter, Wilderness areas.

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

Dated: October 25, 2010.

Jared Blumenfeld,

Regional Administrator, EPA Region IX.

[FR Doc. 2010–27634 Filed 11–1–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 74 and 78

[WT Docket No. 02–55, ET Docket No. 00–258 and 95–18; FCC 10–179]

Relocation Cost Sharing in the Broadcast Auxiliary Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document concludes the Commission's longstanding efforts to relocate the Broadcast Auxiliary Service (BAS) from the 1990–2110 MHz band to the 2025–2110 MHz band, freeing up 35 megahertz of spectrum in order to foster the development of new and innovative services. This decision addresses the outstanding matter of Sprint Nextel Corporation's (Sprint Nextel) inability to agree with Mobile Satellite Service (MSS) operators in the band on the sharing of the costs to relocate the BAS incumbents. To resolve this controversy, the Commission applies its time-honored relocation principles for emerging technologies previously adopted for the BAS band to the instant relocation process, where delays and unanticipated developments have left ambiguities and misconceptions among the relocating parties. In the process, the Commission balances the responsibilities for and benefits of relocating incumbent BAS operations among all the new entrants in the different services that will operate in the band.

DATES: Effective December 2, 2010.

FOR FURTHER INFORMATION CONTACT: Nicholas Oros, (202) 418–0636, Policy and Rules Division, Office of Engineering and Technology, *Nicholas.Oros@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Fifth Report and Order, Eleventh Report and Order, Sixth Report and Order, and Declaratory Ruling,* WT Docket No. 02–55, ET Docket No. 00–258 and 95–18, adopted September 29, 2010, and released September 29, 2010. The full text of this document is available on the Commission's Internet site at *www.fcc.gov.* It is also available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The full text of this document also may be purchased from the Commission's duplication contractor, Best Copy and Printing Inc., Portals II, 445 12th St., SW., Room CY–B402, Washington, DC 20554; telephone (202) 488–5300; fax (202) 488–5563; e-mail *FCC@BCPIWEB.COM.*

Summary of the Fifth Report and Order, Eleventh Report and Order, Sixth Report and Order, and Declaratory Ruling

1. This Report and Order and Declaratory Ruling concludes the Commission's longstanding efforts to relocate the Broadcast Auxiliary Service (BAS) from the 1990–2110 MHz band to the 2025–2110 MHz band, freeing up 35 megahertz of spectrum in order to foster the development of new and innovative services that can provide mobile broadband and nationwide communications capabilities. This decision in particular addresses the outstanding matter of Sprint Nextel Corporation's (Sprint Nextel) inability to agree with Mobile Satellite Service (MSS) operators in the band on the sharing of the costs to relocate the BAS incumbents. To date, Sprint has shouldered the entire cost of this relocation, which was completed on July 15, 2010.

2. To resolve this important issue, the Commission applied its time-honored relocation principles for emerging technologies previously adopted for the BAS band to the instant relocation process, where delays and unanticipated developments have left ambiguities and misconceptions among the relocating parties. These principles have been a fundamental part of the Commission's past efforts to unlock value and promote investment through the relocation process. In the end, the

Commission balanced the responsibilities for and benefits of relocating incumbent BAS operations among all the new entrants in the different services that will operate in the band.

3. The Commission has sought to relocate BAS licensees to a more spectrally efficient band plan and make spectrum available for other uses, while fairly distributing the relocation costs among the new users. Because the path leading to this Fifth Report and Order, Eleventh Report and Order, Sixth Report and Order, and Declaratory Ruling (Report and Order and Declaratory Ruling) has been especially complex, the Commission summarized the history of this proceeding to the extent relevant to the decisions it was making; see paragraphs 4 through 12 of the Report and Order and Declaratory Ruling. In the Declaratory Ruling the Commission addresses a number of disputes that have arisen in this proceeding involving requirements that were established when the current BAS relocation scheme was adopted in 2004; see paragraphs 15 through 44 of the Report and Order and Declaratory Ruling.

Discussion

4. The Report and Order and Declaratory Ruling addresses disputes regarding sharing the cost of relocating the 2 GHz BAS incumbents. The Commission concludes that the best course of action is to clarify and modify the cost sharing requirements to address the ambiguity or lack of definition in the current requirements to correspond to the stated purposes and structure of the cost sharing principles set forth in the *Commission decision which established Sprint Nextel's entry into the band, the 800 MHz R&O (69 FR 67823),* as well as to balance the responsibilities for and benefits of relocating incumbent BAS operations among all the new entrants in the band in a way that is consistent with the Commission's relocation policies set forth in the *Emerging Technologies* proceeding. One of the important underlying principles of the relocation policy is that licensees that ultimately benefit from the spectrum cleared by the first entrant shall bear the cost of reimbursing the first entrant for the accrual of that benefit. The Commission noted its concern that were it to stray from the traditional application of the *Emerging Technologies* relocation policy, future licensees might be unwilling or unable to assume the burden and cost of clearing spectrum quickly if they were unsure of the likelihood that they will be reimbursed by other new entrants.

Termination Date of the Cost Sharing Obligations

5. As explained in the Declaratory Ruling adopted along with this Report and Order, the MSS and AWS entrants have an obligation to reimburse Sprint Nextel for a portion of the costs of relocating the BAS incumbents if they enter the band prior to either the end of two future events connected to adoption of the *800 MHz R&O:* the 800 MHz reconfiguration or the 800 MHz true-up. Because the timing of either of these events is presently unknown, the new entrants are in a state of uncertainty as to their financial obligation. The Commission believes that all of the parties will be served by adopting a date certain for extinguishing cost-sharing obligations—the band sunset date of December 9, 2013. This will harmonize the relocation requirements for the BAS band with the relocation rules for other bands that were based on the *Emerging Technologies* principles. The MSS entrants argue that the cost sharing requirements for this band have departed from the *Emerging Technologies* principles in a number of ways and argue that the Commission should not follow the principles in regard to their cost sharing obligations. While the Commission has made departures from the *Emerging Technologies* procedures, those limited departures were made because of the unique features of the BAS transition. However, where circumstances do not require some deviation from *Emerging Technologies,* the Commission shall adhere closely to these time-tested principles to balance the interest of incumbent licensees, new entrants who relocate incumbents, and new entrants who benefit from the band clearing. In this case, because the main reason for allowing early termination of the new entrants' cost-sharing obligation no longer applies—*i.e.* Sprint Nextel will probably not be taking credit for all of its BAS relocation costs against the anti-windfall payment that is described in the *800 MHz R&O*—there is no compelling reason to end the cost sharing obligation of the new entrants any earlier than the band sunset date. Consequently, any new entrant that enters the band before December 9, 2013 will be required to reimburse the entrant who relocated BAS incumbents a *pro rata* share of the relocation costs, subject to the limitations discussed in the Report and Order.

6. The Commission left in place the current band sunset date of December 9, 2013, despite the request by Sprint Nextel to adjust the date until 2015. The sunset date is a vital component of the *Emerging Technologies* policies because, among other things, it specifies the date upon which unrelocated incumbents become secondary and it provides a length of time for incumbent licensees to transition from the band. Because the BAS relocation has been completed, there is no need to change the sunset date to 2015. While Sprint Nextel is correct that AWS licensees may not enter the band by the current sunset date, the Commission's goal in choosing the sunset date is not to provide the entrant who relocates incumbents with a greater likelihood of receiving cost sharing from later entrants. When Sprint Nextel undertook the responsibility to relocate the BAS incumbents as a result of the *800 MHz R&O,* it knew the timing of the band sunset and the uncertainties of the entrance of AWS licensees.

Definition of "Enter the Band"

7. The "enter the band" terminology was used in the *800 MHz R&O* and *AWS Sixth R&O* to denote when the new entrants would incur an obligation to reimburse Sprint Nextel for a *pro rata* share of the cost of relocating the BAS incumbents, but neither order defined the term.

8. The Commission concludes that an MSS entrant will "enter the band" and therefore incur a cost sharing obligation when the MSS entrant certifies that its satellite is operational for purposes of meeting its operational milestone. In previous *Emerging Technologies* band clearings, the later entrant becomes responsible for reimbursing the earlier entrants' relocation cost when the later entrant is in the position to cause interference to the incumbent licensees prior to their relocation. The Commission previously determined that it does not believe in general that the MSS entrants may operate without causing interference to the BAS incumbents. Consequently, once the MSS satellites are operational, they would have the potential for causing interference to the incumbent BAS operations. As with the tests used in previous band clearings, the definition adopted here is easy to apply and not subject to contention. Also, the test is in keeping with the nature of the BAS service.

9. The AWS entrants require a different definition of "enter the band." The Commission concludes that an AWS entrant will "enter the band" on a license-by-license basis on the date that the grant of each long-form application becomes a final action. This requirement has the advantage of ease of administration, and conforms to the overall *Emerging Technologies* policies.

Once the AWS entrant's long form application has been granted, signifying the issuance of a license, the AWS entrant will be in the position to roll out service and benefit from Sprint's relocation of the BAS incumbents. Sprint Nextel's right to seek reimbursement from an AWS licensee that enters the band prior to the sunset date is limited to an AWS licensee's proportional share of the costs incurred in the BAS clearance, on a *pro rata* basis according to the amount of spectrum that each licensee is assigned in the 1990–2025 MHz band. The Commission intends to adopt specific cost sharing rules for AWS in the 1995–2000 MHz and 2020–2025 MHz bands when it adopts service rules which define the licensing scheme for these bands.

Limitations on MSS Cost Sharing Obligations

10. In the *800 MHz R&O,* the costs for which the MSS entrants had to reimburse Sprint Nextel were limited to a *pro rata* share of relocating the top 30 markets and fixed BAS links because these were the BAS incumbents that the MSS entrants had to relocate before they could begin operations. The Commission concludes that even with the changed circumstances surrounding the BAS relocation, the most appropriate course is to retain the current cost sharing obligations for MSS entrants. Although the Commission recognizes that the parties have conflicting interests at stake, this requirement was clearly established from the outset and the Commission declines to reverse it now, where all parties involved have been aware of their respective rights and obligations and presumably structured their activities accordingly.

11. TerreStar, one of the MSS entrants, claims that equitable factors argue for limiting the MSS entrants' reimbursement obligation to the expenses Sprint Nextel incurred before September 7, 2007 because if Sprint Nextel had completed the BAS relocation by the end of the BAS 30-month relocation period there would have been no relocation expenses incurred after this date. The Commission is not persuaded that equitable factors support allowing TerreStar or DBSD (the other MSS entrant) to escape paying a *pro rata* share of the BAS relocation costs. The MSS entrants have suffered little harm from the delays in the BAS relocation, and the Commission has taken steps to minimize the impact that delays in the transition would have on DBSD and TerreStar's plans to begin operations. It concludes that there is no reason to reduce their cost sharing obligations further.

12. The Commission rejects DBSD's suggestion that the amount that the MSS entrants owe for BAS relocation be depreciated from when Sprint Nextel signed frequency relocation agreements with the BAS incumbents. The Commission also rejects DBSD's suggestion that cost caps be applied to the BAS relocation costs. Finally, the Commission will not limit Sprint Nextel's ability to seek reimbursement from MSS entrants to only those expenses it cannot receive credit against the 800 MHz anti-windfall payment, as suggested by TerreStar.

Payment Issues

13. In the Report and Order the Commission adopts a policy affirming the tentative conclusion made in the *June 2009 Further Notice* that Sprint Nextel may not both receive credit in the 800 MHz true-up and receive reimbursement from the MSS and AWS entrants for the same costs. This has been the rule since the cost sharing requirements were adopted in the *800 MHz R&O,* and is necessary to prevent Sprint Nextel from receiving the unjustified windfall of a double recovery, and no party has objected to this conclusion. If the true-up occurs prior to Sprint Nextel receiving reimbursement from another entrant, the Commission will require Sprint Nextel to inform the other entrant of the expenses for which it has received credit in the 800 MHz true-up prior to receiving reimbursement. The other entrant will not be obligated to reimburse Sprint Nextel for what would otherwise be its share of those particular expenses.

14. The principle that Sprint Nextel is not entitled to make a double recovery also applies to reimbursements it receives from among the new entrants. Multiple new entrants may have an interest in the same portion of the relocated BAS spectrum because, for example, entrants change business structure or assign their licenses. Accordingly, the Commission specifies that Sprint Nextel is not entitled to obtain reimbursement from a new entrant for relocation costs that Sprint Nextel has already received from another new entrant. Thus, if a new entrant assigns its license to a third party after the new entrant has reimbursed Sprint Nextel, the Commission would reject a claim that the assignee is responsible for reimbursing Sprint Nextel for that same relocation expense. The converse also holds: An assignee would be considered a new entrant and is responsible for unpaid cost sharing associated with a particular portion of the spectrum. However, to the extent that a new entrant seeks to assign its license to a third party prior to satisfying its reimbursement obligation, the assignor and assignee would be jointly and severally liable for the reimbursement costs until paid.

15. As for when Sprint Nextel should be reimbursed by the other new entrants for its BAS relocation cost, the Commission does not adopt either of the proposals on which it sought comment on the *June 2009 Further Notice.* The Commission concludes that the reimbursement deadline for a new MSS or AWS entrant will be based on when the new entrant has "entered the band." Once the new entrant has entered the band, but no later than the sunset date, Sprint Nextel may provide the new entrant with the required documentation and request payment. The new entrant will then have thirty days to submit its reimbursement to Sprint Nextel, unless, the parties agree to different terms (such as an installment plan). This approach avoids complexities of administering separate deadlines for each market and provides certainty to the parties.

16. The Commission will not require, nor will it object if parties agree to, an installment payment plan for BAS relocation reimbursement. The Commission encourages the parties interested in making installment payments to use the 30-day payment window to negotiate an appropriate installment payment plan. If no installment plan is agreed upon, a new entrant must pay the full cost sharing amount in one payment at the reimbursement deadline.

17. The Commission sees no reason to link the payment of new entrants' cost sharing obligations to the true-up as the MSS entrants have suggested. The Commission does not think it would be prudent to introduce the uncertainty associated with the true-up date to the payment date of the BAS cost sharing, especially given that it has prohibited Sprint Nextel from both claiming credit for BAS relocation costs against the anti-windfall payment and receiving cost sharing payments from new entrants for the same costs.

18. As the Commission proposed in the *June 2009 Further Notice,* it will require that Sprint Nextel share with any other entrant from whom it seeks reimbursement its relocation cost as documented in its annual audit as provided to the transition administrator, copies of third-party audited statements of expenses associated with the BAS relocation, and copies of the relevant

frequency relocation agreements. As discussed, the new entrant will have 30 days, unless other terms are agreed upon, to make its reimbursement payment after Sprint Nextel has provided this documentation.

19. The MSS entrants have requested the ability to examine and contest individual expenses while Sprint Nextel has expressed concern that the MSS entrants are merely trying to delay or limit their cost sharing obligations. With regard to disputes that may arise with either MSS entrants or future AWS entrants, we note that parties have several options to resolve disputes that may arise including mediation, arbitration, or pursuing civil remedies in the court system. Parties contesting a specific cost sharing obligation shall provide evidentiary support to demonstrate that their calculation is reasonable and made in good faith; specifically, they are expected to exercise due diligence to obtain the information necessary to prepare an independent estimate of the relocation costs in question.

20. The Commission did not adopt the proposal in the *June 2009 Further Notice* to allow Sprint Nextel to recover relocation costs associated with all 20 megahertz of MSS spectrum from a single MSS entrant. In reaching the decision, we observe that under the Commission's *Emerging Technologies* policies the amount that the earlier entrant could recover has always been based on the amount of the later entrant's spectrum that the earlier entrant has cleared. The Commission concludes that it should not depart from these traditional *Emerging Technologies* policies.

21. As to future AWS entrants, the Commission adopted rules consistent with the tentative conclusion the Commission made in the *June 2009 Further Notice* that the future AWS licensees that enter the band prior to the sunset date will be responsible for reimbursing Sprint Nextel for relocating the BAS incumbents, less any BAS relocation costs for which Sprint Nextel had received credit against the anti-windfall payment. This conclusion is consistent with past actions in this proceeding and with the traditional *Emerging Technologies* policies. However, as the Commission noted in the *June 2009 Further Notice,* determining how to apportion the relocation cost among the future AWS licensees will have to wait until the licensing scheme for the AWS licensees is adopted. The Commission intends to adopt specific cost sharing rules, consistent with this Order, to govern the cost-sharing process between Sprint Nextel and AWS entrants in the 1995–2000 MHz and the 2020–2025 MHz bands, when the Commission adopted service rules which defined the licensing scheme for these bands.

22. The Commission will adopt no specific policies or procedures as to how it should proceed if later new entrants fail to reimburse an earlier entrant for the cost of relocating BAS incumbents as required. Instead, it will address complaints regarding failure to make required payments that are filed before the Commission through our existing enforcement mechanisms.

The Automatic Stay of Section 362 of the Bankruptcy Code

23. DBSD filed a petition to stay the rulemaking proposed in the *June 2009 Further Notice* on the grounds that the rulemaking must be automatically stayed under section 362(a) of the Bankruptcy Code, 11 U.S.C. 362(a). The Commission finds DBSD's arguments misplaced, and denies its petition for stay.

24. The automatic stay of the Bankruptcy Code, 11 U.S.C. 362(a), essentially bars actions against the debtor to recover a pre-petition claim against the bankruptcy estate or to obtain possession or exercise control over property of the estate. The regulatory exception to the automatic stay, 11 U.S.C. 362(b)(4), excepts from the automatic stay actions taken pursuant to a government unit's or organization's police or regulatory powers, including enforcement of a judgment other than a money judgment.

25. The *June 2009 Further Notice,* which focused on clarifying the cost-sharing and reimbursement obligations set forth in prior Commission orders, was designed to further the Commission's long stated public policy goals of efficient management of the radio spectrum. The *June 2009 Further Notice,* therefore, falls squarely within the regulatory exception to the automatic stay. DBSD's arguments to the contrary are without merit. The declaratory ruling, which includes matters of Commission policy related to but not subject to the *June 2009 Further Notice,* likewise fits the regulatory exception: the Commission has no pecuniary interest in the outcome and is acting in the public interest for a public purpose.

26. Based on the legal standards, the Commission agrees with Sprint Nextel that the general rulemaking proceeding is not subject to the automatic stay merely because one of the parties to the rulemaking is a debtor in a bankruptcy case.

27. Nor is there any basis to exclude the DBSD debtors from the effects of this Report and Order and accompanying Declaratory Ruling merely because it may result in a financial impact on one or more of those parties. Moreover, under the well-established principles of the regulatory exception to the automatic stay, a regulatory body can implement its public policies, and even adopt orders directed at particular industry participants, without violating the automatic stay so long as the regulatory body does not seek to enforce a money judgment outside of the bankruptcy claims process.

28. The Commission rejects DBSD's contention that the regulatory exception does not apply because, according to DBSD, the *June 2009 Further Notice* will effectively adjudicate or resolve the reimbursement dispute between Sprint Nextel and DBSD. The express purpose of this Report and Order and accompanying Declaratory Ruling is to further the policy goals of promoting more efficient use of spectrum and permitting the introduction of new services. This Report and Order and accompanying Declaratory Ruling promotes the general regulatory policies of the Commission, but does not seek to determine the pecuniary interest of any individual debtor or creditor. The rulemaking and declaratory ruling apply to a variety of industry participants, not just to DBSD, and are applicable to all similarly situated entities. Moreover, the final result of this Report and Order and accompanying Declaratory Ruling is not a judgment for or against Sprint Nextel on its particular reimbursement claims. Now that the obligations are clarified, it is up to Sprint Nextel to pursue its claims. With respect to the DBSD bankruptcy, any proceedings by Sprint Nextel on a claim for monetary recovery against a debtor in the DBSD bankruptcy case is a matter for the Bankruptcy Court and is not addressed in this Report and Order and accompanying Declaratory Ruling. Thus, the Commission's rulemaking and issuance of a declaratory ruling have remained within the limits of the regulatory exception to the automatic stay.

29. In addition, the results of this Report and Order and Declaratory Ruling meet both the pecuniary purpose and public policy tests limiting the regulatory exception. With respect to the pecuniary purpose test, the Commission is acting solely in its regulatory capacity and has no creditor interest in the DBSD bankruptcy case or in the outcome of the Sprint Nextel-DBSD dispute. The Commission's actions here also meet the "public policy" test. The Commission's actions

are not designed to protect the claim of Sprint Nextel or any other creditor against the DBSD bankruptcy estates.

30. Although the Eastern District of Virginia has referred claims to the Commission for "resolution," the actions the Commission takes here are not an adjudication of the claims that Sprint Nextel, DBSD, and TerreStar have raised in that court proceeding. Instead, the Commission clarifies its relocation rules to assist the parties, as well as the court, in determining the responsibilities of each party in the ongoing BAS relocation.

Retroactivity

31. The question about cost sharing requirements in the Report and Order involves when the MSS entrants' obligation to share the costs of BAS relocation ends, not whether they are under such an obligation. In the Declaratory Ruling, the Commission explained that under the requirements set out in the *800 MHz Order,* the MSS operators incur a cost sharing obligation if they enter the band before the 800 MHz band reconfiguration or true-up process is complete. Once incurred, the operator's reimbursement obligation continues until discharged by payment or cut off by intervening events. Because the 800 MHz rebanding process has unfolded in unexpected ways, the precise timing and nature of the triggering events that would cut off these obligations was unspecified, and, under these circumstances, the exact dates that the MSS operators' ongoing payment obligations would terminate were not set.

32. To the extent the Commission's clarification of the triggering events for termination of the payment obligations constitutes a new or modified rule, it would be considered primarily retroactive only if it changed the past legal consequences of past actions. This clarification, however, has worked no change in the legal consequences (*i.e.,* incurrence of the reimbursement obligation) of the MSS operators' past actions (*i.e.,* entering the band). Moreover, the clarification does not change how the MSS operators would have been treated if the band reconfiguration had proceeded according to plan. Since it did not, however, the circumstances that would have relieved the MSS operators of their payment obligations did not come about, leaving them with these obligations intact and the manner of their termination (other than for payment) unspecified. In taking action now to establish a firm date in the future (December 9, 2013) that will cut off the MSS operators' cost sharing obligations, the Commission acts prospectively.

Paperwork Reduction Analysis

33. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Congressional Review Act

34. The Commission SHALL SEND a copy of this Fifth Report and Order, Eleventh Report and Order, Sixth Report and Order, and Declaratory Ruling in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission's Consumer and Governmental Affairs Bureau will send a copy of the Fifth Report and Order, Eleventh Report and Order, Sixth Report and Order, and Declaratory Ruling, including the FRFA, to the Chief Counsel for Advocacy of the SBA.

Final Regulatory Flexibility Analysis

35. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Further Notice of Proposed Rule Making* (*FNPRM*).[2] The Commission sought written public comment on the proposals in the *FNPRM,* including comment on the IRFA.[3] No commenting parties specifically addressed the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[4]

A. Need for, and Objectives of, the Rules

36. In this Fifth Report and Order, Eleventh Report and Order, and Sixth Report and Order and Declaratory Ruling (collectively, Report and Order), we modify and clarify the Commission's requirements for the new entrants to the 1990–2025 MHz band to share the cost of relocating the incumbent BAS licensees from that band. The BAS incumbents have been removed from the 1990–2025 MHz band to make way for Sprint Nextel, MSS entrants, and future AWS licensees. Sprint Nextel, who will occupy the 1990–1995 MHz spectrum, completed relocation of the BAS incumbents from the band on July 15, 2010. The MSS entrants (DBSD and TerreStar), who will occupy the 2000–2020 MHz spectrum, have both launched satellites. The AWS licenses for the 1995–2000 MHz and 2020–2025 MHz bands have not yet been issued.

37. The cost sharing requirements for the BAS relocation must be modified because circumstances surrounding the relocation have significantly changed since the requirements were adopted. When the current cost sharing requirements were adopted in 2004, Sprint Nextel was expected to have completed the BAS transition by September 7, 2007; one or both of the MSS entrants was expected to have entered the band and incurred a cost sharing obligation to Sprint; the reconfiguration of the 800 MHz band, which Sprint Nextel was also undertaking, would have been completed by June 26, 2008; and Sprint Nextel was expected to be able to receive credit for the BAS relocation costs not reimbursed by MSS and AWS licenses toward the value of spectrum it was receiving. None of these assumptions has in fact been correct. Furthermore, the current requirements have a number of ambiguities, such as not specifying a standard for determining how MSS and AWS licenses incur a cost sharing obligation to Sprint Nextel and not specifying when reimbursement of BAS relocation expenses is to occur.

38. The Report and Order concludes that Sprint Nextel may not both receive reimbursement for cost sharing from other new entrants and receive credit for the same relocation costs against the value of the spectrum it is receiving. The MSS and AWS entrants can incur a relocation obligation until the band relocation rules sunset on December 9, 2013. The Report and Order further concludes that an MSS entrant will incur an obligation to reimburse Sprint for BAS relocation costs when it certifies that its satellite is operational for purposes of meeting its operational milestone. As for AWS licensees, the Report and Order concludes that AWS entrants will incur a cost sharing obligation upon grant of their long form application for their licenses. The Report and Order decrees that Sprint Nextel may provide a new entrant with documentation of the relocation expenses for which reimbursement is

[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* Improving Public Safety Communications in the 800 MHz Band, WT Docket No. 02–55, ET Docket No. 00–258 and ET Docket No. 95–18, *Report and Order and Order and Further Notice of Proposed Rulemaking,* 24 FCC Rcd 7904 Appendix C (2009).

[3] *See Id.* at ¶ 1.

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

owed only after the new entrant has "entered the band" and therefore incurred a cost sharing obligation. The new entrant will then have thirty days to pay the amount owed Sprint Nextel, unless the parties agree to a different schedule.

39. In addition, the Report and Order concludes that the MSS entrants' reimbursement obligation to Sprint Nextel should continue to be limited to a *pro rata* share of the costs of relocating BAS in the thirty largest markets (by population) and all fixed BAS links. The Report and Order requires Sprint Nextel to share with other new entrants from whom it is seeking reimbursement, information about its relocation cost as documented in its annual external audit and as Sprint Nextel provides to the Transition Administrator of the 800 MHz transition, copies of frequency relocation agreements that it has with any BAS incumbent for which it is seeking cost sharing, and third-party audited statements of expenses associated with the BAS relocation.

B. Legal Basis

40. The action is taken pursuant to sections 4(i), 301, 303(c), 303(f), 303(g), 303(r), 303(y), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 301, 303(c), 303(f), 303(g), 303(r), 303(y), and 332.

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

41. 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, if adopted.[5] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[6] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[7] 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.[8]

42. The rule modifications will affect the interest of the new entrants to the 1990–2025 MHz band: MSS, Sprint Nextel, and future AWS entrants to the band.

43. *MSS.* There are two MSS operators in the 1990–2110 MHz band. These operators will provide services using the 2000–2020 MHz portion of the band. The SBA has developed a small business size for Satellite Telecommunications, which consist of all companies having annual revenues of less than $15 million.[9] Neither of the two MSS operators currently has revenues because, while they both have operational satellites, they are not providing commercial service. However, given that as of December 31, 2008, these MSS operators had assets of $1.341 billion and $664 million, respectively, we expect that both of these companies will have annual revenue of over $15 million once they are able to offer commercial services.[10] Consequently, we find that neither MSS operator is a small business. Small businesses often do not have the financial ability to become MSS system operators due to high implementation costs associated with launching and operating satellite systems and services.

44. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category.[11] Prior to that time, such firms were within the now-superseded categories of "Paging" and "Cellular and Other Wireless Telecommunications."[12] Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.[13] Because Census Bureau data are not yet available for the new category, we will estimate small business prevalence using the prior categories and associated data. For the category of Paging, data for 2002 show that there were 807 firms that operated for the entire year.[14] Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.[15] For the category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year.[16] Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.[17] Thus, we estimate that the majority of wireless firms are small.

45. *AWS.* The AWS licenses have not been issued and the Commission has no definite plans to issue these licenses. Presumably some of the businesses which will eventually obtain AWS licenses will be small businesses. However, we have no means to estimate how many of these licenses will be small businesses.

46. *Sprint Nextel.* Sprint Nextel as a new entrant to the band will occupy spectrum from 1990–1995 MHz. The Third Report and Order grants Sprint Nextel a waiver of the deadline by which it must relocate the BAS, CARS, and LTTS incumbents from the 1990–2025 MHz portion of the band. Sprint Nextel belongs to the SBA category, Wireless Telecommunications Carriers (except satellite).[18] Businesses in this category are considered small if they have fewer than 1,500 employees.[19] As of December 31, 2009 Sprint Nextel had about 40,000 employees.[20] Consequently, we find that Sprint Nextel is not a small business.

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

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

[7] 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to the RFA, 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**." 5 U.S.C. 601(3).

[8] Small Business Act, 15 U.S.C. 632 (1996).

[9] 13 CFR 121.201, NAICS Code 517410.

[10] TerreStar Corp., SEC Form 10–K 2008 Annual Report, filed March 12, 2009 at F–2; ICO Global Communications (Holdings) Limited, SEC Form 10–K 2008 Annual Report, filed March 31, 2009 at 52. ICO's subsidiary which controls its satellite covering the United States is currently in bankruptcy. ICO Global Communications (Holdings) Limited, Form 8–K, filed May 15, 2009.

[11] U.S. Census Bureau, 2007 NAICS Definitions, "517210 Wireless Telecommunications Categories (Except Satellite)"; *http://www.census.gov/naics/2007/def/ND517210.HTM#N517210.*

[12] U.S. Census Bureau, 2002 NAICS Definitions, "517211 Paging"; *http://www.census.gov/epcd/naics02/def/NDEF517.HTM.*; U.S. Census Bureau, 2002 NAICS Definitions, "517212 Cellular and Other Wireless Telecommunications"; *http://www.census.gov/epcd/naics02/def/NDEF517.HTM.*

[13] 13 CFR 121.201, NAICS code 517210 (2007 NAICS). The now-superseded, pre-2007 CFR citations were 13 CFR 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

[14] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization," Table 5, NAICS code 517211 (issued Nov. 2005)).

[15] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1,000 employees or more."

[16] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization," Table 5, NAICS code 517212 (issued Nov. 2005)).

[17] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1,000 employees or more."

[18] 13 CFR 121.201, NAICS Code 517210.

[19] *Id.*

[20] Sprint Nextel Corp., SEC Form 10–K 2009 Annual Report, filed Feb. 26, 2010 at 12.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

47. The Report and Order clarifies the existing obligation of new entrants to reimburse the party who relocates BAS incumbents for a portion of the relocation costs. It specifies that an AWS entrant incurs a cost sharing obligation upon grant of the long-form application for its license, and an MSS entrant incurs an obligation when it certifies that its satellite is operational for purposes of meeting its operational milestone. The reimbursement obligation continues until the December 9, 2013 band sunset date. The Report and Order also specifies when payment of relocation cost is due.

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

48. 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.[21]

49. Most of the decisions in the Report and Order address cost sharing obligations between the MSS entrants, future AWS entrants, and Sprint Nextel for relocating the BAS incumbents. Of these new entrants only the future AWS entrants may be small entities. Because no licensing scheme for the AWS spectrum has been determined, we are unable to determine how many (if any) of these future licensees may be small entities. It is also difficult to determine how the impact of the cost sharing rules on them may be reduced.

50. All of the new entrants benefit from the clarity that the Report and Order brings to the cost sharing rules. The new entrants can now be certain how they incur a cost sharing obligation, what expenses are eligible for cost sharing, when they must make payment, and when the obligation will end if they do not incur a cost sharing obligation (*i.e.* they do not enter the band by the sunset date). In this way the cost sharing requirements adopted in the Report and Order benefit those future AWS entrants who may be small entities.

51. Under the cost sharing rules, Sprint Nextel may receive cost sharing from the other new entrants to the band. One possible alternative to lessen the impact on new entrants who are small entities would be to reduce the amount that small entities are required to reimburse other entrants for the BAS relocation. This would in effect require Sprint Nextel to subsidize the small entities. This would be unfair because Sprint Nextel did not volunteer to subsidize the small entities, the small entities would likely be direct competitors of Sprint Nextel, and Sprint Nextel has spent a large sum of money on the BAS transition. Sprint Nextel is only receiving 5 megahertz of the 35 megahertz of spectrum and up to this point has shouldered the entire cost of the BAS transition. Not requiring the future AWS entrants who are small entities to pay their share of the relocation cost would also harm the Commission's future relocation policies. In the future licensees are not likely to volunteer to relocate incumbents if they are forced to subsidize other licensees.

52. Another alternative would be to let the small entities pay their cost sharing obligation on the installment plan.[22] Allowing use of installment payments would in effect make the party who relocated the incumbents a creditor of the small entity. This would be more costly for the party who relocated the incumbents because they will receive payment later. It would also subject the relocating party to increased risk of non-payment. There is also no record as to what specific installment plan could be adopted.

53. Because of these drawbacks, we do not believe either of these alternatives is appropriate. Furthermore, because no AWS licenses have been issued, no small entities currently have a cost sharing obligation for the BAS transition. When AWS licenses are issued at some future date, the potential licensees will know for certain that they face a cost sharing liability because of the refinement of the cost sharing rules adopted in this Report and Order.

F. Federal Rules That May Duplicate, Overlap or Conflict With the Rules

54. None.

Ordering Clauses

55. Pursuant to sections 4(i), 301, 303(c), 303(f), 303(g), 303(r), 303(y), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 301, 303(c), 303(f), 303(g), 303(r), 303(y), and 332, this Fifth Report and Order, Eleventh Report and Order, Sixth Report and Order *is adopted* and will become effective 30 days after publication in the **Federal Register.**

56. Pursuant to sections 4(i), 301, 303(c), 303(f), 303(g), 303(r), 303(y), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 301, 303(c), 303(f), 303(g), 303(r), 303(y), and 332, this Declaratory Ruling *is adopted* and was effective September 29, 2010.

57. The Petition for Stay filed by New DBSD Satellite Services G.P. *is denied.*

58. The Commission *shall send* a copy of this Fifth Report and Order, Eleventh Report and Order, Sixth Report and Order, and Declaratory Ruling in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2010–27577 Filed 11–1–10; 8:45 am]

BILLING CODE 6712–01–P

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

[22] We rejected requiring the MSS entrants to pay their obligation under an installment plan. *See* paragraph 16, *supra.*

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2010–0148]

RIN 2127–AK39

Federal Motor Vehicle Safety Standards; Head Restraints

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; technical amendments; response to petitions for reconsideration and petitions for rulemaking.

SUMMARY: This document responds to petitions for reconsideration of the agency's May 2007 final rule amending our head restraint standard, and to related petitions for rulemaking. This document also makes technical corrections. The May 2007 final rule was issued in response to petitions for reconsideration of our December 2004 final rule upgrading our head restraint standard. We are partially granting and partially denying the petitions for reconsideration.

DATES: *Effective Date:* This rule is effective January 3, 2011. *Petitions:* Petitions for reconsideration must be received by December 17, 2010.

ADDRESSES: Any petitions for reconsideration should refer to the docket number of this document and be submitted to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Docket Room W12–140, Washington, DC 20590.

The petition will be placed in the docket. Anyone is able to search the electronic form of all documents received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may contact Louis Molino of the Office of Rulemaking, Office of Crashworthiness Standards, Light Duty Vehicle Division, NVS–112, (Phone: 202–366–1740). For legal issues, you may contact Edward Glancy of the Office of Chief Counsel, NCC–112, (Phone: 202–366–2992). You may send mail to both of these officials at the National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

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I. Overview

This document responds to petitions for reconsideration of the agency's May 2007 final rule amending our head restraint standard, and to related petitions for rulemaking. This document also makes technical corrections.

The May 2007 final rule was issued in response to petitions for reconsideration of our December 2004 final rule upgrading our head restraint standard. The December 2004 final rule represented a significant upgrade of NHTSA's head restraint standard, and the estimated benefits, recognized primarily by reductions in "whiplash" injuries, were substantial. The overwhelming majority of those benefits came from reducing the "backset," or distance between the back of the head and the head restraint.

We also note that further rulemaking on this subject is upcoming. A Global Technical Regulation (GTR) on the subject has recently been adopted, and NHTSA plans to publish a notice of proposed rulemaking (NPRM) to propose changes in accordance with the GTR.

In this document, we are partially granting and partially denying the petitions for reconsideration of our May 2007 final rule. Some of the issues raised by the petitioners for rulemaking are addressed by the GTR. We will address those issues in the context of a future separate rulemaking based on the GTR. We are otherwise denying the petitions for rulemaking.

II. Background

A. Introduction

On December 14, 2004, NHTSA published in the **Federal Register** (69 FR 74848) a final rule [1] upgrading the agency's head restraint standard in order to reduce whiplash injuries in rear collisions. The upgraded standard specified requirements for front seat head restraints and for head restraints voluntarily installed in rear outboard designated seating positions.

On May 4, 2007, NHTSA published in the **Federal Register** (72 FR 25484) a final rule; response to petitions for reconsideration [2] which completed the agency's response to petitions for reconsideration of the December 2004 final rule. The agency partially granted and partially denied the petitions. The agency also denied a related petition for rulemaking, submitted by Kongsberg Automotive (Kongsberg), in that document. Kongsberg is a company that produces automotive parts, including head restraint systems.

The upgraded standard is designated Standard No. 202a; *Head Restraints; Mandatory applicability begins on September 1, 2009.* The earlier standard is Standard No. 202; *Head Restraints; Applicable at the manufacturers' option until September 1, 2009.* The requirements of the upgraded standard are currently being phased in.

In today's document, we are responding to petitions for reconsideration received in response to the May 2007 final rule, and to related petitions for rulemaking. Readers who may be interested in the broader issues involved in the rulemaking to upgrade the head restraint standard are encouraged to read the December 2004 and May 2007 final rules.

B. Agency Goals in Upgrading Head Restraint Standard

The agency upgraded its head restraint standard in order to reduce whiplash injuries in rear collisions. Whiplash injuries are a set of common symptoms that occur in motor vehicle crashes and involve the soft tissues of the head, neck and spine. Symptoms of

[1] Docket No. NHTSA–2004–19807.

[2] Docket No. NHTSA–2007–27986.

pain in the head, neck, shoulders, and arms may be present along with damage to muscles, ligaments and vertebrae, but in many cases lesions are not evident. The onset of symptoms may be delayed and may only last a few hours; however, in some cases, effects of the injury may last for years or even be permanent. The relatively short-term symptoms are associated with muscle and ligament trauma, while the long-term ones are associated with nerve damage.

Based on National Automotive Sampling System (NASS) data, we estimate that between 1988 and 1996, 805,581 whiplash injuries [3] occurred annually in crashes involving passenger cars and LTVs (light trucks, multipurpose passenger vehicles, and vans). Of these whiplash injuries, 272,464 occurred as a result of rear impacts. For rear impact crashes, the average cost of whiplash injuries in 2002 dollars is $9,994 (which includes $6,843 in economic costs and $3,151 in quality of life impacts, but not property damage), resulting in a total annual cost of approximately $2.7 billion.

Although whiplash injuries can occur in any kind of crash, an occupant's chances of sustaining this type of injury are greatest in rear-end collisions. When a vehicle is struck from behind, typically several things occur in quick succession to an occupant of that vehicle. First, from the occupant's frame of reference, the back of the seat moves forward into his or her torso, straightening the spine and forcing the head to rise vertically. Second, as the seat pushes the occupant's body forward, the unrestrained head tends to lag behind. This causes the neck to change shape, first taking on an S-shape and then bending backward. Third, the forces on the neck accelerate the head, which catches up with—and, depending on the seat back stiffness and if the occupant is using a shoulder belt, passes—the restrained torso. This motion of the head and neck, which is like the lash of a whip, gives the resulting neck injuries their popular name.

NHTSA research has indicated that whiplash injuries can be substantially reduced by limiting the distance between the back of the head and the head restraint, a distance known as the "backset." The most significant effect of the 2004 final rule was to limit backset to 55 mm. In limiting backset, NHTSA balanced comfort, safety, and measurement variability concerns. The agency explained the rationale for the backset requirement in the preamble to the December 2004 final rule, and addressed the issue further in the preamble to the May 2007 final rule.

C. May 2007 Final Rule; Response to Petitions for Reconsideration

As noted above, NHTSA's May 2007 final rule, response to petitions for reconsideration, completed the agency's response to petitions for reconsideration of the December 2004 final rule. The agency partially granted and partially denied the petitions. The more significant changes made in the May 2007 response to petitions included:

- Leadtime: For the front seat requirements, the agency provided one additional year of leadtime and also established a one-year phase-in with an 80 percent requirement. NHTSA had previously extended the compliance date for the rear seat requirements by two years. The agency also established a one-year phase-in with an 80 percent requirement for the rear seat requirements.
- Backset: NHTSA made two changes related to the backset requirement. First, the agency specified in FMVSS No. 202a that backset is determined by taking the arithmetic average of three measurements, rather than using a single measurement. Two studies, one by NHTSA and one by Transport Canada, had indicated that taking an average of several measurements reduces variability. Second, we slightly relaxed the backset requirement by specifying that the 55 mm backset limit applies with the seat back at the vehicle manufacturer's specified design angle rather than at 25 degrees. This decision reflected consideration of interrelated issues and data concerning the 55 mm backset limit, comfort, and seat back angle.
- Rear Seat Non-Use Positions: To provide greater flexibility in this area, we added (as included in the NPRM) an option for a 10-degree change in the torso reference angle criteria.
- Gaps Between Head Restraint and Seat Back: We added a manufacturer option under which the gap requirement may be met by either the existing FMVSS No. 202a procedure using a sphere or one based on the measurement methodology set forth in United Nations Economic Commission for Europe (UNECE or ECE) Regulation No. 17, *Uniform Provisions concerning the Approval of Vehicles with regard to the Seats, their Anchorages, and any Head Restraints.*
- Backset and Height Retention (Lock) Tests: We specified that instead of returning to the reference loads of 37 Nm and 50 N after application of the peak load during these tests, that the load be reduced to zero and then increased to the reference loads.

The agency also denied a related petition for rulemaking, submitted by Kongsberg, in that document. Kongsberg's petition for rulemaking had made requests in the areas of effective backset, backset retention and displacement, height retention, non-use position, definition of rear restraint, gaps, and removability of head restraints.

D. Global Technical Regulation on Head Restraints

In the preamble to the May 2007 final rule, we explained that the agency had separately been leading efforts to develop a GTR on head restraints We noted that the work on the GTR had been proceeding at the same time that NHTSA had been evaluating the petitions for reconsideration of the December 2004 final rule, and that some of the issues that were the subject of the petitions for reconsideration had also been raised in the context of the GTR.

We explained that in the May 2007 document, we were addressing those issues in the context of the petitions for reconsideration of the recently upgraded FMVSS No. 202. We explained further that if the development of the GTR continued to proceed successfully and it was ultimately adopted, and if the U.S. had voted for its adoption, NHTSA would issue an NPRM based on the GTR for a new FMVSS.

After publication of the May 2007 document, the development of the GTR on head restraints did continue to proceed successfully. It was adopted in March 2008 by a vote taken by the World Forum for Harmonization of Vehicle Regulations (WP.29). The U.S. voted for its adoption. Prior to the vote, on February 14, 2008, NHTSA published in the **Federal Register** (73 FR 8743) a request for comments [4] on the GTR to inform its decision on the vote.

The agency explained in the February 2008 request for comments that once the GTR was established through consensus voting at WP.29, NHTSA would initiate domestic rulemaking to amend its existing FMVSS to incorporate approved provisions of the GTR. The agency explained that this would allow for further opportunity to consider comments from interested parties through the rulemaking process. NHTSA noted that if its rulemaking process leads it to either not adopt or to modify aspects of the GTR, the agency would seek to amend the GTR in accordance with established procedures

[3] Non-contact Abbreviated Injury Scale (AIS) 1 neck.

[4] Docket No. NHTSA–2008–0016.

under the 1998 Global Agreement and WP.29, as it did with the door lock GTR.

NHTSA is currently in the process of developing an NPRM based on the head restraints GTR.

E. Petitions for Reconsideration of May 2007 Final Rule and Related Submissions

NHTSA received a total of seven submissions in response to, or related to, the May 2007 final rule. These documents included ones styled as petitions for reconsideration, petitions for expedited rulemaking and a statement of support for one of the petitions for expedited rulemaking.

While one of the documents, submitted by Kongsberg, was called a petition for reconsideration, some of its requests are not for reconsideration of the May 2007 final rule. Instead, they either request reconsideration of the agency's denial of that company's petition for rulemaking or are new requests for rulemaking. NHTSA does not have procedures for requesting reconsideration of denials of petitions for rulemaking. However, to the extent a petitioner provides new information, the agency may consider such a document as a new petition for rulemaking. We will treat these parts of Kongsberg's petition as a petition for rulemaking.

Petitions for reconsideration of the May 2007 final rule were received from the Alliance of Automobile Manufacturers (Alliance), Vehicle Services Consulting, Inc. (VSCI), and Kongsberg. The Alliance is a trade organization of motor vehicle manufacturers. VSCI is a company that assists small volume vehicle manufacturers with U.S. certification related matters.

Petitions for rulemaking were received from the Alliance, Mitsubishi Motors R&D of America (Mitsubishi) and Kongsberg. The Association of International Automobile Manufacturers (AIAM) submitted a letter in support of the Mitsubishi petition.

The American Association for Justice (AAJ) submitted a document that is styled as a petition for reconsideration and objects to the agency's discussion of implied preemption. The agency does not consider this to be a petition for reconsideration, as NHTSA's preemption discussion is not a rule.

We believe that a fundamental misunderstanding lies at the heart of petitioners' characterization of the discussion in the final rule. AAJ has mistakenly characterized the agency's discussion of implied preemption, a discussion that we included in approximately two dozen other Federal motor vehicle safety standard rulemaking notices issued from February 2007 to November 2008. We explained those discussions at length in a June 14, 2010 final rule on FMVSS No. 305 (75 FR 33515, at 33524–33525), which we believe has addressed the concerns of AAJ and PC on this subject.

To summarize the agency's discussion in the FMVSS No. 305 final rule, in each of the **Federal Register** notices discussing *Geier* v. *American Honda Motor Co.,* 529 U.S. 861 (2000) and the agency's response to Executive Order (E.O.) 13132, NHTSA sought to explain that we had examined whether there might be any possible basis for a judicial finding of implied preemption of state tort law. In all but a few of those notices, we concluded each examination without identifying any potential obstacle or conflict that might give rise to such a finding.[5] The FMVSS No. 305 final rule explained that the agency has increasingly clarified and amplified its discussion responding to E.O. 13132 in an attempt to end the misunderstandings and assuage concerns about the preemption discussion. Readers are referred to that document for a full discussion of the language in question. Similarly, NHTSA clarified the discussion of E.O. 13132 in the FMVSS No. 305 final rule. The agency's discussion in that document should eliminate commenters' misunderstandings about this topic.

The specific requests in the various petitions, broken down by subject matter, are discussed briefly below.

1. Petitions for Reconsideration

a. Rear Seat Non-Use Positions

Under FMVSS No. 202a, head restraints installed in the rear seats are permitted to have a "non-use" position, in which they are not required to meet in-use performance requirements. Some of the reasons for such a position are to help improve rear visibility, prevent the head restraint from interfering with the seat being stowed, and to facilitate child seat attachment. However, in developing the upgraded head restraint standard, NHTSA was concerned that passengers may inadvertently occupy the seat with the head restraint in the non-use position, thereby depriving themselves of the whiplash protection afforded by the head restraint.

In order to permit the non-use position, yet mitigate the potential dangers, the agency required head restraints that can be adjusted to such positions to meet one of three options, which are set forth in paragraphs S4.4(a)–(c) of FMVSS No. 202a. One option (a) was that a head restraint in a non-use position must automatically return to a normal "use position" when the seat is occupied by a test dummy representing a 5th percentile female. The second option (b) was that the head restraint must be capable of manually rotating at least 60 degrees forward or rearward, between the use position and the non-use position. This option, while not necessarily physically preventing a passenger from sitting in a seat with the head restraint in the non-use position, would at least provide a clear visible cue that the head restraint was not properly adjusted. The third option (c) was that the head restraint in the non-use position must cause the torso of a test manikin to move forward by at least a 10-degree angle when compared to its angle when the head restraint is in a use position. This has the effect of making most passengers uncomfortable, which provides a strong cue that the head restraint is not in the proper position.

Some petitioners for reconsideration requested that this third option be broadened. Specifically, the Alliance requested that the agency modify the standard by allowing a rear head restraint in the non-use position to only cause the torso to move 5–10 degrees forward, rather than at least 10. Essentially, the Alliance was asking that the head restraint not have to jut out as much as it currently must in order to provide the physical cue to the passenger that it is out of position. There were two rationales offered for this. First, the Alliance believed that it would be difficult to design stow-away seating if the head restraint had to protrude so far as to cause the torso angle to move forward 10 degrees. Second, the Alliance argued that the mechanics required by the 10-degree torso angle change would cause problems with certain child seats.

b. Leadtime for Small Vehicle Manufacturers

The agency was also petitioned to extend the leadtime for small manufacturers. Specifically, VSCI petitioned the agency to permit small-volume manufacturers (SVMs) to comply with FMVSS No. 202a only at the end of the phase-in period, rather than having to phase in the new head restraint requirements like other manufacturers. The standard specifies that mandatory compliance begins on September 1, 2009, with at least 80% of vehicles manufactured during the production year beginning on that date being compliant with FMVSS No. 202a for front seat head restraints. By

[5] The May 2007 final rule on FMVSS No. 202a was one of many notices in which we did not identify any potential obstacle or conflict.

September 1, 2011, 100% of all head restraints in both the front and rear seats must be compliant with the new standard.

The specific phase-in percentage requirements are shown by the table below.

Date	Front seats (%)	Rear seats (%)
Production Year Beginning September 1, 2009	80	0
Production Year Beginning September 1, 2010	100	80
September 1, 2011	100	100

VSCI requested that SVMs, that is, manufacturers which produce less than 5,000 vehicles per year for sale in the U.S., not be required to comply with FMVSS No. 202a until September 1, 2011, the end of the phase-in period. VSCI's reasoning is that if a SVM produces only one line of vehicles, if it changes the head restraint for one vehicle, it changes it for 100% of its line. Thus, unless a SVM has more than four vehicle lines, requiring 80% compliance is no different than requiring 100% compliance. Furthermore, VSCI suggests that an extension of the effective compliance date could help SVMs integrate the new head restraint requirements with the start of a new product cycle, rather than having to integrate them in the middle or end of a cycle.

Finally, VSCI argues generally that SVMs should always be permitted to comply with new standards at the end of phase-in cycles, due to the fact that the nature of their businesses frequently make partial compliance with standards not an option. VSCI also requested that the agency formally adopt VSCI's definition of a SVM, which is: "*an original vehicle manufacturer that produces or assembles fewer than 5,000 vehicles annually for sale in the United States.*"

c. Static Lockout of Active Head Restraints During Backset Retention Testing

The next issue is somewhat complex to explain. Certain head restraints, known as "mechanical active head restraints," move with respect to the seat due to occupant loading. This means that these systems move the head restraint forward and up by activation of a lever mechanism in the seat back. While this helps to ensure proper head restraint placement for human occupants, it can create a problem when developing a static [6] test. When the backset retention test [7] is performed, the seat back is loaded through a backpan.[8] For mechanical active head restraints, this loading activates the lever and pivots the head restraint forward. This is followed by loading of the head restraint through a head form, which tends to rotate the head restraint rearward. Thus, the head restraint is placed in an unstable condition and is no longer acting as a rigid body. Under such conditions, it would be difficult to meet the backset displacement limits.[9] To address this testing problem, in the May 2007 final rule the agency modified the test procedure to allow those kinds of head restraints to be fixed in the unoccupied seat position for purposes of the test. This solved the problem of testing active head restraints in a static manner. For reference, the regulatory text (emphasis added) of 5.2.7(a) states that for head restraints that *move with respect to the seat when occupant loading is applied to the seat back,* S5.2.7(a)(1) through (8) may be performed with the head restraint *fixed in a position corresponding to the position when the seat is unoccupied.*

One petitioner, Kongsberg, made three separate requests with regard to this particular requirement. First, it asked that the agency clarify the fixation allowance by specifying that the fixation of the active head restraint occur closest to the occupant loading and not closest to the head restraint. It justified this by arguing that there will be looseness throughout the active head restraint mechanism. Second, it requested that NHTSA "set a minimum level of 'forward movement.'" Lastly, it requested that this fixation allowance be extended to electronically triggered active head restraints in addition to those activated by occupant loading (body triggered). It argued that to limit the allowance to body-triggered systems is not providing a standardized test for all technologies.

Specification of Fixation Point

Kongsberg's first request (part 6.1 of its submission) relates to the specific nature of where a mechanical active head restraint should be fixed for purposes of the static backset retention test. As paragraph S5.2.7(a) currently states, the head restraint is "fixed in a position corresponding to the position when the seat is unoccupied." However, some mechanical active head restraints may have several linkages that transfer occupant loading on the seat back into head restraint movement. In that case, the petitioner stated, the regulatory text as written would allow fixation at any of these points if it ultimately restricts the head restraint from activation under seat back loading.

Instead, Kongsberg requested that the agency change the regulatory text to require that mechanical active head restraints be fixated at the linkage point closest to the occupant loading. Doing otherwise, the petitioner argued, would give an unfair advantage to mechanical active head restraints, because they could be fixated at the point where the head restraint connects to the seat back rather than where it first feels the force of the occupant loading. If this were the case, then a mechanical active head restraint could pass the retention test, even if there was looseness in the head restraint-seat back connection, where a different type of head restraint with the same strength characteristics would not have passed.

Limiting the Fixation Option to Head Restraints That Have a Minimum Level of Forward Movement

The next point from Kongsberg's petition (part 6.2) in this area is its request that NHTSA set a minimum level of "forward movement." While the precise request being made is not clear, it is effectively asking NHTSA to functionally define how far an active mechanical head restraint must be able to move forward in order to be classified as such, and therefore, take advantage of the ability to be fixated during static testing of head restraint displacement.

Expansion of Fixation Option to Reactive and Electronically-Triggered Head Restraint Systems

Third, Kongsberg petitioned the agency (part 6.2.2 of its submission) to expand the fixation option to include all reactive and electronically triggered head restraints during static testing. Currently, this option is only available for "head restraints that move with respect to the seat when occupant loading is applied to the seat back," that is, for active mechanical head restraints. Kongsberg, in the background section of its submission, defined two broad categories of head restraints: "reactive systems," in which energy from body

[6] Alternatively, manufacturers have the ability to certify to a dynamic test requirement.

[7] The backset retention test helps ensure that when the head is forced back, as in a crash, the head restraint stays in position.

[8] A backpan is the part of the manikin that rests on the seat back.

[9] To pass the backset retention test, the head form must not move more than 25 mm during the application of the initial reference load (S4.2.7(a)(1)), not be displaced more than 102 mm during application of the peak load (S4.2.7(a)(3)), and return to within 13 mm of the initial reference position when unloaded to the reference load level (S4.2.7(a)(3)).

mass is transferred to mitigate the impact of a head on a head restraint; and "proactive systems," in which stored energy is released to mitigate the impact. The petitioner claimed that permitting the fixation option for only active mechanical head restraints, is not providing standardized testing of all technologies. For example, electronically triggered head restraints also move during impact, but do not qualify for the fixation option because they do not move with respect to the seat in response to occupant loading. Kongsberg would like NHTSA to permit all of these types of head restraint systems to be fixed in position for purposes of static testing.

d. Clarifying Definition of Adjustable Head Restraints

Kongsberg made a request that the agency clarify the definition of "adjustable head restraints." Specifically, Kongsberg requested that they be defined "in such a way that it is only possible to classify into the 'adjustable' category, head restraints which have no adjustment locks, yet lock into just a single in use locking position." It added that "[t]his could be either a traditional head restraint with separate cushion which has a one time lock into use position or an advanced stowage mechanism which again has only a single in use lock position."[10]

The stated purpose of this definition would be to clarify that the types of head restraints described above could be classified as "adjustable" head restraints, thereby permitting them to use the 25 mm cylindrical gap test as per paragraph S4.2.4.2. The option to use the 25 mm cylindrical gap test was added in the May 2007 final rule.

e. Technical Amendments

In addition to the substantive issues, several issues of technical clarification and one issue of a clerical nature were brought to the agency's attention.

2. Petitions for Rulemaking

a. Discomfort Metric for Non-Use Position and Relaxation Requirement for Gap

Two petitioners, Mitsubishi and the Alliance, requested that the agency do rulemaking, preferably on an expedited basis, on something known as a "discomfort metric." The discomfort metric is a mechanism, adopted as part of the GTR for head restraint systems, for measuring the level of discomfort imposed by a head restraint system in a non-use position. This discomfort would, in theory, lead the occupant of the seat to adjust the head restraint to an in-use position. The petitioners requested that NHTSA incorporate the discomfort metric as an additional rear head restraint non-use position compliance option in paragraph S4.4. Additionally, Mitsubishi petitioned the agency to add a relaxation requirement for the gap within the head restraint. This relaxation requirement is also a part of the GTR, and Mitsubishi requested that the agency do an "expedited rulemaking" to incorporate both of these provisions.

b. "Effective Backset"

Kongsberg requested that the agency replace its backset requirement (of 55 mm) with an "effective backset" requirement (of 58.5 mm) when a 10 N load is applied to the head restraint. According to the petitioner, this additional 3.5 mm represents the amount of displacement/compression one would expect from applying that reference load. Backset, as described in paragraph S5.2.3, is the distance between the rear of the head form and the front edge of the head restraint. This is currently a simple measurement, and is taken without applying force to the head restraint that would cause displacement.

The petitioner's concept of effective backset is that the backset should be measured with a certain amount of force applied to the head restraint. According to the petitioner, various features of the head restraint, such as a layer of soft "comfort foam" on the outside, air gaps within the restraint, or looseness in the connecting mechanisms (if they exist), could displace with a small amount of force applied to the head restraint. Therefore, according to Kongsberg, measuring the backset with a small amount of force (sometimes called a "reference load") on the head restraint provides a better indication of where the head restraint will begin to apply significant resistance to a rearward-moving head.

Kongsberg also requested that the agency adopt requirements for rear seat effective backset as an alternative to its backset *retention* requirements for rear seat head restraints. It requested a 58.5 mm effective backset for rear seat head restraints with only one locking position, and an 80 mm effective backset for rear seat head restraints with multiple locking positions. While currently head restraints in rear seats do not have backset requirements (that is, manufacturers can choose a backset value for reasons of occupant comfort or other design considerations),[11] the head restraints are required to be able to withstand substantial loads from wherever they are placed. In the first part of the retention requirement, head restraints must displace no more than 25 mm when a 37 Nm reference load is applied. The head restraint is then loaded to 373 Nm (with a 102 mm displacement limit) and finally unloaded to the reference value (where it must be within 13 mm of the reference position).

This, according to Kongsberg, results in head restraints with an advanced stowage mechanism and only a single locking position, being penalized. It similarly stated that head restraints with multiple locking positions should have relief, as long as they stay within the overall limit of the effective backset.

III. Agency Response to Petitions for Reconsideration of May 2007 Final Rule and Technical Amendments

A. NHTSA Declines To Adopt a 5-Degree Torso Change Angle for Rear Seat Non-Use Positions

With regard to non-use positions for rear seat head restraints, NHTSA has provided a variety of options in FMVSS No. 202a. Specifically, a manufacturer can choose one of four routes to comply with the standard. It can:

(1) Use a removable head restraint.

(2) Have a non-use position that produces a 10-degree torso angle change.

(3) Have a non-use position that rotates 60 degrees.

(4) Have a non-use position that automatically positions the head restraint when the seat is occupied.

The Alliance's petition seeks to expand these options by modifying the torso angle change option to create a torso angle change of anywhere from 5 to 10 degrees. The basic rationale behind the Alliance's petition is that the 10-degree torso change option is not adequate to accommodate the popular feature of stowing rear seats in the floor of a vehicle, and that a 5-degree option would be more flexible. In its petition[12], the Alliance stated:

> [U]nfortunately, the approach taken in the final rule may not provide the intended flexibility because it would require the addition of material to shingled head restraints. In some vehicle configurations this additional sizing would negate the ability to stow seats and could potentially lead to unintended consequences to children (in and out of child seats) and smaller occupants, such as interference with tall child seats and

[10] Kongsberg petition, 4.2.1.

[11] Most of the benefits of rear head restraints come from the height, not the backset.

[12] Docket No. NHTSA–2007–27986–0012, p. 1.

head/neck interference with small occupants. As a result, balancing the tradeoffs associated with the additional option the Agency sought to provide leads to an option that is not in fact a viable option for some manufacturers.

NHTSA does not agree that permitting a 5-degree torso angle change option is a necessary or appropriate change, nor do we believe that it provides nearly as many safety benefits as the 10-degree option.

To begin, we will reiterate the rationale used in the 2007 final rule to explain why NHTSA is limiting the torso angle change to 10 degrees. The torso angle change option is effective for the following reasons: When the head restraint protrudes so far as to cause the average occupant's torso to move forward by 10 degrees, the occupant will feel discomfort and a physical cue that the head restraint is out of position, and therefore adjust it so it functions properly. In its human factors study,[13] the agency found that a 5-degree torso angle change does not cause occupants to realize that the head restraint is in a non-use position, and therefore adjust it, nearly as often as a 10-degree torso angle change does. The study showed that while a 5-degree change induced occupants to adjust the head restraint a mere 15 percent of the time, whereas a 10-degree change had the desired effect 80 percent of the time. As we stated in the 2007 final rule, it was the results of this study that caused the agency to decline the petitioner's request to permit a 5-degree torso angle change.

In this new petition, the Alliance offered two arguments as to why NHTSA should reconsider its reliance on the human factors study and permit use of a 5-degree torso angle change option. First, it argued that the NHTSA human factors study was limited to adults over 60 inches, and thus did not account for the fact that the majority of occupants in rear seats are likely to be shorter (*i.e.,* children). Second, the Alliance stated that head restraints that use a 10-degree torso angle change may interfere with the functioning of some child seats. Additionally, the Alliance argued, as stated above, that some vehicle designs may not be compatible with a head restraint that uses the 10-degree torso angle change option. We will address these arguments below. (We also note again that there are several other alternative means of compliance.)

With regard to the human factors study, while NHTSA is aware that it focused on adults, the agency does not consider that to be a defect with the study. The Alliance pointed out that the occupants in the study were at least 60 inches tall, whereas, according to National Automotive Sampling System (NASS) General Estimates System (GES) data, 43 percent of crash-involved occupants of rear seats are under that height. This should, according to the Alliance, "lead to a conclusion that the 10 degree torso angle displacement requirement, while potentially preferable to force a response from taller adults, leads to designs that are too stringent for children and child seats in certain vehicle configurations."

NHTSA does not believe that the fact that the human factors study focused on adults over 60 inches impairs the relevance of that study, nor did the Alliance present any data that this fact should cause NHTSA to question to efficacy of the 10-degree torso angle change option. With regard to the height of the occupants in the study, the reason that NHTSA focused on taller occupants is that these are the only occupants that benefit from rear seat head restraints. As stated in the human factors study:

> The height of rear seat passengers directly impacts where the stowed head restraint would contact them. To determine how the subject seat might interact with occupants of different heights, the dimensions of the subject seat were measured. The seat dimensions were considered along with standard sitting shoulder height values for adult males and females to establish the range of occupant heights that would be most likely to experience discomfort due to a stowed head restraint. The standing height values used for recruitment were established through extrapolation from the sitting shoulder height values.
>
> The height of the lower edge of the stowed head restraint in the test vehicle is approximately 18.5 inches with respect to the seat pan * * *. It appeared that an occupant whose sitting shoulder height is approximately this value would not be uncomfortable with the head restraint fully stowed. It was unclear how much greater than 18.5 inches the threshold lies at which an occupant's sitting shoulder height would be sufficiently large for the person to experience discomfort.
>
> The height at which children are no longer required to be seated in a child safety seat is 57 inches. A 57-inch tall child (10–12 yrs old) would have a sitting shoulder height of about 19.3 inches (based on extrapolation from NIST data found on the Internet). Since in its stowed position, the bottom of the head restraint is at 18.5 in, a 57-inch tall child may not be tall enough to experience discomfort created by a stowed head restraint. Furthermore, children of this age may not be mature enough to conclude that something is wrong with the seat configuration if they experience only minor discomfort. For this reason, as well as the difficulty in recruiting minor subjects, participants less than 18 years of age were not pursued.[14]

In summary, occupants less than 60 inches tall are unlikely to receive any benefit from the torso angle change option, either because the head restraint is too high to cause them discomfort, or because they are too young to understand to adjust the head restraint if it is causing them discomfort. On the other hand, the human factors study did show that, for occupants tall enough to benefit from a head restraint (that is, adults over 60 inches), a 5-degree angle change is insufficient to cause them to adjust the head restraint to the use position, while a 10-degree change does have the desired effect.

We would further note that NHTSA did conduct at least one test involving a 10-year old occupant using 5-, 10-, and 15-degree torso angle change positions. The Alliance petition included the 10-degree condition image from the report as an example of a child's head in what they claimed was a non-preferred position. However, neither the human factors study nor NHTSA has ever stated that subject had any negative opinion about the 10-degree condition. Nor do we have any other information that leads us to believe that short stature occupants such as children in booster seats and older children without boosters would have disaffection for the 10-degree condition. The petition did not claim any data to this effect.

Second, the Alliance asserted that a 10-degree torso angle change can interfere with certain child restraint systems (CRSs). Specifically, it raised a concern about the potential inability to secure a rigid forward-facing ISOFIX CRS to a seat that meets the 10-degree torso angle change design. One potential problem it gave was that "the connection necessary for a rigid ISOFIX CRS anchorage may not be possible in some vehicle configurations if the head restraint is built to conform to a 10-degree torso angle displacement." Additionally, for occupants using high-back CRSs, the torso displacement criteria would result in forward or rotational displacement of the child seat. Finally, it stated that children in backless booster seats or not seated in child restraint systems could experience head and neck interference by head restraints designed to the 10-degree torso angle change criteria.

There are several reasons why NHTSA does not consider this a valid argument for permitting a 5-degree torso angle change option. The first is, again,

[13] DOT HS 809 957, "Rear Seat Stowable Head Restraint Non-Use Position Torso Angle Study," November 2005.

[14] DOT HS 809 957, "Rear Seat Stowable Head Restraint Non-Use Position Torso Angle Study," November 2005, p. 13–15.

that the NHTSA study indicated that a 5-degree change simply does not cause a rear seat occupant to adjust an out-of-position head restraint. Thus, a line of reason arguing that a 5-degree change could better accommodate certain CRSs does not address the fundamental rationale for disallowing a 5-degree option. Second, NHTSA is aware that contact occurs between current non-regulated rear seat head restraint designs with certain forward-facing CRSs, and typically adjusting the seat back and/or head restraint can achieve proper CRS orientation. Sometimes, depending on the design of the CRS, seat, and head restraint, it may be necessary or easier to simply remove the head restraint to properly install the CRS, which is one reason why NHTSA continues to allow head restraint removal as an option (see 69 FR 74871). The mere fact that one permissible non-use option may not work for all CRS/seat configurations is not sufficient justification to allow a relatively unsafe non-use position option. Finally, we do not believe that there are currently any forward-facing ISOFIX CRSs on the market, thus their potential lack of compatibility with a 10-degree design is of limited significance.

The Alliance raised the issue of high-backed CRSs, as they are most likely to contact the head restraint in the lowered, non-use position. This is not new information, and was addressed in the 2004 Final Rule. We believe that the statement in that rule is still appropriate:

> With respect to comments pertaining to the potential incompatibility between rear head restraints and some high-back hybrid child restraints and boosters, NHTSA notes that high-back child restraints are used in Europe with no reports of incompatibilities. As Magna commented, rear seat head restraints are much more common in Europe due to competitive pressures. Nonetheless, if incompatibilities arise in this country, they can be resolved by several means. First, we believe that an adjustable head restraint is likely to have a position that does not interfere with high back hybrid child restraints. That is, raising the head restraint may alleviate the potential interference. Second, the high-back child restraint can be installed in a seating position for which a head restraint is not provided, removable, or has a non-use position. We note that even where rear outboard head restraints are provided, many vehicles do not provide a head restraint in the center seating position. We recognize that, even with the flexibility afforded to the manufacturers with respect to rear seat head restraints, there may be isolated situations where certain high back child restraints are not compatible with specific seating positions in certain vehicles. However, we expect this to be relatively infrequent. In short, the agency does not believe that the possible incompatibilities are insurmountable even in situations in which rear seats are equipped with optional head restraints.[15]

Because the petitioner did not provide new data regarding the safety benefits of a 5-degree torso angle change design, or interference between head restraints and CRSs, we are not adopting that option for the rear seat head restraint non-use position.

B. NHTSA Declines To Permit Additional Leadtime for Small Vehicle Manufacturers

In light of the fact that FMVSS No. 202a's head restraint requirements are phased in over a period of several years, VSCI petitioned the agency to permit small volume manufacturers (SVMs) to wait until the end of the phase-in period to comply with the standard. Its rationale is that while multiple-line manufacturers will only need to convert a portion of their fleets to the new head restraint requirements by the respective phase-in dates (September 1, 2009 for front seat head restraints, and September 1, 2010 for rear seat head restraints), a SVM with only one or two vehicle lines would need to convert all of its vehicle lines to the new head restraint requirements, while a large manufacturer with many lines would only need to convert 80 percent of its vehicles. VSCI stated, "[i]t would not allow such SVMs the full amount of time that large manufacturers have for redesign, testing, 'implementing changes with the start of a new model cycle,' and 'additional flexibility in meeting these challenges.'"[16] Therefore, according to the petitioner, SVMs are particularly burdened by this rulemaking. We note that this argument is not specific to the head restraints at issue, but in fact could be applied to virtually any requirement with a phase-in period.

NHTSA declines to adopt this general argument. We note that the burden of designing new head restraints to meet the requirements of the upgraded FMVSS No. 202a is likely to be more for larger manufacturers, as they will have to design compliant head restraints for a larger number of vehicles, whereas SVMs, even if by the nature of their product lines are required to bring all of their vehicles into compliance at the start of the phase-in period, will only have to design compliant head restraints for a small number of vehicle lines.

More importantly, we do not agree with the inherent logic of the argument that SVMs should be permitted, generally, to delay any compliance until the end of the phase-in periods for new requirements. VSCI stated that over the past seven years, the agency has on numerous occasions permitted SVMs to delay compliance until the end of the phase-in periods. However, in previous rulemakings where NHTSA has done this, it has given specific reasons—related to the standard at issue—for permitting additional leadtime for SVMs. For example, in the 2000 FMVSS No. 208 final rule, we stated that SVMs do not have the access to new technology at the same time as larger manufacturers.[17] With regard to advanced air bags, the subject of that rulemaking, there were specific issues of a complex upgrade and short leadtime. Thus, there were specific reasons for excluding SVMs from compliance with the standard until they had been given more time to prepare. With regard to the head restraint requirements of FMVSS No. 202a, however, we do not believe this to be the case. There has already been substantial leadtime since publication of the 2004 Final Rule and the 2007 Final Rule in response to petitions for reconsideration. Furthermore, the technologies required to comply with FMVSS No. 202a are not particularly complex or novel. For those reasons, we decline to grant additional leadtime to SVMs. Since we are not granting additional leadtime to SVMs, VSCI's request that we adopt its definition of a SVM is moot.

C. Static Lockout of Active Head Restraints During Backset Retention Testing

As currently specified in paragraph S5.2.7(a), mechanical active head restraints (that is, head restraints that move with respect to the load on the seat) are fixed in their undeployed position for static testing purposes. NHTSA modified the backset retention test procedure (S5.2.7(a)) in the 2007 final rule by allowing mechanical active head restraints the option of being fixed in position during the test. This was done in response to several petitions requesting that the agency allow more displacement for these types of head restraints, as they were unable to meet the 25 mm requirement due to their active design. Instead of granting additional leeway for displacement, however, NHTSA instead included a provision permitting mechanical active head restraints to be fixed in position. As we stated:

> We note that the agency anticipated that there may be advanced designs which, by their active nature, are unable to pass the

[15] 69 FR 74847, 74871.

[16] VSCI petition, Docket No. NHTSA–2007–27986–0010.

[17] 65 FR 30720.

static test requirements in their undeployed positions. This is why the dynamic compliance option was provided.

However, while the dynamic compliance option is specifically in place for active systems, it has never been our intention to exclude active systems from certifying through the static option. However, the agency has emphasized that such static compliance must be in the undeployed condition.

Based on our desire to not exclude the possibility of active systems being certified to the static option, we have decided to permit active systems to be fixed in their undeployed position during the retention tests. We are including a specific manufacturer option to this effect in FMVSS No. 202a.[18]

As discussed above, Kongsberg petitioned for a variety of clarifications and amendments with regard to static testing of active head restraints for purposes of the backset retention test. The company asked the agency to specify exactly where the head restraint should be fixed, assuming there are multiple locations in the deployment mechanism it can be fixed at. Kongsberg also asked NHTSA to give guidance as to how far forward a head restraint must be able to move before it can be qualified as an active head restraint. Finally, the company also asked NHTSA to expand this option beyond mechanical active head restraints, to include what it refers to as "reactive" head restraints as well as to those that are electronically-triggered. Our responses to each of these three requests are set forth below.

1. NHTSA Agrees To Specify the Fixation Point for Static Testing of Active Mechanical Head Restraints

In part 6.1 of its petition, Kongsberg makes the following statement:

Within advanced head restraint systems, there will always be freeplay within the moving parts resulting in system looseness. Kongsberg requests that NHTSA clarify the test procedure in such a way that specifies the procedure for fixating the head restraint. That is fixation of the advanced mechanism should occur closest to the occupant loading and not closest to the head restraint.

NHTSA believes that Kongsberg's request to specify the fixation point has merit. For a mechanical active head restraint, there is a mechanism that translates pressure on the seat back (caused by the body being pressed back into the seat, such as during a rear impact) into forward movement on the head restraint, to protect against whiplash. As Kongsberg pointed out, a mechanical active head restraint may have multiple linkages. For example, there may be one linkage where the seat back connects to the head restraint, and another that moves when the occupant's back presses into the front surface of the seat back. These components could be connected directly or be connected through intermediate linkages. As the specification is currently written, the regulatory text would allow fixation at any of these linkage points, so long as doing so prevents the head restraint from moving forward when pressure is applied to the seat back. Kongsberg requests that NHTSA clarify this ambiguity by specifying that the fixation must occur at the point closest to the point where the force from an occupant's torso would activate the head restraint.

We agree with Kongsberg's request for two reasons. First, the request helps to resolve an ambiguity in the requirement—given multiple locations where a head restraint could be fixed in a static position, it provides clarity for NHTSA to specify which one is used. Second, having the fixation requirement located at the spot closest to the occupant's torso loading helps to prevent a situation where a mechanical active head restraint could be less effective than another type of head restraint. This would occur if a test fixed the head restraint at the point where the seat back connects to the head restraint, instead of another location closer to where occupant loading occurs. In this situation, the test would not account for looseness in the linkage between the head restraint and the seat back—a problem that would have been uncovered if a different type of head restraint had been used where no fixation was necessary to undertake a static test. This would result in the head restraint passing the test when force is applied to the seat back, but still moving too far when in use, and an occupant strikes the head restraint.

For these reasons, we are revising S5.2.7(a) to provide that the fixation is applied to the member(s) that first transmit(s) the seat back loading from the occupant to the head restraint.

2. NHTSA Declines To Specify a Minimum Forward Movement Requirement for Static Testing of Active Mechanical Head Restraints

Kongsberg also requested that "NHTSA set a minimum level of 'forward movement' to clarify this new rule."[19] This request is effectively asking NHTSA to functionally define how far an active mechanical head restraint must be able to move forward in order to be classified as such, and therefore, take advantage of the ability to be fixated during static testing of head restraint displacement.

After considering this request, we have decided not to define a minimum forward movement criterion for active head restraints. We believe the limitation in the regulatory text that this option is available only for "head restraints that move with respect to the seat when occupant loading is applied to the seat back" excludes typical adjustable head restraints. The agency does not believe there is ambiguity on that issue, and therefore believes that there is not a problem that needs to be addressed. Second, we do not have any data on what, if any, lower limit to place on the movement of a mechanical active head restraint, nor did the petitioner supply any data or offer a suggestion. Given these factors, we are not proceeding on this request.

3. NHTSA Declines To Expand the Fixation Option to "Reactive" and Electronically Triggered Head Restraints

The third request that Kongsberg put forth (in part 6.2.2 of its petition) was to expand the fixation option from mechanical active head restraints to all "reactive" and "proactive" head restraints. Kongsberg defines these terms in the background section (part 1.0 of its petition). Reactive head restraints, according to the petitioner, are those where energy from body mass is transferred to the head restraint to mitigate the impact. Proactive head restraints, on the other hand, are those where stored energy is released to mitigate the impact of the head on the restraint. Generally, proactive head restraints would be electronically triggered at the time of a crash.

Kongsberg's request is that vehicle manufacturers be permitted to certify all head restraints that move with respect to the seat back through a static test with the head restraint in a fixed position, as they can do with mechanical active head restraints. It claimed that this would put all reactive and proactive head restraints in the same position, and that not allowing this is creating special rules for one segment of technology.

NHTSA declines to adopt Kongsberg's request and disagrees with its reasoning on this point. The rationale for permitting the fixation option for mechanical active head restraints, as explained in the 2007 rule, is not applicable to the other types of head restraints that Kongsberg described. The fixation option was created because mechanical active head restraints move relative to the seat back when the

[18] 72 FR 25484, 25504.

[19] Kongsberg petition, part 6.2.1.

backpan, simulating the back of an occupant, applies a load to it. Therefore, they would almost certainly fail the initial backset displacement test. Using the fixation option solves this limited problem, allowing mechanical active head restraints to be tested in the static test like all other head restraints. Electronically-triggered "proactive" head restraints, on the other hand, do not move when the backpan applies a load to the seat back. Therefore, there is no need for fixation.

D. "Adjustable" Head Restraints and Availability of 25 mm Cylindrical Gap Test Option

As indicated above, Kongsberg made a request that the agency clarify the definition of "adjustable head restraints." Specifically, Kongsberg requested that they be defined "in such a way that it is only possible to classify into the 'adjustable' category, head restraints which have no adjustment locks, yet lock into just a single in use locking position." It added that "[t]his could be either a traditional head restraint with separate cushion which has a one time lock into use position or an advanced stowage mechanism which again has only a single in use lock position." [20]

The stated purpose of this definition would be to clarify that the types of head restraints described above could be classified as "adjustable" head restraints, thereby permitting them to use the 25 mm cylindrical gap test as per paragraph S4.2.4.2. The text of S4.2.4, *Gaps,* states that all head restraints must meet limits for gaps in the head restraint specified in S4.2.4.1, and that for gaps between the seat and head restraint, *adjustable head restraints* must meet either the limits specified in S4.2.4.1 or S4.2.4.2. [emphasis added]

S4.2.4.2 of FMVSS No. 202a is titled *Gaps between the adjustable head restraint and seat using a 25 mm cylinder.*

The purpose of Kongsberg's petition on this issue appears to allow a head restraint design that does not have multiple positions of adjustment to take advantage of the compliance option given in S4.2.4.2. The design in question can move with respect to the seat back, but only locks in a single in-use position. To accomplish this, Kongsberg recommended specifically defining this type of head restraint as being "adjustable." Kongsberg stated in its petition that NHTSA has provided definitions for three types of head restraints (integral, adjustable, and active). While the definitions were not integrated into the text of Standard No. 202, these types of head restraints were discussed in the preamble of the **Federal Register** notice of May 4, 2007. In that document, we stated:

> Vehicle manufacturers currently use three types of head restraints to meet the requirements of FMVSS No. 202. The first type is the "integral head restraint," which is non-adjustable and is built into the seat. It typically consists of a seat back that extends high enough to meet the height requirement of the standard. The second type is the "adjustable" head restraint, which consists of a separate cushion that is attached to the seat back, typically by two sliding metal shafts. Adjustable head restraints typically adjust vertically to accommodate different occupant seating heights. Some also provide adjustments to allow the head restraint to be moved closer to the occupant's head. The third type is the active head restraint system, which deploys in the event of a collision to minimize the potential for whiplash. During the normal vehicle operation, the active head restraint system is retracted.[21]

We did not include definitions in the regulatory text because distinctions between the types of head restraints are not typically necessary. In general, the performance requirements of FMVSS No. 202a are applicable for all types of head restraints and adjustable head restraints are specifically referenced to indicate the "adjusted" position they are to be configured in for testing. This is also the case in S4.2.4.1 and S4.2.4.2, which indicate that adjustable head restraints are to be placed in their lowest height position and any backset position.

However, a unique feature of S4.2.4 is that it states that the requirement for gaps between the seat and head restraint is limited to adjustable head restraints. Although a definition of adjustable head restraint is not included in the standard, the agency addressed the meaning of the term in a March 29, 2009 letter of interpretation to Kongsberg. In that interpretation, we concluded that a folding head restraint that only has a single in-use position, regardless of movement to non-use positions, would not be considered an adjustable head restraint. Therefore, the types of head restraints that Kongsberg described in their petition would not have the option of using the procedure in paragraph S4.2.4.2 to determine the acceptability of the gap between the seat and the head restraint.

For the reasons explained below, we are revising FMVSS No. 202a in a way that will accommodate Kongsberg's concern, but not by defining the head restraints at issue as adjustable head restraints.

In analyzing the Kongsberg petition, we have considered the rationale provided in the May 2007 final rule for providing this gap measurement alternative. In a section of the preamble to the 2007 final rule discussing the gap between the head restraint and seat back we stated the following: [22]

> After considering the DaimlerChrysler and Alliance petitions, we have decided to specify that the gap requirement must be met when the gap is measured either by the existing current FMVSS No. 202a procedure using a sphere or one based on the ECE 17 measurement methodology. We are not aware of any data showing benefits to one methodology over the other.

The agency did not provide a specific explanation of why the option was limited to adjustable head restraints. We note that Appendix G of the DaimlerChrysler petition stated the following:

> S5.7 of ECE R17 requires a maximum gap of 60 mm for head restraints which are not adjustable, and a maximum gap of 25 mm for adjustable systems in the lowest position. The gap is measured similar to the height of the head restraint, perpendicular to the torso line as illustrated below.

Consequently, the limitation of S4.2.4 to adjustable head restraints was consistent with the petitioner's request. However, the specific types of design for which DaimlerChrysler mentioned in its request for the additional compliance option were "shingled" and "saddle" designs. Such designs used for rear seats could have a single in-use position of height adjustment. Thus, the 25 mm cylinder option currently would not be available to such a design.

Given Kongsberg's petition, we considered whether there is a good reason to exclude from this option head restraints that lock in a single in-use position. In analyzing this question, we looked at two similar theoretical rear seat head restraint designs. The first was a shingle head restraint that could move from a non-use position to a single in-use position. The second design could move from a non-use position to a lowest in-use position of adjustment, but also had several other in-use adjustment positions. However, in the lowest adjustment position, it occupied the same position in space as the first design that only had one in-use adjustment position. Thus, in the position of adjustment in which the gap measurement test would be performed, there would be no functional difference between the two designs. Given this, we believe that there is not a safety reason to exclude from this option head

[20] Kongsberg petition, 4.2.1.

[21] 72 FR 25484, 25484–5.

[22] 72 FR 25503.

restraints that lock in a single in-use position.

In light of the above, we have decided to revise the regulatory text so that the 25 mm cylinder option is available for all head restraints that can move with respect to the seat. This will make this option available for the types of designs described by Kongsberg. The revisions are in S4.2.4.2.

We note that we do not believe it would be appropriate to extend the 25 mm cylinder option to integral head restraints. In the 2004 final rule, the agency specified that the gap measurement was to be made 540 mm above the H-point "[b]ecause there may not be a clear distinction between the end of the seat back and the beginning of the head restraint in integral head restraints." [23] This fact would make it difficult to apply the 25 mm cylinder option to integral head restraints because it may not be possible to determine where the gap between the head restraint and seat back is. Therefore, there is reason to exclude integral head restraints from this option.

Finally, we note that the above analysis made no distinction between head restraints that move through some action of the occupant or active head restraints that might only move in a rear impact. The reason for this is that we do not believe there will be any ambiguity in finding the gap between the head restraint and seat back in these designs and thus using the 25 mm cylinder option.

E. Technical Amendments and Corrections

In addition to petitions for reconsideration and rulemaking, the agency also received a petition from the Alliance requesting that several minor technical corrections be made to the regulatory text of FMVSS No. 202a. Additionally, one part of Kongsberg's petition was not considered a petition for reconsideration, but the suggested change represented a technical correction. The issues raised by these petitions are addressed below. In addition, NHTSA identified an error in which regulatory text was inadvertently removed by the 2007 final rule.

1. NHTSA Agrees To Revise S5.2.4.2. The first change to the standard requested by the Alliance was in regard to paragraph S5.2.4.2. This section describes the "gap test," used to determine if the distance between the seat back and the head restraint is acceptably small. According to S4.2.4.2, the maximum gap permitted is 25 mm. Paragraph (c) of the procedure (S5.2.4.2(c)) reads "Determine if at least 125 mm of the [25 mm diameter] cylinder can completely pass through the gap." If testing shows that 125 mm or more of the cylinder can pass through the gap between the seat back and the head restraint, the head restraint would fail the test.

The Alliance petitioned that the language in paragraph (c) be changed from the current wording to read "Determine that no more than 125 mm of the cylinder can completely pass through the gap." It requested this language for purposes of clarification.

While we are not adopting the language suggested by the Alliance, we are adding a sentence to clarify that if 125 mm or more of the cylinder can pass through the gap, the head restraint would fail the test.

2. NHTSA Agrees To Revise S5.3.4. The Alliance's second requested change involves the reordering of two of the sentences in the dynamic performance test description in paragraph S5.3.4. Section S5.3.4 specifies the seat adjustment requirements for the dynamic compliance option.

The effect of moving the two sentences at issue from the beginning of the setup procedure to the suggested locations would be, according to the petition, to change the sequence of steps in which the laboratory sets up the seat for the dynamic test. Instead of setting the inclination of the seat back at the beginning of the process, the laboratory would make the final seat back adjustment after the vertical and fore-aft adjustments are set.

According to the Alliance, the purpose of the requested change is to reduce test-to-test variability of the dynamic test. It stated that setting the seat back adjustment at the beginning of the setup process can lead to some variability, and that it is general laboratory practice "to locate the seat cushion position first and make the final seat back adjustment after the vertical and fore-aft adjustments are set." [24] Reordering the regulatory text in that manner would facilitate testing, according to the petitioner.

After considering the Alliance's petition, we provide the following response. We did not intend in the 2007 final rule to specify a "sequence" of seat adjustment in S5.3.4. Our intent was to specify conditions to be met concurrently when the seat is in its final state of adjustment, in consideration of the various modes to achieve those conditions. We believe the specified adjustments can exist in harmony with each other. For example, S5.3.4 provides, through reference to S5, that the seat cushion and seat back must be adjusted such that the final H-point position is the highest H-point position with respect to the seat back.[25] However, this adjustment must be done in the context of achieving a final 25 degree seat back inclination. Achieving this H-point position with the correct seat back angle may involve an iterative process of adjusting various seat positioning controls. It would therefore not be correct to consider S5.3.4 as specifying a sequence of adjustments. Moreover, given the current language of the section and as indicated by the petitioner, there would not be a control on the final seat back angle.

To clarify this, we are adding a sentence to S5.3.4 stating that the specified seat adjustments are a list of conditions. We are also moving the two sentences as requested by the petitioner, but note that this will not affect the requirements of the standard. In light of the petitioner's misunderstanding about the issue of seat adjustment we are also adding a sentence to S5 to clarify that the seat adjustments made in S5 and S5.1 are also a set of conditions rather than a sequence. Again, we believe that adding clarification here will have no effect on the standard.

In S5.3.4, we are also removing a reference to S5.1 which is outdated.

3. NHTSA Agrees To Revise S5.2.6(d) and S5.2.7(a)(7). The third requested technical amendment relates to the testing of height retention (S5.2.6) and backset retention (S5.2.7(a)). In the 2007 final rule, NHTSA introduced a "zero load" condition into these tests. Essentially, this is a pause between when the largest amount of force is applied and the final test load is applied, to reduce hysteresis in the foam of the head restraint. In those sections, NHTSA specified that the zero load condition should be maintained for not more than two minutes.

The Alliance requested that instead of specifying "not more than two minutes," NHTSA specify that the zero load condition be maintained for "two minutes, +/−5 seconds." It stated that this change would provide more clarity for the test procedure. We agree with their argument. We believe it will clarify our original intent and reduce any potential variability. This change will be reflected in the regulatory text of the two paragraphs.

4. NHTSA Agrees To Revise S5.2.7(a)(5). The portion of the Kongsberg petition on the load vector

[23] 69 FR 74862.

[24] Alliance petition, Docket No. NHTSA–2007–27986–0013, p. 2.

[25] This provision effectively minimizes the measured seat height.

position in the backset retention test [26] is not related to any change made to the 2004 final rule by the 2007 final rule. Therefore, it is not a petition for reconsideration. However, NHTSA has determined that the requested clarification would constitute a technical amendment. Therefore, we are addressing it in this document.

Kongsberg requested that the agency clarify the test procedure in such a way that specifies that the load vector is applied through the centerline of the head form at a height 65 mm +/− 3 mm below the top of the head restraint.

NHTSA believes that the Kongsberg interpretation of the test procedure specified in S5.2.7 of FMVSS No. 202a is correct. In fact, this test is derived from paragraph S5.2 of the version of FMVSS No. 202 now in force, which allows for the use of a cylinder to apply the required force. When a cylinder is used to apply the force, because of the shape or angle of the head restraint, it may not make it possible to assure the point of contact is 65 mm below the top of the head restraint or to do so may result in a position of the axis of load application far from the 65 mm position. However, the axis of load application can be controlled. Although paragraph S5.2.7 of FMVSS No. 202 specifies a spherical head form loading device, the concept of aligning the axis of load application, represented by the centerline of the head form, remains the same (see Figure 1). Thus, we believe any clarification is simply a technical correction of the existing regulatory text. We are therefore revising S5.2.7(a)(5) to provide this clarification.

We note that the configuration in the illustration is for explanatory purposes only. Other configurations are acceptable if they conform to the text of the standard.

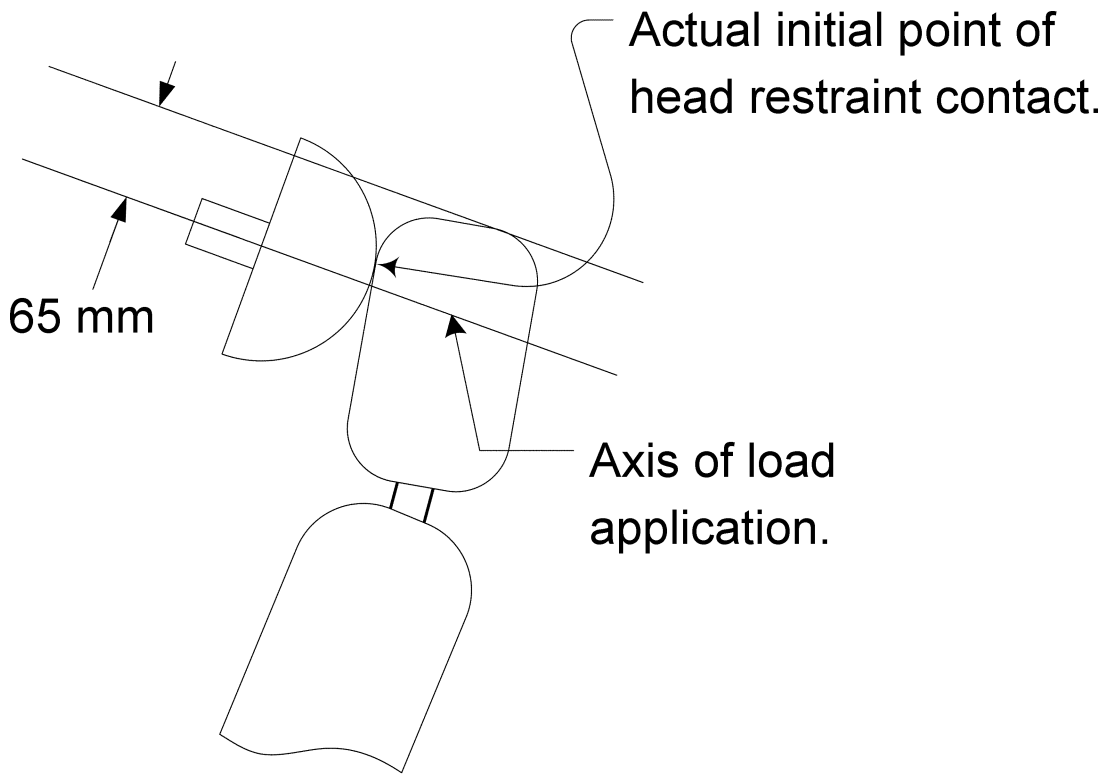

Figure 1

5. NHTSA Is Correcting Clerical Errors in S4.3 and S5.3. The 2004 final rule altered the head restraint position specification for the dynamic compliance option from any position of adjustment to a mid-height position and any position of backset adjustment.[27] This was indicated in both paragraphs S4.3 and S5.3. However, the 2007 final rule inadvertently removed the phrase "and at any position of backset adjustment" from the regulatory text in each of those sections. In this document, we are correcting that clerical error by modifying S4.3 and S5.3 to be consistent with the provisions for backset adjustment previously specified in the 2004 final rule.

IV. Agency Response to Petitions for Rulemaking

A. NHTSA Declines To Conduct Rulemaking Concerning Discomfort Metric or Relaxation Requirement for Gap Separate From the Rulemaking Based on the GTR

The Alliance and Mitsubishi Motors petitioned NHTSA to perform "expedited rulemaking" to permit an additional option for certifying compliance for a rear seat non-use position, something known as the "discomfort metric." The discomfort metric is, briefly, a measurement of the location of the head restraint with respect to the position of the occupant of the vehicle.

According to Mitsubishi, the discomfort metric, using certain values provided by the Japanese Automotive Manufacturers Association, is effective in prompting the seated occupants to adjust the head restraint from a non-use position to an in-use position.

[26] Kongsberg petition, part 5.0.

[27] 70 FR 74886 and 74888.

Mitsubishi also petitioned the agency to add a relaxation requirement for the gap within the head restraint. Mitsubishi stated that these provisions are both parts of the new GTR for head restraints.

NHTSA notes that the GTR on head restraints was adopted in March 2008. The GTR incorporates NHTSA's backset requirement, as well as offering a means to harmonize the remaining differences between the FMVSS and UNECE standards.[28] However, in order to modify the FMVSSs, NHTSA must propose to adopt the provisions in the GTR.

NHTSA is in the process of preparing an NPRM regarding the GTR provisions. However, we decline to conduct a separate rulemaking concerning a specific subset of the GTR provisions. There are a variety of interrelationships between the various requirements and related test procedures in any GTR, including the one on head restraints. The agency therefore believes it is important to consider the various provisions of a GTR together in a single rulemaking.

B. NHTSA Denies Petition for Rulemaking To Replace the Current Backset Requirement With an "Effective Backset" Requirement

Paragraph S5.2.3 of FMVSS No. 202a specifies a 55 mm backset limit. Backset is measured using a Head Restraint Measurement Device (HRMD), consisting of a specified head form attached to the Society of Automotive Engineers (SAE) J826 manikin (rev. Jul 95). The head form includes a probe that slides rearward until contact is made with the head restraint. The resulting measurement reflects the horizontal distance between the back of the head of a seated 50th percentile adult male dummy and the front of the head restraint.

Kongsberg requested (in part 2.5 of its petition) that this 55 mm limit be replaced with a 58.5 mm "effective backset" specification, which would be measured in a different way. Under the method recommended by the petitioner, a 10 N force would be applied as a preload. The 58.5 mm figure recommended by the petitioner is derived from adding the backset and a 3.5 mm displacement to represent the typical net effect of additional system flex when a 10 N preload is applied.

Kongsberg argued that a test method that only measures static backset is inferior to dynamic methods. It believes that its recommended method of measuring backset would improve the correlation between the static and dynamic measurements. According to Kongsberg, the preload application serves to improve this correlation by considering the effect of: (i) Very soft foam; (ii) the air gap between upholstery and foam; and (iii) the flex within the adjustment mechanism. As for the 10 N and 3.5 mm figures specifically, Kongsberg stated that the GTR was, at the time of Kongsberg's petition, reviewing the application of a 10 N preload to "prevent very soft head restraints" and reported a typical net effect of 3.5 mm additional system flex. We note that while the working group did review a presentation suggesting this approach, it was ultimately rejected in favor of the current procedure.

Kongsberg also argued that the agency recognized the benefit of using a pre-load in the gap measurement test procedure, and that this benefit should be extended to all tests that have the goal of measuring the position of foam and trim.

While we have considered the arguments raised by Kongsberg, we have decided to deny its petition in this area.

First, we believe that the petitioner has not demonstrated that its recommended approach would result in significant safety benefits or any other need for the approach. The agency's estimate of backset benefits is based on the current measurement method and, as such, takes into account physical factors associated with current head restraints that are related to system flex. To the extent the petitioner's recommendation would increase the backset limit by the amount that is the typical net effect of additional flex associated with a 10 N pre-load, it would not be expected to result in significant safety benefits. While the approach recommended by Kongsberg might be used to address possible concerns about very soft head restraints or ones that had excessive flex, the petitioner has not demonstrated that this possible problem is sufficiently large to warrant rulemaking. Moreover, the approach recommended by the petitioner could result in a less stringent requirement for some head restraints. The petitioner has not demonstrated a need for increased flexibility.

Also, there would be additional costs and complexity associated with the effective backset method. Unlike the current backset measurement method, the recommended effective backset method would require load measurement capability. The current HRMD backset probe does not have that capability, and adding such a capability is not necessarily a simple matter. Furthermore, this adjustment would require additional assessment of the procedure.

As to the gap measurement using a 165 mm sphere, both the 2004 and 2007 final rules specified that no more than a 5 N load is applied to the sphere when performing the measurements. This measurement relies on the ability to clearly delineate the points/lines of contact between the 165 mm sphere and the head restraint, and is thus a more complex measurement. In the laboratory, this is typically achieved through transfer paint applied to the head restraint. As a practical matter, the same device is used to perform this test as the backset retention test, and the ability to measure applied load is built into the apparatus.

We also note that the agency has explained and justified the current requirement in previous documents in this rulemaking, and previously addressed issues related to effective backset.

Given the lack of apparent safety benefits, lack of demonstrated need for a changed approach, and the additional testing and evaluation and other resources that would be needed for the agency to further consider rulemaking in this area, we deny this part of Kongsberg's petition.

C. NHTSA Denies Petition for Rulemaking To Adopt Effective Backset Requirements for Rear Head Restraints as Alternative to Backset Retention Requirement

Kongsberg petitioned the agency to adopt requirements for rear seat head restraint effective backset as an alternative to the backset retention requirement. It requested a 58.5 mm effective backset for rear seat head restraints with only one locking position, and an 80 mm effective backset for rear seat head restraints with multiple locking positions. Kongsberg did not expressly state what procedure should be used for the 80 mm effective backset, but the implication is that it would be through application of a load through the backset probe equivalent to 37 Nm.

FMVSS No. 202a does not specify backset requirements for rear seat head restraints, and those restraints themselves are not required. However, rear head restraints are subject to the backset *retention* requirements in S4.2.7. This is to ensure that the head restraint, if provided, is capable of providing the requisite strength to prevent whiplash.

Kongsberg indicated that it does not believe the agency has considered the effect of complex stowage and adjustment mechanisms in the rear seats

[28] *See* 73 FR 8743, February 14, 2008.

where there is not a backset requirement. It claimed that because of the amount of movement that can come from "comfort foam" compression, the current requirement is not a test of the head restraint lock. The petitioner stated that "[a]dvanced stowage mechanisms are penalized in a way that requires new head restraint solutions (with no comfort foam) even though the effective backset (sum of the measured backset and foam preload) is comparable to the NHTSA backset requirement for front row and is also below the value required of a front seat IIHS static good rating." It stated that if the advanced stowage systems have adjustments that allow multiple lock positions, "these solutions should have relief from the backset retention requirements if the 'effective' backset measurement, in all adjustment positions, is comparable to the strict backset requirements for front row."

We begin by noting that Kongsberg stated in its petition that it "proposes" that a more meaningful test for backset retention in rear seating applications would be "one that provides an alternative to certify with an effective backset * * *." Given this language, the petitioner appears to be requesting a manufacturer option in this area rather than that the agency necessarily establish a mandatory backset requirement for rear head restraints.

We note that the agency proposed to limit rear seat head restraint backset in the 2001 NPRM (66 FR 968), which also would have required that rear seat head restraints be provided. However, for the reasons explained in the 2004 final rule preamble, we decided not to require rear seat head restraints and eliminated the backset limit for optionally provided rear seat head restraints (69 FR 74857). Kongsberg did not address the reasons provided by the agency in that decision or provide an analysis demonstrating a need for a mandatory backset requirement for voluntarily-provided rear head restraints, and we are not revisiting that issue at this time.

After considering the arguments raised by Kongsberg, we have decided to deny its petition in this area. On the issue of relief from the backset retention requirement for rear head restraints, we do not believe such relief is in the interest of safety. Although there is no backset requirement for voluntarily-provided rear seat head restraints and the height requirement is less stringent, the agency believes that it is important for these head restraints to maintain their adjusted position just as it is for required front seat head restraints. NHTSA believes that when a vehicle occupant adjusts the backset of a head restraint to the proper position, it should maintain its adjusted position in the event of a collision. This is also consistent with our position that front seat head restraints must meet the backset retention test even in adjustment positions with less backset than 55 mm. While we have considered the arguments and data provided by Kongsberg, including data subject to a request for confidentiality, the petitioner has not demonstrated that there is a practicability problem with the backset retention test.

Neither has the petition demonstrated why the agency should apply one effective backset requirement to head restraints with a single locking position (58.5 mm at 10 N) and another effective backset requirement to head restraints with multiple locking positions (80 mm at 37 Nm).

We also note that the agency has explained and justified the current requirement in previous documents in this rulemaking, and previously addressed issues related to effective backset.

For the reasons discussed above, we deny Kongsberg's petition in this area.

V. Rulemaking Analyses and Notices

This rule makes several minor changes to the regulatory text of FMVSS No. 202a, and does not increase the regulatory burden on manufacturers. The agency has discussed the relevant requirements of the Vehicle Safety Act, Executive Order 12866, the Department of Transportation's regulatory policies and procedures, the Regulatory Flexibility Act, Executive Order 13132 (Federalism), Executive Order 12988 (Civil Justice Reform), Executive Order 13045 (Protection of Children from Environmental Health and Safety Risks), the Paperwork Reduction Act, the National Technology Transfer and Advancement Act, the Unfunded Mandates Reform Act, and the National Environmental Policy Act in the May 2007 final rule cited above. Those discussions are not affected by these changes.

Privacy Act

Please note that any one is able to search the electronic form of all documents received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or you may visit *http://www.dot.gov/privacy.html.*

Revised Regulatory Text

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Reports and recordkeeping requirements, Tires.

■ In consideration of the foregoing, NHTSA is amending 49 CFR part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

■ 2. In § 571.202a, revise S4.2.4.2, S4.3, S5, S5.2.4.2(c), S5.2.6(d), S5.2.7(a) introductory text, S5.2.7(a)(5), S5.2.7(a)(7), S5.3, and S5.3.4 to read as follows:

§ 571.202a Standard No. 202a; Head restraints; Mandatory applicability begins on September 1, 2009.

* * * * *

S4.2.4.2 *Gaps between the head restraint and seat using a 25 mm cylinder.* The following option is only available to head restraints that can move with respect to the seat. When measured in accordance with S5.2.4.2 of this section using the 25 mm cylinder specified in that paragraph, there must not be any gap greater than 25 mm between the anterior surface of the head restraint and anterior surface of the seat, with the head restraint adjusted to its lowest height position and any backset position, except as allowed by S4.4.

* * * * *

S4.3 *Dynamic performance and width.* At each forward-facing outboard designated seating position equipped with a head restraint, the head restraint adjusted midway between the lowest and the highest position of adjustment, and at any position of backset adjustment, must conform to the following:

* * * * *

S5 *Procedures.* Demonstrate compliance with S4.2 through S4.4 of this section as follows. The positions of seat adjustment specified in S5 and S5.1 are conditions to be met concurrently and are not a sequential list of adjustments. Any adjustable lumbar support is adjusted to its most posterior nominal design position. If the seat cushion adjusts independently of the seat back, position the seat cushion such that the highest H-point position is achieved with respect to the seat back, as measured by SAE J826 (July 1995) manikin, with leg length specified in S10.4.2.1 of § 571.208 of this Part. If the

specified position of the H-point can be achieved with a range of seat cushion inclination angles, adjust the seat inclination such that the most forward part of the seat cushion is at its lowest position with respect to the most rearward part. All tests specified by this standard are conducted with the ambient temperature between 18 degrees C. and 28 degrees C.

* * * * *

S5.2.4.2 * * *

(c) Determine if at least 125 mm of the cylinder can completely pass through the gap. If 125 mm or more of the cylinder can completely pass through the gap, the gap is not in compliance.

S5.2.6 * * *

(d) Reduce the load at the rate of 250 ± 50 N/minute until the load is completely removed. Maintain this condition for two minutes ± 5 seconds.

* * * * *

S5.2.7 * * *

(a) *Backset retention and displacement.* For head restraints that move with respect to the seat when occupant loading is applied to the seat back, S5.2.7(a)(1) through (8) may be performed with the head restraint fixed in a position corresponding to the position when the seat is unoccupied. This fixation is applied to the member(s) that first transmit(s) the seat back loading from the occupant to the head restraint.

* * * * *

(5) Maintain the position of the back pan as established in S5.2.7(a)(4) of this section. Using a 165 ± 2 mm diameter spherical head form with a surface roughness of less than 1.6 μm, root mean square, establish the head form initial reference position by aligning the centerline of the head form perpendicular to the displaced torso reference line, on the seat centerline, and at a height 65 ± 3 mm below the top of the head restraint. Apply a posterior initial load that will produce a 37 ± 0.7 Nm moment about the H-point. After maintaining this moment for 5.5 ± 0.5 seconds, measure the posterior displacement of the head form during the application of the load.

* * * * *

(7) Reduce the load at the rate of 187 ± 37 Nm/minute until it is completely removed. Maintain this condition for two minutes ± 5 seconds.

* * * * *

S5.3 *Procedures for dynamic performance.* Demonstrate compliance with S4.3 of this section in accordance with S5.3.1 though S5.3.9 of this section with a 50th percentile male Hybrid III test dummy specified in 49 CFR part 572 subpart E, fitted with sensors to measure head to torso rotation. The dummy with all sensors is to continue to meet all specifications in 49 CFR part 572 subpart E. The restraint is positioned midway between the lowest and the highest position of adjustment, and at any position of backset.

* * * * *

S5.3.4 *Seat Adjustment.* The following seat adjustments specify conditions to be met concurrently and are not a sequential list of adjustments. At each outboard designated seating position, using any control that primarily moves the entire seat vertically, place the seat in the lowest position. Using any control that primarily moves the entire seat in the fore and aft directions, place the seat midway between the forwardmost and rearmost position. If an adjustment position does not exist midway between the forwardmost and rearmost positions, the closest adjustment position to the rear of the midpoint is used. Adjust the seat cushion and seat back as required by S5 of this section. If the seat back is adjustable, it is set at an inclination position closest to 25 degrees from the vertical, as measured by SAE J826 (July 1995) manikin. If there is more than one inclination position closest to 25 degrees from the vertical, set the seat back inclination to the position closest to and rearward of 25 degrees. If the head restraint is adjustable, adjust the top of the head restraint to a position midway between the lowest position of adjustment and the highest position of adjustment. If an adjustment position midway between the lowest and the highest position does not exist, adjust the head restraint to a position below and nearest to midway between the lowest position of adjustment and the highest position of adjustment.

* * * * *

Issued: October 28, 2010.

David L. Strickland,

Administrator.

[FR Doc. 2010–27669 Filed 11–1–10; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 622

[Docket No. 0907201152–0420–02]

RIN 0648–AY05

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Regulatory Amendment to the Fishery Management Plan for the Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule that implements a regulatory amendment to the Fishery Management Plan for the Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands (FMP) prepared by the Caribbean Fishery Management Council (Council). This rule modifies the Bajo de Sico seasonal closure from a 3-month closure to a 6-month closure, and prohibits fishing for and possession of Caribbean reef fish in or from the exclusive economic zone (EEZ) portion of Bajo de Sico during the closure. The final rule also prohibits anchoring in the EEZ portion of Bajo de Sico year-round. In addition to the measures contained in the regulatory amendment, this final rule also adds spear to the list of allowable gears in the commercial sector of the Caribbean reef fish fishery and revises the title of the FMP in the list of authorized fisheries and gear. The intended effect of this rule is to provide further protection for red hind spawning aggregations and large snappers and groupers, and better protect the essential fish habitat (EFH) where these species reside.

DATES: This rule is effective December 2, 2010.

ADDRESSES: Copies of the regulatory amendment, the Environmental Assessment, the regulatory flexibility analysis, and the regulatory impact review (RIR) may be obtained from Britni Tokotch, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701 or may be downloaded from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Britni Tokotch, 727–824–5305.

SUPPLEMENTARY INFORMATION: The Caribbean reef fish fishery is managed

under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On July 28, 2010, NMFS published a proposed rule for the Bajo de Sico regulatory amendment in the **Federal Register** and requested public comment (75 FR 44209). The rationale for the measures contained in this final rule are provided in the regulatory amendment and in the preamble to the proposed rule and are not repeated here.

Comments and Responses

During the comment period for the proposed rule, NMFS received one comment. This comment was from a Federal agency and expressed general support for the actions proposed in the rule. NMFS received no comments that addressed specific actions in the Bajo de Sico regulatory amendment or the proposed rule.

Classification

The Administrator, Southeast Region, NMFS, determined that the regulatory amendment is necessary for the conservation and management of the reef fish fishery and is consistent with the Magnuson-Stevens Act and other applicable laws.

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

A final regulatory flexibility analysis (FRFA) was prepared. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant economic issues raised by public comments, NMFS responses to those comments, and a summary of the analyses completed to support the action. A copy of the full analysis is available from NMFS (*see* **ADDRESSES**). A summary of the FRFA follows.

The Magnuson-Stevens Act provides the statutory basis for this final rule. This final rule will not establish any new reporting, recordkeeping, or other compliance requirements. No duplicative, overlapping, or conflicting Federal rules have been identified.

This final rule will modify the Bajo de Sico seasonal closure by extending it from a 3-month closure to a 6-month closure, and prohibit fishing for and possession of Caribbean reef fish in or from the EEZ portion of Bajo de Sico during the closure. This final rule will also prohibit anchoring by fishing vessels in the EEZ portion of Bajo de Sico year-round. This rule also makes minor revisions to the codified text, including adding spear to the list of allowable gears in the commercial sector of the reef fish fishery, and revising the title of the FMP in the list of authorized fisheries and gears in § 600.725. The purposes of this final rule are to provide further protection for red hind spawning aggregations and large snappers and groupers from directed fishing mortality, to achieve a more natural sex ratio, age, and size structure, and to better protect the EFH where these species reside.

No significant issues associated with the economic analysis were raised through public comment on the proposed rule. A summary of the single comment received is provided in the previous section of this preamble. No changes were made in the final rule as a result of this comment.

At present, Federal permits are not required to participate in Council-managed fisheries on Puerto Rico's west coast, and, therefore, it is unknown how many fishermen or vessels participate in the Federal component of these fisheries. However, landings data from Puerto Rico's trip ticket program indicate that 294 fishermen had commercial landings on Puerto Rico's west coast in 2007. Some of these fishermen do not possess commercial fishing licenses, and the vessels used by these fishermen are not identified in the landings data. Preliminary fisherman Census data for 2008 indicate that 95 percent of commercial fishermen own one vessel, and thus it is assumed for current purposes that each commercial fisherman represents a single commercial fishing vessel. Furthermore, all charter and headboat vessels used to fish for, take, retain, or possess Atlantic billfish, tunas, swordfish, or sharks must possess an Atlantic Highly Migratory Species (HMS) charter/headboat permit. In 2008, eight charter vessels on Puerto Rico's west coast held HMS charter/headboat permits.

In Puerto Rico's west coast fisheries, commercial fishing vessels average 20 ft (6.3 m) in length, but range between 12 to 51 ft (3.8–15.9 m), with the vast majority being between 15 and 25 ft (4.7–7.8 m). These vessels have an average horsepower (HP) of approximately 77, though considerable variability exists within the fleet, even among vessels of comparable length. The age of these vessels is approximately 19 years on average. The majority of vessels are made of fiberglass (63 percent), though wood hulls and wood and fiberglass composite hulls are relatively common, accounting for 19 percent and 18 percent of the fleet, respectively. On average, each vessel carries two individuals, the captain and one crewman.

According to the 2008 fisherman Census, 72 percent of Puerto Rico's west coast commercial fishermen possess some type of commercial fishing license while 28 percent do not. Of those fishermen who hold a commercial fishing license, the vast majority (78 percent) possess a full-time license, while the others possess either a beginner's license (18 percent) or a part-time license (4 percent). These fishermen are approximately 47 years old on average and have nearly 27 years of commercial fishing experience. Each fisherman supports approximately three dependents on average, which translates to an average household family size of four persons. Each fisherman spends an average of approximately 51 hours per week on commercial fishing related activities. These individuals are highly dependent on income from commercial fishing, which represents more than 85 percent of their household income on average. More than half of these fishermen (54 percent) have less than a high school level of education, 35 percent have a high school level of education, and 11 percent have some additional education beyond high school.

As a result of non-reporting, reported landings and, thus, revenue for Puerto Rico's commercial fisheries underestimate actual landings and revenue. Therefore, landings and revenue must be adjusted in order to generate more accurate estimates. Based on corrected landings estimates, average gross revenue per commercial fisherman was $5,431 and $9,168 in 2006 and 2007 respectively, or $7,076 across both years. The maximum gross revenue for a single commercial fisherman in either year was approximately $138,000. Commercial fishermen are mainly dependent on revenue from spiny lobster, queen conch, and reef fish, particularly queen snapper and silk snapper. However, harvest of queen conch is prohibited in the EEZ around Puerto Rico and bottom-tending gear (*e.g.,* fish traps, lobster traps, and bottom longline) is prohibited in Bajo de Sico. Scuba diving and bottom line are the predominant gears used by commercial fishermen. The bottom line fishery for reef fish is most relevant for the actions in this rule.

In 2008, eight vessels on Puerto Rico's west coast possessed HMS charter/headboat permits. All eight charter vessels are made of fiberglass. The majority of the HMS charter vessels (seven) use rod and reel gear, while one vessel uses handline gear. Furthermore, these vessels average 27 ft (8.4 m) in

length and have 358 HP on average and thus are slightly longer and considerably more powerful on average than commercial fishing vessels. These vessels are approximately 8 years old on average and are thus typically much newer than commercial fishing vessels. Charter vessels also typically carry more individuals in terms of crew and passengers (approximately seven on average) than commercial vessels. Charter vessels most frequently target dolphin, blue marlin, wahoo, and yellowfin tuna. Charter fishermen have approximately 25 years of fishing experience on average. Charter vessels in Puerto Rico take approximately 190 trips per year each, though recent survey data suggest that charter vessels on the west coast may average only 150–160 trips per year. These data also suggest that west coast charter vessels specialize in half-day trips rather than full-day trips, the latter of which was reported to cost $526 on average in 2005. Annual landings and revenue data for west coast charter vessels are not presently available. However, the available information regarding number of trips per year and cost per trip indicates that these charter operations are similar to those in the Gulf of Mexico and South Atlantic regions. Therefore, it is assumed that these vessels' maximum and average annual revenues are also similar to those operating in the Gulf of Mexico and South Atlantic regions.

The Small Business Administration defines a small business in the commercial fishing industry as an entity that is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $4.0 million annually (NAICS codes 114111, finfish fishing). For charter vessels, the other qualifiers apply and the annual receipts threshold is $7.0 million (NAICS code 713990, recreational industries). Based on the annual revenue and related information for the fisheries provided above, all vessels expected to be directly impacted by this final rule are determined, for the purpose of this analysis, to be small entities.

The action to modify the Bajo de Sico closure is expected to directly benefit all eight charter vessels on Puerto Rico's west coast by giving them access to Bajo de Sico's HMS and pelagic resources during the 3 months (December, January, and February) the area is currently closed to all fishing. The magnitude of these economic benefits depends on the extent to which these vessels take additional trips to Bajo de Sico as opposed to reallocating current trips from other areas. An estimate of how many additional trips these charter vessels might take is not currently available. However, additional trips would be expected to result in higher revenue and thus higher profit.

Conversely, 64 of the 294 (22 percent) commercial fishing vessels actively participating in Puerto Rico's west coast fisheries in 2007 are expected to experience direct, adverse economic effects as a result of the action to modify the Bajo de Sico closure. Specifically, since these vessels will experience additional loss of access to Bajo de Sico's fisheries resources, particularly reef fish, during the months of October, November, and March under this action, their landings, revenue, and, therefore, profit are expected to decrease. Based on an extrapolation of landings data from Puerto Rico's trip ticket data, the 64 directly affected vessels averaged approximately 6,400 lb (2,303 kg) in landings and $17,300 in gross revenue in 2007. Detailed cost data and, therefore, profit estimates are not currently available for these commercial vessels. Therefore, the reduction in profit arising from this action cannot be directly estimated for the directly affected vessels.

However, surveys of the directly affected commercial fishermen indicate that these vessels are expected to experience a 48-percent reduction in landings and a 47-percent reduction in gross revenue, or approximately $8,130 per vessel. Most of these losses are due to reductions in the harvest of reef fish, particularly deepwater snappers. However, the harvest of other species (e.g. baitfish) caught on trips that target reef fish are also expected to be foregone. Since these relatively small vessels will not be able to transit through Bajo de Sico with reef fish on board and may have to travel to more distant fishing grounds in order to harvest deepwater snappers, operating costs are expected to increase by 57 percent. Further, the affected fishermen are expected to experience a 55-percent reduction in household income. Since the fisherman's household income is generally indicative of net revenue or profit to the vessel, this figure represents the best available estimate of the expected percentage reduction in profit for these entities.

On the other hand, since October and November are off-season for many commercial vessels due to poor weather and sea conditions, and given that the harvest of their primary target species, silk snapper, is already prohibited during these months, the reductions in landings, revenue, household income and, therefore, profit are likely overestimated. Furthermore, if they currently possess the proper gear, a few vessels may be able to partially mitigate these losses by reallocating some of their fishing effort out of the bottom line fishery for reef fish into the troll line fishery for HMS and pelagic species during the months that Bajo de Sico will be closed to fishing for Caribbean reef fish.

The action to prohibit anchoring by fishing vessels in Bajo de Sico year-round is not expected to generate adverse economic impacts on the eight charter vessels because they use troll or handline gear and do not drop anchor when fishing. It is possible, though not likely, that a few of the commercial vessels expected to be affected by the action to modify the Bajo de Sico closure may experience additional minimal adverse economic effects as a result of the anchoring prohibition. Though it is not necessary for vessels using bottom line gear to drop anchor when fishing, such behavior may occur on occasion. Since dropping anchor in Bajo de Sico would no longer be permissible under the action, vessels would be required to move out of the area, and thereby expend additional fuel, if they want to drop anchor. The effects resulting from the occasional need for a few vessels to expend additional fuel would likely be imperceptible and, therefore, probably have no impact on these vessels' profitability.

The action to add spear to the list of allowable gears in the commercial sector of the reef fish fishery is not expected to generate any adverse economic effects on commercial reef fish vessels. This action is administrative in nature, the purpose of which is to correct an oversight with respect to the current list of allowable gears for the commercial reef fish fishery. Since spear is and has been an historically used gear in the commercial reef fish fishery, the Council intended for it to be included in the list of allowable gears. This action would formally legalize its use in the fishery but have no effect on its current or expected future use in the fishery and thus, in turn, have no effect on the operations of commercial reef fish vessels.

The Council considered a number of alternatives to achieve their objectives and reduce potential adverse economic effects, where appropriate. The following is a discussion of these alternatives and the reason they were not chosen as the proposed action. An alternative may not be chosen for reasons unrelated to the expected economic effects of the alternative, such as not achieving the Council's objectives

and, as a result, the following information only discusses the expected economic effects of the alternative that was not chosen when the alternative would have achieved the Council's objectives, would have been expected to result in reduced adverse economic effects relative to the proposed action, or was not chosen for some other reason.

Four alternatives, including the status quo, were considered for the action to modify the Bajo de Sico seasonal closure. Three of the alternatives include multiple options that determine which species and specific activities are covered by the closure. The first alternative, the status quo, would not have modified the seasonal closure for Bajo de Sico or prohibited possession of reef fish onboard when transiting through the area during the closure. Further, the seasonal closure would have continued to apply to all fishing, including fishing for non-reef fish species such as HMS and pelagics. The status quo alternative is inconsistent with the Council's objective of providing greater protection for spawning aggregations of reef fish in the area as well as for developed coral that provide essential habitat for these species.

The second alternative, which would extend the seasonal closure by 3 months to the months of October, November, and March, had three options in addition to the action. The first option would have prohibited fishing for all species, including those not managed by the Council, during the closure. The second option would have prohibited fishing for and possession of all species, including those not managed by the Council, during the closure. The third option would have prohibited fishing for reef fish during the closure. The first two options were not selected because fishing for HMS and pelagic species using troll, rod and reel, and handline gear near the surface is not expected to result in the incidental harvest of reef fish or damage to coral. As such, prohibiting fishing for and possession of these species would generate unnecessary economic and social impacts on charter, private recreational, and commercial vessels. The third option was not selected because it would still allow transit through Bajo de Sico during the closure with reef fish onboard. Allowing possession of reef fish onboard would make enforcement of the closure more difficult and thereby less effective.

The third alternative, which would extend the seasonal closure by 3 months to the months of March, April, and May, had four options. Although this alternative would close Bajo de Sico for 6 months, and thereby generate comparable biological benefits in terms of protecting red hind spawning aggregations and larger individuals of snapper and grouper, as well as protecting well developed coral and sponge habitat (EFH), it would create greater adverse social and economic impacts on commercial vessels and associated onshore businesses because commercial fishing activity is considerably greater in March, April, and May than in October, November, and March. Thus, this alternative would result in lower net benefits to society.

The fourth alternative, which would implement a year-round closure of Bajo de Sico, had four options. This alternative would have generated greater biological benefits with respect to protecting coral and reef fish populations. However, the additional benefits of a year-round closure to reef fish spawning aggregations were not believed to be significantly greater compared to a 6-month closure, and additional protections to coral habitat are being accomplished by the anchoring prohibition. Further, by completely prohibiting access to Bajo de Sico's reef fish and, in effect, baitfish resources, this alternative would have generated much greater adverse social and economic impacts on commercial and charter vessels and associated onshore businesses. Given the rule's objectives, the Council concluded these considerably larger social and economic costs outweighed the additional biological benefits and, thus, would have resulted in lower net benefits to society.

Three alternatives, including the status quo, were considered for the action to prohibit anchoring in Bajo de Sico. The first alternative, the status quo, would not have implemented any restrictions on anchoring in Bajo de Sico. Anchoring is thought to cause substantial and long lasting damage to coral populations. Anchoring can also indirectly impact the long-term growth of coral populations. Coral populations are an essential part of the ecology of reef environments. If coral populations are decreased, reef fish populations could also be indirectly impacted by lack of essential habitat. Thus, this alternative is contrary to the Council's objective of providing additional protections to important coral habitat.

The second alternative would have prohibited anchoring for 6 months. Anchoring has a high probability of damaging essential coral reef populations. These coral populations are very vulnerable and slow growing, and even slight damage can require years of recovery. Anchoring during the open season could damage coral beyond recovery. Coral populations are an essential part of the ecology of reef environments. If coral populations are decreased, reef fish populations could also be indirectly impacted by lack of essential habitat. Thus, this alternative is contrary to the Council's objective of providing additional protections to important coral habitat.

Copies of the RIR and FRFA are available from NMFS (*see* **ADDRESSES**).

List of Subjects

50 CFR Part 600

Administrative practice and procedures, Confidential business information, Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics.

50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: October 28, 2010.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR parts 600 and 622 are amended as follows:

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

■ 1. The authority citation for part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

■ 2. In § 600.725, in paragraph (v), in the table under heading "V. Caribbean Fishery Management Council," the heading for entry 2. is revised, and a new entry 2.D. is added to read as follows:

§ 600.725 General prohibitions.

* * * * *

(v) * * *

Fishery	Authorized gear types
* * * * * * *	
V. Caribbean Fishery Management Council.	
* * * * * * *	
2. Caribbean Reef Fish Fishery (FMP).	
* * * * * * *	
D. Other commercial fishery	D. Spear.
* * * * * * *	

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 3. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 4. In § 622.33, paragraph (a) introductory text is revised, paragraph (a)(2)(ii)(A) is removed and reserved, and paragraph (a)(8) is added to read as follows:

§ 622.33 Caribbean EEZ seasonal and/or area closures.

(a) *Seasonal closures.* In addition to the other restrictions specified in this paragraph (a), fishing with pots, traps, bottom longlines, gillnets or trammel nets is prohibited year-round in the closed areas specified in paragraphs (a)(1), (2), (3), and (8) of this section.

* * * * *

(8) *Bajo de Sico closed area.* (i) The Bajo de Sico closed area is bounded by rhumb lines connecting, in order the following points:

Point A	North lat.	West long.
A	18°15.7′	67°26.4′
B	18°15.7′	67°23.2′
C	18°12.7′	67°23.2′
D	18°12.7′	67°26.4′
A	18°15.7′	67°26.4′

(ii) From October 1 through March 31, each year, no person may fish for or possess any Caribbean reef fish, as listed in Table 2 of Appendix A to part 622, in or from those parts of the Bajo de Sico closed area that are in the EEZ. The prohibition on possession does not apply to such Caribbean reef fish harvested and landed ashore prior to the closure.

(iii) Anchoring, by fishing vessels, is prohibited year-round in those parts of the Bajo de Sico closed area that are in the EEZ.

* * * * *

[FR Doc. 2010–27661 Filed 11–1–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

RIN 0648–XZ95

Atlantic Highly Migratory Species; Inseason Action To Close the Commercial Blacknose Shark and Non-Blacknose Small Coastal Shark Fisheries

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

ACTION: Notification of fishery closure.

SUMMARY: NMFS is closing the commercial blacknose shark and non-blacknose small coastal shark (SCS) fisheries. This action is necessary because landings for the 2010 blacknose shark fishing season are projected to have reached at least 80 percent of the available quota.

DATES: The commercial fisheries for blacknose shark and non-blacknose SCS are closed effective 11:30 p.m. local time November 2, 2010 until, and if, NMFS announces, via a notice in the **Federal Register** that additional quota is available and the season is reopened.

FOR FURTHER INFORMATION CONTACT: Karyl Brewster-Geisz or Peter Cooper, 301–713–2347; (fax) 301–713–1917.

SUPPLEMENTARY INFORMATION: The Atlantic shark fisheries are managed under the 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP), its amendments, and its implementing regulations found at 50 CFR part 635 issued under authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

Under § 635.5(b)(1), shark dealers are required to report to NMFS all sharks landed every two weeks. Dealer reports for fish received between the 1st and 15th of any month must be received by NMFS by the 25th of that month. Dealer reports for fish received between the 16th and the end of any month must be received by NMFS by the 10th of the following month. Under § 635.28(b)(3), when NMFS projects that fishing season landings for either blacknose shark or non-blacknose SCS quota have reached or are projected to reach 80 percent of the available quota within a given fishing season, NMFS will file for publication with the Office of the Federal Register a notice of closure for the entire SCS fishery, including both the blacknose and non-blacknose SCS fisheries, that will be effective no fewer than 5 days from the date of filing. From the effective date and time of the closure until NMFS announces, via a notice in the **Federal Register**, that additional quota is available and the season is reopened, the fishery for that species group is closed, even across fishing years.

On June 1, 2010 (75 FR 30484), NMFS announced the final rule for Amendment 3 to the Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP), which, among other things, established quotas and opening dates for the 2010 blacknose shark and non-blacknose SCS fisheries. Both the blacknose shark and non-blacknose SCS fisheries opened on June 1, 2010, with base quotas of 19.9 metric tons (mt) dressed weight (dw) (43,872 lb dw) and 221.6 mt dw (488,539 lb dw), respectively. Dealer reports recently received through the September 30, 2010, reporting period indicate that 13.4 mt dw or 68 percent of the available blacknose shark fishery quota has been landed, and that 89.1 mt dw or 40 percent of the available non-blacknose SCS fishery quota has been landed. Dealer reports received to date indicate that 20 percent of the blacknose shark quota was landed from the opening of the fishery on June 1, 2010, through June 30, 2010; 14.4 percent of the quota was landed in July; 13.6 percent of the quota was landed in August; and 20 percent of the quota was landed in September. NMFS looked at

two landings projection scenarios—one that used the average landings rate of blacknose sharks per day from the entire 2010 fishing period (June 1 to September 30), and another that used the average blacknose shark landings rate from the last reporting period (September 15 to September 30)—to estimate blacknose shark landings by October 31, 2010. The projections estimate that approximately 17 and 36.9 percent of the blacknose shark quota will be landed in October, respectively, and that blacknose shark landings could total approximately 85 and 104.9 percent of the blacknose shark quota by October 31, 2010, respectively.

Dealer reports received to date indicate that 9.5 percent of the non-blacknose SCS fishery quota was landed from the opening of the fishery on June 1, 2010, through June 30, 2010; 8.5 percent of the quota was landed in July; 9.4 percent of the quota was landed in August; and 12.6 percent of the quota was landed in September. NMFS looked at two landing projection scenarios—one that used the average landings rate of non-blacknose SCS per day from the entire 2010 fishing period (June 1 to September 30), and another that used the average non-blacknose SCS landings rate from the last reporting period (September 15 to September 30)—to estimate non-blacknose SCS landings by October 31, 2010. The projections estimate that approximately 10 and 13.5 percent of the non-blacknose SCS quota will be landed in October, respectively, and that non-blacknose SCS landings could approximately total 50 and 53.5 percent of the non-blacknose shark quota by October 31, 2010, respectively.

The projections indicate that blacknose shark landings have reached at least 85 percent of the quota, which exceeds the 80-percent limit specified in the regulations. Accordingly, NMFS is closing both the commercial blacknose shark and non-blacknose SCS fisheries as of 11:30 p.m. local time November 2, 2010. This closure does not affect any other shark fishery.

During the closure, retention of blacknose sharks and/or non-blacknose SCS is prohibited for persons fishing aboard vessels issued a commercial shark limited access permit (LAP) under 50 CFR 635.4, unless the vessel is properly permitted to operate as a charter vessel or headboat for HMS and is engaged in a for-hire trip, in which case the recreational retention limits for sharks and "no sale" provisions apply (50 CFR 635.22(a) and (c)). A shark dealer issued a permit pursuant to § 635.4 may not purchase or receive blacknose sharks and/or non-blacknose SCS from a vessel issued an Atlantic shark LAP, except that a permitted shark dealer or processor may possess blacknose sharks and/or non-blacknose SCS that were harvested, off-loaded, and sold, traded, or bartered, prior to the effective date of the closure and were held in storage.

Classification

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries, NOAA (AA), finds that providing for prior notice and public comment for this action is impracticable and contrary to the public interest because the fishery is currently underway, and any delay in this action would cause overharvest of the quota and be inconsistent with management requirements and objectives. If the quota is exceeded, the affected public is likely to experience reductions in the available quota and a lack of fishing opportunities in future seasons. For these reasons, the AA also finds good cause to waive the 30-day delay in effective date pursuant to 5 U.S.C. 553 (d)(3). This action is required under § 635.28(b)(2) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 27, 2010.

Carrie Selberg,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–27658 Filed 10–28–10; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 75, No. 211
Tuesday, November 2, 2010

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1095; Directorate Identifier 2009–NE–40–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney (PW) Models PW4074 and PW4077 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for PW PW4074 and PW4077 turbofan engines with 15th stage high-pressure compressor (HPC) disks, part number (P/N) 55H615, installed. This proposed AD would require removing the 15th stage HPC disk within 12,000 cycles since new (CSN) or, for any disks that exceed 12,000 CSN after the effective date of this AD using a drawdown plan that includes a borescope inspection (BSI) or eddy current inspection (ECI) of the rim for cracks. This proposed AD results from multiple shop findings of cracked 15th stage HPC disks. We are proposing this AD to prevent cracks from propagating into the bolt hole, which could result in a failure of the 15th stage HPC disk, uncontained engine failure, and damage to the airplane.

DATES: We must receive any comments on this proposed AD by January 3, 2011.

ADDRESSES: Use one of the following addresses to comment on this proposed AD.

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

Contact Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–7700; fax (860) 565–1605, for a copy of the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: James Gray, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *james.e.gray@faa.gov;* telephone (781) 238–7742; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send us any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA–2010–1095; Directorate Identifier 2009–NE–40–AD" in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light 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 with FAA personnel concerning this proposed AD. Using the search function of the Web site, anyone can find and read the comments in any of our dockets, including, if provided, the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

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 proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is the same as the Mail address provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

Discussion

We have received reports of multiple shop findings of cracked 15th stage HPC disks that required removing the disks from service. As of June 30, 2010, 53 disks with cracks in the front rail of the load and lock slots have been reported. Engineering investigation determined that the initiation was the result of thermal mechanical fatigue. Three of the disks had cracks that propagated radially into the bolt holes. These cracks could propagate further and lead to failure of the disk.

This condition, if not corrected, could result in a failure of the 15th stage HPC disk, uncontained engine failure, and damage to the airplane.

Relevant Service Information

We have reviewed and approved the technical contents of PW Service Bulletin (SB) PW4G–112–72–309, Revision 1, dated July 1, 2010, that describes procedures for performing a BSI or ECI for cracks in the front rail of the outer rim of the 15th stage HPC disk.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. We are proposing this AD, which would require removing the 15th stage HPC disk before 12,000 CSN, or for any disks that exceed 12,000 CSN after the effective date of this AD using a drawdown plan that includes a BSI or ECI of the rim for cracks. The proposed AD would require you to use the service information described previously to perform these actions.

Interim Action

These actions are interim actions and we may take further rulemaking actions in the future.

Costs of Compliance

We estimate that this proposed AD would affect 44 engines installed on airplanes of U.S. registry. Prorated parts

would cost about $66,000 per 15th stage HPC disk. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $2,904,000.

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 have 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 that the proposed 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); and
3. Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. You may get a copy of this summary at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

Under the authority delegated to me by the Administrator, the Federal Aviation Administration 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:

Pratt & Whitney: Docket No. FAA–2010–1095; Directorate Identifier 2009–NE–40–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by January 3, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Pratt & Whitney (PW) PW4074 and PW4077 turbofan engines with 15th stage high-pressure compressor (HPC) disks, part number (P/N) 55H615, installed. These engines are installed on, but not limited to, Boeing 777–200 series and 777–300 series airplanes.

Unsafe Condition

(d) This AD results from multiple shop findings of cracked 15th stage HPC disks. We are issuing this AD to prevent cracks from propagating into the bolt holes of the 15th stage HPC disk, which could result in a failure of the 15th stage HPC disk, uncontained engine failure, and damage to the airplane.

Compliance

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

(f) For 15th stage HPC disks that have 9,865 or fewer cycles since new (CSN) on the effective date of this AD, remove the disk from service before accumulating 12,000 CSN.

(g) For 15th stage HPC disks that have accumulated more than 9,865 CSN on the effective date of this AD, do the following:

(1) Remove the disk from service at the next piece-part exposure above 12,000 CSN, not to exceed 2,135 cycles-in-service (CIS) after the effective date of this AD.

(2) For 15th stage HPC disks that are installed in the engine and exceed 12,000 CSN, perform a borescope inspection (BSI) or eddy current inspection (ECI):

(i) Within 2,400 cycles-since-last fluorescent penetrant inspection or ECI, or

(ii) Within 1,200 cycles-since-last BSI, or

(iii) Within 55 cycles-in-service (CIS) after the effective date of this AD, whichever is latest.

(3) If you see a suspected crack using a BSI from paragraph (g)(2) of this AD, but can't visually confirm a crack, perform an ECI within 5 CIS after the BSI.

(4) If you find a crack using any inspection, remove the disk from service before further flight.

(h) Use paragraph 1.A. or 1.B. of the Accomplishment Instructions "For Engines Installed on the Aircraft" or 1.A. or 1.B. of the Accomplishment Instructions "For Engines Removed from the Aircraft," of PW Service Bulletin PW4G–112–72–309, Revision 1, dated July 1, 2010 to perform the inspections.

Alternative Methods of Compliance

(i) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(j) Contact James Gray, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *james.e.gray@faa.gov;* telephone (781) 238–7742; fax (781) 238–7199, for more information about this AD.

(k) Pratt & Whitney Service Bulletin PW4G–112–72–309 Revision 1, dated July 1, 2010, pertains to the subject of this AD. Contact Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–7700; fax (860) 565–1605, for a copy of this service information.

Issued in Burlington, Massachusetts, on October 26, 2010.

Karen M. Grant,

Acting Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2010–27607 Filed 11–1–10; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1 and 4

RIN 3038–AD11

Removing Any Reference to or Reliance on Credit Ratings in Commission Regulations; Proposing Alternatives to the Use of Credit Ratings

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is proposing rules to implement new statutory provisions enacted by Title IX of the Dodd-Frank Wall Street Reform and Consumer Protection Act. These proposed rules apply to futures commission merchants, designated clearing organizations and commodity pool operators. The proposed rules implement the new statutory framework that requires agencies to replace any reference to or

reliance on credit ratings in their regulations with an appropriate alternative standard.

DATES: Submit comments on or before December 2, 2010.

ADDRESSES: You may submit comments, identified by RIN number 3038–AD11 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Agency Web site, via its Comments Online process: http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.
- *Mail:* David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as mail above.

Please submit your comments using only one method.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the established in CFTC Regulation 145.9.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Adrianne Joves, Counsel, Office of General Counsel, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5420. E-mail: *ajoves@cftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act").[2] Title VII of the Dodd-Frank Act[3] amended the Commodity Exchange Act ("CEA")[4] to establish a comprehensive new regulatory framework for swaps and security-based swaps. The legislation was enacted to reduce risk, increase transparency, and promote market integrity within the financial system by, among other things: (1) Providing for the registration and comprehensive regulation of swap dealers and major swap participants; (2) imposing clearing and trade execution requirements on standardized derivative products; (3) creating robust recordkeeping and real-time reporting regimes; and (4) enhancing the Commission's rulemaking and enforcement authorities with respect to, among others, all registered entities and intermediaries subject to the Commission's oversight.

In addition, Title IX of the Dodd-Frank Act addresses credit ratings agencies. In pertinent part, Title IX requires Federal agencies to review, modify and report on their regulations that require the use of an assessment of the creditworthiness of a security or money market instrument and that rely on or reference credit ratings.[5] Section 939A of the Dodd-Frank Act directs that the Commission:

(1) Review Commission regulations that require the use of an assessment of the credit-worthiness of a security or money market instrument;

(2) Remove any reference to or reliance on credit ratings in such regulations and substitute an appropriate standard of credit-worthiness;

(3) Seek to establish, to the extent possible, uniform standards of credit-worthiness; and

(4) Report to Congress after the completion of the rulemaking process.[6]

The Dodd-Frank Act contains a statutory deadline of July 21, 2011, for completing the required review of Commission regulations for any such reference to or reliance on credit ratings.[7]

The Commission has completed the required review of its regulations[8] and has identified two categories of regulations that contain any reliance on credit ratings: (1) Those that rely on ratings to limit how Commission registrants might invest or deposit customer funds; and (2) those that require disclosing a credit rating to describe an investment's characteristics. However, not every instance identified by this review specifically references or relies on credit ratings to assess the credit-worthiness of a security or a money market instrument. Nonetheless, in keeping with its efforts to fully comply with both the spirit and letter of the Dodd-Frank Act, the Commission is proposing to amend all of its identified regulations that rely on credit ratings regarding financial instruments. Accordingly, the Commission proposes amending Rules 1.49[9] and 4.24[10] to remove any references or reliance on credit ratings and replace them with alternative standards. Elsewhere in today's **Federal Register**, the Commission is also publishing notice of its proposal to amend Commission regulations 1.25 and 30.7, which in part proposes removing all references to or reliance on credit ratings in those regulations. Finally, the Commission is also publishing in today's **Federal Register** notice of its proposal to amend Part 40 of its regulations. This proposal includes removing Appendix A to Part 40,[11] which contained one reference to credit ratings.

The Commission requests comment on all aspects of the proposed rules, as well as comment on the specific provisions and issues highlighted in the discussion below.

II. Discussion

A. Removing Reliance on or Reference to Credit Ratings To Limit How Registrants Might Deposit Customer Funds

As noted above, after completing the required review of Commission regulations for references to or reliance on credit ratings, two instances were identified where credit ratings were used to help limit how registrants might handle customer funds. Commission regulations 1.49 and 30.7, which were written to mirror one another,[12] both include a reference to credit ratings. The Commission is proposing to remove those references to credit ratings from both 30.7 and 1.49. The Commission's proposal to remove the reference to credit ratings from regulation 30.7 is

[1] 17 CFR 145.9.

[2] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at *http://www.cftc.gov./LawRegulation/OTCDERIVATIVES/index.htm.*

[3] Pursuant to Section 701 of the Dodd-Frank Act, Title VII may be cited as the "Wall Street Transparency and Accountability Act of 2010."

[4] 7 U.S.C. 1 *et seq.*

[5] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, § 939A (2010).

[6] Id.

[7] Id. at § 939A(a).

[8] *Supra* note 4.

[9] 17 CFR 1.49 (2009).

[10] 17 CFR 4.24(h)(1)(i) (2009).

[11] 17 CFR app. pt. 40 guideline no. 1 (2009).

[12] *See* 68 FR 5549 (Feb. 4, 2003).

being published elsewhere in today's **Federal Register**.

1. Commission Regulation 1.49

Commission Regulation 1.49 [13] places qualifications on the types of depositories where futures commission merchants (FCMs) and designated clearing organizations (DCOs) might place customer funds. Similar to 30.7, 1.49 currently requires that an acceptable foreign depository must either: (1) Have in excess of $1 billion of regulatory capital; or (2) issue commercial paper or a long-term debt instrument that is rated in one of the two highest rating categories by at least one nationally recognized statistical rating organization (NRSRO).

In keeping with the Dodd-Frank Act, the Commission proposes to remove all ratings requirements from Regulation 1.49. This proposal is based on the Commission's views regarding the uncertain reliability of ratings as currently administered. Recent events in the financial markets have revealed significant weaknesses in the ratings industry and its ability to reliably gauge the safety of debt instruments. Further, Congress and other Federal financial regulators have considered eliminating or restricting rating requirements with some frequency during the past two years.[14]

Finally, noting that the requirements regarding the placement of customer funds in foreign depositories in the two regulations were originally written to mirror one another,[15] this proposal to remove the reference to credit ratings in Commission regulation 1.49 is done in concert with proposals found elsewhere in today's **Federal Register** regarding Commission regulation 30.7. That proposal considers the reference to credit ratings in Commission regulation 30.7 to be no more useful or necessary to gauge the safety of a depository institution than similar references found in Commission regulation 1.25. To explain its proposal to remove references to credit ratings in Commission regulation 1.25, the Commission notes the poor past performance of credit ratings in gauging the safety of certain types of investments, and its view that credit ratings are not necessary to gauge the future ability of certain types of investments to preserve customer funds. As a result, this proposal serves to align Commission regulation 1.49 with proposed Commission regulations 1.25 and 30.7, and to greater simplify the regulatory treatment of investment of customer funds.

Request for Comment

The Commission requests comment on whether relying on a minimum capital requirement of $1 billion dollars in regulatory capital is an adequate alternative standard to current Commission regulation 1.49. The Commission also requests comment on whether there is another standard or measure of solvency and credit-worthiness that might be used as an appropriate, additional test of a bank's safety. Specifically, the Commission seeks comment on whether a leverage ratio or a capital adequacy ratio requirement consistent with or similar to those in the Basel III accords[16] would be an appropriate additional safeguard for a bank or trust company located outside the United States.

The Commission welcomes any other comments on this proposal.

B. Removing Reliance on Credit Ratings To Help Disclose the Characteristics of an Investment

After completing the required review of Commission regulations for references to or reliance on credit ratings, two instances were identified where credit ratings were used to help disclose the characteristics of an investment. Commission regulation 4.24 [17] and Appendix A to Part 40 [18] both include a reference to credit ratings. As a result, while the references to credit ratings are not specifically related to the credit-worthiness of securities or money market instruments, in keeping with the spirit of the Dodd-Frank Act the Commission is proposing to remove the references to credit ratings from 4.24. Elsewhere in today's **Federal Register** the Commission is proposing amendments to Part 40 of the Commission's regulations, including the removal of Appendix A to Part 40.

1. Commission Regulation 4.24

Commission Regulation 4.24 requires commodity pool operators (CPOs) to disclose the characteristics of the commodity and other interests that the pool will trade including, if applicable, their investment rating. In keeping with its stated goal of complying fully with the spirit and letter of the Dodd-Frank Act, the Commission proposes removing the references to ratings Commission regulation 4.24 and replacing that reference with the phrase "credit-worthiness." While CPOs may still choose to reference an investment rating to describe the credit-worthiness of an investment in its disclosures, the Commission notes that the CPO as appropriate should make an independent assessment of the credit-worthiness of those investments.

Request for Comment

The Commission requests comment on what effect removing credit ratings as one characteristic included in Commission regulation 4.24 might have on the ability of investors and others to understand the disclosures of commodity pool operators (CPOs) regarding the characteristics of a commodity pool. The Commission also requests comment on the ability of CPOs to make independent assessments of the credit-worthiness of their pool's investments.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) [19] requires Federal agencies, in promulgating rules, to consider the impact of those rules on small businesses. The rule amendments proposed herein will affect FCMs, DCOs and CPOs. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on small entities in accordance with the RFA.[20] The Commission has previously determined that registered FCMs,[21] DCOs [22] and CPOs [23] are not small entities for the purpose of the RFA. Accordingly, pursuant to 5 U.S.C. 605(b), the Chairman, on behalf of the Commission, certifies that the proposed rules will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) [24] imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. The proposed rule amendments do not require a new collection of information on the part of any entities subject to the

[13] 17 CFR 1.49(d)(3)(i)(B) (2009).

[14] *See* 74 FR 63832 (Dec. 4, 2009) (discussing the efforts of the Securities Exchange Commission). *See also* 75 FR 52283 (Aug. 25, 2010) (discussing the efforts of the Federal banking agencies.)

[15] *See supra* note 11.

[16] *See* Press Release, Basel Committee on Banking Supervision, Group of Governors and Heads of Supervision Announces Higher Global Minimum Capital Standards (Sept. 12, 2010) (*http://bis.org/press/p100912.pdf*).

[17] 17 CFR 4.24(h)(1)(i) (2009).

[18] 17 CFR app. pt. 40 guideline no. 1 (2009).

[19] 5 U.S.C. 601 *et seq.*

[20] 47 FR 18618 (Apr. 30, 1982).

[21] *Id.* at 18619.

[22] 66 FR 45604, 45609 (Aug. 29, 2001).

[23] 47 FR 18618–21 (Apr. 30, 1982).

[24] 44 U.S.C. 3501 *et seq.*

proposed rule amendments. Accordingly, for purposes of the PRA, the Commission certifies that these proposed rule amendments, if promulgated in final form, would not impose any new reporting or recordkeeping requirements.

C. Costs and Benefits of the Proposed Rules

Section 15(a) of the CEA [25] requires the Commission to consider the costs and benefits of its actions before issuing a rulemaking under the Act. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of rule or to determine whether the benefits of the rulemaking outweigh its costs; rather, it requires that the Commission "consider" the costs and benefits of its actions. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular rule is necessary or appropriate to protect the public interest or to effectuate any of the provisions or accomplish any of the purposes of the Act.

Summary of proposed requirements. Proposed rule 1.49 would facilitate greater protection of customer funds. The proposed amendments align proposed regulation 1.49 with proposals made elsewhere in today's **Federal Register** regarding Commission regulations 1.25 and 30.7. Like those proposals, the proposed amendments to Commission regulation 1.49 are made with the primary purpose of safeguarding the funds of customers.

Proposed amendments to Commission regulation 4.24 would lessen reliance on credit ratings and will reduce risk in the financial system by placing more responsibility on CPOs to fully understand the credit-worthiness of their investments .

Costs. With respect to costs, the Commission has determined that its proposals present minimal costs while providing the great benefits of safeguarding customer funds and decreasing the risks associated with CPOs not evaluating the credit-worthiness of their investments. There may be some minimal costs associated with transferring customer funds, if necessary, to more sound foreign depository institutions and with CPOs improving their ability to make independent assessments regarding the credit-worthiness of their investments.

Benefits. With respect to benefits, the Commission has determined that the proposed rules will help safeguard customer funds and will result in CPOs improving their understanding of the credit-worthiness of their investments. The proposed rules help protect market participants and the public by safeguarding customer funds and highlighting the accountability CPOs have for understanding the credit-worthiness of their investments. The proposed rules will not hinder the efficiency or competitiveness of futures markets, and may improve the financial integrity of the markets by helping to safeguard customer funds and encourage CPOs to better understand the credit-worthiness of their investments. The proposed rules will not have any effect on price discovery, and may help improve sound risk management practices.

Public Comment. The Commission invites public comment on its cost-benefit considerations. Commenters are also invited to submit any data or other information that they may have quantifying or qualifying the costs and benefits of the Proposal with their comment letters.

List of Subjects

17 CFR Part 1

Brokers, Commodity futures, Consumer protection.

17 CFR Part 4

Advertising, Commodity futures, Commodity pool operators, Commodity trading advisors, Consumer protection, Disclosure, Principals, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Commodity Futures Trading Commission proposed to amend 17 CFR parts 1 and 4 as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for part 1 is revised to read as follows:

Authority: 7 U.S.C. 1a, 2, 5, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010) and the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. 106–554, 114 Stat. 2763 (2000).

2. Section 1.49 is amended by revising paragraph (d)(3) to read as follows:

§ 1.49 Denomination of customer funds and location of depositories.

* * * * *

(d) * * *

(3) A depository, if located outside the United States, must be:

(i) A bank or trust company that has in excess of $1 billion of regulatory capital; or

(ii) A futures commission merchant that is registered as such with the Commission; or

(iii) A derivatives clearing organization.

* * * * *

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

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

Authority: 7 U.S.C. 1a, 2, 4, 6(c), 6b, 6c, 6l, 6m, 6n, 6o, 12a and 23 as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010).

2. Section 4.24 is amended by revising paragraph (h)(1)(i) to read as follows:

§ 4.24 General disclosures required.

* * * * *

(h) * * *

(1) * * *

(i) The approximate percentage of the pool's assets that will be used to trade commodity interests, securities and other types of interests, categorized by type of commodity or market sector, type of security (debt, equity, preferred equity), whether traded or listed on a regulated exchange market, maturity ranges and by credit worthiness, as applicable;

* * * * *

By the Commodity Futures Trading Commission.

Dated: October 27, 2010.

David A. Stawick,

Secretary.

Statement of Chairman Gary Gensler Removing Any Reference to or Reliance on Credit Ratings in Commission Regulations; Proposing Alternatives to the Use of Credit Ratings

October 26, 2010

I support the proposal to remove any reliance on credit ratings within the Commission's regulations. Under Title IX of the Dodd-Frank Act, Congress required that the Commission review references to credit ratings in our

[25] 7 U.S.C. 19(a).

existing regulations and to specifically remove them if they were regarding certain financial instruments. The Commission has completed the required review of its regulations and has identified seven instances of references to credit ratings, five of which were regarding those financial instruments. Today, we are proposing removing these five references and reliance to credit ratings. This rule addresses two of those references in Regulation 1.49, which limits the types of banks in which futures commission merchants and derivatives clearing organizations may place customer funds, and 4.24, which requires commodity pool operators to disclose to their customers where they are putting customer money. The other actions we are taking today regarding rule certifications in Part 40 and investment of customer funds in Regulation 1.25 and 30.7 will address the remaining instances of credit ratings.

[FR Doc. 2010–27555 Filed 11–1–10; 8:45 am]

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 15 and 20

RIN 3038–AD17

Position Reports for Physical Commodity Swaps

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is proposing reporting regulations that are reasonably necessary for implementing and enforcing aggregate position limits for certain physical commodity derivatives. As a result of recent legislative reforms, the Commission may adopt regulations establishing aggregate position limits for designated contract market ("DCM") physical commodity futures contracts and swaps that are economically equivalent to such contracts. The Commission currently receives, and uses for market surveillance purposes, including position limit enforcement, data on large positions in all physical commodity futures and option contracts traded on DCMs. However, there is no analogous reporting structure in place for economically equivalent swaps, which until recently were largely unregulated financial contracts. The Commission's proposal would require position reports on economically equivalent swaps from clearing organizations, their members and swap dealers. Notably, the proposed regulations also include a sunset provision. The sunset provision would render the regulations ineffective upon the Commission's issuance of an order finding that operating swap data repositories ("SDRs") are capable of processing positional data in a manner that would enable the Commission to set and enforce aggregate position limits.

DATES: Comments must be received on or before December 2, 2010.

ADDRESSES: You may submit comments, identified by RIN number, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow instructions for submitting comments.
- *Agency Web Site: http://www.cftc.gov.*
- *E-mail: Swaps.Reporting@cftc.gov.*
- *Mail:* David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as mail above.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedure established in CFTC regulation 145.9 (17 CFR 145.9). The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Stephen Sherrod, Acting Deputy Director, Market Surveillance, (202) 418–5452, *ssherrod@cftc.gov,* or Bruce Fekrat, Senior Special Counsel, Office of the Director, (202) 418–5578, *bfekrat@cftc.gov,* Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Economically Equivalent Swaps

A. Background

The Commodity Exchange Act ("CEA or Act") of 1936,[1] as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act"),[2] includes provisions imposing clearing and trade execution requirements on standardized derivatives as well as comprehensive recordkeeping and reporting requirements that extend to all swaps, a defined term in CEA section 1a(47). New section 4a(a)(2) of the CEA, as introduced by section 737 of the Dodd-Frank Act, charges the Commission with promulgating regulations, as appropriate, to limit the amount of positions, other than *bona fide* hedge positions, that may be held by any person with respect to commodity futures and option contracts in exempt and agricultural commodities[3] traded on or subject to the rules of a DCM within 180 and 270 days, respectively, of the legislation's enactment on July 21, 2010. New section 4a(a)(6)(A) of the Act requires Commission-set position limits to apply aggregately across DCMs to contracts that are based on the same commodity. The exempt and agricultural commodity futures and option contracts for which the Commission may consider position limits are listed in proposed regulation 20.2 ("20.2 listed futures contracts" or "20.2 contracts"). The list in proposed regulation 20.2, however, is non-exclusive and preliminary. Should the Commission propose regulations to establish position limits, it may decide not to propose position limits for all of the 20.2 listed futures contracts or, alternatively, may decide to propose

[1] 7 U.S.C. 1 *et seq.*

[2] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, *Public Law* 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at *http://www.cftc.gov./LawRegulation/OTCDERIVATIVES/index.htm.*

[3] Section 1a(20) of the Act defines the term "exempt commodity" to mean a commodity that is not an excluded commodity or an agricultural commodity. Section 1a(19) defines the term "excluded commodity" to mean, among other things, an interest rate, exchange rate, currency, credit risk or measure, debt or equity instrument, measure of inflation, or other macroeconomic index or measure. Although the term "agricultural commodity" is not defined in the Act, CEA section 1a(9) enumerates a non-exclusive list of several agricultural-based commodities. The Commission will consider the issuance of a notice of rulemaking proposing a definition for the term "agricultural commodity" in October of 2010. Although broadly defined, exempt commodity futures contracts are often viewed as energy and metals products.

position limits for futures contracts other than the 20.2 contracts.

Similar to CEA section 4a(a)(2), new section 4a(a)(5) of the Act charges the Commission with establishing position limits, including aggregate position limits, as appropriate, for swaps that are economically equivalent to DCM contracts in exempt and agricultural commodities with CFTC-set position limits. The definition of the term "paired swaps and swaptions" in proposed regulation 20.1 attempts to recognize a readily identifiable and partial set of swaps and swaptions (for ease of reference, collectively "swaps") that could potentially be considered as economically equivalent to 20.2 listed futures contracts.

As discussed in more detail below, proposed regulation 20.1 defines paired swaps, and hence economically equivalent swaps, in two ways. First, paired swaps are defined as swaps that are directly or indirectly linked to the price of one or more 20.2 listed futures contract. Second, paired swaps are defined as swaps that are based on the price of the same commodity for delivery at the same location(s) as that of a 20.2 listed futures contract, or another delivery location, with substantially the same supply and demand fundamentals as the delivery location(s) referenced by a 20.2 listed futures contract. The paired swap definition's second part therefore proposes to include swaps that are settled to a price series that is not based on, but is nonetheless highly correlated to, the price of a 20.2 listed futures contract.

B. The Necessity of the Proposed Regulations

New section 4a(a)(5) of the Act provides that position limits for economically equivalent swaps be developed concurrently with position limits established for DCM contracts in exempt and agricultural commodities. In order to have the ability to enforce market-specific and aggregate position limits for the relevant DCM contracts and economically equivalent swaps, the Commission would require positional data for DCM contracts and economically equivalent swaps. The Commission currently obtains DCM futures and option positional data under parts 15 through 19 and 21 of its regulations,[4] which derive their statutory authority in significant part from sections 4a, 4g and 4i of the CEA. In contrast, the Commission has limited access to swaps positional data. In this regard, the Commission receives positional data on swaps that are significant price discovery contracts ("SPDCs") under part 36 of its regulations. Such contracts are executed through exempt commercial markets and typically cleared. SPDCs, however, do not encompass all economically equivalent swaps (as defined by proposed regulation 20.1 through the term paired swaps). SPDC positional data would therefore not supply sufficient information to the Commission to monitor all economically equivalent swaps for aggregate position limit violations, should such limits be adopted. Moreover, parts 15 through 19 and 21 of the Commission's regulations do not apply to uncleared swaps that may be SPDCs. To have consistency in reporting, regulation 20.2(a) would require SPDCs that are paired swaps to be reported under proposed part 20 instead of parts 15 through 19 and 21 of the Commission's regulations (which include position reporting regulations for clearing organizations and futures intermediaries that are analogous to those proposed herein).

The Commission also receives positional data for some swaps that are cleared by certain clearing organizations but not listed for trading ("cleared-only swaps").[5] This positional data is received from a limited number of clearing organizations, and depending on the contract and the clearing organization, does not necessarily provide disaggregated data on swaps held by non-clearing member counterparties. As with SPDCs, cleared-only swaps positional data would not supply sufficient data to the Commission to monitor for aggregate position limit violations across DCM contracts with CFTC-set position limits and economically equivalent swaps. To the extent that cleared-only swaps are paired swaps, regulation 20.2(a) would require reporting under proposed part 20 instead of parts 15 through 19 and 21 of the Commission's regulations.

The Commission notes that the Dodd-Frank Act also provides for the establishment of SDRs. Once established and operationally able to receive swaps data, SDRs would have the potential to serve as the Commission's primary positional data source. The Congressionally mandated deadline for establishing position limits, however, predates the deadline for Commission regulations for SDR registration. Thus, the position reports for physical commodity swaps contemplated by these proposed regulations would function as a transitional tool until SDRs are in operation and able to provide the Commission with swap positional data. If implemented in whole or in part, the Commission may determine to continue or discontinue the proposed reporting system once SDRs are operational.

CEA sections 4a and 8a(5), considered in tandem, provide the statutory authority for these proposed regulations. The Commission cannot fully effectuate the mandate of section 4a of the Act without an operational data collection system. In proposing these regulations, the Commission relies on its CEA section 8a(5) general rulemaking authority. Section 8a(5) authorizes the Commission "to make and promulgate such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of this Act." For the reasons discussed above, the proposed regulations, in the Commission's judgment, are reasonably necessary to effectuate CEA section 4a as amended by the Dodd-Frank Act.

II. The Proposed Regulations

A. Listed Futures Contracts

Section 4a(a)(2) of the Act provides that the Commission shall set, as appropriate, position limits for exempt and agricultural DCM futures and option contracts.[6] The Act also provides that the Commission shall establish position limits, including aggregate limits, as appropriate, for swaps that are economically equivalent to futures contracts (and options thereon or options on commodities) with CFTC-set position limits. Proposed regulation 20.2 lists a broad set of futures contracts and options thereon which may be the subject of CFTC-set position limits. These 20.2 listed futures contracts can be divided into two categories. The first category contains futures contracts that have high levels of open interest and significant notional value (and certain

[4] Commission regulations referred to herein are found at 17 CFR chapter 1.

[5] *See, e.g., Order (1) Pursuant to Section 4(c) of the Commodity Exchange Act, Permitting the Chicago Mercantile Exchange to Clear Certain Over-the-Counter Agricultural Swaps and (2) Pursuant to Section 4d of the Commodity Exchange Act, Permitting Customer Positions in Such Cleared-Only Contracts and Associated Funds To Be Commingled With Other Positions and Funds Held in Customer Segregated Accounts,* 74 FR 12316, 12320 (March 24, 2009) (requiring reporting under parts 15, 16 and 17 of the Commission's regulations for cleared-only swaps).

[6] New section 4a(a)(2) by its terms also applies to options on physicals. With respect to options on physicals traded on DCMs, the current open interest levels in such DCM contracts on the commodities underlying the 20.2 listed futures contracts are minimal.

related contracts).[7] The contracts in this category are:

REFERENCE DCM CONTRACTS WITH HIGH OPEN INTEREST AND NOTIONAL VALUE (INCLUDING CERTAIN RELATED CONTRACTS)
Chicago Board of Trade ("CBOT") Corn.
CBOT Rough Rice.
CBOT Soybeans.
CBOT Soybean Meal.
CBOT Soybean Oil.
CBOT Wheat.
Chicago Mercantile Exchange ("CME") Feeder Cattle.
CME Live Cattle.
CME Milk Class III.
Comex ("CMX") Copper Grade #1.
CMX Gold.
CMX Silver.
ICE Futures US ("ICUS") Cocoa.
ICUS Coffee C.
ICUS Cotton No. 2.
ICUS Frozen Concentrated Orange Juice.
ICUS Sugar No. 11.
ICUS Sugar No. 16.
Kansas City Board of Trade ("KCBT") Wheat.
Minneapolis Grain Exchange ("MGEX") Wheat.
NYSELiffe ("NYL") Gold, 100 Troy Oz.
NYL Silver, 5000 Troy Oz.
New York Mercantile Exchange ("NYMEX") Cocoa.
NYMEX Coffee.
NYMEX Cotton.
NYMEX Crude Oil, Light Sweet ("WTI").
NYMEX Gasoline Blendstock (RBOB).
NYMEX Natural Gas.
NYMEX No. 2 Heating Oil, New York Harbor.
NYMEX Palladium.
NYMEX Platinum.
NYMEX Sugar No. 11.

The contracts in the second category, listed below, do not have high levels of open interest or represent significant notional values. However, based on feedback from inquiries posed to swap market participants relating to the size and level of activity in certain markets, Commission staff recommended their inclusion in proposed regulation 20.2.[8] Such contracts may serve as the pricing basis of a significant number of swap market transactions, thereby warranting some measure of Commission scrutiny.

ADDITIONAL DCM REFERENCE CONTRACTS
CBOT Ethanol.
CBOT Oats.
CME Butter.
CME Cheese.
CME Dry Whey.
CME Hardwood Pulp.
CME Lean Hogs.
CME Non Fat Dry Milk.
CME Random Length Lumber.
CME Softwood Pulp.
NYMEX Brent Financial.
NYMEX Central Appalachian Coal.
NYMEX Hot Rolled Coil Steel.
NYMEX Uranium.

B. Scope of Economically Equivalent Swaps

The Commission, through the definition of paired swap or paired swaption (for ease of reference, collectively "paired swaps") in proposed regulation 20.1, defines a subset of swaps that may qualify as economically equivalent to the DCM contracts listed in proposed regulation 20.2. Proposed regulation 20.1 identifies paired swaps (*i.e.,* economically equivalent swaps) in two paragraphs. The first paragraph of proposed regulation 20.1 defines paired swaps to include those that directly or indirectly are linked to the price of a 20.2 listed futures contract. This category includes swaps that are partially or fully settled or priced at a differential to a 20.2 listed futures contract. The following list provides examples of the types of swaps that are intended to be covered under the first paragraph of the proposed definition of paired swap.

1. *Directly linked to a listed contract*—A swap settled to the price of the NYMEX Heating Oil Calendar Swap Futures Contract is directly linked to a 20.2 listed DCM futures contract because the floating price of the futures contract is equal to the monthly average settlement price of the first nearby contract month for the NYMEX New York Harbor No. 2 Heating Oil Futures Contract.

2. *Indirectly linked to a listed contract*—The ICE WTI Average Price Option is indirectly linked to a 20.2 listed futures contract because the floating price of the swap references the ICE WTI 1st Line Swap Contract which in turn is equal to the monthly average settlement price of the NYMEX Front Month WTI Crude Futures Contract.

3. *Partially settled to a listed contract*—A swap settled to the Argus Sour Crude Index ("ASCI") (which also underlies the CME Argus WTI Formula Basis Calendar Month Swap Futures Contract) is partially settled to a 20.2 listed futures contract.[9] Because the ASCI index uses both a physical cash market component and the NYMEX WTI Futures Contract to establish the level of the index, it would partially settle to a 20.2 listed futures contract and would be a paired swap under the first paragraph of the proposed definition.[10]

4. *Priced at a differential to a listed contract*—The ICE Henry Physical Basis LD1 Contract is priced at a differential to a 20.2 listed futures contract because the settlement price is the final settlement price for natural gas futures (a listed 20.2 contract) as reported by NYMEX for the specified month plus the contract price.

The second paragraph of the proposed definition of a paired swap includes swaps that directly or indirectly link to, including being partially or fully settled or priced at a differential to, the price of the same commodity for delivery at the same location or locations as that of a 20.2 listed futures contract. As opposed to paragraph one, the second paragraph of the definition of paired swap looks to a swap's connection to the commodity underlying a 20.2 listed futures contract, and to the delivery locations with a nexus to those delivery locations specified in a 20.2 listed contract, as opposed to the price of the of the contract itself. Therefore, in contrast to paragraph one, the linkage is to the price of the underlying commodity and its physical marketing channels.

Under paragraph two, a paired swap would include swaps that are based on the same commodity[11] as that of a 20.2 listed futures contract but deliverable at locations that are different than a 20.2 listed futures contract's delivery locations, so long as such locations have substantially the same supply and demand fundamentals as that of a 20.2

[7] These contracts can function as anchors to many other DCM contracts and therefore directly or indirectly correspond to a substantial fraction of open interest for listed physical commodity derivatives. *See, e.g., Federal Speculative Position Limits for Referenced Energy Contracts and Associated Regulations,* 75 FR 4133, 4154 (January 26, 2010) ("January 2010 proposed regulations for major energy contracts") (showing the spoke contracts linked to the physically delivered NYMEX Crude Oil, Light Sweet futures contract).

[8] Staff tasked with assisting the Commission in developing the proposed regulations made this recommendation after meeting with or speaking to 23 outside parties, representing commercial end-users, commercial merchants, commodity-based swap trading arms of large financial institutions, futures exchanges, swap data service providers, and our sister financial regulators. *See http://www.cftc.gov/LawRegulation/DoddFrankAct/ExternalMeetings/otc_meetings.html.*

[9] The floating price of the CME futures contract is equal to the arithmetic average of the ASCI (1st month) outright price from Argus Media for each business day that the ASCI is determined during the contract month.

[10] For a description of the ASCI methodology, *see, e.g., http://web04.us.argusmedia.com/ArgusStaticContent//Meth/ASCI.pdf.*

[11] As provided in the Commission's January 2010 proposed regulations for major energy contracts, a commodity will be considered to be the same (for the purposes of reporting under this regulation) if such commodity has the same economic characteristics with respect to grade and quality specifications as those referenced by a 20.2 listed futures contract.

listed futures contract reference delivery location. The following list provides examples of the types of swaps that are reportable under the second paragraph of the definition.

1. *Same commodity with a delivery point that shares substantially the same supply and demand fundamentals*—An uncleared swap based on a NYMEX Columbia Gulf, Mainline Natural Gas Index Swap (Platts Gas Daily/Platts IFERC) Futures Contract provides an example of a futures contract which references an underlying spot market that is affected by substantially similar supply and demand forces as the pricing location to which the NYMEX Natural Gas Futures Contract references. In this case, the floating price of the NYMEX Columbia Gulf, Mainline Natural Gas Index Swap (Platts Gas Daily/Platts IFERC) Futures Contract is equal to the difference in the monthly average prices for Mainline Midpoint (Midpoint) and the Platts Inside FERC's Gas Market Report (Platts IFERC) Columbia Gulf Transmission Co., Mainline Index. This swap would be on based the same commodity as that of a 20.2 listed contract, but deliverable at a different location. The different location, however, shares substantially the same supply and demand fundamentals as the Henry Hub, which is the delivery location for the NYMEX Natural Gas contract. The swap's delivery location is in close proximity to the Henry Hub, and there is tight arbitrage between the two pricing hubs.

2. *Same commodity at different locations*—The NYMEX Transco, Zone 6 Natural Gas Index Swap (Platts Gas Daily/Platts IFERC) Futures Contract provides an example of a futures contract which references an underlying spot market that is interconnected with a spot market to which the NYMEX Natural Gas Futures Contract references. The floating price of the NYMEX Transco, Zone 6 Natural Gas Index Swap (Platts Gas Daily/Platts IFERC) Futures is equal to the difference in the monthly average prices for the Platts Gas Daily Transco, Zone 6 N.Y. Midpoint (Midpoint) and the Platts Inside FERC's Gas Market Report (Platts IFERC) Transco Zone 6 Index (Index) for the stipulated period within the contract specifications. The index price represents a natural gas spot market that is physically linked, via the Transco pipeline, to a spot market (Henry Hub) which is referenced by a 20.2 listed futures contract.

C. Reporting Under the Proposed Regulations

1. Reports by Clearing Organizations

Regulation 20.3 proposes to collect paired swap reports from clearing organizations. Clearing organizations are defined in proposed regulation 20.1 as persons or organizations that act as a medium between clearing members for the purpose of clearing swaps or swaptions or effecting settlements of swaps or swaptions. The intent of the definition, which is modeled on the definition used in Commission regulation 15.00 (the definitional section for the Commission's large trader reporting rules), is to apply the reporting regulations only to entities that perform clearing functions as clearing intermediaries and counterparties to each side of a swap for the purpose of clearing the trade. The proposed definition is intended to cover entities that are commonly known as clearing organizations, regardless of their registration status with the Commission. It is not meant to apply to financial institutions or parties to swaps that provide counterparties with financing, credit support, or hold collateral to facilitate or to ensure that payments are made under the terms of a paired swap.

Pursuant to proposed regulation 20.3, clearing organizations, for paired swap positions, would report the aggregate proprietary and aggregate customer accounts of each clearing member of that clearing organization. Proposed regulation 20.1 defines clearing member as any person who is a member of, or enjoys the privilege of clearing trades in its own name through, a clearing organization. The paired swap positions would be reported to the Commission as futures equivalent positions in terms of a swap's related 20.2 listed futures contract. Proposed Appendix A to this part provides several examples of the methods used for converting swap positions into futures equivalent positions. The proposed regulations would ask for reporting in futures equivalents because such conversions are made by entities that deal in swaps to effectively manage residual price risks by entering into 20.2 listed futures contracts. Reporting in futures equivalents would result in a measure of equivalency between positions in paired swaps and their related 20.2 listed futures contracts, and it would allow for the enforcement of aggregate position limits across futures and swaps should the Commission adopt such limits.

As required under paragraph (a) and (b) of proposed regulation 20.3, each clearing organization would submit to the Commission a data record that identifies either gross long and gross short futures equivalent positions if the record corresponds to a paired swap position, or gross long and gross short futures equivalent positions on a non-delta-adjusted basis if the data record corresponds to a paired swaption position. A data record (for the purposes of this rulemaking) can be thought of as a grouped subset of the overall set of reported data elements that communicates a unique (non-repetitive) positional message to the Commission.

Clearing organizations would be required to report a data record for each clearing member for each reporting day, which is defined in proposed regulation 20.1 as the daily period of time between a clearing organization or reporting entity's usual and customary last internal valuation of paired swaps or swaptions and the next such period. In order to provide clearing organizations with some flexibility in determining daily operational cycles that would coincide with their obligation to provide clearing member reports on a daily basis, the proposed definition would permit such cycles of time to vary for different clearing organizations, so long as the daily period of time is consistently observed and the Commission is notified, upon its request, of the manner by which a cycle is calculated. Data records would be reported electronically in a manner consistent with current Commission practice.

The positional data elements in paragraphs (a) and (b) of proposed regulation 20.3 would require daily reports for each aggregated proprietary account and each aggregated customer account, by each cleared product, and by each futures equivalent month. Each data record would indicate the commodity reference price with which each cleared product is associated. As defined in proposed regulation 20.1, a commodity reference price is the price series used by the parties to a swap or swaption to determine payments made, exchanged, or accrued under the terms of that swap or swaption. In addition, data records for swaptions would be required to be broken down further by expiration date, put or call indicator, and strike price. Proposed Appendix B to part 20 includes examples of data records that would be required of clearing organizations. The examples in Appendix B are provided to facilitate the public's ability to comment on these reports, and if adopted as part of a final rulemaking, increase a clearing organization's familiarity with the type of reporting the regulations would require.

In addition to reports for clearing members, clearing organizations would, pursuant to proposed regulation 20.3(c), be required to provide to the Commission, for each futures equivalent month, end of reporting day settlement prices for each cleared product and deltas for every unique swaption put and call, expiration date, and strike price. This second daily report would provide the type of information that is necessary to assign a weight to a trader's positions.

2. Reports by Reporting Entities

Proposed regulation 20.4 would require reporting entities to report proprietary positions in paired swaps and their paired swap counterparty positions. Proposed regulation 20.1 identifies a reporting entity as a clearing member or a swap dealer as defined in section 1a of the CEA and as subject to definitional changes that may be made through the issuance of Commission regulations.

The definition of reporting entity is intended to identify financial firms that regularly make markets in swaps, as well as divisions or subsidiaries of large commercial swap market participants that provide risk management services to other commercial entities in the normal course of their business operations. Proposed regulation 20.4 is intended to require reports from such financial firms and not from commercial end-users with swaps activities of limited scope. By requiring reporting from these large market participants, proposed regulation 20.4 could provide visibility into the majority of paired swaps trading activity without burdening commercial entities that may have less experience with compliance and reporting requirements stemming from the regulation of financial institutions.[12] The Commission solicits comment specifically on the proposed definition of reporting entity and the sufficiency of the market visibility gained by requiring reports only from a limited set of market participants.

Proposed regulation 20.4 would require reporting entities to provide the Commission with positional reports only if the reporting entities hold reportable paired swap positions. Proposed regulation 20.1 defines a reportable position as a position, in any one futures equivalent month, comprised of fifty or more futures equivalent paired swaps or swaptions based on the same commodity. This proposed level is calibrated to capture data on a sufficiently large percentage of paired swap positions and was arrived at after consultation with multiple market participants.[13] The Commission specifically requests comment on whether this reporting level is appropriate relative to the size of positions held by paired swap counterparties.

Once a reporting entity's paired swaps position meets or exceeds the fifty futures equivalent paired swaps or swaptions threshold, proposed regulation 20.1 defines all other paired swap positions held by the reporting entity (in the commodity that initially caused the reporting entity's positions to be deemed reportable) to be part of the entity's reportable position.[14] Clearing members and other reporting entities would follow the same procedure for determining if their proprietary positions or any counterparty positions are reportable to the Commission. As with clearing member reports that would be provided by clearing organizations to the Commission under proposed regulation 20.3, proposed regulation 20.4 would require paired swap positions to be represented and reported in futures equivalents. Without a common method of accounting for positions in swaps and futures, aggregate positions could potentially not be enforceable, should the Commission promulgate such limits.

To determine what to report under proposed regulation 20.4, reporting entities would separately consider proprietary positions, counterparty positions, and positions in controlled accounts. For each actual swap or swaption account that includes a paired swap or swaption in which the reporting entity is reportable, such entities would be required to provide for each reporting day a data record that either identifies long and short paired swap positions (if the record pertains to swap positions) or long and short non-delta-adjusted paired swaption positions and long and short delta-adjusted swaption positions (if the record pertains to swaptions positions). For uncleared paired swaps, the proposed regulations would require a reporting entity to use economically reasonable and analytically supported deltas.

As proposed under regulation 20.4, this information would be grouped separately by swap or swaption account that is a part of a reportable account, by futures equivalent month, by cleared or uncleared contracts, by commodity reference price, and by clearing organization, if the data record pertains to cleared swaps. Data records pertaining to cleared swaption positions under the proposed regulations would be further grouped by put or call, expiration date, and strike price. Uncleared swaption positions, however, would not be required to be grouped by put or call, expiration date, and strike price. The reports provided under proposed regulation 20.4 would also include identifiers for the commodity underlying the reportable position, the counterparties of the account and the 102S filing identifier, as described in more detail below, assigned by the reporting entity to the owner(s) of the account, as well as the controller(s) of the account. Proposed Appendix B to this part includes several examples of required records.

3. Series S Filings

Proposed regulation 20.5(a) would require a 102S filing for the identification of the direct owner or controller of a "reportable account" by the reporting entity holding or carrying the account. The 102S filing would consist of the "name, address, and contact information of the direct owner or controller of the reportable account" and a "brief description of the nature of such person's paired swaps and swaptions' market activity" (*e.g.,* whether it is an omnibus account for another broker or an individual account). The reporting entity is required to submit a 102S filing only once for each person associated with a reportable account.

Once an account holder or controller is reportable, the Commission may contact the trader directly and require that the trader file a more detailed identification report, a 40S filing. The Commission would require a 40S filing if a trader has become reportable for the first time and is not known to the Commission. A 40S filing would consist of the submission of a CFTC Form 40 "Statement of Reporting Trader." As the current version of Form 40 covers information on positions in futures and options, the trader would be required to complete the form as if the form covered

[12] The proposed definition of reporting entity includes an exemption from the definition of reporting entity for entities that are not commonly known as swap dealers.

[13] *See http://www.cftc.gov/LawRegulation/DoddFrankAct/ExternalMeetings/otc_meetings.html.*

[14] In order to verify that a reporting entity's paired swap positions are no longer above the threshold, the proposed definition of reportable position would also encompass positions in paired swaps held by the reporting entity on the first day after which the reporting entity's paired swap positions are no longer reportable.

information related to positions in paired swaps and swaptions.[15]

The 102S filings and the 40S filing together would allow the Commission to identify the person(s) owning the account or controlling its trading, the person to contact regarding trading, the nature of the account, whether the reported account is related—by financial interest or control—to another account, and the principal occupation or business of the account owner. The filings also would provide the Commission information on whether the account is being used for hedging cash market exposure.

Commission staff would use the information in these two filings to determine if the reported account corresponds to a new trader or is an additional account of an existing trader. If the account is an additional one of an existing trader, it would then be aggregated with that of other related accounts currently being reported. By properly identifying and aggregating accounts, Commission surveillance staff would be able to assess a trader's compliance with speculative position limits across futures and swaps markets, should the Commission adopt such limits.

4. Maintenance of Books and Records

Proposed regulation 20.6 would impose recordkeeping requirements on reporting clearing organizations, reporting entities, and persons with reportable swaps positions. Proposed regulation 20.6(a) would require clearing organizations to keep records of transactions in paired swaps or swaptions. Proposed regulation 20.6(b) would require reporting entities and persons with reportable positions to maintain "books and records * * * showing all records for transactions concerning all reportable positions." In addition, reporting entities and persons with reportable positions would be required to keep books and records on "transactions in the cash commodity" and its products and byproducts, and "all commercial activities" that are hedged in 20.2 listed futures contract, "or options thereon," or paired swaps and swaptions. These recordkeeping requirements are very similar to those in current regulation 18.05.

The recordkeeping duties imposed by proposed regulation 20.6 are to be in accordance with the requirements of regulation 1.31. Most pertinently, regulation 1.31(a)(1) requires that these transaction records be kept for five years, the first two of which they "shall be readily accessible." Such books and records "shall be open to inspection by any representative of the Commission."

These recordkeeping requirements would allow the Commission to have ready access to records that would enable Commission staff to reconstruct the transaction history of reported positions. These requirements would ensure that data records submitted to the Commission could be audited. In addition, these records would enable Commission staff to better reconstruct trading activity that may have had a material impact on the price discovery process.

The recordkeeping burden imposed by proposed regulation 20.6 is not anticipated to be high. These requirements are not unlike the recordkeeping requirements imposed by Congress in new CEA section 4r(c)(2) on all swap market participants, and by the Commission on those entities with reportable futures accounts under the existing recordkeeping provision of regulation 18.05.

5. Form and Manner of Reporting

Proposed regulation 20.7(a) provides that the Commission would specify, in writing to persons required to report, the format, coding structure, and electronic data transmission procedures for these reports and submissions. The purpose of this provision would be to provide notice on how the Commission would determine the means by which the part 20 reports are to be formatted and submitted.

6. Delegation of Authority

Proposed regulation 20.8 delegates certain of the Commission's proposed part 20 authority to the Director of the Division of Market Oversight and through the Director to other employee or employees as designated by the Director. The delegated authority extends to: (1) Issuing a special call for a 40S or 102S filing; and (2) providing instructions or determining the format, coding structure, and electronic data transmission procedures for submitting data records and any other information required under proposed part 20. The purpose of this delegation provision is to facilitate the ability of the Commission to respond to changing market and technological conditions for the purpose of ensuring timely and accurate data reporting.

7. Sunset Provision

Proposed regulation 20.9 includes a sunset provision. The sunset provision would render the proposed regulations ineffective and unenforceable upon the Commission's finding (through the issuance of an order) that operating SDRs are capable of processing positional data in a manner that would enable the Commission to effectively surveil paired swaps trading and paired swap markets. Proposed regulation 20.9 also provides the Commission with the authority to retain the effectiveness and enforceability of any requirement in part 20, such as the reporting of deltas for uncleared paired swaps or the reporting of paired swap positions in futures equivalents, should the Commission determine that such reporting is of material value to conducting market surveillance.

D. Solicitation of Comments

Pursuant to the Dodd-Frank Act, the Commission will refine the definition of swap dealer in CEA section 1a. The Commission solicits comments on whether it should delay the implementation of proposed part 20 to sixty days following a final Commission rulemaking further defining the term swap dealer. The Commission also specifically requests comments on any role self-regulatory organizations could play in gathering positional data on paired swaps. In addition, the Commission solicits comments on alternative approaches that may be employed to gather positional data on paired swaps.

III. Related Matters

A. Cost-Benefit Analysis

1. Introduction

Section 15(a) of the Act requires that the Commission, before promulgating a regulation under the Act or issuing an order, consider the costs and benefits of its action. By its terms, CEA section 15(a) does not require the Commission to quantify the costs and benefits of a new regulation or determine whether the benefits of the regulation outweigh its costs. Rather, CEA section 15(a) simply requires the Commission to "consider the costs and benefits" of its action.

CEA section 15(a) specifies that costs and benefits shall be evaluated in light of the following considerations: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. Accordingly, the Commission could, in its discretion, give greater weight to any of the five considerations and could, in its discretion, determine that,

[15] The Commission plans to revise Form 40 in the future so that the form would explicitly target information on paired swaps and swaptions positions as well as futures and options positions.

notwithstanding its costs, a particular regulation was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

2. Costs

As mentioned above, under CEA section 4a(a)(2), the Commission has been directed to establish position limits, as appropriate, on traders in certain physical commodity futures and swaps markets within 180 or 270 days of the enactment of the Dodd-Frank Act, for exempt and agricultural commodities, respectively. As explained in this release, the Commission lacks the information it needs with respect to paired swaps to be able to conduct surveillance for limits that may be established under CEA section 4a.

In developing these proposed regulations, the Commission has aimed to minimize the cost and burden associated with reporting positional data to the Commission. As discussed above, the Commission has tailored the regulations to conform to the market structure for cleared and uncleared paired swaps. The cost of proposed part 20 regulations would be borne by firms that are clearing organizations reporting under proposed regulation 20.3 and clearing member reportable entities reporting under proposed regulation 20.4. For such firms, the additional cost to implement a reporting system is expected to be minimal since the Commission understands these firms track their own and their counterparties' positions for risk-management purposes.

Although the Commission has proposed a reporting system for cleared paired swaps that resembles the large trader reporting system, the Commission proposes a structurally different reporting system for uncleared paired swaps. The structure of the uncleared paired swaps market is not as centralized as the cleared paired swaps market: There is no central counterparty that corresponds to a clearing organization in the uncleared paired swaps market. The Commission believes that swap dealers may be counterparties to a significant portion of the market for uncleared paired swaps and swaptions.

Accordingly, the Commission has proposed to require position reporting from swap dealers. These firms are to report their positions as well as those of their counterparties, provided that they are above the "reportable position" level. These firms have the creditworthiness to be able to negotiate a substantial swaps portfolio in paired swaps across many counterparties. As is the case for clearing member reportable entities, it is likely that creating or purchasing an information technology system that can present such a firm's net position exposures on a daily basis would not be an overly burdensome marginal expense, since the Commission understands swap dealers track their exposures for risk management purposes.

For counterparties that would be subject to the recordkeeping requirements of proposed regulation 20.6, it should be noted that these requirements would place new burdens (in terms of reporting and retaining information on cash market transactions) only on persons that are reportable solely in paired swaps. This is because recordkeeping requirements are imposed by Congress with respect to all swaps in new section 4r(c)(2) of the CEA. Likewise, counterparties that hold reportable futures positions (in addition to reportable paired swaps positions) are currently subject to existing recordkeeping requirements under regulation 18.05. Thus, the Commission believes that these additional burdens, in marginal terms, are not expected to be overly burdensome, given that firms collect information on their commercial activities in the normal course of business operations.

3. Benefits

As discussed above, implementing proposed part 20 would enable the Commission to monitor and enforce position limits, if established by the Commission, to diminish, eliminate, or prevent excessive speculation; to deter and prevent market manipulation; ensure sufficient market liquidity for *bona fide* hedgers; and to ensure that the price discovery function of the underlying market is not disrupted. By enabling the Commission to monitor compliance with position limits to address these concerns, the Commission would be better able to protect the price discovery process (CEA section 15(a)(2)(C)) and market participants and the public from the threats of excessive speculation and price manipulation (CEA section 15(a)(2)(A)).

In addition to providing increased market transparency through the reporting of paired swap positions to the Commission, the Commission would be better able to first, protect market participants and the public (CEA section 15(a)(2)(A)) and second, increase the efficiency and competitiveness of the markets (CEA section 15(a)(2)(B)). The extension of the Commission's surveillance activities to these paired swap markets would help ensure the integrity of these markets and thereby protect market participants and the public from disruptive trading, price manipulation, and the effects of market congestion. Further, with the extension, the Commission would be able to expand its Commitments of Traders report to include aggregate position data on the paired swaps markets, and thus, would provide the public, including market participants, greater transparency into the constitution of markets covered by the proposed part. This increased transparency may reduce the informational asymmetries in the paired swap markets and thereby improve the efficiency of the market and promote competition.

4. Conclusion

The Commission, after considering the CEA section 15(a) factors, finds that the expected incremental cost imposed by proposed part 20 is outweighed by the expected benefit. Accordingly, the Commission has determined to propose part 20. The Commission invites public comment on its cost-benefit considerations. Commenters are also are invited to submit any data or other information that they may have quantifying or qualifying the costs and benefits of proposed part 20.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") requires Federal agencies, in proposing regulations, to consider the impact of those regulations on "small entities." [16] The proposed regulations detailed in this release would affect organizations including registered derivatives clearing organization ("DCOs"), clearing members (many of whom would be registered with the Commission already as futures commission merchants ("FCMs")), swap dealers, and persons who have reportable paired swaps positions and otherwise have not been reportable based on futures positions.

The Commission has previously determined that DCOs [17] and FCMs [18] are not "small entities" for purposes of the RFA. As noted above, a reportable paired swaps position would include 50 or more paired swaps positions in a futures equivalent month. The Commission notes this threshold is higher than the minimum 25 contract reporting levels in effect for futures positions under regulation 15.03. Previously, the Commission had determined that the reporting levels in regulation 15.03 would not affect small

[16] 5 U.S.C. 601 *et seq.*

[17] 66 FR 45604, 45609 (August 29, 2001).

[18] Policy Statement and Establishment of Definitions of "Small Entities" for Purposes of the Regulatory Flexibility Act, 47 FR 18618, 18619 (Apr. 30, 1982).

entities.[19] The Commission does not believe that entities who meet the proposed larger quantitative threshold would constitute small entities for RFA purposes.

Accordingly, the Commission does not expect the regulations, as proposed herein, to have a significant impact on a substantial number of small entities. Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the proposed regulations would not have a significant economic impact on a substantial number of small entities. The Commission invites the public to comment on whether the entities covered by these proposed regulations should be considered small entities for purposes of the RFA.

C. Paperwork Reduction Act

1. Overview

The Paperwork Reduction Act ("PRA") [20] imposes certain requirements on Federal agencies in connection with their conducting or sponsoring any collection of information as defined by the PRA. This proposed rulemaking would result in new collection of information requirements within the meaning of the PRA. The Commission therefore is submitting this proposal to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for this collection of information is "Part 20—Position Reports for Physical Commodity Swaps" (OMB control number 3038–NEW). If adopted, responses to this collection of information would be mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. OMB has not yet assigned a control number to the new collection for proposed part 20. The requirements of new part 20 are not currently covered by any existing OMB control number.

The Commission is submitting this proposal to OMB for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11.

As noted earlier, in section 737 of the Dodd-Frank Act, Congress amended section 4a of the CEA to require the Commission to establish, as appropriate, aggregate position limits for futures contracts traded on a DCM and for economically equivalent swaps. Pursuant to new section 4a(a)(2)(B) of the CEA, Congress mandated that the Commission set these position limits within 180 days of enactment of the Dodd-Frank Act for exempt commodities and 270 days for agricultural commodities. In order to enforce regulations establishing position limits for economically equivalent swaps, the Commission has determined that it first needs to establish the reporting regulations proposed herein. Given the short timeframe in which the Commission must determine whether to set position limits under the Dodd-Frank Act, the Commission has determined that it needs to adopt a swaps reporting system on an expedited basis to comply with the statutory deadline contained in new section 4a(a)(2)(B) of the CEA.

2. Information Provided and Recordkeeping Duties

As a result of the Dodd-Frank Act, new part 20 proposes putting into place reporting requirements for "clearing organizations" and "reporting entities" and recordkeeping requirements for these firms in addition to firms that become reportable because of a reportable paired swap or swaption positions. Accordingly, the Commission is seeking a new and separate control number for reporting from "clearing organizations" and "reporting entities" (collectively "respondents") and recordkeeping for firms that become reportable because of a reportable paired swap or swaption position operating in compliance with the requirements of proposed part 20. Upon OMB's approval and assignment of a new control number specifically for the collection of information and recordkeeping requirements of proposed part 20, the Commission intends to submit the necessary documentation to OMB to enable it to apply a new OMB control number exclusively for part 20 reports.

Proposed part 20 would result in the collection of information on "paired swaps and swaptions" positions as defined in proposed regulation 20.1. Specifically, proposed part 20 provides for three new kinds of reports:

1. Under proposed regulation 20.3, swap "clearing organizations" would provide daily reports of relevant position and clearing data.

2. Under proposed regulation 20.4, "reporting entities" would produce position reports on a daily basis on their own and individual counterparty accounts. Within this class of "reporting entities," there are two categories of "reporting entities:" (a) "clearing members" and (b) "swap dealers" that are not clearing members. The former category, "clearing members," would include many firms that are currently registered as FCMs with the Commission. The Commission estimates that a total of 180 swap dealers transact in physical commodity swaps and thereby may be reporting entities under proposed part 20 (clearing members and non-clearing members combined).

3. Finally, under proposed regulation 20.5, all "reporting entities" would submit identifying information to the Commission on new reportable accounts through a 102S filing.

In addition to creating these reporting requirements, proposed regulation 20.6 would impose recordkeeping requirements for (1) clearing organizations, (2) reporting entities, and (3) persons with "reportable positions" in the covered futures contract listed in proposed regulation 20.2 or "paired swaps or swaptions." Proposed regulation 20.6(a) would require clearing organizations to maintain "all records of transactions in paired swaps or swaptions" on clearing organizations. Proposed regulation 20.6(b) would require reporting entities and "persons with reportable positions" to maintain for all commodities in which it holds a reportable position "all records for transactions * * * in the cash commodity * * * [and] its products and byproducts" and in "commercial activities" underlying a hedge in a covered futures contract or in paired swaps or swaptions. These provisions extend those recordkeeping requirements currently applicable to those traders holding reportable positions in futures contracts, as currently found in regulation 18.05, to those traders holding reportable positions in swaps.

The Commission estimates that the recordkeeping requirements of proposed regulation 20.6 would not be overly burdensome. For the firms subject to the reporting and recordkeeping requirements of proposed regulation 20.6, it should be noted that these requirements are not unlike the recordkeeping requirements imposed by Congress in the new CEA section 4r(c)(2) of the CEA and by existing recordkeeping regulation 18.05. If a firm subject to these recordkeeping requirements was previously reportable due to a futures position in the relevant commodity above the "reporting level" (*see* regulation 15.03), then the proposed regulation 20.6(b) recordkeeping burdens would not be new, as that firm would already be subject to these requirements under regulation 18.05. If a firm becomes subject to the proposed regulation 20.6 recordkeeping requirements only because of a reportable swaps position (not because of a futures position above

[19] *Id.* at 18620 (excluding large traders from the definition of small entity).

[20] 44 U.S.C. 3501 *et seq.*

the reportable level) then the requirements contained in the proposal add only the duty to keep records on "all commercial activities that a reporting entity or person hedges" to the swaps-related recordkeeping duties imposed by CEA section 4r(c)(2). These additional burdens are not expected to be substantial, given that in the normal course of business firms would collect this information on their commercial activities.

The Commission estimates that implementing proposed part 20 would create a total annual reporting and recordkeeping hour burden of 79,503 hours across 705 firms. Based on a weighted average wage rate of $74.36,[21] this would amount to an annualized labor cost of $5.9 million. In addition, the Commission estimates that total annualized capital/start-up, operating, and maintenance costs [22] would amount to a combined $32.7 million. This overall total reporting and recordkeeping hour burden is the sum of estimated burdens for the three reporting categories and the three recordkeeping categories mentioned above.

Reporting burdens:

1. Proposed regulation 20.3 clearing organization reports would account for 938 of these annual reporting and recordkeeping hours. These hours would be spread across 5 respondents. Annualized capital/start-up, operating, and maintenance costs for all affected clearing organizations combined would be approximately $100,000.[23]

2. Proposed regulation 20.4 reporting entity reports would have two separate burden estimates based on the kind of reporting entity providing the report:

a. Clearing member (80 clearing member/swap dealers plus 20 clearing member/non-swap dealers) reporting entity reports would create an annual reporting and recordkeeping burden of 25,000 hours spread across 100 respondents. Annualized capital/start-up, operating, and maintenance costs for all firms in this category combined would be approximately $6 million.

b. Swap dealer non-clearing member reporting entity reports would create an annual reporting and recordkeeping burden of 37,500 hours spread across 100 respondents. Annualized capital/start-up, operating, and maintenance costs for all firms in this category combined would be approximately $8 million.

3. Proposed regulation 20.5 reporting entity 102S submissions would create an annual reporting and recordkeeping burden of 1,800 hours spread across 200 firms. Annualized capital/start-up, operating, and maintenance costs for all reporting entities combined providing these reports would be approximately $1 million.

4. 40S submissions by persons with reportable positions under proposed regulation 20.5(b) in paired swaps would create an annual reporting and recordkeeping burden of 165 hours and would affect 500 firms. Annualized capital/start-up, operating, and combined maintenance costs for all firms providing 40S filings would be approximately $4.5 million.

Recordkeeping burdens:

1. Proposed regulation 20.6(a) recordkeeping duties for clearing organizations would account for 100 of these annual reporting and recordkeeping hours. These hours would be spread across 5 firms. Annualized capital/start-up, operating, and maintenance costs to meet the recordkeeping requirements of proposed regulation 20.6(a) would be approximately $100,000 spread across all affected clearing organizations.

2. Proposed regulation 20.6(b) reporting entity recordkeeping duties would have two separate burden estimates based on the kind of reporting entity providing the report:

a. Clearing member (80 clearing member/swap dealers plus 20 clearing member/non-swap dealers) reporting entity recordkeeping would create an annual reporting and recordkeeping burden of 2,000 hours spread across 100 respondents. Annualized capital/start-up, operating, and maintenance costs for all firms in this category of recordkeeping reporting entities would be approximately $2 million.

b. Swap dealer non-clearing member reporting entity recordkeeping would create an annual reporting and recordkeeping burden of 2000 hours spread across 100 respondents. Annualized capital/start-up, operating, and maintenance costs for all firms in this category of recordkeeping reporting entities would be approximately $2 million.

3. Proposed regulation 20.6(b) recordkeeping duties for persons with reportable positions in swaps (these firms were previously not reportable) would create an annual reporting and recordkeeping burden of 10,000 hours spread across 500 firms. Annualized capital/start-up, operating, and maintenance costs for all traders in this category combined would be approximately $11.5 million.

3. Confidentiality

The Commission would protect proprietary information according to the Freedom of Information Act and 17 CFR part 145, "Commission Records and Information." In addition, section 8(a)(1) of the Act strictly prohibits the Commission, unless specifically authorized by the Act, from making public "data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers." [24] 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.

4. Comments on Information Collection

The Commission invites the public and other Federal agencies to comment on any aspect of the reporting and recordkeeping burdens discussed above. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information would have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection 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 collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Comments may be submitted directly to the Office of Information and Regulatory Affairs, by fax at (202) 395–6566 or by e-mail at *OIRAsubmissions@omb.eop.gov.* Please provide the Commission with a copy of submitted comments so that all

[21] The Commission staff's estimates concerning the wage rates are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association ("SIFMA"). The $74.36 per hour is derived from figures from a weighted average of salaries and bonuses across different professions from the SIFMA Report on Management & Professional Earnings in the Securities Industry 2009, modified to account for an 1,800-hour work-year and multiplied by 1.3 to account for overhead and other benefits. The wage rate is a weighted national average of salary and bonuses for professionals with the following titles (and their relative weight); "programmer (senior)" (60% weight), "compliance advisor (intermediate)" (20%), "systems analyst" (10%), and "assistant/associate general counsel" (10%).

[22] The capital/start-up cost component of "annualized capital/start-up, operating, and maintenance costs" is based on an initial capital/start-up cost that is straight-line depreciated over five years.

[23] All of the capital cost estimates in these estimates are based on a 5 year, straight-line depreciation.

[24] 7 U.S.C. 12(a)(1).

comments can be summarized and addressed in the final regulation preamble. Refer to the Addresses section of this notice of proposed rulemaking for comment submission instructions to the Commission. A copy of the supporting statements for the collections of information discussed above may be obtained by visiting RegInfo.gov. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is most assured of being fully effective if received by OMB (and the Commission) within 30 days after publication of this notice of proposed rulemaking.

List of Subjects

17 CFR Part 15

Brokers, Commodity futures, Reporting and recordkeeping requirements.

17 CFR Part 20

Physical commodity swaps, Swap dealers, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Commodity Futures Trading Commission proposes to amend 17 CFR parts 15 and 20 as follows:

PART 15—REPORTS—GENERAL PROVISIONS

1. The authority citation for part 15 is revised to read as follows:

Authority: 7 U.S.C. 2, 5, 6a, 6c, 6f, 6g, 6i, 6k, 6m, 6n, 7, 7a, 9, 12a, 19, and 21, as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010).

2. Revise the heading and introductory text in § 15.00 to read as follows:

§ 15.00 Definitions of terms used in parts 15 to 19, and 21 of this chapter.

As used in parts 15 to 19, and 21 of this chapter:

* * * * *

3. Add part 20 to read as follows:

PART 20—POSITION REPORTS FOR PHYSICAL COMMODITY SWAPS

Sec.
20.1 Definitions.
20.2 Covered contracts.
20.3 Clearing organizations.
20.4 Reporting entities.
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Appendix A to Part 20—Guidelines on Futures Equivalancy
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Authority: 7 U.S.C. 1a, 2, 5, 6, 6a, 6c, 6f, 6g, 6t, 12a, 19, as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010).

§ 20.1 Definitions.

As used in, and solely for the purposes of, this part:

Account controller means a person that by power of attorney or otherwise directs trading for an account.

Business day means "business day" as that term is defined in § 1.3 of this chapter.

Cleared product means a paired swap or swaption that a clearing organization offers or accepts for clearing.

Clearing member means any person who is a member of, or enjoys the privilege of, clearing trades in its own name through a clearing organization.

Clearing organization means the person or organization that acts as a medium between clearing members for the purpose of clearing swaps or swaptions or effecting settlements of swaps or swaptions.

Closed swap or closed swaption means a swap or swaption that has been settled, exercised, closed out, or terminated.

Commodity reference price means the price series (including derivatives contract and cash market prices or price indices) used by the parties to a swap or swaption to determine payments made, exchanged, or accrued under the terms of the contracts.

Controlled account means "controlled account" as defined in § 1.3 of this chapter.

Counterparty means, from the perspective of one side to a contract, the person that directly corresponds to the other side of the contract.

Futures equivalent means an economically equivalent amount of one or more futures contracts that represents a position or transaction in one or more paired swaps or swaptions consistent with the conversion guidelines in Appendix A of this part.

Open swap or swaption means a swap or swaption that has not been closed.

Paired swap or paired swaption means an open swap that is:

(1) Directly or indirectly linked, including being partially or fully settled on, or priced at a differential to, the price of any commodity futures contract listed in § 20.2; or

(2) Directly or indirectly linked, including being partially or fully settled on, or priced at a differential to, the price of the same commodity for delivery at the same location, or locations with substantially the same supply and demand fundamentals, as that of a commodity futures contract listed in § 20.2.

Person means any "person" as that term is defined in § 1.3 of this chapter.

Reportable account or consolidated account that is reportable means a consolidated account that includes a reportable position.

Reportable position means:

(1) A position, in any one futures equivalent month, comprised of fifty or more futures equivalent paired swaps or swaptions based on the same commodity underlying a futures contract listed in § 20.2, grouped separately by swaps and swaptions, then grouped by gross long contracts on a futures equivalent basis or gross short contracts on a futures equivalent basis;

(2) For a consolidated account (described in § 20.4(a)) that includes a reportable position as defined in paragraph (1) of this definition, all other positions in that account that are based on the commodity that renders the account reportable; and

(3) The first reporting day on which a consolidated account (described in § 20.4(a)) no longer in fact includes a reportable position as described in paragraph (1) of this definition (because on such day, the reporting entity's consolidated account shall be considered and treated as if it in fact included reportable positions as described in paragraph (1) of this definition.

Reporting day means the period of time between a clearing organization or reporting entity's usual and customary last internal valuation of paired swaps or swaptions and the next such period, so long as the period of time is consistently observed on a daily basis and the Commission is notified, upon its request, of the manner by which such period is calculated and any subsequent changes thereto.

Reporting entity, means:

(1) A clearing member; or

(2) Swap dealer as that term is defined in section 1a of the Act and any Commission definitional regulations adopted thereunder, unless determined otherwise by the Commission for the purpose of excluding entities that are not commonly known as swap dealers from the reporting requirements of § 20.4.

Swap means (other than a swaption) "swap" as defined in section 1a of the Act and any Commission definitional regulations adopted thereunder.

Swaption means an option to enter into a swap or a physical commodity

option included in the definition of "swap" under section 1a of the Act and any Commission definitional regulations adopted thereunder.

Swap or swaption account means an account for swaps or swaptions maintained at a clearing organization or reporting entity.

§ 20.2 Covered contracts.

(a) All paired swaps and swaptions, unless specifically provided otherwise, shall be reported pursuant to the requirements and conditions of this part and shall not be reported under parts 15 through 19, or 21 of this chapter.

(b) The futures and option contracts listed by designated contract markets for the purpose of reports filed and information provided under this part are as follows:

COVERED AGRICULTURAL AND EXEMPT FUTURES CONTRACTS
Chicago Board of Trade ("CBOT") Corn.
CBOT Ethanol.
CBOT Oats.
CBOT Rough Rice.
CBOT Soybean Meal.
CBOT Soybean Oil.
CBOT Soybeans.
CBOT Wheat.
Chicago Mercantile Exchange ("CME") Butter.
CME Cheese.
CME Dry Whey.
CME Feeder Cattle.
CME Hardwood Pulp.
CME Lean Hogs.
CME Live Cattle.
CME Milk Class III.
CME Non Fat Dry Milk.
CME Random Length Lumber.
CME Softwood Pulp.
COMEX ("CMX") Copper Grade #1.
CMX Gold.
CMX Silver.
ICE Futures U.S. ("ICUS") Cocoa.
ICUS Coffee C.
ICUS Cotton No. 2.
ICUS Frozen Concentrated Orange Juice.
ICUS Sugar No. 11.
ICUS Sugar No. 16.
Kansas City Board of Trade ("KCBT") Wheat.
Minneapolis Grain Exchange ("MGEX") Wheat.
NYSELiffe ("NYL") Gold, 100 Troy Oz.
NYL Silver, 5000 Troy Oz.
New York Mercantile Exchange ("NYMEX") Cocoa.
NYMEX Brent Financial.
NYMEX Central Appalachian Coal.
NYMEX Coffee.
NYMEX Cotton.
NYMEX Crude Oil, Light Sweet.
NYMEX Gasoline Blendstock (RBOB).
NYMEX Hot Rolled Coil Steel.
NYMEX Natural Gas.
NYMEX No. 2 Heating Oil, New York Harbor.
NYMEX Palladium.
NYMEX Platinum.

COVERED AGRICULTURAL AND EXEMPT FUTURES CONTRACTS—Continued
NYMEX Sugar No. 11.
NYMEX Uranium.

§ 20.3 Clearing organizations.

(a) *Reporting data records.* For each reporting day, with respect to paired swaps or swaptions, clearing organizations shall report to the Commission, separately for each clearing member's proprietary and customer account, unique groupings of the data elements in paragraph (b) of this section (to the extent that there are such corresponding elements), in a single data record, so that each reported record is distinguishable from every other reported record (because of differing data values, as opposed to the arrangement of the elements).

(b) *Populating reported data records with data elements.* Data records reported under paragraph (a) of this section shall include the following data elements:

(1) An identifier assigned by the Commission to the clearing organization;

(2) The identifier assigned by the clearing organization to the clearing member;

(3) The identifier assigned by the clearing organization for a cleared product;

(4) The reporting day;

(5) A proprietary or customer account indicator;

(6) The futures equivalent month;

(7) The commodity reference price;

(8) Long swap positions;

(9) Short swap positions;

(10) A swaption put or call side indicator;

(11) A swaption expiration date;

(12) A swaption strike price;

(13) Long non-delta-adjusted swaption positions; and

(14) Short non-delta-adjusted swaption positions.

(c) *End of reporting day data.* For all futures equivalent months, clearing organizations shall report end of reporting day settlement prices for each cleared product and deltas for every unique swaption put and call, expiration date, and strike price.

§ 20.4 Reporting entities.

(a) *Consolidated accounts.* Each reporting entity shall combine all paired swap and swaption positions:

(1) That are proprietary positions (swaps and swaptions to which the reporting entity is a counterparty), in a single consolidated account that it shall attribute to itself;

(2) That are positions directly owned by a reporting entity's counterparty, in a single consolidated account that it shall attribute to that specific counterparty; and

(3) That are positions under the direction of an account controller, in a single consolidated account that it shall attribute to that specific account controller.

(b) *Reporting data records.* Reporting entities shall report to the Commission, for each reporting day, and separately for each consolidated account described in paragraphs (a)(1) through (a)(3) of this section that is reportable, unique groupings of the data elements in paragraph (c) of this section (to the extent that there are such corresponding elements), in a single data record, so that each reported record is distinguishable from every other reported record (because of differing data values, as opposed to the arrangement of the elements).

(c) *Populating reported data records with data elements.* Data records reported under paragraph (b) of this section shall include the following data elements:

(1) An identifier assigned by the Commission to the reporting entity;

(2) An identifier assigned by the reporting entity to each swap or swaption account;

(3) A 102S identifier assigned by the reporting entity to the owner of such accounts;

(4) A 102S identifier assigned by the reporting entity to the controller of such accounts;

(5) The name of each owner of such accounts;

(6) The name of each controller of such accounts;

(7) The reporting day;

(8) The identifier for the cleared product assigned by the clearing organization (cleared only);

(9) The commodity underlying the reportable positions;

(10) The futures equivalent month;

(11) A cleared or uncleared indicator;

(12) A clearing organization identifier;

(13) The commodity reference price;

(14) A bi-lateral trade indicator;

(15) Long paired swap positions;

(16) Short paired swap positions;

(17) A swaption put or call side indicator (cleared only);

(18) A swaption expiration date (cleared only);

(19) A swaption strike price (cleared only);

(20) Long non-delta-adjusted paired swaption positions;

(21) Short non-delta-adjusted paired swaption positions;

(22) Long delta-adjusted paired swaption positions (non-cleared only, using economically reasonable and analytically supported deltas);

(23) Short delta-adjusted paired swaption positions (non-cleared only, using economically reasonable and analytically supported deltas);

(24) Long paired swap or swaption notional value (non-cleared only); and

(25) Short paired swap or swaption notional value (non-cleared only).

§ 20.5 Series S filings.

(a) *102S filing.*

(1) When a consolidated account first becomes reportable, the reporting entity holding or carrying the account shall submit a 102S filing, which shall consist of the name, address, and contact information of the direct owner or controller of the reportable account and a brief description of the nature of such person's paired swaps and swaptions market activity.

(2) A reporting entity may submit a 102S filing only once for each person, even if such persons at various times have multiple reportable positions in the same or different paired swaps or swaptions; however, reporting entities must update a 102S filing if the information provided is no longer accurate.

(3) Reporting entities shall submit a 102S filing within three days following the first day a consolidated account first becomes reportable or at such time as instructed by the Commission upon special call.

(b) *40S filing.* Every person who holds or controls a reportable position shall after a special call upon such person by the Commission file with the Commission a 40S filing at such time and place as directed in the call. A 40S filing shall consist of the submission of a Form 40, which shall be completed by such person as if any references to futures or option contracts were references to paired swaps or swaptions as defined in § 20.1.

§ 20.6 Maintenance of books and records.

(a) Every clearing organization shall keep all records of transactions in paired swaps or swaptions in accordance with the requirements of § 1.31 of this chapter.

(b) Every reporting entity or person with reportable positions shall keep books and records, in accordance with the requirements of § 1.31 of this chapter, showing all records for transactions concerning all reportable positions, including records for transactions in the cash commodity in which the reporting entity or other person is reportable, its products and byproducts, and all commercial activities that a reporting entity or person hedges by taking a position in the contracts listed in § 20.2 or paired swaps and swaptions.

§ 20.7 Form and manner of reporting and submitting information or filings.

Unless otherwise instructed by the Commission, a clearing organization or reporting entity shall submit data records and any other information required under this part to the Commission as follows:

(a) Using the format, coding structure, and electronic data transmission procedures approved in writing by the Commission; and

(b) Not later than 9 a.m. eastern time on the next business day following the reporting day or at such other time as instructed by the Commission.

§ 20.8 Delegation of authority to the Director of the Division of Market Oversight.

(a) The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Market Oversight or such other employee or employees as the Director may designate from time to time, the authority:

(1) In § 20.5(a)(3) for issuing a special call for a 102S filing;

(2) In § 20.5(b) for issuing a special call for a 40S filing;

(3) In § 20.7 for providing instructions or determining the format, coding structure, and electronic data transmission procedures for submitting data records and any other information required under this part.

(b) The Director of the Division of Market Oversight may submit to the Commission for its consideration any matter which has been delegated in this section.

(c) Nothing in this section prohibits the Commission, at its election, from exercising the authority delegated in this section.

§ 20.9 Sunset provision.

(a) Except as otherwise provided in paragraph (b) of this section, the sections of this part shall become ineffective and unenforceable upon a Commission finding that, through the issuance of an order, operating swap data repositories are processing positional data and that such processing will enable the Commission to effectively surveil trading in paired swaps and swaptions and paired swap and swaption markets.

(b) The Commission may determine, in its discretion, to maintain the effectiveness and enforceability of any section of this part, or any requirement therein, in an order issued under paragraph (a) of this section, upon finding that such sections, or requirements therein, provide the Commission with positional data or data elements that materially improves the accuracy and surveillance utility of the positional data processed by swap data repositories.

Appendix A to Part 20—Guidelines on Futures Equivalency

The following examples illustrate how swaps should be converted into futures equivalents. In general the total notional quantity for each swap should be apportioned to referent futures months based on the fraction of days remaining in the life of the swap during each referent futures month to the total duration of the swap, measured in days. The terms used in the examples are to be understood in a manner that is consistent with industry practice.

EXAMPLE 1—FIXED FOR FLOATING WTI CRUDE OIL SWAP LINKED TO A DCM CONTRACT

Reference price	Daily official next to expire contract price for the NYMEX Light Sweet Crude Oil Futures Contract ("WTI") in $/bbl through the NYMEX spot month.
Fixed Price	$80.00 per barrel.
Floating Price	The arithmetic average of the reference price during the pricing period.
Notional Quantity	100,000 bbls/month.
Calculation Period	One month.
Fixed Price Payer	Company A.
Floating Price Payer	Company B.
Settlement Type	Financial.
Swap Term	Six full months from January 1 to June 30.
Floating Amount	Floating Price * Notional Quantity.
Fixed Amount	Fixed Price * Notional Quantity.

NYMEX WTI trading in the next to expire futures contract ceases on the third business day prior to the 25th of the calendar month preceding the contract month. For simplicity in this example, the last trading day in each WTI futures contract is shown as the 22nd of the month.

Futures equivalent position on January 1

Total Notional Quantity = 6 months * 100,000 bbls/month = 600,000 bbls

1,000 bbl = 1 futures contract

Therefore 600,000 bbls/1,000 bbls/contract = 600 futures equivalent contracts

Total number of days in swap term = 31 + 28 + 31 + 30 + 31 + 30 = 181

FUTURES EQUIVALENT POSITION OF SWAP ON JANUARY 1

Dates swap in force	Referent futures month	Fraction of days	Company A position (long) †	Company B position (short) †
January 1–January 22	February	22/181	73	73
January 23–February 22	March	31/181	103	103
February 23–March 22	April	28/181	93	93
March 23–April 22	May	31/181	103	103
April 23–May 22	June	30/181	99	99
May 23–June 22	July	31/181	103	103
June 23–June 30th	August	8/181	27	27
Total		181/181	601	601

† Contracts rounded to the nearest integer.

Futures equivalent position on January 2

Total Notional Quantity = Remaining swap term * 100,000 bbls/month = 596,685 bbls

1,000 bbl = 1 futures contract

Therefore 596,685 bbls/1,000 bbls/contract = 597 futures equivalent contracts

Total number of days = 30 + 28 + 31 + 30 + 31 + 30 = 180

FUTURES EQUIVALENT POSITION OF SWAP ON JANUARY 2

[Example 1 continued]

Dates swap in force	Referent futures month	Fraction of days	Company A position (long) †	Company B position (short) †
January 2–January 22	February	21/180	70	−70
January 23–February 22	March	31/180	103	−103
February 23–March 22	April	28/180	93	−93
March 23–April 22	May	31/180	103	−103
April 23–May 22	June	30/180	99	−99
May 23–June 22	July	31/180	103	−103
June 23–June 30th	August	8/180	27	−27
Total		180/180	597	−597

† Contracts rounded to the nearest integer.

EXAMPLE 2—FIXED FOR FLOATING CORN SWAP

Reference price	Daily official next to expire contract price for the CBOT Corn Futures Contract in $/bushel through the CBOT spot month.
Fixed Price	$5.00 per bushel per month.
Floating Price	The arithmetic average of the reference price during the pricing period.
Calculation Period	One month.
Notional Quantity	1,000,000 bushels/month.
Fixed Price Payer	Company A.
Floating Price Payer	Company B.
Settlement Type	Financial.
Swap Term	Six full months from January 1 to June 30.
Floating Amount	Floating Price * Notional Quantity.
Fixed Amount	Fixed Price * Notional Quantity.

Last trading day in the nearby CBOT Corn futures contract is the business day preceding the 15th of the contract month. For simplicity in this example, the last trading day in each Corn futures contract is shown as the 14th of the month. Futures contract months for corn are March, May, July, September, and December.

Futures equivalent position on January 1

Total Notional Quantity = 6 contract months * 1,000,000 bushels/month = 6,000,000 bushels

5,000 bushels = 1 futures contract

Therefore 6,000,000 bushels/5,000 bushels/contract = 1,200 futures equivalent contracts

Total days = 31 + 28 + 31 + 30 + 31 + 30 = 181

FUTURES EQUIVALENT POSITION OF SWAP ON JANUARY 1

Dates swap in force	Referent futures month	Fraction of days	Company A position (long)†	Company B position (short)†
January 1–March 14	March	73/181	483	−483
March 15–May 14	May	61/181	404	−404
May 15–June 30	July	47/181	311	−311
Total		181/181	1,198	−1,198

† Contracts rounded to the nearest integer.

EXAMPLE 3—FIXED FOR FLOATING NY RBOB (PLATTS) CALENDAR SWAP FUTURES

Reference price	Platts Oilgram next to expire contract Price Report for New York RBOB (Barge) through the NYMEX spot month.
Fixed Price	$1.8894 per gallon.
Floating Price	For each contract month, the floating price is equal to the arithmetic average of the high and low quotations from Platts Oilgram Price Report for New York RBOB (Barge) for each business day that it is determined during the contract month.
Calculation Period	One quarter.
Notional Quantity	84 million gallons/quarter.
Fixed Price Payer	Company A.
Floating Price Payer	Company B.
Settlement Type	Financial.
Swap Term	Six full months from January 1 to June 30.
Floating Amount	Floating Price * Notional Quantity.
Fixed Amount	Fixed Price * Notional Quantity.

NYMEX NY RBOB (Platts) Calendar Swap Futures Contract month ends on the final business day of the contract month. For simplicity in this example, the last trading day in each futures contract is shown as the final day of the month.

Futures equivalent position on January 1

Total Notional Quantity = 2 quarters * 84 million = 168 million gallons

42,000 gallons = 1 futures contract

Therefore 168 million/42,000 gallons/futures contract = 4,000 futures equivalent contracts

Total number of days = 31 + 28 + 31 + 30 + 31 + 30 = 181

FUTURES EQUIVALENT POSITION OF SWAP ON JANUARY 1

Dates swap in force	Referent futures month	Fraction of days	Company A position (long)†	Company B position (short)†
January 1–March 31	April	90/181	1989	−1989
April 1–June 30	July	91/181	2011	−2011
Total		181/181	4000	4000

† Contracts rounded to the nearest integer.

EXAMPLE 4—CALENDAR SPREAD SWAP

Reference price	The difference between the next to expire contract price for the NYMEX WTI Futures contract and the deferred contract price for the NYMEX WTI Futures contract.
Fixed Price	$80 per barrel.
Floating Price	The arithmetic average of the reference price during the pricing period.
Calculation Period	One month.
Notional Quantity	100,000 bbls/month.
Fixed Price Payer	Company A.
Floating Price Payer	Company B.
Settlement Type	Financial.
Swap Term	Six full months from January 1 to June 30.
Floating Amount	Floating Price * Notional Quantity.
Fixed Amount	Fixed Price * Notional Quantity.

NYMEX WTI trading in the next to expire futures contract ceases on the third business day prior to the 25th of the calendar month preceding the contract month. For simplicity in this example, the last trading day in each WTI futures contract is shown as the 22nd of the month.

Futures equivalent position on January 1

Total Notional Quantity = 6 months * 100,000 bbls/month = 600,000 bbls

1,000 bbl = 1 futures contract

Therefore 600,000 bbls/1,000 bbls/contract = 600 futures equivalent contracts

Total number of days = 31 + 28 + 31 + 30 + 31 + 30 = 181

FUTURES EQUIVALENT POSITION OF SWAP ON JANUARY 1

Dates swap in force	Fraction of days	Applicable next to expire futures month	Company A position (long)†	Company B position (short)†	Applicable deferred futures month	Company A position (short)†	Company B Position (long)†
January 1–January 22	22/181	February	73	−73	March	−73	73
January 23–February 22	31/181	March	103	−103	April	−103	103
February 23–March 22	28/181	April	93	−93	May	−93	93
March 23–April 22	31/181	May	103	−103	June	−103	103
April 23–May 22	30/181	June	99	−99	July	−99	99
May 23–June 22	31/181	July	103	−103	August	−103	103
June 23–June 30th	8/181	August	27	−27	September	−27	27
Total	181/181		601	−601		−601	601

† Contracts rounded to the nearest integer.

EXAMPLE 5—COLUMBIA GULF MAINLINE BASIS SWAP (PLATTS IFERC) FUTURES

Reference price	The next issue of the Inside FERC's Gas Market Report ("Platts IFERC") Columbia Gulf Transmission Co. Mainline Index ("Index") and the next to expire NYMEX (Henry Hub) Natural Gas Futures contract final settlement price.
Fixed Price	$0.05 per MMBtu per month.
Floating Price	The Floating Price for each contract month will be equal to the Platts Inside FERC's Gas Market Report ("Platts IFERC") Columbia Gulf Transmission Co. Mainline Index ("Index") published in the table titled "Prices of Spot Gas Delivered to Pipelines" in the first regular issue of the contract month minus the NYMEX (Henry Hub) Natural Gas Futures contract final settlement price for the corresponding contract month.
Calculation Period	Monthly.
Notional Quantity	10,000 MMBtu/calendar day.
Fixed Price Payer	Company A.
Floating Price Payer	Company B.
Settlement type	Financial.
Swap Term	One month from January 1 to January 31.
Floating Amount	Floating Price * Notional Quantity * calendar days in the month.
Fixed Amount	Fixed Price * Notional Quantity * calendar days in the month.

NYMEX Henry Hub Natural Gas Futures Contract trading ceases three business days prior to the first day of the delivery month. For simplicity in this example, the last trading day in the futures contract is shown as the 28th of the month.

Futures equivalent position on January 1

Total Notional Quantity for each leg = 1 month * 31 days/month * 10,000 MMBtu/day = 310,000 MMBtu

10,000 MMBtu = 1 futures contract

Therefore 310,000 MMBtu/10,000 MMBtu/contract = 31 futures equivalent contracts

Total number of days = 31

FUTURES EQUIVALENT POSITION OF SWAP ON JANUARY 1

Dates swap in force	Fraction of days	Referent futures month	Company A position in Columbia Gulf Transmission Co. mainline natural gas (long) MMBtu	Company A position in NYMEX (Henry Hub) natural gas futures (short)	Company B position in Columbia Gulf Transmission Co. mainline natural gas (short) MMBtu	Company B position in NYMEX (Henry Hub) natural gas futures (long)
January 1–January 28	28/31	February	†††	−28	†††	28
January 29–January 31	3/31	March		−3		3
Total	31/31			−31		31

††† Note: Because there is no underlying position taken in a basis contract, for reporting purposes, only enter the futures equivalent contract quantities into the corresponding futures.

EXAMPLE 6—WTI SWAPTION (CALL)

Swaption Style	American.
Option Type	Call.
Swaption Start Date	Jan 1 of the current year.
Swaption End Date	June 30 of the current year.
Strike Price	$80.50/bbl.
Notional Quantity	100,000 bbl/month.
Calculation Period	One month.

EXAMPLE 6—WTI SWAPTION (CALL)—Continued

Reference Price	Daily official next to expire contract price for WTI NYMEX Crude Oil Futures Contract in $/bbl through the NYMEX spot month.
Fixed Price	$80.00 per barrel per month.
Floating Price	The arithmetic average of the reference price during the pricing period.
Settlement Type	Financial.
Swap Term	One month from July 1 to July 31 of the current year.
Floating Amount	Floating Price * Notional Quantity.
Fixed Amount	Fixed Price * Notional Quantity.

NYMEX WTI trading ceases on the third business day prior to the 25th of the calendar month preceding the delivery month. For simplicity in this example, the last trading day in each WTI futures contract is shown as the 22nd of the month.

Futures equivalent position on January 1

Total Notional Quantity = 1 month * 100,000 bbls/month = 100,000 bbls

1,000 bbl = 1 futures contract

Therefore 100,000 bbls/1,000 bbls/contract = 100 futures equivalent contracts

Total number of days = 31

GROSS POSITION ON JANUARY 1

Dates swap in force	Referent futures month	Fraction of days	Company A position (long)†	Company B position (short)†
July 1–July 22	August	22/31	70	−70
July 23—July 31	September	9/31	29	−29
Total		31/31	99	99

† Contracts rounded to the nearest integer.

DELTA †† ADJUSTED POSITION AND FUTURES EQUIVALENT POSITION ON JANUARY 1

Date	August		September	
	Delta	Position	Delta	Position
January 1	.2	14	.2	5

†† Deltas should be calculated in an economically reasonable and analytically supportable basis.

EXAMPLE 7—WTI COLLAR SWAP

Swaption Style	American.
Swaption Start Date	Jan 1 of the current year.
Swaption End Date	June 30 of the current year.
Call strike Price	$70.00 per bbl.
Put strike price	$90.00 per bbl.
Notional Quantity	100,000 barrels per month.
Calculation Period	One month.
Reference Price	Daily official next to expire contract price for WTI NYMEX Crude Oil in $/bbl through the NYMEX spot month.
Fixed Price	$80.00 per barrel.
Floating Price	The arithmetic average of the reference price during the pricing period.
Settlement Type	Financial.
Swap Term	One month from July 1 to July 31 of the current year.
Floating Amount	Floating Price * Notional Quantity.
Fixed Amount	Fixed Price * Notional Quantity.

NYMEX WTI trading ceases on the third business day prior to the 25th of the calendar month preceding the delivery month. For simplicity in this example, the last trading day in each WTI futures contract is shown as the 22nd of the month.

Futures equivalent position on January 1

Total Notional Quantity = 1 month * 100,000 bbls/month = 100,000 bbls

1,000 bbl = 1 futures contract

Therefore 100,000 bbls/1,000 bbls/contract = 100 futures equivalent contracts

Total number of days = 31

GROSS POSITION ON JANUARY 1

Dates swap in force	Referent futures month	Fraction of days	Company A position		Company B position	
			Call	Put	Call	Put
July 1–July 22	August	22/31	70.97	70.97	−70.97	−70.97

GROSS POSITION ON JANUARY 1—Continued

Dates swap in force	Referent futures month	Fraction of days	Company A position		Company B position	
			Call	Put	Call	Put
July 23–July 31	September	9/31	29.03	29.03	−29.03	−29.03
Total		31/31	100	100	−100	−100

COMPANY (A) DELTA† ADJUSTED POSITION ON JANUARY 1

Date	August				September			
	Long call		Short put		Long call		Short put	
	Delta	Position	Delta	Position	Delta	Position	Delta	Position
January 1	.7	49	.3	−21	.7	20	.3	−8

† Deltas should be calculated in an economically reasonable and analytically supportable basis.

FUTURES EQUIVALENT POSITION ON JANUARY 1

Date	August ††		September ††	
	Long	Short	Long	Short
January 1	70	0	28	0

†† Contracts rounded to the nearest integer.

Appendix B to Part 20—Explanatory Guidance on Data Record Layouts

Record Layout Examples for § 20.3

The following example (in Tables 1, 2 and 3) covers reporting for a particular clearing organization. "Clearing Organization One" would report, for the 27th of September 2010, the following eleven unique data record submissions. Each data record submission represents a unique position, as indicated by § 20.3, held by a clearing member of Clearing Organization One. Paragraph (a) of § 20.3 broadly outlines the data elements that determine unique positions for reports on clearing member positions. Paragraphs (b) of § 20.3 present all of the data elements that should be submitted in reference to a particular data record for a particular clearing member (in Table 1). Paragraph (c) identifies data elements that would comprise end of day record data on cleared products (in Tables 2 and 3). Therefore, paragraphs (b) and (c) of § 20.3 present all of the data elements that should be submitted in reference to a particular data record. Paragraphs (a) and (c) are reproduced below.

(a) Reporting data records. For each reporting day, with respect to paired swaps or swaptions, clearing organizations shall report to the Commission, separately for each clearing member's proprietary and customer account, unique groupings of the data elements in paragraph (b) of this section (to the extent that there are such corresponding elements), in a single data record, so that each reported record is distinguishable from every other reported record (because of differing data values, as opposed to the arrangement of the elements).

(c) End of reporting day data. For all futures equivalent months, clearing organizations shall report end of reporting day settlement prices for each cleared product and deltas for every unique swaption put and call, expiration date, and strike price.

Because CFTC designated Clearing Organization One (in this example) currently has two clearing members, "Clearing Members One" and "Clearing Member Two." positions cleared for these two distinct clearing members would be subdivided.

In the following example it is assumed that the clearing member accounts are either proprietary or customer (but not both) and therefore data record submissions do not have to be delineated by these account types. However, if clearing members did have both proprietary and customer accounts, then a clearing organization would have to further subdivide these clearing member data records by these two account types.

Clearing Member One currently has five positions with multiple cleared product IDs and futures equivalent months/years, and therefore these positions also constitute separate data records.

Clearing Member Two currently has six positions with the following varying characteristics: Cleared product IDs; futures equivalent months/years; commodity reference prices; swaption positions that involve both puts and calls; and multiple strike prices. Accordingly, these positions must be reported in separate data records. An illustration of how these records would appear is included in Table 1 below. Clearing Organization One would also have to report the corresponding swaption position deltas, strike prices, expiration dates, and settlement prices and swap settlement prices. An illustration of these submissions is included in Tables 2 and 3 below.

TABLE 1—DATA RECORDS REPORTED UNDER PARAGRAPHS (a) AND (b) OF § 20.3

Data records	CFTC clearing org ID	Clearing org clearing member ID	Clearing org cleared product ID	Reporting day	Proprietary/ customer account indicator	Futures equivalent month and year	Commodity reference price
Data record 1	CCI_ID_1	CM_ID_2	CP_04	9/27/2010	C	Nov–10	NYMEX NY Harbor No. 2.
Data record 2	CCO_ID_1	CM_ID_2	CP_04	9/27/2010	C	Oct–10	NYMEX NY Harbor No. 2.
Data record 3	CCI_ID_1	CM_ID_2	CP_02	9/27/2010	C	Nov–10	NYMEX Henry Hub.
Data record 4	CCO_ID_1	CM_ID_2	CP_02	9/27/2010	C	Oct–10	NYMEX Henry Hub.
Data record 5	CCI_ID_1	CM_ID_2	CP_02	9/27/2010	C	Nov–10	NYMEX Henry Hub.
Data record 6	CCO_ID_1	CM_ID_2	CP_02	9/27/2010	C	Oct–10	NYMEX Henry Hub.
Data record 7	CCO_ID_1	CM_ID_1	CP_03	9/27/2010	P	Mar–11	NYMEX Light Sweet.

TABLE 1—DATA RECORDS REPORTED UNDER PARAGRAPHS (a) AND (b) OF § 20.3—Continued

Data records	CFTC clearing org ID	Clearing org clearing member ID	Clearing org cleared product ID	Reporting day	Proprietary/ customer account indicator	Futures equivalent month and year	Commodity reference price
Data record 8	CCO_ID_1	CM_ID_1	CP_03	9/27/2010	P	Feb–11	NYMEX Light Sweet.
Data record 9	CCO_ID_1	CM_ID_1	CP_01	9/27/2010	P	Mar–11	NYMEX Light Sweet.
Data record 10	CCO_ID_1	CM_ID_1	CP_01	9/27/2010	P	Feb–11	NYMEX Light Sweet.
Data record 11	CCO_ID_1	CM_ID_1	CP_01	9/27/2010	P	Jan–11	NYMEX Light Sweet.
NDR	Yes	Yes	Yes	Yes	Yes	Yes	No.

Data records	Long swap position	Short swap position	Put/call indicator	Swaption expiration date	Swaption strike price	Non-delta adjusted long swaption position	Non-delta adjusted short swaption position
Data record 1	0	5000					
Data record 2	0	2000					
Data record 3			C	7/29/2011	5.59	2000	0
Data record 4			C	7/29/2011	5.59	18000	0
Data record 5			P	7/29/2011	5.50	100	30
Data record 6			P	7/29/2011	5.50	900	270
Data record 7	5000	0					
Data record 8	5000	0					
Data record 9	429	1286					
Data record 10	2281	6843					
Data record 11	1290	3871					
NDR	No	No	Yes	Yes	Yes	No	No

Note: The bottom row of Table 1 indicates whether data elements for which any difference in one of the elements constitutes a reason for a new data record (NDR).

TABLE 2—EXAMPLE OF DATA RECORDS REQUIRED UNDER § 20.3(c) FOR CLEARED SWAPTION PRODUCTS

Data records	CFTC clearing org ID	Clearing org cleared product ID	Reporting day	Futures equivalent month and year	Commodity reference price	Swaption expiration date	Swaption strike price	Put/call indicator	Delta	Swaption daily settlement price
Data record 1	CCI_ID_1	CP_02	9/27/2010	Nov–10	NYMEX Henry Hub.	7/29/2011	5.59	C	.5	6.25
Data record 2	CCO_ID_1	CP_02	9/27/2010	Oct–10	NYMEX Henry Hub.	7/29/2011	5.59	C	.5	5.50
Data record 3	CCI_ID_1	CP_02	9/27/2010	Nov–10	NYMEX Henry Hub.	7/29/2011	5.50	P	.2	4.53
Data record 4	CCO_ID_1	CP_02	9/27/2010	Oct–10	NYMEX Henry Hub.	7/29/2011	5.50	P	.2	4.78

TABLE 3—EXAMPLE OF DATA RECORDS REQUIRED UNDER § 20.3(c) FOR CLEARED SWAP PRODUCTS

Data records	CFTC clearing org ID	Clearing org cleared product ID	Reporting day	Futures equivalent month and year	Commodity reference price	Swap daily settlement price
Data record 1	CCI_ID_1	CP_04	9/27/2010	Nov–10	C	20.35
Data record 2	CCO_ID_1	CP_04	9/27/2010	Oct–10	C	10.50
Data record 3	CCO_ID_1	CP_03	9/27/2010	Mar–11	P	15.00
Data record 4	CCO_ID_1	CP_03	9/27/2010	Feb–11	P	21.00
Data record 5	CCO_ID_1	CP_01	9/27/2010	Mar–11	P	17.50
Data record 6	CCO_ID_1	CP_01	9/27/2010	Feb–11	P	21.65
Data record 7	CCO_ID_1	CP_01	9/27/2010	Jan–11	P	12.50

Record Layout Example for § 20.4

In this example, "Reporting Entity One" would report for the 27th of September 2010, the following twelve unique data records under § 20.4. Each data record represents a unique part of a reportable position in the same commodity held by Reporting Entity One. Paragraph (b) of § 20.4 outlines the data elements that determine unique positions; paragraph (b) is reproduced below.

(b) *Reporting data records. Reporting entities shall report to the Commission, for each reporting day, and separately for each consolidated account described in paragraphs (a)(1) through (a)(3) of this section that is reportable, unique groupings of the data elements in paragraph (c) of this section (to the extent that there are such corresponding elements), in a single data record, so that each reported record is distinguishable from every other reported record (because of differing data values, as opposed to the arrangement of the elements).*

In the following example it is assumed that Reporting Entity One currently clears with one clearing organization and therefore the

data records do not have to be delineated by clearing organization. However, if Reporting Entity One did use multiple clearing organizations, then it would have to further subdivide its data submissions by each clearing organization.

Reporting Entity One currently has twelve positions with the following varying characteristics: account owners; account controllers; futures equivalent months/years; clearing organization cleared products; swaptions that were either cleared or uncleared; commodity reference prices; and whether the trade was entered into on or off execution facilities. Accordingly, these positions constitute separate data records. An illustration of how these records would appear is included in Table 4 below.

TABLE 4—EXAMPLE OF DATA RECORDS REPORTED UNDER § 20.4(C)

Data records	Commission reporting entity ID	Reporting entity client account number	102S Owner ID	102S Controller ID	Account owner name	Account controller name	Reporting day	Clearing org cleared product ID
Data record 1	CRE_ID_1	ACCT_1	CONTROL_1	OWNER_1	XYZ Corp.	ABC Corp.	9/27/2010	CP_04
Data record 2	CRE_ID_1	ACCT_1	CONTROL_1	OWNER_1	XYZ Corp.	ABC Corp.	9/27/2010	CP_04
Data record 3	CRE_ID_1	ACCT_1	CONTROL_1	OWNER_1	XYZ Corp.	ABC Corp.	9/27/2010	CP_04
Data record 4	CRE_ID_1	ACCT_1	CONTROL_1	OWNER_1	XYZ Corp.	ABC Corp.	9/27/2010	CP_04
Data record 5	CRE_ID_1	ACCT_3	CONTROL_2	OWNER_1	XYZ Corp.	FED Corp.	9/27/2010	CP_03
Data record 6	CRE_ID_1	ACCT_4	CONTROL_2	OWNER_2	WVU Corp.	FED Corp.	9/27/2010	CP_03
Data record 7	CRE_ID_1	ACCT_2	CONTROL_1	OWNER_1	XYZ Corp.	ABC Corp.	9/27/2010	CP_03
Data record 8	CRE_ID_1	ACCT_5	CONTROL_1	OWNER_2	WVU Corp.	ABC Corp.	9/27/2010	CP_03
Data record 9	CRE_ID_1	ACCT_1	CONTROL_1	OWNER_1	XYZ Corp.	ABC Corp.	9/27/2010	
Data record 10	CRE_ID_1	ACCT_1	CONTROL_1	OWNER_1	XYZ Corp.	ABC Corp.	9/27/2010	
Data record 11	CRE_ID_1	ACCT_1	CONTROL_1	OWNER_1	XYZ Corp.	ABC Corp.	9/27/2010	CP_01
Data record 12	CRE_ID_1	ACCT_1	CONTROL_1	OWNER_1	XYZ Corp.	ABC Corp.	9/27/2010	CP_01
NDR Uncleared	Yes	Yes	No	No	No	No	Yes	No
NDR Cleared	Yes	Yes	No	No	No	No	Yes	Yes

Data records	Commodity code	Futures equivalent month and year	Cleared/ uncleared indicator	CFTC clearing org identifier	Commodity reference price	Execution facility	Long swap position	Short swap position
Data record 1	HO1	Feb-11	C	CCO_ID_1	Platts Oilgram Price Report for New York No. 2 (Barge).	EX1	1989	0
Data record 2	HO1	Jan-11	C	CCO_ID_1	Platts Oilgram Price Report for New York No. 2 (Barge).	EX2	2011	0
Data record 3	HO1	Feb-11	C	CCO_ID_1	NYMEX NY Harbor No. 2	EX1	0	5000
Data record 4	CL	Jan-11	C	CCO_ID_1	NYMEX NY Harbor No. 2	EX3	0	2000
Data record 5	CL	Feb-11	C	CCO_ID_1	NYMEX Light Sweet	EX1	5000	0
Data record 6	CL	Feb-11	C	CCO_ID_1	NYMEX Light Sweet	EX1	5000	0
Data record 7	CL	Feb-11	C	CCO_ID_1	NYMEX Light Sweet	EX7	429	1286
Data record 8	CL	Feb-11	C	CCO_ID_1	NYMEX Light Sweet	EX1	1571	4714
Data record 9	NG	Nov-10	U	U	NYMEX Henry Hub	NOEX		
Data record 10	NG	Oct-10	U	U	NYMEX Henry Hub	NOEX		
Data record 11	NG	Nov-10	C	CCO_ID_1	NYMEX Henry Hub	EX1		
Data record 12	NG	Oct-10	C	CCO_ID_1	NYMEX Henry Hub	EX1		
NDR Uncleared	No	Yes	Yes	No	Yes	Yes	No	No
NDR Cleared	No	Yes	Yes	Yes	No	Yes	No	No

Data records	Put/call indicator	Swaption expiration date	Swaption strike price	Non-delta adjusted long swaption position	Non-delta adjusted short swaption position	Delta adjusted long swaption position	Delta adjusted short swaption position	Long swap or swaption notional value position	Short swap or swaption notional value position
Data record 1									
Data record 2									
Data record 3									
Data record 4									
Data record 5									
Data record 6									
Data record 7									
Data record 8									
Data record 9				2000	0	1000	0	111800000	0
Data record 10				18000	0	9000	0	1006200000	0
Data record 11	P	7/29/2011	5.55	100	30	20	6		
Data record 12	P	7/29/2011	5.55	900	270	180	54		
NDR Uncleared	No	Yes	No	No	No	No	No	No	No
NDR Cleared	Yes	Yes	Yes	No	No	No	No	No	No

Note: The bottom two rows in Table 4 indicate whether, for uncleared and cleared swaps and swaptions, data elements for which any difference in one of the elements constitutes a reason for a new data record (NDR).

Issued by the Commission this 19th day of October 2010 in Washington, DC.

David Stawick,

Secretary of the Commission.

Note: The following attachments will not appear in the Code of Federal Regulations.

Statement of Chairman Gary Gensler

Position Reports for Physical Commodity Swaps

October 19, 2010

I support the proposed large trader reporting rulemaking for physical commodity swaps. The Commission currently receives data on large

positions in all physical commodity futures traded on DCMs and uses it for market surveillance purposes, including position limit enforcement. With today's proposed rule, we would have an analogous reporting system for swaps.

The proposal would require position reports on economically equivalent swaps from clearing organizations, their members and swap dealers. This will enable the CFTC to receive such data until swap data repositories are in operation and capable of fulfilling the Commission's need for this information.

Concurring Statement of Commissioner Jill E. Sommers

Relating to the Commission's Proposal on Position Reports for Physical Commodity Swaps and Swaptions

October 19, 2010

I support this proposal to receive daily position reports for physical commodity swaps and swaptions because I believe it furthers our continued effort to expand transparency into swap markets and because I believe it is critical that the Commission receive this information as soon as possible. I recognize that this proposal is a precursor to the Commission moving forward with a proposal on the imposition of position limits. That said, my vote in support of this proposal today should not in any way be interpreted as expressing support for moving forward with the imposition of position limits by the deadlines set forth in Dodd-Frank.

In July and August 2009, the Commission held three public hearings to discuss imposition of position limits in energy markets. Five months later, in January 2010, the Commission issued a proposed rule imposing position limits in four enumerated energy contracts. I had grave concerns about moving forward with position limits on those four contracts, and accordingly voted against the proposal. My grave concerns about moving forward with position limits have not been eased, and in fact, have only been heighted by certain provisions of Dodd-Frank.

Section 737 of Dodd-Frank states that the Commission shall by rule, regulation, or order establish limits on the amount of positions, *as appropriate,* that may be held by any person. This section requires the limits to be aggregated across markets and related products and to be imposed within 180 days for energy and metals contracts, and 270 days for agricultural contracts.

In my view, no position limit is appropriate if it is imposed without the benefit of receiving and fully analyzing complete data concerning the open interest in each market. Only then is the Commission able to properly consider the size of each market and calibrate a limit that is appropriate for each market. Currently, the Commission does not have complete data and will not have complete data until swap data repositories are up and running and all swap market data is reported to swap data repositories or to the Commission. I believe that, optimistically, the earliest this reporting can happen will be by the end of 2011. Again that is an optimistic estimate.

Because of the 180 and 270 day requirements in Dodd-Frank, as we sit here today, the Commission is tentatively planning a November 30 public meeting to vote on proposed speculative position limits for exempt and agricultural commodities. Mind you, by November 30 the Commission will not have garnered any data from the proposed rule we are discussing today, because it, or some modified version of it, probably will not be effective in final form by November 30. In addition, by November 30, swap data repositories will still be at least one year away from operating. Even if the proposed rule we are discussing today were effective by November 30, it will not provide complete information sufficient to impose position limits.

Under these circumstances, when considering the imposition of aggregate position limits on exempt and agricultural commodities, I believe the Commission should find that imposing such limits is not appropriate in the absence of full and complete data and analysis on the open interest in each market. I believe it is a mistake to interpret the arbitrary 180 day and 270 day deadlines as somehow trumping the requirement that the Commission make an appropriateness determination before imposing any position limits.

This is an issue that I will be following closely, and I look forward to hearing the views of the public and market participants on this issue.

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 39 and 140

RIN 3038–AD00

Process for Review of Swaps for Mandatory Clearing

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is proposing rules to implement new statutory provisions enacted by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act. These proposed rules apply to the review of swaps by the Commission to determine whether the swaps are required to be cleared.

DATES: Submit comments on or before January 3, 2011.

ADDRESSES: You may submit comments, identified by RIN number, by any of the following methods:

- *Agency Web Site, via its Comments Online process: http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.
- *Mail:* David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as mail above.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that may be exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the established procedures in CFTC Regulation 145.9.[1]

FOR FURTHER INFORMATION CONTACT: Eileen A. Donovan, Special Counsel, 202–418–5096, *edonovan@cftc.gov,* Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

On July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).[2] Title VII of the

[1] Commission regulations referred to herein are found at 17 CFR Ch. 1.

[2] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at *http://www.cftc.gov./LawRegulation/OTCDERIVATIVES/index.htm.*

Dodd-Frank Act[3] amended the Commodity Exchange Act (CEA)[4] to establish a comprehensive new regulatory framework for swaps and security-based swaps. The legislation was enacted to reduce risk, increase transparency, and promote market integrity within the financial system by, among other things: (1) Providing for the registration and comprehensive regulation of swap dealers and major swap participants; (2) imposing clearing and trade execution requirements on standardized derivative products; (3) creating rigorous recordkeeping and real-time reporting regimes; and (4) enhancing the Commission's rulemaking and enforcement authorities with respect to, among others, all registered entities and intermediaries subject to the Commission's oversight.

Section 723(a)(3) of the Dodd-Frank Act amends the CEA to provide that "it shall be unlawful for any person to engage in a swap unless that person submits such swap for clearing to a derivatives clearing organization [(DCO)] that is registered under [the CEA] or a [DCO] that is exempt from registration under [the CEA] if the swap is required to be cleared."[5] Section 723(a)(3) requires the Commission to adopt rules for the review of a swap, or group, category, type, or class of swaps (collectively, "swaps") to make a determination as to whether the swaps should be required to be cleared.

In addition, Section 745(b) of the Dodd-Frank Act amends the CEA to direct the Commission to prescribe criteria, conditions, or rules under which the Commission will determine the initial eligibility or the continuing qualification of a DCO to clear swaps.[6]

Accordingly, the Commission is proposing to adopt Regulation 39.5 to implement procedures for determining the eligibility of a DCO to clear swaps that it plans to accept for clearing; for DCOs submitting swaps to the Commission for review; for Commission-initiated reviews of swaps; and for staying a clearing requirement while the clearing of a swap is reviewed.

The Commission requests comment on all aspects of the proposed rules, as well as comment on the specific provisions and issues highlighted in the discussion below.

[3] Pursuant to Section 701 of the Dodd-Frank Act, Title VII may be cited as the "Wall Street Transparency and Accountability Act of 2010."

[4] 7 U.S.C. 1 *et seq.*

[5] *See* Section 2(h) of the CEA, 7 U.S.C. 2(h).

[6] *See* Section 5c(c)(5)(C)(iii) of the CEA, 7 U.S.C. 7a–2(c)(5)(C)(iii).

II. Proposed Regulations

A. Eligibility of a DCO To Clear Swaps

The Dodd-Frank Act requires the Commission to determine, upon request or its own motion, the initial eligibility or continuing qualification of a DCO to clear a swap that it plans to accept for clearing, under criteria, conditions, or rules determined by the Commission. Such criteria, conditions, or rules must consider the financial integrity of the DCO and any other factors that the Commission determines to be appropriate.[7]

Under proposed Regulation 39.5(a), a DCO would be presumed eligible to accept for clearing any swap that is within a group, category, type, or class of swaps that the DCO already clears. However, such a presumption would be subject to Commission review, and if the Commission determines that the swap is not within a group, category, type, or class of swaps that the DCO already clears, the DCO would be required to request a determination by the Commission of its eligibility to clear the swap. A DCO that plans to accept for clearing any swap that is *not* within a group, category, type, or class of swaps that the DCO already clears also would be required to make such a request.

To receive a determination of eligibility to clear a swap, a DCO would have to file a written request with the Commission that addresses its ability to maintain compliance with the core principles for DCOs set out in Section 5b(c)(2) of the CEA if it accepts the swap for clearing, specifically: (1) The sufficiency of its financial resources; and (2) its ability to manage the risks associated with clearing the swap, especially if the Commission determines that the swap is required to be cleared.

B. Submission of Swaps to the Commission for Review

The Dodd-Frank Act requires a DCO that plans to accept a swap (or group, category, type, or class of swaps) for clearing to submit the swap to the Commission for review.[8] Proposed Regulation 39.5(b) sets out the process for DCOs to follow, including what information a DCO must include in its submission to assist the Commission in its review.

First, the submission would have to include a statement that the DCO is eligible to clear the swap and, if the Commission determines that the swap is required to be cleared, the DCO would be able to maintain compliance with Section 5b(c)(2) of the CEA. This provision is intended to satisfy the Dodd-Frank Act requirement that a swap submission be consistent with Section 5b(c)(2).[9] Regulation 39.5(b)(1) would require a DCO submitting a swap to be eligible to clear the swap under Regulation 39.5(a) and, as noted above, a DCO that seeks to be considered eligible to clear a swap must demonstrate its ability to maintain compliance with the core principles in Section 5b(c)(2). Therefore, a DCO submitting a swap under Regulation 39.5(b) would have already demonstrated pursuant to Regulation 39.5(a) its ability to comply with Section 5b(c)(2). Accordingly, the Commission believes it is appropriate to require only a statement to that effect in the swap submission itself.

A DCO would also have to provide a statement that includes, but is not limited to, information that would assist the Commission in the quantitative and qualitative assessment of five specific factors that the Dodd-Frank Act requires the Commission to take into account when reviewing a swap submission,[10] and additional information that the Commission believes is needed for an effective review of the swap submission. The proposed regulation would require the DCO to provide specific information relating to product specifications; participant eligibility standards; pricing sources, models, and procedures;[11] risk management procedures; measures of market liquidity and trading activity; the effect of a clearing requirement on the market for the swap; applicable rules, manuals, policies, or procedures; and terms and trading conventions on which the swap is currently traded.

Finally, the swap submission would have to include a description of the manner in which the DCO has provided

[7] *See* Section 5c(c)(5)(C)(iii)(II) of the CEA, 7 U.S.C. 7a–2(c)(5)(C)(iii)(II).

[8] *See* Section 2(h)(2)(B)(i) of the CEA, 7 U.S.C. 2(h)(2)(B)(i).

[9] *See* Section 2(h)(2)(D)(i) of the CEA, 7 U.S.C. 2(h)(2)(D)(i).

[10] *See* Section 2(h)(2)(D)(ii) of the CEA, 7 U.S.C. 2(h)(2)(D)(ii).

[11] This would include information about any price reference index used, such as the name of the index, the source that calculates it, the methodology used to calculate the price reference index and how often it is calculated, and when and where it is published publicly. For example, the BBA LIBOR 3-Month USD interest rate published by the British Bankers Association is calculated daily by Thomson Reuters on behalf of BBA. The rate is published daily at 11 a.m. London Time via data vendors like Reuters and Bloomberg, and is calculated using a survey of 16 major banks. The bank quotes are then ranked in order, high four and bottom four removed, and the remaining eight quotes are averaged to determine the official 3-Month USD LIBOR fixing rate for that day. A DCO would be required to provide documentation of the index methodology and publication frequency or the relevant hyperlink if it is openly available on the Internet.

notice of the submission to its members and a summary of any opposition to the submission expressed by members. The Dodd-Frank Act requires a DCO to provide notice of the submission to its members in a manner to be determined by the Commission.[12] The Commission recognizes that a DCO typically has established procedures for providing notice to its members and believes it is appropriate to allow the DCO to provide notice of a swap submission in the same manner. The submission to the Commission also would have to include a summary of any opposition expressed by members, which means that a DCO would be expected to notify members before it makes its submission to the Commission. The Commission invites comment on whether the regulation should prescribe a specific manner in which a DCO must provide notice to its members, and whether the regulation should prescribe a specific period of time between the notice to members and the submission to the Commission to allow time for members to make their views on the submission known.

Upon receiving a DCO's submission, the Commission would begin its 90-day review by posting the submission on the Commission Web site for a 30-day public comment period, as required by the Dodd-Frank Act. The Commission invites comment regarding the appropriateness and sufficiency of providing notice of the submission on the Commission Web site as compared to publishing notice of the submission in the **Federal Register**. The review would not begin until the submission was complete, as determined solely in the discretion of the Commission. Due to the relatively brief 90-day review period prescribed by the Dodd-Frank Act, the Commission must be certain before it begins a review that it has the information it needs to reach an appropriate determination.

The proposed regulation encourages a DCO to submit swaps to the Commission, to the extent reasonable and practicable to do so, by group, category, type, or class of swaps. The Commission believes this will make the review process more efficient. The Commission would be able to consolidate multiple submissions from one DCO or subdivide a DCO's submission for review as appropriate.

The Commission would review the submission and make a determination as to whether the swap will be required to be cleared not later than 90 days after receiving the submission, unless the submitting DCO agreed to an extension. In making a determination that the swap must be cleared, the Commission would impose terms and conditions on the requirement as appropriate.

C. Commission-Initiated Reviews of Swaps

The Dodd-Frank Act requires the Commission on an ongoing basis to review swaps that have not been accepted for clearing by a DCO to make a determination as to whether the swaps should be required to be cleared.[13] Under proposed Regulation 39.5(c), the Commission would use information obtained pursuant to Commission regulations [14] from swap data repositories, swap dealers, and major swap participants, and any other available information, in undertaking such reviews.

If no DCO has accepted for clearing a particular swap, group, category, type, or class of swaps that the Commission finds would otherwise be subject to a clearing requirement, the Commission would, as required by the Dodd-Frank Act,[15] investigate the relevant facts and circumstances and, within 30 days of the completion of its investigation, issue a public report containing the results of the investigation. The Commission would take such actions as it determines to be necessary and in the public interest, which may include establishing margin or capital requirements for parties to the swap, group, category, type, or class of swaps.

D. Stay of Clearing Requirement

After making a determination that a swap (or group, category, type, or class of swaps) is required to be cleared, the Commission, on application of a counterparty to a swap or on its own initiative, may stay the clearing requirement until it completes a review of the terms of the swap and the clearing arrangement.[16] Proposed Regulation 39.5(d)(2) sets out the process for a counterparty to a swap to apply for a stay of the clearing requirement.

A counterparty to a swap that wants to apply for a stay of the clearing requirement for that swap would be required to submit a written request to the Secretary of the Commission that includes information that would assist the Commission in its review, including: The identity and contact information of the counterparty to the swap; the terms of the swap subject to the clearing requirement; the name of the DCO that clears the swap; a description of the clearing arrangement; and a statement explaining why the swap should not be subject to a clearing requirement.

The Commission also would be able to obtain additional information to assist it in its review from the DCO that clears the swap. The Commission would complete its review not later than 90 days after issuance of the stay, unless the DCO that clears the swap agrees to an extension.

Upon completion of its review, the Commission could determine, subject to any terms and conditions as the Commission determines to be appropriate, that the swap must be cleared, or that the clearing requirement will not apply but clearing may continue on a non-mandatory basis.

III. Technical Amendments

The Commission is proposing to amend Regulation 140.94 [17] to delegate authority to the Director of the Division of Clearing and Intermediary Oversight to consolidate or subdivide swap submissions as appropriate for review under proposed Regulation 39.5(b)(2) and to request information from a derivatives clearing organization in connection with the stay of a clearing requirement under proposed Regulation 39.5(d)(3).

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires that agencies consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis respecting the impact.[18] The rules proposed by the Commission shall affect only DCOs. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its regulations on small entities in accordance with the RFA.[19] The Commission has previously determined that DCOs are not small entities for the purpose of the RFA.[20]

[12] *See* Section 2(h)(2)(B)(i) of the CEA, 7 U.S.C. 2(h)(2)(B)(i).

[13] *See* Section 2(h)(2)(A) of the CEA, 7 U.S.C. 2(h)(2)(A).

[14] The Commission intends to adopt such regulations before any Commission reviews would be initiated.

[15] *See* Section 2(h)(4)(B) of the CEA, 7 U.S.C. 2(h)(4)(B).

[16] *See* Section 2(h)(3)(A) of the CEA, 7 U.S.C. 2(h)(3)(A).

[17] *See* 75 FR 55410 (Sep. 10, 2010). The Commission previously proposed to amend Regulation 140.94 in connection with the proposal of Regulation 39.11 (75 FR 63113 (Oct. 14, 2010)). The Commission intends to place all delegations to the Director of the Division of Clearing and Intermediary Oversight for Part 39 under this regulation.

[18] 5 U.S.C. 601 *et seq.*

[19] 47 FR 18618 (Apr. 30, 1982).

[20] *See* 66 FR 45605, 45609 (August 29, 2001).

Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the proposed rules will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. OMB has not yet assigned a control number to the new collection. The Paperwork Reduction Act of 1995 (PRA) [21] imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. This proposed rulemaking would result in new collection of information requirements within the meaning of the PRA. The Commission therefore is submitting this proposal to the Office of Management and Budget (OMB) for review. If adopted, responses to this collection of information would be mandatory. The Commission will protect proprietary information according to the Freedom of Information Act and 17 CFR Part 145, "Commission Records and Information." In addition, section 8(a)(1) of the CEA strictly prohibits the Commission, unless specifically authorized by the CEA, from making public "data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers." The Commission is also required to protect certain information contained in a government system of records according to the Privacy Act of 1974, 5 U.S.C. 552a.

1. Information Provided by Reporting Entities/Persons

The proposed regulations require each respondent to file information with the Commission on an occasional basis, which would result in one annual response per respondent. Commission staff estimates that each respondent would expend 40 hours to prepare each filing required under the proposed regulations, which was estimated based on the Commission's prior experience with DCOs and their preparation of filings for the Commission's review. Commission staff estimates that it would receive filings from up to 12 respondents annually, which assumes that each DCO would make an average of one filing per year. Accordingly the burden in terms of hours would in the aggregate be 40 hours annually per respondent and 480 hours annually for all respondents.

Commission staff estimates that each respondent could expend up to $4000 annually, based on an hourly wage rate of $100, to comply with the proposed regulations. This would result in an aggregated cost of $48,000 per annum (12 respondents x $4000). The Commission invites public comment on the accuracy of its estimate regarding the collection requirements that would result from the proposed regulations.

2. Information Collection Comments

The Commission invites the public and other federal agencies to comment on any aspect of the reporting and recordkeeping burdens discussed above. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (i) Evaluate whether the proposed collection of information is 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 estimate of the burden of the proposed collection 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 collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Comments may be submitted directly to the Office of Information and Regulatory Affairs, by fax at (202) 395–6566 or by e-mail at *OIRAsubmissions@omb.eop.gov.* Please provide the Commission with a copy of submitted comments so that all comments can be summarized and addressed in the final rule preamble. Refer to the Addresses section of this notice of proposed rulemaking for comment submission instructions to the Commission. A copy of the supporting statements for the collections of information discussed above may be obtained by visiting RegInfo.gov. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

C. Cost-Benefit Analysis

Section 15(a) of the CEA [22] requires the Commission to consider the costs and benefits of its actions before issuing a rulemaking under the CEA. By its terms, Section 15(a) does not require the Commission to quantify the costs and benefits of a rule or to determine whether the benefits of the rulemaking outweigh its costs; rather, it requires that the Commission "consider" the costs and benefits of its actions. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular rule is necessary or appropriate to protect the public interest or to effectuate any of the provisions or accomplish any of the purposes of the CEA.

Summary of proposed requirements. The proposed rule would implement processes for determining the eligibility of a DCO to clear swaps that it wishes to accept for clearing; for DCOs submitting swaps to the Commission for review; for Commission-initiated reviews of swaps; and for staying a clearing requirement while the clearing of a swap is reviewed.

Costs. With respect to costs, the Commission has determined that the rule results in minimal costs. The rule only requires DCOs and swap counterparties to provide sufficient information for the Commission to carry out its responsibilities under the Dodd-Frank Act in an efficient manner. The rule itself does not require the clearing of any swap, so the Commission did not consider the potential costs of mandatory clearing in its analysis.

Benefits. With respect to benefits, the Commission has determined that the rule will benefit the public by making information publicly available and by providing opportunity for comment. The rule also takes into account the risk management practices of a DCO in making a determination on the DCO's eligibility to clear swaps. The rule itself does not require the clearing of any swap, so the Commission did not

[21] 44 U.S.C. 3501 *et seq.*

[22] 7 U.S.C. 19(a).

consider the potential benefits of mandatory clearing in its analysis.

Public Comment. The Commission invites public comment on its cost-benefit considerations. Commenters are also invited to submit any data or other information that they may have quantifying or qualifying the costs and benefits of the proposal with their comment letters.

List of Subjects

17 CFR Part 39

Business and industry, Commodity futures, Reporting and recordkeeping requirements.

17 CFR Part 140

Authority delegations (Government agencies), Conflict of interests, Organization and functions (Government agencies).

For the reasons stated in the preamble, the Commission proposes to amend 17 CFR parts 39 and 140 as follows:

PART 39—DERIVATIVES CLEARING ORGANIZATIONS

1. The authority citation for part 39 is revised to read as follows:

Authority: 7 U.S.C. 7a–1 as amended by Pub. L. 111–203, 124 Stat. 1376.

2. Redesignate §§ 39.5 through 39.7 as §§ 39.6 through 39.8 and add new § 39.5 to read as follows:

§ 39.5 Review of swaps for Commission determination on clearing requirement.

(a) *Eligibility to clear swaps.* (1) A derivatives clearing organization shall be presumed eligible to accept for clearing any swap that is within a group, category, type, or class of swaps that the derivatives clearing organization already clears. Such presumption of eligibility, however, is subject to review by the Commission.

(2) A derivatives clearing organization that wishes to accept for clearing any swap that is not within a group, category, type, or class of swaps that the derivatives clearing organization already clears shall request a determination by the Commission of the derivatives clearing organization's eligibility to clear such a swap before accepting the swap for clearing. The request, which shall be filed electronically with the Secretary of the Commission, shall address the derivatives clearing organization's ability, if it accepts the swap for clearing, to maintain compliance with section 5b(c)(2) of the Act, specifically:

(i) The sufficiency of the derivatives clearing organization's financial resources; and

(ii) The derivative clearing organization's ability to manage the risks associated with clearing the swap, especially if the Commission determines that the swap is required to be cleared.

(b) *Swap submissions.* (1) A derivatives clearing organization shall submit to the Commission each swap, or any group, category, type, or class of swaps that it plans to accept for clearing. The derivatives clearing organization making the submission must be eligible under paragraph (a) of this section to accept for clearing the submitted swap, or group, category, type, or class of swaps.

(2) A derivatives clearing organization shall submit swaps to the Commission, to the extent reasonable and practicable to do so, by group, category, type, or class of swaps. The Commission may in its reasonable discretion consolidate multiple submissions from one derivatives clearing organization or subdivide a derivatives clearing organization's submission as appropriate for review.

(3) The submission shall be filed electronically with the Secretary of the Commission and shall include:

(i) A statement that the derivatives clearing organization is eligible to accept the swap, or group, category, type, or class of swaps for clearing and, if the Commission determines that the swap, or group, category, type, or class of swaps is required to be cleared, the derivatives clearing organization will be able to maintain compliance with section 5b(c)(2) of the Act;

(ii) A statement that includes, but is not limited to, information regarding the swap, or group, category, type, or class of swaps that is sufficient to provide the Commission a reasonable basis to make a quantitative and qualitative assessment of the following factors:

(A) The existence of significant outstanding notional exposures, trading liquidity, and adequate pricing data;

(B) The availability of rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear the contract on terms that are consistent with the material terms and trading conventions on which the contract is then traded;

(C) The effect on the mitigation of systemic risk, taking into account the size of the market for such contract and the resources of the DCO available to clear the contract;

(D) The effect on competition, including appropriate fees and charges applied to clearing; and

(E) The existence of reasonable legal certainty in the event of the insolvency of the relevant DCO or one or more of its clearing members with regard to the treatment of customer and swap counterparty positions, funds, and property;

(iii) Product specifications, including copies of any standardized legal documentation, generally accepted contract terms, standard practices for managing any life cycle events associated with the swap, and the extent to which the swap is electronically confirmable;

(iv) Participant eligibility standards, if different from the derivatives clearing organization's general participant eligibility standards;

(v) Pricing sources, models, and procedures, demonstrating an ability to obtain sufficient price data to measure credit exposures in a timely and accurate manner, including any agreements with clearing members to provide price data and copies of executed agreements with third-party price vendors, and information about any price reference index used, such as the name of the index, the source that calculates it, the methodology used to calculate the price reference index and how often it is calculated, and when and where it is published publicly;

(vi) Risk management procedures, including measurement and monitoring of credit exposures, initial and variation margin methodology, methodologies for stress testing and back testing, settlement procedures, default management procedures, and an independent validation of the scalability of the derivatives clearing organization's risk management policies, systems, and procedures, including the margin methodology, settlement procedures, and default management procedures;

(vii) Measures of market liquidity and trading activity, including information on the sources of such measures;

(viii) An analysis of the effect of a clearing requirement on the market for the group, category, type, or class of swaps, both domestically and globally, including the potential effect on market liquidity, trading activity, use of swaps by direct and indirect market participants, and any potential market disruption;

(ix) Applicable rules, manuals, policies, or procedures;

(x) Terms and trading conventions on which the swap is currently traded;

(xi) A description of the manner in which the derivatives clearing organization has provided notice of the submission to its members and a summary of any opposition to the submission expressed by the members. A copy of the notice to members shall be included with the submission.

(4) The submission will be made available to the public and posted on

the Commission Web site for a 30-day public comment period. A derivatives clearing organization that wishes to request confidential treatment for portions of its submission may do so in accordance with the procedures set out in § 145.9(d).

(5) The Commission will review the submission and determine whether the swap, or group, category, type, or class of swaps described in the submission is required to be cleared. The Commission will make its determination not later than 90 days after a complete submission has been received, unless the submitting derivatives clearing organization agrees to an extension. The determination of when such submission is complete shall be at the sole discretion of the Commission. In making a determination that a clearing requirement shall apply, the Commission may require such terms and conditions to the requirement as the Commission determines to be appropriate.

(c) *Commission-initiated reviews.* (1) The Commission on an ongoing basis will review swaps that have not been accepted for clearing by a derivatives clearing organization to make a determination as to whether the swaps should be required to be cleared. In undertaking such reviews, the Commission will use information obtained pursuant to Commission regulations from swap data repositories, swap dealers, and major swap participants, and any other available information.

(2) Notice regarding any determination made under paragraph (c)(1) of this section will be posted on the Commission Web site for a 30-day public comment period.

(3) If no derivatives clearing organization has accepted for clearing a particular swap, group, category, type, or class of swaps that the Commission finds would otherwise be subject to a clearing requirement, the Commission will:

(i) Investigate the relevant facts and circumstances;

(ii) Within 30 days of the completion of its investigation, issue a public report containing the results of the investigation; and

(iii) Take such actions as the Commission determines to be necessary and in the public interest, which may include requiring the retaining of adequate margin or capital by parties to the swap, group, category, type, or class of swaps.

(d) *Stay of clearing requirement.* (1) After making a determination that a swap, or group, category, type, or class of swaps is required to be cleared, the Commission, on application of a counterparty to a swap or on its own initiative, may stay the clearing requirement until the Commission completes a review of the terms of the swap, or group, category, type, or class of swaps and the clearing arrangement.

(2) A counterparty to a swap that wishes to apply for a stay of the clearing requirement for that swap shall submit a written request to the Secretary of the Commission that includes:

(i) The identity and contact information of the counterparty to the swap;

(ii) The terms of the swap subject to the clearing requirement;

(iii) The name of the derivatives clearing organization clearing the swap;

(iv) A description of the clearing arrangement; and

(v) A statement explaining why the swap should not be subject to a clearing requirement.

(3) A derivatives clearing organization that has accepted for clearing a swap, or group, category, type, or class of swaps that is subject to a stay of the clearing requirement shall provide any information requested by the Commission in the course of its review.

(4) The Commission will complete its review not later than 90 days after issuance of the stay, unless the derivatives clearing organization that clears the swap, or group, category, type, or class of swaps agrees to an extension.

(5) Upon completion of its review, the Commission may:

(i) Determine, subject to any terms and conditions as the Commission determines to be appropriate, that the swap, or group, category, type, or class of swaps must be cleared; or

(ii) Determine that the clearing requirement will not apply to the swap, or group, category, type, or class of swaps, but clearing may continue on a non-mandatory basis.

PART 140—ORGANIZATION, FUNCTIONS, AND PROCEDURES OF THE COMMISSION

3. The authority citation for part 140 continues to read as follows:

Authority: 7 U.S.C. 2 and 12a.

4. In § 140.94, revise paragraph (a)(5) and add new paragraphs (a)(6) and (a)(7) to read as follows:

§ 140.94 Delegation of authority to the Director of the Division of Clearing and Intermediary Oversight.

(a) * * *

(5) All functions reserved to the Commission in § 5.14 of this chapter;

(6) All functions reserved to the Commission in §§ 39.5(b)(2) and (d)(3) of this chapter; and

(7) All functions reserved to the Commission in §§ 39.11 (b)(1)(vi), (b)(2)(ii), (c)(1), (c)(2), (f)(1), and (f)(4) of this chapter.

* * * * *

Issued in Washington, DC, on October 26, 2010, by the Commission.

David A. Stawick,

Secretary of the Commission.

Note: The following attachment will not appear in the Code of Federal Regulations:

Statement of Chairman Gary Gensler Process for Review of Swaps for Mandatory Clearing October 26, 2010

I support the proposed rulemaking to establish a process for the review and designation of swaps for mandatory clearing. One of the primary goals of the Dodd-Frank Act was to lower risk by requiring standardized swaps to be centrally cleared. The process set out in the proposed rule is consistent with the Congressional requirement that derivatives clearing organizations (DCOs) be eligible to clear the swaps and that before a swap becomes subject to mandatory clearing the public get to provide input on the contract or class of contracts. Though we have until July to finalize this rulemaking, it is my hope that we can finish by April. This would allow us to begin reviewing the contracts that are already being cleared by DCOs and under Dodd-Frank have already been deemed submitted to the Commission for consideration.

[FR Doc. 2010–27532 Filed 11–1–10; 8:45 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 40

RIN 3038–AD07

Provisions Common to Registered Entities

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is proposing rules to implement new statutory provisions enacted under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") and amend existing rules affected by the passage of the Dodd-Frank Act. These proposed rules apply to designated contract markets ("DCMs"), derivatives

clearing organizations ("DCOs"), swap execution facilities ("SEFs") and swap data repositories ("SDRs"). The proposed rules implement the new statutory framework for certification and approval for new products, new rules and rule amendments submitted to the Commission by registered entities. Furthermore, the proposed rules prohibit event contracts based on certain excluded commodities, establish special procedures for certain rule changes proposed by systemically important derivatives clearing organizations ("SIDCOs"), and provide for the tolling of review periods for certain novel derivative products pending the resolution of jurisdictional determinations.

DATES: Submit comments on or before January 3, 2011.

ADDRESSES: You may submit comments, identified by RIN number, by any of the following methods:

- Agency Web site, via its Comments Online process: *http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.
- *Mail:* David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581
- *Hand Delivery/Courier:* Same as mail above.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow instructions for submitting comments.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in CFTC Regulation 145.9.[1] The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Bella Rozenberg, Special Counsel, Division of Market Oversight ("DMO"), at 202–418–5119 or *brozenberg@cftc.gov,* Riva Spear Adriance, Associate Director for Market Review, DMO at 202–418–5494 or *radriance@cftc.gov,* in each case, also at the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

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I. Background

On July 21, 2010, President Obama signed the Dodd-Frank Act.[2] Title VII of the Dodd-Frank Act[3] amended the Commodity Exchange Act ("Act")[4] to establish a comprehensive new regulatory framework for swaps and security-based swaps. The legislation was enacted to reduce risk, increase transparency, and promote market integrity within the financial system by, among other things: (1) Providing for the registration and comprehensive regulation of swap dealers and major swap participants; (2) imposing clearing and trade execution requirements on standardized derivative products; (3) creating robust recordkeeping and real-time reporting regimes; and (4) enhancing the Commission's rulemaking and enforcement authorities with respect to, among others, all registered entities and intermediaries subject to the Commission's oversight.

Section 745 of the Dodd-Frank Act amends Section 5c of the Act to provide for new rule, rule amendment and product certification and approval procedures, which are applicable to DCMs and DCOs, as well as new registered entities, SEFs and SDRs.[5] Section 745 of the Dodd-Frank Act also authorizes the Commission to prohibit the listing of event contracts based on certain excluded commodities if such contracts involve one or more activities enumerated in the Dodd-Frank Act. Furthermore, Section 745 of the Dodd-Frank Act authorizes the Commission to prohibit contracts based on similar activities if they are determined by rule or regulation to be contrary to the public interest. Section 806(e)(1) of the Dodd-Frank Act requires that a SIDCO[6] provide the Commission with 60 days advance notice of any proposed changes to rules, procedures or operations that could materially affect the nature or level of risk presented by a SIDCO. Finally, the Commission proposes to toll the review period of novel derivative products pending a determination as to whether the Commission or the Securities and Exchange Commission ("SEC") has jurisdiction over novel derivative products.

The Commission proposes a number of changes in order to enhance its ability to administer the Act, as amended, ensure consistency with various new requirements of the Dodd-Frank Act and clarify the regulatory obligations imposed on market participants. Specifically, the Commission proposes to amend sections 40.1 through 40.8 and adopt new sections 40.10 through 40.12[7] to amend the definitions, establish certification and approval procedures for the rules and products of registered entities, including SIDCOs, prohibit event contracts based on certain excluded commodities, and codify statutory requirements relating to tolling of the review period pending SEC and CFTC jurisdictional determinations.

[1] 17 CFR 145.9.

[2] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at *http://www.cftc.gov/LawRegulation/OTCDERIVATIVES/index.htm.*

[3] Pursuant to Section 701 of the Dodd-Frank Act, Title VII may be cited as the "Wall Street Transparency and Accountability Act of 2010."

[4] 7 U.S.C. 1 *et seq.*

[5] The Dodd-Frank Act created new registered entities, including SEFs and SDRs. Issues related to the regulation of these entities will be addressed in other rulemakings issued by the Commission.

[6] A SIDCO is a DCO that has been designated as a systemically important financial market utility by the Financial Stability Oversight Council pursuant to Section 804 of the Dodd-Frank Act.

[7] Commission regulations referred to herein are found at 17 CFR 1.

Although Section 745 of the Dodd-Frank Act does not provide a statutory deadline for promulgation of final rules, Part 40 of the Commission's regulations currently is inconsistent with certain provisions of Section 745. In addition, since, as noted, the Dodd-Frank Act created new registered entities, SEFs and SDRs, the rule certification procedures for these new registered entities must be in place by the time these entities begin operating. Therefore, Part 40 should be amended by July 15, 2011, the date when relevant provisions of the Dodd-Frank Act become effective.

The Commission requests comment on all aspects of the proposed rules, as well as comment on the specific provisions and issues highlighted in the discussion below.

II. The Proposed Amendments to Part 40 of the Commission's Regulations

a. Section 40.1 Definitions

To implement the requirements of the Dodd-Frank Act and to ensure the Commission's ability to administer Part 40, the Commission proposes a number of amendments to the definitions found in § 40.1. The Commission proposes to add definitions for "dormant swap execution facilities" and "dormant swap data repositories" to provide consistency with the extant § 40.1definitions for dormant DCMs and dormant DCOs. Also, the Commission proposes to delete the definition of a "dormant derivatives trading execution facility" since this entity was eliminated by the Dodd-Frank Act.

Further, the Commission proposes to revise the definition of "emergency" to include an occurrence or circumstance that threatens the timely collection and payment of funds in connection with clearing and settlement by a derivatives clearing organization. In addition, the Commission proposes to incorporate references to swap transactions where appropriate to ensure consistency in application of Part 40 to both current and new registered entities. The Commission also proposes to delete the existing restriction on Commission review of rules relating to margin levels currently included in the definition of rule.[8] The restriction is no longer appropriate as Section 736 of the Dodd-Frank Act amends Section 8a(7) of the Act to permit the Commission to alter or supplement the rules of a registered entity by issuing rules, regulations or orders regarding margin requirements. By necessity, such action requires the Commission to be able to review a DCO's rules "relating to the setting of levels of margin" in the first instance, even though the Commission itself is not authorized to "set specific margin amounts" under Section 8(a)(7). Finally, the Commission proposes to revise the definition of "terms and conditions" to add a new paragraph (j)(15) to include specific information relating to swaps proposed to be cleared by a DCO. By supplementing other provisions of paragraph (j) that are relevant to swaps, the Commission seeks to clarify the types of information that may differentiate swaps from futures contracts. These include, for example, the following: notional value; relevant dates, tenor, and day count conventions; stub, premium, or initial cash flow components; and payment and reset frequency.

b. Section 40.2 Listing and accepting products for trading or clearing by certification

Section 5c(c) of the Act permits registered entities to list for trading or accept for clearing any new product by providing to the Commission a written certification that the new product, rule, or rule amendment complies with the Act and Commission regulations. Under current § 40.2, prior to listing or accepting products for trading or clearing by certification, the Commission requires, among other things, that registered entities provide the terms and conditions of their products and certify that submitted products comply with the Act and Commission regulations. The Commission also requires that registered entities provide, only if requested by Commission staff, additional information relating to whether the contract meets the requirements of the Act or the Commission's regulations or policies thereunder.

Further, the Act permits registered entities to list for trading only those products that are not susceptible to manipulation and have appropriate position limitations or position accountability for speculators. To assist registered entities in demonstrating compliance with these Core Principles and to better ensure the integrity of certified products, the Commission proposes two amendments to § 40.2.

The Commission proposes to amend § 40.2 to require registered entities to include in their submission documentation relied on to establish the basis for compliance with the applicable provisions of the Act and the Commission's regulations thereunder, including the Core Principles for registered entities. The proposed amendments to § 40.2 will increase the timeliness and efficiency of Commission review. The Commission has always required that registered entities have evidence supporting their certification of compliance with the Act available for Commission review.[9]

Based on these experiences, the Commission proposes to amend § 40.2(a) to require a registered entity to include in its submission any documentation relied on to establish the basis for compliance with the Act and the Commission's regulations thereunder, including the applicable Core Principles. For DCM and SEF submissions of new products and product amendments, the Commission expects submissions to include documentation demonstrating that the product is not readily susceptible to manipulation (Core Principle 3 for

[8] The restriction in the current regulations reflects an ambiguity in the Act as modified by the Commodity Futures Modernization Act ("CFMA"). Prior to enactment of the CFMA in 2000, Section 5a(a)(12)(A) of the Act required that all changes to contract terms and conditions be submitted to the Commission for approval "except those rules relating to the setting of levels of margin." In Section 113 of the CFMA, Congress removed Section 5a(a)(12)(A), allowing registered entities to amend their rules by self-certification. The new provision did not retain any reference to margin rules. However, Section 8(a)(7) was not amended by the CFMA, and retained a provision that allowed the Commission to alter or supplement the rules of a registered entity, except for rules relating to "the setting of levels of margin," thereby creating uncertainty as to whether registered entities could adopt or change margin rules without certifying those rules to the Commission. Because there was no indication that Congress intended to alter the special status of rules relating to the setting of margin levels, the Commission resolved this ambiguity by excluding the setting of margin levels from the definition of "rule." Section 8(a)(7)(D) now permits the Commission to require the changes with respect to margin requirements provided that the Commission's rules, regulations or orders (i) are limited to protecting the financial integrity of a DCO, (ii) are designed for risk management purposes to protect the financial integrity of transactions, and (iii) do not set specific margin amounts.

[9] For instance, in January 2006, when the Commission issued Technical and Clarifying Amendments to Rules for Exempt Markets, Derivatives Transaction Execution Facilities and Designated Contract Markets, and Procedural Changes for Derivatives Clearing Organization Registration Applications, it required DCMs to provide documentation demonstrating compliance with the Act and the Commission's regulations. It expressly stated, "DCMs are responsible in the first instance, and the Commission is ultimately responsible in its oversight role, for assuring that DCM products and rules comply with applicable designation criteria and Core Principles. When a DCM self-certifies a product or rule, it is, in effect, pledging that the product or rule does meet those standards. Assuming the DCM is acting in good faith, it must have some reasonable basis for making that pledge * * * [and therefore] * * * when reasonable questions arise, it should not be burdensome for a DCM to share information regarding the reasonable basis underlying the new product or a rule with the Commission or its staff." *See* 71 FR 1956 (Jan. 12, 2006).

DCMs and SEFs) and that associated position limits or position accountability provisions are necessary and appropriate (Core Principle 5 for DCMs and Core Principle 4 for SEFs). Proposed §§ 40.3, 40.5, and 40.6 contain a similar requirement for submission of new products, rules and rule amendments.

The Commission believes that before self-certifying that a new contract complies with the Act and the Commission's regulations, a registered entity should conduct an appropriate due diligence review to support that assertion. Furthermore, the Commission believes that any such review should generate some form of documentation at the registered entity substantiating the review, including information used and sources consulted to reach the conclusion supporting self-certification. Therefore, the Commission believes that the inclusion of such information in the self-certified submission itself should not be burdensome for registered entities that are conducting appropriate due diligence reviews before making such submissions.

Further, the Commission proposes a new § 40.2 requirement that registered entities examine potential legal issues associated with the listing of products and include certain representations with their submissions. The reason for these requirements is that certain commodity futures and option products are based on measures or linked to information that may be subject to bona fide intellectual property rights claims. Commodity futures and option contracts, such as those based on emission credits, can also be based on underlying markets that are constructs of Federal or state regulations. In these and other circumstances, the Commission has an interest in verifying that registered entities have an adequate understanding of the legal conditions and constraints that may have a material impact on the trading of these types of products. Accordingly, the Commission proposes to add § 40.2(a)(3)(vi) to require that certified product submissions be accompanied by a written statement verifying that the registered entity has undertaken a due diligence review of the legal conditions, including conditions relating to contractual and intellectual property rights, that may affect the trading of the product underlying the contract. Finally, the Commission proposes in § 40.2(a)(3)(vii) to require a registered entity to certify that the registered entity has posted a copy of the pending product certification submission on the registered entity's Web site at the time of the filing. This will permit market participants to receive prompt notice of new rules filed with the Commission.

c. Section 40.3 Voluntary submission of new products for Commission review and approval

Although the Dodd-Frank Act does not specifically require that the Commission amend § 40.3, the Commission believes that the amendments described below are necessary to enhance the Commission's ability to administer the Act. Similar to its proposed amendments to § 40.2, described above, the Commission proposes to amend § 40.3 to require DCMs, DCOs, and SEFs to include with their requests for new product approval all documentation relied upon to determine that the new product complies with applicable Core Principles.

In addition, similar to proposed § 40.2(a)(3)(vi), proposed § 40.3(a)(9) requires registered entities to submit a written statement that they have undertaken a due diligence review of the legal conditions, including conditions relating to contractual and intellectual property rights, that may affect the trading of the product. These additional requirements should expedite Commission review. Moreover, parallel to proposed §§ 40.2(a)(3)(vii) and 40.6(a)(2), proposed § 40.3(a)(10) requires a registered entity to certify that the registered entity has posted a copy of the pending product certification submission on the registered entity's Web site at the time of the filing. As mentioned above, this will allow market participants to receive prompt notice of pending requests for product approval. Also, to provide the overall consistency with the requirements of the Dodd-Frank Act, proposed § 40.3(d)(1) authorizes the Commission to extend the review period if the product raises novel or complex issues.

Finally, the Commission notes that the standard for review and approval for new products remains unchanged; that is, the Commission shall approve a new product unless the terms and conditions of such product would violate the Act or the Commission's regulations thereunder.

d. Section 40.4 Amendments to terms or conditions of enumerated agricultural products

The Commission proposes a number of technical amendments to clarify existing regulatory obligations imposed on the DCMs that trade contracts based on an agricultural commodity listed in Section 1a(9) of the Act.

Pursuant to Section 5c(c)(2)(B) of the Act, rules that materially change a term or condition of a contract with open interest that is based on an agricultural commodity enumerated in Section 1a(9) of the Act, must be approved by the Commission prior to implementation. A finding of materiality is, by statute, at the reasonable discretion of the Commission. Through prior rulemaking, the Commission has enumerated several rule categories in § 40.4(b) that are deemed not to be material for purposes of Section 5c(c)(2)(B) of the Act and thus not subject to prior approval. The Commission has separately enumerated several categories of registered entities' rules in § 40.6(d) that need not be approved by, or certified with, the Commission prior to implementation. Exchange rules that come within these categories typically are limited in scope and are implemented under enabling rules that have already been approved by, or certified with, the Commission.

Since there is substantial overlap between the categories of rules deemed not to be material under § 40.4(b) and the categories of rules enumerated in § 40.6(d), the Commission proposes to amend § 40.4(b) to refer to § 40.6(d) for the purpose of identifying rules that are deemed by the Commission not to be material under Section 5c(c)(2)(B) of the Act. Such rules would qualify for implementation under § 40.6 without prior approval or certification.

In addition, the Commission proposes to clarify that changes in trading hours in § 40.4(b)(3) and changes required to comply with an order of an adjudicative or regulatory body in § 40.4(b)(4), while not material for purposes of Section 5c(c)(2)(B) of the Act, must be implemented through a prior certified submission under § 40.6(a) because of their potential effects on the operations of a DCM.

e. Section 40.5 Voluntary submission of rules for Commission review and approval

Section 745 of the Dodd-Frank Act establishes a new standard for the review of new rules or rule amendments. That standard, as codified in proposed § 40.5(b), requires the Commission to approve a new rule or rule amendment unless the rule or rule amendment is inconsistent with the Act or the Commission's regulations promulgated thereunder. In determining whether a rule is inconsistent with the Act, the Commission may also consider, for example, whether the new rule or rule amendment potentially disrupts market integrity, or increases systemic risk.

The Commission also proposes amendments to the information required to be submitted when requesting

approval of amendments to the terms and conditions of a product under § 40.5. Consistent with § 40.2 and § 40.3, the Commission proposes to amend § 40.5(a)(7) to require a registered entity submitting an amendment of a product's terms and conditions to include with its submission the documentation relied upon to establish the basis for compliance with the Act and the Commission's regulations thereunder, including the applicable Core Principles.

Additionally, similar to §§ 40.2(a)(3)(vii), 40.3(a)(10) and 40.6 (a)(2), the Commission proposes in § 40.5(a)(6) to require registered entities to certify that the registered entity has posted a copy of the pending product certification submission on the registered entity's Web site at the time of the filing. This will permit market participants to receive prompt notice of new requests for approval filed with the Commission. The Commission intends to continue its current practice of publishing all requests for Commission review and approval on its Web site. Finally, proposed § 40.5(a)(11) requires registered entities, in connection with the submission of a request for changes to a product's terms or conditions, to submit a written statement that they have undertaken a due diligence review of the legal conditions, including conditions relating to contractual and intellectual property rights, that may affect the trading of the product, similar to the statement required in §§ 40.2 and 40.3.

f. Section 40.6 Self-certification of rules

Section 745 of the Dodd-Frank Act amended Section 5c(c) of the Act to include a new 10-day certification review period for all rules and rule amendments submitted to the Commission by registered entities and to permit the Commission to stay the certification of rules or rule amendments that, among other things, present novel or complex issues that require additional time to analyze. The Commission proposes to codify these new certification provisions in § 40.6, as follows.

To implement the amended procedures for self-certification of rules described in Section 745 of the Dodd-Frank Act, the Commission proposes in § 40.6(a)(3) to require registered entities to submit self-certifications at least ten business days before the projected effective date. A rule certification will become effective ten business days after the Commission receives the certification, unless the Commission notifies the registered entity, within 10 business days, that it is staying the certification pursuant to § 40.6(c).

Parallel to proposed § 40.5(a), proposed § 40.6(a) requires a registered entity to certify that the registered entity has posted a copy of the pending product certification submission on the registered entity's Web site at the time of the filing. This will permit market participants to receive prompt notice of new rules or rule amendments filed with the Commission. The Commission intends to continue its current practice of publishing the self-certified rules on its Web site.

Further, in proposed § 40.6(a)(6), the Commission clarifies the distinction between rules that establish standards and authorize appropriate parties to respond to an emergency—which must be submitted to the Commission prior to implementation—and rules that implement a response to a particular emergency—which, in certain circumstances, may be submitted to the Commission after implementation.

Similar to §§ 40.2, 40.3 and 40.5, proposed § 40.6(a)(7)(v) requires that amendments to the terms and conditions of a product be accompanied by documentation relied upon to establish the basis for compliance with the Act and the regulations thereunder, including the applicable Core Principles.

As is proposed for §§ 40.2, 40.3 and 40.5 and discussed above, the Commission proposes to amend § 40.6(a)(7)(viii) to require registered entities to include with their certification of any changes to a product's terms and conditions, a written statement that they have undertaken a due diligence review of legal conditions relating to futures or options trading based on the underlying product or instrument.

Under proposed § 40.6(b), a new rule or rule amendment will become effective ten business days after the certified rule or rule amendment is received by the Commission, unless the Commission notifies the registered entity that it is staying the certification. Generally, a DCM seeking to adopt a program (such as a program to address conflicts of interest), which is in substance the same as a program previously approved by the Commission, or an exchange seeking to change a rule establishing trading hours or seeking to modify the terms and conditions of a listed contract for which it has provided sufficient evidence of compliance with Core Principles, may self-certify and, without Commission action, implement the proposed rule or rule amendment after ten business days.

Proposed § 40.6(c)(1) stays the certification of a rule if the Commission determines that the new rule or rule amendment presents novel or complex issues, is certified with an inadequate explanation, or is potentially inconsistent with the Act or the Commission's regulations thereunder. Once the Commission issues a notification of stay to the registered entity, the Commission will have 90 days to conduct a review. The rule will be certified upon expiration of the 90-day review period unless the Commission objects to the certification. If the Commission decides to lift the stay prior to the expiration of the 90-day review period, the Commission will notify the registered entity of its action.

The Commission also notes that the new stay provision in proposed § 40.6(c)(1) is distinct from the stay provision presently in effect under current § 40.6(b), which the Commission proposes to move to § 40.6(c)(4). The latter provision, which implements Commission authority under section 8a(7) of the Act, permits the Commission to stay the *effectiveness* of a rule or rule amendment that already has been implemented pursuant to the self-certification procedures in § 40.6(a). Conversely, the new stay provision in proposed § 40.6(c)(1), pursuant to the Commission's new authority in Section 745 of the Dodd-Frank Act, authorizes a stay of the certification itself and would be issued during the review process, thereby possibly preventing the certified rule or rule amendment from ever becoming effective in the first instance.

A stay of a rule certification may be appropriate, for example, where a registered entity certifies a rule that raises unique issues not previously reviewed by Commission staff. In addition, the Commission believes that new rules or rule amendments may raise a number of complex issues if they appear to have a material impact on the futures market or the underlying cash market. Thus such rules are more likely to be subject to an extended review period to allow the Commission to adequately identify and address complex regulatory issues. For example, the Commission may need more than ten business days to determine whether a proposed market maker incentive program appropriately encourages market liquidity and does not have unnecessary anticompetitive effects. Staff might also need more than ten business days to analyze whether deliverable supplies of an underlying commodity are sufficient to support a proposed change to a spot month speculative position limit on a physical-delivery contract. The above mentioned

examples of submissions often raise a number of complex issues that may require an extended review period.

Proposed § 40.6(c)(2) provides for a 30-day public comment period, within the 90-day review period, whenever the Commission determines to stay a new rule or rule amendment and take it under further review. Under proposed § 40.6(c)(2), the Commission would provide notice of the comment period by posting the notice and the new rule or rule amendment submission on the Commission's Web site.[10]

The Commission believes that publication of the notice of the 30-day comment period on the Commission's Web site, *www.cftc.gov*, will provide the public and market participants with the timely opportunity to comment on new rules or rule amendment submissions. The Commission routinely uses its Web site to disseminate information regarding Commission activities and industry filings.[11] Web site publication would facilitate public comment while allowing Commission staff adequate time to assess comments and complete a substantive analysis within the statutory 90-day time frame. Finally, the Commission anticipates enhancements to its Web site publication procedures to promptly inform interested members of the public of stayed rules through email notifications on the Commission's Web site.

The Commission is also exploring the possibility of having registered entities file rule certifications, as well as other types of submissions, through a portal located at *www.cftc.gov.* The Commission believes that allowing registered entities to file rule certifications in this manner will simplify the filing process and also provide the public with close to real-time access to new rules and rule amendments submitted to the Commission for review. The Commission is determining the technological requirements necessary to implement this filing process. Once the Commission has formulated a process for submitting certifications through the Commission's Web site, the Commission will notify the public and establish a timeline to implement new electronic filing procedures.

The Commission proposes several amendments to § 40.6(d). Specifically, the Commission proposes to permit registered entities to implement reductions to a contract's minimum tick size without approval by or certification to the Commission, in order to maintain consistency between §§ 40.4(b) and 40.6(d). The Commission in proposed § 40.6(d)(2)(v), requires that fee changes associated with market making or other incentive programs be submitted for Commission review under § 40.6(a). Finally, the Commission also proposes that changes to the terms of all options, including options on agricultural products, options on futures, and options on physicals, that relate to the strike price listing procedures, strike price intervals, and the listing of strike price on a discretionary basis, be implemented without certification or notice under § 40.6(d)(3).

g. Section 40.7 Delegations

To ensure that the review process is conducted in an efficient manner, the Commission proposes to amend § 40.7 to delegate to the Director of the Division of Clearing and Intermediary Oversight and, separately, to the Director of the Division of Market Oversight, after consultation with the General Counsel or the General Counsel's designee, the authority to extend the review of new contracts, rules and rule amendments submitted to the Commission pursuant to § 40.3(d) and § 40.5(d) and the authority to stay the certification of new rules or rule amendments pursuant to § 40.6(c), when the submission raises novel or complex issues that require additional time to analyze, is of major economic significance or is potentially inconsistent with the Act or Commission Regulations.

Furthermore, the Commission proposes to delegate to the Director of the Division of Clearing and Intermediary Oversight and, separately, to the Director of the Division of Market Oversight the authority to stay or to extend the review of new products, new rules and rule amendments pursuant to § 40.3 (d) or § 40.5(d) or § 40.6(c), when the submission is incomplete or accompanied by an inadequate explanation.

Finally, proposed § 40.7(a)(1)(iii) delegates to the Director of the Division of Clearing and Intermediary Oversight or the Director's designee, subject to the concurrence of the General Counsel or the General Counsel's designee, all determinations under proposed § 40.10 with respect to a SIDCO's proposed change in rules, procedures or operations that could materially affect the nature or level of risks presented by the SIDCO. This includes a determination that the proposed change is consistent with the Act and the Commission's regulations, and the purposes of the Dodd-Frank Act and any applicable rules, orders or standards prescribed under Section 805(a) of the Dodd-Frank Act.

h. Section 40.8 Availability of public information

This section describes information that the Commission will make public and provides for procedures for requesting confidential treatment of part 40 submissions to the Commission. The Commission proposes to retain reference to an electronic trading facility on which significant price discovery contracts are traded or executed in § 40.8 until July 20, 2012. Although the Dodd-Frank Act eliminated these entities, they are allowed to continue operation until July 20, 2012, pursuant to grandfather relief issued by the Commission.[12]

In addition, the Commission proposes to amend § 40.8 to include new registered entities, SEFs and SDRs. Confidential treatment requests will be considered pursuant to part 145 of the Commission's regulations.[13]

i. Section 40.10 Special certification procedures for submission of rules by systemically important derivatives clearing organizations

To implement the provisions of Section 806(e) of the Dodd-Frank Act, proposed § 40.10(a) would require a SIDCO to provide the Commission with advance notice of any proposed change to its rules, procedures or operations that could "materially affect the nature or level of risks" presented by the SIDCO. The SIDCO would be required to provide the notice not less than 60 days in advance of the proposed change. Submission of proposed changes would be subject to the filing requirements of § 40.6(a)(1), as well as the Web site publication requirements under § 40.6(a)(2). In addition to providing information required under § 40.6(a)(7), the notice would have to describe the nature of the change, the expected effects on risks to the SIDCO, its clearing members, and the market, and how the SIDCO planned to manage those risks. Under proposed 40.10(a)(2), concurrent with providing the Commission with the advance notice or

[10] It is the Commission's intention to promptly post the notice and new rule or rule amendment in order to commence the public comment period as soon as possible within the 90-day review period. This will maximize the amount of time after the comment period closes for the submitter to respond to public comments and possibly revise its proposed rule or rule amendment and for the Commission to thoroughly consider the issues raised by the new rule or rule amendment.

[11] In addition, the Commission's Web site provides a link for signing up to receive press releases issued by the Office of Public Affairs. This service enables members of the public to be apprised of the opening of comment periods in a timely manner.

[12] *See* 75 FR 56513 (Sept. 16, 2010).

[13] 17 CFR part 145.

any request or other information related to the advance notice, the SIDCO would be required to provide the Board of Governors of the Federal Reserve System with a copy of such notice, request or other information.

Under proposed § 40.10(b), changes that could materially affect the nature or level of risks would be defined as those as to which there is a reasonable possibility that the changes could substantially affect the performance of essential clearing and settlement functions or the overall nature or level of risk presented by the SIDCO. Such changes could include, but would not be limited to, changes that materially affect financial resources, participant and product eligibility, risk management (including matters relating to margin and stress testing), daily or intraday settlement procedures, default procedures, system safeguards (business continuity and disaster recovery), and governance. Materiality would be determined on a case-by-case basis. If a SIDCO were to determine that a proposed change was not material and it did not file an advance notice, but the Commission determined that the change was material, the Commission could require the SIDCO to withdraw the proposed change and provide advance notice pursuant to § 40.10.

The Commission requests comment on the proposed materiality standard in general and, more specifically, whether another approach to defining materiality would be more effective. The Commission further requests comment on whether, as an alternative to the proposed approach, the standard in proposed paragraph (b) should set forth examples of changes that would be considered to be non-material and could be treated in accordance with the provisions of § 40.6. The Commission solicits recommendations regarding what types of changes might be identified as non-material. At a minimum, the Commission would consider deeming to be non-material changes those listed in § 40.6(c) (proposed to be redesignated as § 40.6(d)) and that are relevant to SIDCOs.[14] The Commission notes that while this list of non-material changes is useful in the broader context of all rule changes that could be submitted under the certification procedures of § 40.6, the fact that the Dodd-Frank Act and § 40.10 already establish a materiality threshold makes the existing list of non-material changes less meaningful for purposes of § 40.10. The Commission believes that any further refinement of what might be considered non-material for purposes of § 40.10 would have to be appropriately circumscribed so as to be specific enough to provide useful guidance for SIDCOs, while remaining broad enough so as not to inappropriately limit the types of changes that the Commission would consider material and subject to the procedures of § 40.10.

Under proposed § 40.10(c), the Commission may require a SIDCO to provide further information to assess the nature or level of any risks associated with the proposed change and the sufficiency of any proposed risk management technique.

Further, under proposed § 40.10(d), within 60 days from the date the Commission received a notice of a proposed change, the Commission would inform a SIDCO if it objects to the proposed change on the grounds that the change is not consistent with the Act or the Commission's regulations, or the purposes of the Dodd-Frank Act or any applicable rules, orders, or standards prescribed under Section 805(a) of the Dodd-Frank Act. If the Commission were to require further information, the Commission would have an additional 60 days after the date the Commission received the requested information, to inform the SIDCO of any objection to the proposed change. The Commission may ask for additional information more than once. In such case, the review period would be extended 60 days from the date that the information pertaining to the last request was received.

Proposed § 40.10(e) would allow a SIDCO to implement a proposed rule change if the review period lapsed without Commission action.

Proposed § 40.10(f) would allow the Commission, during the 60-day review period, to extend the review period for an additional 60 days if the proposed change raised novel or complex issues. For example, if the Commission does not request additional information but extends the review period 60 days upon receiving the advance notice, the maximum review period would be 120 days after receipt of the advance notice. On the other hand, if the Commission requests and obtains additional information 30 days after receiving the notice and then extends the review period 60 days in order to consider complex or novel issues, then the Commission would have a maximum of 150 days to reach a determination after receipt of the advance notice.

Proposed § 40.10(g) would permit a SIDCO to implement a proposed change prior to the expiration of the review period if it received a notification in writing from the Commission that the Commission does not object to the proposed change and authorizes the SIDCO to implement the change. Such authorization may be subject to conditions imposed by the Commission.

Proposed § 40.10(h) would permit a SIDCO to implement a change without providing 60 days advance notice to the Commission if the SIDCO determined that an emergency exists and immediate implementation of the change was necessary for the SIDCO to continue to provide its services in a safe and sound manner. The SIDCO would be required to notify the Commission of the emergency change as soon as practicable, but no later than 24 hours after implementation of the change. The notification must provide the information required in an advance notice, as well as describe the nature of the emergency and explain why the emergency change was necessary for the SIDCO to continue to provide its services in a safe and sound manner. Under the proposed regulation, the Commission could require modification or rescission of the emergency change if the Commission determined that the change was not consistent with the Act or the Commission's regulations or the purposes of the Dodd-Frank Act, or any applicable rules, orders, or standards prescribed under section 805(a) of the Dodd-Frank Act.

Finally, the Commission requests comment on whether there are any substantive changes to rules, procedures, or operations that should not be permitted to be adopted under emergency circumstances without prior notice to the Commission. For example, should there be restrictions on a SIDCO's ability to demand significantly higher assessments from clearing members on an emergency basis?

j. Section 40.11 Review of event contracts based on certain excluded commodities

Section 745(b) of the Dodd-Frank Act authorizes the Commission to prohibit the listing, trading, or clearing of agreements, contracts, transactions or swaps that are based upon an occurrence, extent of a concurrence, or contingency (other than a change in the price, rate, value, or level of a commodity not described in Section 1a(19)(i) of the Act) that is beyond the control of the parties to the relevant contract, agreement, or transaction and associated with financial, commercial, or economic consequence, as defined in

[14] Non-material changes include, for example, corrections of typographical errors, renumbering, periodic updates to identifying information about approved entities and other such non-substantive revisions of a product's terms and conditions that have no effect on the economic characteristics of the product. *See* § 40.6(c)(2)(i).

Section 1a(19)(iv) of the Act, if the contract involves terrorism, assassination, war, gaming, an activity that is unlawful under any Federal or State law, or any similar activity that the Commission determines, by rule or regulation, to be contrary to the public interest.

Pursuant to this authority, the Commission proposes new § 40.11(a)(1) to prohibit the listing, trading, or clearing of any above mentioned agreements, contracts, transactions or swaps. In addition, the Commission proposes new § 40.11(a)(2) to prohibit the listing, trading, or clearing of any agreements, contracts, transactions or swaps involving activities similar to those enumerated in § 40.11(a)(1) and that the Commission determines, by rule or regulation, to be contrary to the public interest.

If during the review process for a product submitted under § 40.2 or § 40.3, the Commission determines that such product may involve an activity that is enumerated in § 40.11(a), the Commission will request that the registered entity suspend the listing or trading of the contract and will conduct a 90-day review to determine whether the product violates § 40.11(a). Upon completion of its review, the Commission will issue an order, as required by Section 745(b) of the Dodd-Frank Act, finding either that the product violates or does not violate the prohibitions in proposed § 40.11(a).

k. Section 40.12 Tolling of review period pending jurisdictional determination

Under Section 718(a) of the Dodd-Frank Act, a registered entity certifying, submitting for approval, or otherwise filing a proposal to list a product having elements of both a security and a derivative may provide notice of its proposal both to the Commission and the Securities and Exchange Commission. However, under Section 718(a)(1)(B) of the Dodd-Frank Act, if the registered entity chooses not to provide such notice, then the Commission must notify the Securities and Exchange Commission of the submission and accompany such notice with a copy of the registered entity's complete filing if it determines that the proposal has elements of both securities and futures. If either Commission requests a jurisdictional determination pursuant to Section 718 of the Dodd-Frank Act, the Commission will toll the applicable product certification or approval review period until the issuance of a final determination order.

If the Commission or the Securities and Exchange Commission seeks judicial review of a jurisdictional determination, proposed § 40.12 stays the challenged order, as well as the review period for the product, until the United States Court of Appeals for the District of Columbia Circuit issues a final determination pursuant to Section 718(b) of the Dodd-Frank Act, or until there is resolution of an appeal of that determination. The submission review period will resume only upon a finding that the Commission has jurisdiction over the submission.

l. Revision of Appendices to Part 40

The Commission proposes to revise the appendices to Part 40 to clarify the new regulatory requirements and to provide consistency with the overall requirements of the Act, as amended by the Dodd-Frank Act. The present content of Appendix A relates solely to the listing of certain futures contracts by DCMs and not to the listing of contracts by registered entities generally. Accordingly, the Commission proposes to delete the content of Appendix A, currently titled "Guideline No. 1," from part 40. The substance of the appendix will be incorporated into part 38 as part of a separate rulemaking.

In addition, the Commission proposes to move and incorporate the current language in Appendix B, currently titled, "Schedule of Fees," into Appendix A. The Commission proposes to reserve Appendix B for a future rulemaking. Appendix C remains reserved.

The Commission proposes minor amendments to the submission cover sheet and instructions provided in Appendix D to part 40. The proposed submission cover sheet has been modified to include SEFs and SDRs. The amended cover sheet will be posted on the Commission's Web site upon publication of the final rules. The Commission also proposes to amend the instructions in Appendix D to clarify that registered entities must describe the substance of the submission with enough specificity to characterize all material aspects of the filing. A description of the submission should allow a party reading it to ascertain the subject and effect of the submission. For example, a description of "Market Regulation Advisory" does not provide the reader with sufficient information to understand what the particular Advisory addresses or its effect, thereby rendering the description less useful. A clear and informative description will facilitate and expedite the posting of the submission on the Commission's Web site. As noted above, the Commission is exploring whether an electronic submission system can be established and made available to registered entities in the near future. The Commission is seeking the public's view on whether automated submission of rules, rule amendments, and products might be facilitated by a Web site portal dedicated to this purpose.

III. Related Matters

a. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") [15] 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.[16] The proposed rules detailed in this release would require DCOs, DCMs, SEFs and SDRs to submit to the Commission, before they become effective, new products, new rules, and rule amendments, with a self-certification that the rules comply with the Act and Commission regulations. The requirements for the self-certification are not complex, and may be satisfied by the completion of a cover sheet with a detailed explanation of the filing. These self-certification rules will not impose a significant economic impact on any entity.

Moreover, the Commission previously determined that DCOs and DCMs are not "small entities" for purposes of the RFA.[17] The Commission has not determined whether SEFs and SDRs, new registered entities created by the Dodd-Frank Act, are small entities. The Dodd-Frank Act defines an SDR to mean any person that collects and maintains information or records with respect to transactions or positions in, or the terms and conditions of, swaps entered into by third parties for the purpose of providing a centralized recordkeeping facility for swaps. The Dodd Frank Act defines a SEF to mean a trading system or platform in which multiple participants have the ability to execute or trade swaps by accepting bids and offers made by multiple participants in the facility or system, through any means of interstate commerce, including any trading facility that facilitates the execution of swaps between persons and is not a DCM.[18]

[15] 5 U.S.C. 601 *et seq.*

[16] 5 U.S.C. 601 *et seq.*

[17] 47 FR 18618, 18619 (April 30, 1982) and 66 FR 45604, 45609 (August 29, 2001).

[18] *See* Section 721 of the Dodd-Frank Act. The Commission anticipates proposing regulations that would further specify those entities that must register as a SEF. The Commission does not believe that such proposals would alter its determination that a SEF is not a "small entity" for purposes of the RFA.

The Commission previously determined that DCMs and DCOs are not "small entities" for purposes of the RFA. The Commission's reasoning included the fact that the Commission designates a contract market or a DCO only when the entity meets specific criteria, including the expenditure of sufficient resources to establish and maintain adequate self-regulatory programs. Likewise, the Commission will register an entity such as a SEF or an SDR only after the entity has met a number of criteria, including the expenditure of sufficient resources to establish and maintain an adequate self-regulatory program.[19] Because SEFs and SDRs will be required to demonstrate compliance with Core Principles, many of which are similar to those applicable to DCMs and DCOs, the Commission hereby determines that SEFs and SDRs are not "small entities" for the purposes of the RFA.

Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. § 605(b) that the proposed rules will not have a significant impact on a substantial number of small entities. The Commission invites the public to comment on all aspects of this Regulatory Flexibility Analysis.

b. Paperwork Reduction Act

The Commission may not conduct or sponsor, and a registered entity is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget ("OMB") control number. Proposed amendments to §§ 40.2, 40.3, 40.5 and 40.6 will impose new information collection requirements within the meaning of the Paperwork Reduction Act[20] on registered entities, as will new proposed §§ 40.10 and 40.12. Accordingly, the Commission has requested that OMB approve and assign a new control number for the proposed collections of information. In connection with its request, the Commission has submitted this notice of proposed 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 this collection of information is Part 40, Provisions Common to Registered Entities, OMB control number 3038–D07. If adopted, responses to this new collection of information will be mandatory.

The Commission will protect proprietary information according to the Freedom of Information Act and 17 CFR part 145, "Commission Records and Information." In addition, section 8(a)(1) of the Act strictly prohibits the Commission, unless specifically authorized by the Act, from making public "data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers." The Commission also is required to protect certain information contained in a government system of records according to the Privacy Act of 1974, 5 U.S.C. 552a.

1. Information Provided by Reporting Entities/Persons

The proposed rules require DCMs, DCOs, and new registered entities, SEFs and SDRs, to collect and submit to the Commission new rules, amended rules and new products pursuant to the procedures outlined in proposed §§ 40.2, 40.3, 40.5, 40.6, 40.10, and 40.12. The Commission proposes these information collection requirements in order to give effect to various notice, rule certification, and rule approval provisions of the Dodd-Frank Act.

The Commission estimated the proposed information collection burdens on registered entities below. These estimates account for (1) the number of respondents; (2) the number of responses required of each respondent; (3) the average hours required to produce each response; and (4) the aggregate annual reporting burden. The Commission estimates that the aggregate effect of proposed §§ 40.2, 40.3, 40.5, 40.6, 40.10, and 40.12 will be to increase the overall information collection burden on registered entities by approximately 8,300 hours per year, resulting mostly from the preparation of materials to be filed with the Commission in connection with the listing of products or the certification or approval of rules and rule amendments. The Commission estimates that there will be 70 designated or registered entities that would be required to file documentation with the Commission on a periodic basis.

Proposed §§ 40.5 and 40.6 require each registered entity to comply with new certification and approval requirements when seeking to implement new rules or rule amendments, including changes to product terms or conditions. In addition, to ensure that market participants are promptly notified of product and rule submissions to the Commission, proposed §§ 40.2(a)(3)(vii), 40.3(a)(10), 40.5(a)(6), and 40.6(a)(2) require registered entities to state that they posted a copy of the certification or request for approval on the registered entity's Web site at the time of the filing with the Commission.

Estimated number of respondents: 45.

Annual responses by each respondent: 120.

Estimated average hours per response: 2.52.

Aggregate annual reporting burden: 13,608.

Proposed § 40.10 requires SIDCOs to provide to the Commission 60 days advance notice of proposed changes to rules, procedures or operations that could materially affect the nature or level of risks presented by the SIDCO.

Estimated number of respondents: 4.

Annual responses by each respondent: 2.

Estimated average hours per response: 5.

Aggregate annual reporting burden: 40.

Proposed § 40.12 requires registered entities to provide notice to the Commission and the Securities and Exchange Commission when certifying, submitting for approval, or otherwise filing a proposal to list a product having elements of both a security and a derivative.

Estimated number of respondents: 17.

Annual responses by each respondent: 34.

Estimated average hours per response: 2.52.

Aggregate annual reporting burden: 1,456.

The Commission invites public comment on the accuracy of its estimate of the collection requirements that would result from the proposed regulations.

2. Information Collection Comments

The Commission invites the public and other federal agencies to comment on the information collection requirements proposed in this notice. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to: (1) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) evaluate the accuracy of the estimated burden of the proposed information collection requirements, including the degree to which the methodology and the assumptions that the Commission employed were valid; (3) determine whether there are ways to enhance the quality, utility, or clarity of the

[19] *See* Core Principle 2 applicable to SEFs under Section 733 of the Dodd-Frank Act and Core Principles 1–3 applicable to SDRs under Section 728 of the Dodd-Frank Act.

[20] 44 U.S.C. 3501 *et seq.*

information proposed to be collected; and (4) minimize the burden of the proposed collections of information on DCMs, SEFs, DCOs, and SDRs, for example through implementation of an electronic rule and product submission system.

Comments may be submitted directly to the Office of Information and Regulatory Affairs, by fax at (202) 395–6566 or by e-mail at *OIRAsubmissions@omb.eop.gov.* Please provide the Commission with a copy of submitted comments so that they can be summarized and addressed in the final rule. Refer to the Addresses section of this notice of proposed rulemaking for comment submission instructions to the Commission. A copy of the supporting statements for the collections of information discussed above may be obtained by visiting RegInfo.gov. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is best assured of receiving full consideration only if received by OMB (and the Commission) within 30 days of publication of this notice of proposed rulemaking.

c. Cost-Benefit Analysis

Section 15(a) of the Act requires the Commission to consider the costs and benefits of its actions before issuing new regulations or orders.[21] By its terms, Section 15(a) does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the proposed regulation outweigh its costs. Rather, Section 15(a) requires the Commission to "consider the costs and benefits" of its proposed regulation. Section 15(a) further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. In conducting its analysis, the Commission may, in its discretion, give greater weight to any one of the five enumerated areas and it may determine that, notwithstanding its costs, a particular rule is necessary to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.[22]

As discussed above, the proposed regulations require registered entities, including DCMs, SEFs, DCOs, and SDRs, to comply with new certification and approval procedures when submitting products and rules for Commission review. These procedures are mandatory pursuant to the Dodd-Frank Act. The Commission has determined that the costs associated with the self-certification and submission for Commission review of new products, new rules, and rule amendments will not negatively affect the efficiency, competitiveness, and financial integrity of the futures and swaps markets, particularly because of the time limits that Congress has imposed on Commission review. The Commission will have 10 days to review new products, new rules, and rule amendments, and only 90 days if it stays a rule to issue a rule approval or disapproval.

The Commission believes that the benefits of the rulemaking are significant. The Commission's certification and approval procedures ensure that registered entities do not enact rules that may be anticompetitive, unfair to market participants, or otherwise detrimental to the public interest. In addition, the special certification procedures for SIDCOs and certain event contracts implement Section 745 of the Dodd-Frank Act and ensure that the Commission has adequate time and information to analyze the registered entity's proposal and to consider the broader implications of permitting the entity to implement the rule or list the product. The SIDCO notice requirement, in particular, may be crucially important to the Commission's oversight of sound risk management practices and to its efforts to mitigate systemic risks, whereas the proposed event contract provisions, consistent with the intent of Congress, prevent individuals from speculating on activities that are harmful to national security and potentially detrimental to the stability of the futures markets and their price discovery function. Finally, the Commission's notice requirements with respect to the submission of novel derivative products promote cooperation between the Commission and the SEC and facilitate more effective and less duplicative regulation of registered entities.

For these reasons, the Commission believes that the certification and approval procedures proposed in this notice are needed to fulfill the requirements of the Dodd-Frank Act in order to protect market participants and to ensure the continued competitiveness and financial integrity of the futures and derivative markets.

The Commission invites public comment on its cost-benefit considerations. Commenters are also invited to submit any data or other information that they may have quantifying or qualifying the costs and benefits of the proposal with their comment letters.

List of Subjects in 17 CFR Part 40

Commodity futures, Contract markets, Designation application, Reporting and recordkeeping requirements, Swap execution facility, Swap data repository, Systemically important derivatives clearing organization, Rule approval, Rule certification, Review of certain event contracts.

In light of the foregoing, and pursuant to authority in the Act, and, in particular, Sections 3, 5, 5c(c) and 8a(5) of the Act, the Commission hereby proposes to revise Part 40 of Title 17 of the Code of Federal Regulations to read as follows:

PART 40—PROVISIONS COMMON TO REGISTERED ENTITIES

Sec.

40.1 Definitions.
40.2 Listing and accepting products for trading or clearing by certification.
40.3 Voluntary submission of new products for Commission review and approval.
40.4 Amendments to terms or conditions of enumerated agricultural products.
40.5 Voluntary submission of rules for Commission review and approval.
40.6 Self-certification of rules.
40.7 Delegations.
40.8 Availability of public information.
40.9 Corporate governance [Reserved]
40.10 Special certification procedures for submission of rules by systemically important derivatives clearing organizations.
40.11 Review of event contracts based on certain excluded commodities.
40.12 Tolling of review period pending jurisdictional determination.
Appendix A to Part 40—Schedule of Fees
Appendix B to Part 40—[Reserved]
Appendix C to Part 40—[Reserved]
Appendix D to Part 40—Submission Cover Sheet and Instructions

Authority: 7 U.S.C. 1a, 2, 5, 6, 7, 7a, 8 and 12, as amended by Titles VII and VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010).

§ 40.1 Definitions.

As used in this part:

(a) *Business day* means the intraday period of time starting at the business hour of 8:15 a.m. and ending at the

[21] 7 U.S.C. 19(a).

[22] *See, e.g., Fisherman's Doc Co-op., Inc* v. *Brown,* 75 F.3d 164 (4th Cir. 1996); *Center for Auto Safety* v. *Peck,* 751 F.2d 1336 (DC Cir. 1985) (noting that an agency has discretion to weigh factors in undertaking cost-benefit analysis).

business hour of 4:45 p.m.; *business hour* means any hour between 8:15 a.m. and 4:45 p.m.. Business day and business hour are Eastern Standard Time or Eastern Daylight Savings Time, whichever is currently in effect in Washington, DC, on all days except Saturdays, Sundays and federal holidays in Washington, DC.

(b) *Dormant contract or dormant product* means:

(1) Any agreement, contract, transaction, instrument, swap or any such commodity futures or option contract with respect to all future or option expiries, listed on a designated contract market, a swap execution facility or cleared by a registered derivatives clearing organization, that has no open interest and in which no trading has occurred for a period of twelve complete calendar months following a certification to, or approval by, the Commission; *provided, however,* that no contract or instrument under this paragraph (b)(1) initially and originally certified to, or approved by, the Commission within the preceding 36 complete calendar months shall be considered to be dormant; or

(2) Any commodity futures or option contract, swap or other agreement, contract, transaction or instrument of a dormant designated contract market, swap execution facility or a dormant derivatives clearing organization; or

(3) Any commodity futures or option contract or other agreement, contract, swap, transaction or instrument not otherwise dormant that a designated contract market, a swap execution facility or a derivatives clearing organization self-declares through certification to be dormant.

(c) *Dormant designated contract market* means any designated contract market on which no trading has occurred during the period of twelve consecutive calendar months, preceding the first day of the most recent calendar month; *provided, however,* no designated contract market shall be considered to be dormant if its initial and original Commission order of designation was issued within the preceding 36 consecutive calendar months.

(d) *Dormant derivatives clearing organization* means any derivatives clearing organization registered pursuant to Section 5b of the Act that has not accepted for clearing any agreement, contract or transaction that is required or permitted to be cleared by a derivatives clearing organization under Sections 5b(a) and 5b(b) of the Act, respectively, for a period of twelve complete calendar months; *provided, however,* no derivatives clearing organization shall be considered to be dormant if its initial and original Commission order of registration was issued within the preceding 36 complete calendar months.

(e) *Dormant swap data repository* means any registered swap data repository on which no data has resided for a period of twelve consecutive calendar months, preceding the most recent calendar month.

(f) *Dormant swap execution facility* means any swap execution facility on which no trading has occurred for a period of twelve consecutive calendar months, preceding the first day of the most recent calendar month; provided, however, no swap execution facility shall be considered to be dormant if its initial and original Commission order of registration was issued within the preceding 36 consecutive calendar months.

(g) *Dormant rule* means:

(1) Any registered entity rule which remains unimplemented for twelve consecutive calendar months following a certification with, or an approval by, the Commission; or

(2) Any rule or rule amendment of a dormant designated contract market, dormant swap execution facility, dormant swap data repository or dormant derivatives clearing organization.

(h) *Emergency* means any occurrence or circumstance that, in the opinion of the governing board of a registered entity, or a person or persons duly authorized to issue such an opinion on behalf of the governing board of a registered entity under circumstances and pursuant to procedures that are specified by rule, requires immediate action and threatens or may threaten such things as the fair and orderly trading in, or the liquidation of or delivery pursuant to, any agreements, contracts, swaps or transactions or the timely collection and payment of funds in connection with clearing and settlement by a derivatives clearing organization, including:

(1) Any manipulative or attempted manipulative activity;

(2) Any actual, attempted, or threatened corner, squeeze, congestion, or undue concentration of positions;

(3) Any circumstances which may materially affect the performance of agreements, contracts, swaps or transactions, including failure of the payment system or the bankruptcy or insolvency of any participant;

(4) Any action taken by any governmental body, or any other registered entity, board of trade, market or facility which may have a direct impact on trading or clearing and settlement; and

(5) Any other circumstance which may have a severe, adverse effect upon the functioning of a registered entity.

(i) *Rule* means any constitutional provision, article of incorporation, bylaw, rule, regulation, resolution, interpretation, stated policy, terms and conditions, trading protocol, agreement or instrument corresponding thereto, including those that authorize a response or establish standards for responding to a specific emergency, in whatever form adopted, and any amendment or addition thereto or repeal thereof, made or issued by a registered entity or by the governing board thereof or any committee thereof.

(j) *Terms and conditions* means any definition of the trading unit or the specific commodity underlying a swap or a contract for the future delivery of a commodity or commodity option contract, specification of cash settlement or delivery standards and procedures, and establishment of buyers' and sellers' rights and obligations under the swap or contract. Whenever possible, all proposed swap or contract terms and conditions should conform to industry standards or those terms and conditions adopted by comparable contracts. Terms and conditions include provisions relating to the following:

(1) Quality and other standards that define the commodity or instrument underlying the contract;

(2) Quantity standards or other provisions related to swap or contract size;

(3) Any applicable premiums or discounts for delivery of nonpar products;

(4) Trading hours, trading months and the listing of swaps or contracts;

(5) The pricing basis, minimum price fluctuations, and maximum price fluctuations;

(6) Any price limits, trading halts, or circuit breaker provisions, and procedures for the establishment of daily settlement prices;

(7) Position limits, position accountability standards, and position reporting requirements;

(8) Delivery points and locational price differentials;

(9) Delivery standards and procedures, including fees related to delivery or the delivery process; alternatives to delivery and applicable penalties or sanctions for failure to perform;

(10) If cash settled; the definition, composition, calculation and revision of the cash settlement price or index;

(11) Payment or collection of commodity option premiums or margins;

(12) Option exercise price, if it is constant, and method for calculating the exercise price, if it is variable;

(13) Threshold prices for an option contract, the existence of which is contingent upon those prices;

(14) Any restrictions or requirements for exercising an option; and

(15) With respect to swaps cleared by a derivatives clearing organization, specifications including but not limited to:

(i) Notional values;

(ii) Relevant dates, tenor, and day count conventions;

(iii) Index;

(iv) Relevant prices, rates or coupons;

(v) Currency;

(vi) Stub, premium, or initial cash flow components along with subsequent life cycle events;

(vii) Payment and reset frequency;

(viii) Business calendars;

(ix) Accrual type; and

(x) Spread or points.

§ 40.2 Listing and accepting products for trading or clearing by certification.

(a) A designated contract market or a swap execution facility must comply with the submission requirements of this section prior to listing a product for trading that has not been approved under § 40.3 of this part or that remains dormant subsequent to being submitted under this section or approved under § 40.3 of this part. A derivatives clearing organization must comply with the submission requirements of this section prior to accepting for clearing a product that is not listed or traded on a designated contract market, derivatives clearing organization or a swap execution facility and has not been approved for clearing under § 40.3 or § 40.5 of this part or that remains dormant subsequent to being submitted under this section or approved under § 40.5 of this part. A submission shall comply with the following conditions:

(1) The designated contract market, or the swap execution facility, or the derivatives clearing organization has filed its submission electronically in a format specified by the Secretary of the Commission with the Secretary of the Commission at *submissions@cftc.gov,* and with the relevant branch chief at the regional office having local jurisdiction over the registered entity;

(2) The Commission has received the submission at its headquarters by the open of business on the business day preceding the product's listing or acceptance for clearing; and

(3) The submission includes:

(i) A copy of the submission cover sheet in accordance with the instructions in Appendix D to this part;

(ii) A copy of the product's rules, including all rules related to its terms and conditions, or the rules establishing the terms and conditions of the listed product that make it acceptable for clearing;

(iii) The intended listing date;

(iv) A certification by the designated contract market, the swap execution facility, or the derivatives clearing organization that the product to be listed complies with the Act and Commission regulations thereunder;

(v) The documentation relied on to establish the basis for compliance with the applicable provisions of the Act and the Commission's regulations thereunder, including the Core Principles;

(vi) A written statement verifying that the registered entity has undertaken a due diligence review of the legal conditions, including conditions that relate to contractual and intellectual property rights, which may materially affect the trading of the product;

(vii) Certification that the registered entity posted a notice of pending product certification with the Commission and a copy of the submission, concurrent with the filing of a submission with the Commission, on the registered entity's Web site. Information which the registered entity seeks to keep confidential may be redacted from the documents published on the registered entity's Web site, but must be republished consistent with any determination made pursuant to § 40.8(c)(4);

(viii) A request for confidential treatment, if appropriate, as permitted under § 40.8.

(b) *Additional information.* If requested by Commission staff, a registered entity shall provide any additional evidence, information or data that demonstrates that the contract meets, initially or on a continuing basis, all of the requirements of the Act and the Commission's regulations and policies thereunder.

(c) *Stay.* The Commission may stay the listing of a contract pursuant to paragraph (a) of this section during the pendency of Commission proceedings for filing a false certification or during the pendency of a petition to alter or amend the contract terms and conditions pursuant to Section 8a(7) of the Act. The decision to stay the listing of a contract in such circumstances shall not be delegable to any employee of the Commission.

§ 40.3 Voluntary submission of new products for Commission review and approval.

(a) *Request for approval.* Pursuant to Section 5c(c) of the Act, a designated contract market, a swap execution facility, or a derivatives clearing organization may request that the Commission approve a new or dormant product prior to listing the product for trading or clearing, or if a product was initially submitted under § 40.2 of this part, subsequent to listing the product for trading or clearing. A submission requesting approval shall:

(1) Be filed electronically with the Secretary of the Commission at *Submissions@cftc.gov,* and with the regional office of the Commission having local jurisdiction over the registered entity in a format specified by the Secretary of the Commission;

(2) Include a copy of the submission cover sheet in accordance with the instructions in Appendix D to this part;

(3) Include a copy of the rules that set forth the contract's terms and conditions;

(4) Include the documentation relied on to establish the basis for compliance with the applicable provisions of the Act and the Commission's regulations thereunder, including the Core Principles;

(5) Describe any agreements or contracts entered into with other parties that enable the registered entity to carry out its responsibilities;

(6) Include the certifications required in § 41.22 for product approval of a commodity that is a security future or a security futures product as defined in Sections 1a(44) or 1a(45) of the Act, respectively, and, if applicable, include the notice required in § 40.12(a) for the listing of novel derivative products;

(7) Include, if appropriate, a request for confidential treatment as permitted under § 40.8;

(8) Include the filing fee required under Appendix A to this part;

(9) Include a written statement verifying that the registered entity has undertaken a due diligence review of the legal conditions, including conditions relating to contractual and intellectual property rights, that may materially affect the trading of the product;

(10) Certify that the registered entity posted a notice of pending request for approval of new product with the Commission and a copy of the submission, concurrent with the filing of a submission with the Commission, on the registered entity's Web site. Information which the registered entity seeks to keep confidential may be redacted from the documents published

on the registered entity's Web site, but must be republished consistent with any determination made pursuant to § 40.8(c)(4);

(11) Include, if requested by Commission staff, additional evidence, information or data demonstrating that the contract meets, initially or on a continuing basis, all of the requirements of the Act, or other requirements for designation or registration under the Act or the Commission's regulations or policies thereunder. The registered entity shall submit the requested information by the open of business on the date that is two business days from the date of request by Commission staff.

(b) *Standard for review and approval.* The Commission shall approve a new product unless the terms and conditions of the product violate the Act or the Commission's regulations.

(c) *Forty-five day review.* All products submitted for Commission approval under this paragraph shall be deemed approved by the Commission 45 days after receipt by the Commission, or at the conclusion of an extended period as provided under paragraph (d) of this section, unless notified otherwise within the applicable period, if:

(1) The submission complies with the requirements of paragraph (a) of this section; and

(2) The submitting entity does not amend the terms or conditions of the product or supplement the request for approval, except as requested by the Commission or for correction of typographical errors, renumbering or other non-substantive revisions, during that period. Any voluntary, substantive amendment by the submitting entity will be treated as a new submission under this section.

(d) *Extension of time.* The Commission may extend the 45 day review period in paragraph (c) of this section for:

(1) An additional 45 days, if the product raises novel or complex issues that require additional time for review in which case, the Commission shall notify the registered entity within the initial 45 day review period and shall briefly describe the nature of the specific issues for which additional time for review is required; or

(2) Any extended review period to which the registered entity agrees in writing.

(e) *Notice of non-approval.* The Commission at any time during its review under this section may notify the registered entity that it will not, or is unable to, approve the product. This notification will briefly specify the nature of the issues raised and the specific provision of the Act or the Commission's regulations, including the form or content requirements of paragraph (a) of this section, that the product violates, appears to violate or potentially violates but which cannot be ascertained from the submission.

(f) *Effect of non-approval.* (1) Notification to a registered entity under paragraph (e) of this section of the Commission's determination not to approve a product does not prejudice the entity from subsequently submitting a revised version of the product for Commission approval or from submitting the product as initially proposed pursuant to a supplemented submission.

(2) Notification to a registered entity under paragraph (e) of this section of the Commission's refusal to approve a product shall be presumptive evidence that the entity may not truthfully certify under § 40.2 that the same, or substantially the same, product does not violate the Act or the Commission's regulations thereunder.

§ 40.4 Amendments to terms or conditions of enumerated agricultural products.

(a) Notwithstanding the provisions of this part, a designated contract market must submit for Commission approval under the procedures of § 40.5, prior to its implementation, any rule or dormant rule that, for a delivery month having open interest, would materially change a term or condition, as defined in § 40.1(j), of a contract for future delivery in an agricultural commodity enumerated in Section 1a(9) of the Act, or of an option on such a contract or commodity.

(b) The following rules or rule amendments are not material and should not be submitted under this section:

(1) Changes that are enumerated in § 40.6(d)(2) may be implemented without prior approval or certification if implemented pursuant to the notification procedures of § 40.6(d);

(2) Changes that are enumerated in § 40.6(d)(3)(ii) may be implemented without prior approval or certification or notification as permitted pursuant to § 40.6(d)(3);

(3) Changes in trading hours may be implemented without prior approval if implemented pursuant to the procedures of § 40.6(a);

(4) Changes required to comply with a binding order of a court of competent jurisdiction, or a rule, regulation or order of the Commission or of another federal regulatory authority, may be implemented without prior approval if implemented pursuant to the procedures of § 40.6(a); or

(5) Any other rule:

(i) The text of which has been submitted for review at least ten business days prior to its implementation and that has been labeled "Non-Material Agricultural Rule Change;"

(ii) For which the designated contract market has provided an explanation as to why it considers the rule "non-material," and any other information that may be beneficial to the Commission in analyzing the merits of the entity's claim of non-materiality; and

(iii) With respect to which the Commission has not notified the contract market during the review period that the rule appears to require or does require prior approval under this section, may be implemented without prior approval if implemented under the procedures of § 40.6(a).

§ 40.5 Voluntary submission of rules for Commission review and approval.

(a) *Request for approval of rules.* Pursuant to Section 5c(c) of the Act, a registered entity may request that the Commission approve a new rule, rule amendment or dormant rule prior to implementation of the rule, or if the request was initially submitted under §§ 40.2 or 40.6 of this part, subsequent to implementation of the rule. A request for approval shall:

(1) Be filed electronically with the Secretary of the Commission at *Submissions@cftc.gov,* and with the regional office of the Commission having local jurisdiction over the registered entity in a format specified by the Secretary of the Commission;

(2) Include a copy of the submission cover sheet in accordance with the instructions in Appendix D to this part;

(3) Set forth the text of the rule or rule amendment (in the case of a rule amendment, deletions and additions must be indicated);

(4) Describe the proposed effective date of the rule or rule amendment and any action taken or anticipated to be taken to adopt the proposed rule by the registered entity or by its governing board or by any committee thereof, and cite the rules of the entity that authorize the adoption of the proposed rule;

(5) Explain the operation, purpose, and effect of the proposed rule, including, as applicable, a description of the anticipated benefits to market participants or others, any potential anticompetitive effects on market participants or others, and how the rule fits into the registered entity's framework of self-regulation;

(6) Certify that the registered entity posted a notice of pending rule with the Commission and a copy of the

submission, concurrent with the filing of a submission with the Commission, on the registered entity's Web site. Information which the registered entity seeks to keep confidential may be redacted from the documents published on the registered entity's Web site but must be republished consistent with any determination made pursuant to § 40.8(c)(4);

(7) Include the documentation relied on to establish the basis for compliance with the applicable provisions of the Act and the Commission's regulations thereunder, including the Core Principles;

(8) Provide additional information which may be beneficial to the Commission in analyzing the new rule or rule amendment. If a proposed rule affects, directly or indirectly, the application of any other rule of the registered entity, the pertinent text of any such rule must be set forth and the anticipated effect described;

(9) Describe briefly any substantive opposing views expressed to the registered entity by governing board or committee members, members of the entity or market participants with respect to the new rule or rule amendment that were not incorporated into the new rule or rule amendment;

(10) Identify any Commission regulation that the Commission may need to amend, or sections of the Act or the Commission's regulations that the Commission may need to interpret, in order to approve the new rule or rule amendment. To the extent that such an amendment or interpretation is necessary to accommodate a new rule or rule amendment, the submission should include a reasoned analysis supporting the amendment to the Commission's regulation or the interpretation;

(11) Include, for all products, a written statement verifying that the registered entity has undertaken a due diligence review of the legal conditions, including conditions relating to contractual and intellectual property rights, which may materially affect the trading of such product or products, if the proposed rule specifically relates to one or more listed products;

(12) As appropriate, include a request for confidential treatment as permitted under the procedures of § 40.8;

(b) *Standard for review and approval.* The Commission shall approve a new rule or rule amendment unless the rule or rule amendment is inconsistent with the Act or the Commission's regulations.

(c) *Forty-five day review.* (1) All rules submitted for Commission approval under paragraph (a) of this section shall be deemed approved by the Commission under section 5c(c) of the Act 45 days after receipt by the Commission, or at the conclusion of such extended period as provided under paragraph (d) of this section, unless the registered entity is notified otherwise within the applicable period, if:

(i) The submission complies with the requirements of paragraph (a) of this section;

(ii) The registered entity does not amend the proposed rule or supplement the submission, except as requested by the Commission, during the pendency of the review period other than for correction of typographical errors, renumbering or other non-substantive revisions. Any amendment or supplementation not requested by the Commission will be treated as the submission of a new filing under this section.

(2) The Commission shall commence the review period in paragraph (c) of this section for a compliant submission under § 40.4(b)(5) ten business days after its receipt.

(d) *Commencement and extension of time for review.* The Commission may further extend the review period in paragraph (c) of this section for any approval request for:

(1) An additional 45 days, if the proposed rule raises novel or complex issues that require additional time for review or is of major economic significance, the submission is incomplete or the requestor does not respond completely to Commission questions in a timely manner, in which case, the Commission shall notify the submitting registered entity within the initial forty-five day review period and shall briefly describe the nature of the specific issues for which additional time for review shall be required; or

(2) Any period, beyond the additional 45 days provided in § 40.5(d)(1), to which the registered entity agrees in writing.

(e) *Notice of non-approval.* Any time during its review under this section, the Commission may notify the registered entity that it will not, or is unable to, approve the new rule or rule amendment. This notification will briefly specify the nature of the issues raised and the specific provision of the Act or the Commission's regulations, including the form or content requirements of this section, with which the new rule or rule amendment is inconsistent or appears to be inconsistent with the Act or the Commission's regulations.

(f) *Effect of non-approval.* (1) Notification to a registered entity under paragraph (e) of this section does not prevent the registered entity from subsequently submitting a revised version of the proposed rule or rule amendment for Commission review and approval or from submitting the new rule or rule amendment as initially proposed in a supplemented submission; the revised submission will be reviewed without prejudice.

(2) Notification to a registered entity under paragraph (e) of this section of the Commission's determination not to approve a proposed rule or rule amendment of a registered entity shall be presumptive evidence that the entity may not truthfully certify that the same, or substantially the same, proposed rule or rule amendment under § 40.6(a) of this section.

(g) *Expedited approval.* Notwithstanding the provisions of paragraph (c) of this section, changes to a proposed rule or a rule amendment, including changes to terms and conditions of a product that are consistent with the Act and Commission regulations and with standards approved or established by the Commission may be approved by the Commission at such time and under such conditions as the Commission shall specify in the written notification, provided, however, that the Commission may, at any time, alter or revoke the applicability of such a notice to any particular product or rule amendment.

§ 40.6 Self-certification of rules.

(a) *Required certification.* A registered entity shall comply with the following conditions prior to implementing any rule that has not obtained Commission approval under § 40.5 of this part, that remains dormant subsequent to being submitted under this section or approved under § 40.5 of this part, or that is submitted under § 40.10 of this part, except as otherwise provided by § 40.10(a):

(1) The registered entity has filed its submission electronically in a format specified by the Secretary of the Commission with the Secretary of the Commission at *submissions@cftc.gov* and with the relevant branch chief at the regional office having local jurisdiction over the registered entity.

(2) The registered entity has provided a certification that the registered entity posted a notice of pending certification with the Commission and a copy of the submission, concurrent with the filing of a submission with the Commission, on the registered entity's Web site. Information that the registered entity seeks to keep confidential may be redacted from the documents published on the registered entity's Web site, but it must be republished consistent with

any determination made pursuant to § 40.8(c)(4).

(3) The Commission has received the submission at its headquarters not later than the open of business on the business day that is 10 business days prior to the registered entity's implementation of the rule or rule amendment.

(4) The Commission has not stayed the submission pursuant to § 40.6(c).

(5) The rule or rule amendment is not a rule or rule amendment of a designated contract market that materially changes a term or condition of a contract for future delivery of an agricultural commodity enumerated in section 1a(4) of the Act or an option on such a contract or commodity in a delivery month having open interest;

(6) *Emergency rule certifications.* (i) New rules or rule amendments that establish standards for responding to an emergency must be submitted pursuant to § 40.6(a);

(ii) Rules or rule amendments implemented under procedures of the governing board to respond to an emergency as defined in § 40.1, shall, if practicable, be filed with the Commission prior to the implementation or, if not practicable, be filed with the Commission at the earliest possible time after implementation, but in no event more than twenty-four hours after implementation; and

(7) The rule submission shall include:

(i) A copy of the submission cover sheet in accordance with the instructions in Appendix D to this part (in the case of a rule or rule amendment that responds to an emergency, "Emergency Rule Certification" should be noted in the Description section of the submission coversheet);

(ii) The text of the rule (in the case of a rule amendment, deletions and additions must be indicated);

(iii) The date of intended implementation;

(iv) A certification by the registered entity that the rule complies with the Act and the Commission's regulations thereunder;

(v) The documentation relied on to establish the basis for compliance with the applicable provisions of the Act and the Commission's regulations thereunder, including the Core Principles;

(vi) A brief explanation of any substantive opposing views expressed to the registered entity by governing board or committee members, members of the entity or market participants, that were not incorporated into the rule, or a statement that no such opposing views were expressed;

(vii) As appropriate, a request for confidential treatment pursuant to the procedures provided in § 40.8;

(viii) For amendments to a product's terms or conditions, a written statement certifying that the registered entity has undertaken a due diligence review of the legal conditions, including conditions relating to contractual and intellectual property rights, that may materially affect the trading of the product.

(8) The registered entity shall provide, if requested by Commission staff, additional evidence, information or data that may be beneficial to the Commission in conducting a due diligence assessment of the filing and the registered entity's compliance with any of the requirements of the Act or the Commission's regulations or policies thereunder.

(b) *Review by the Commission.* The Commission shall have 10 business days to review the new rule or rule amendment before the new rule or rule amendment is deemed certified and can be made effective, unless the Commission notifies the registered entity during the 10-business day review period that it intends to issue a stay of the certification under paragraph (c) of this section.

(c) *Stay*—(1) *Stay of certification of new rule or rule amendment.* The Commission may stay the certification of a new rule or rule amendment submitted pursuant to paragraph (a) of this section by issuing a notification informing the registered entity that the Commission is staying the certification of the rule or rule amendment on the grounds that the new rule or rule amendment presents novel or complex issues that require additional time to analyze, the rule is accompanied by an inadequate explanation or the rule is potentially inconsistent with the Act or the Commission's regulations thereunder. The Commission will have 90 days from the date of the notification to conduct the review. The decision to stay the certification of a rule in such circumstances shall be delegable pursuant to § 40.7 of this part.

(2) *Public comment.* The Commission shall provide a 30-day comment period, within the 90-day period while the stay is in effect as described in paragraph (c)(1) of this section. The Commission shall publish a notice of the 30-day comment period on the Commission Web site. Comments from the public shall be submitted as specified in that notice.

(3) *Expiration of a stay of certification of new rule or rule amendment.* A new rule or rule amendment subject to a stay pursuant to paragraph (c) shall become effective, pursuant to the certification, at the expiration of the 90-day review period described in paragraph (c)(1) of this section unless the Commission withdraws the stay prior to that time, or the Commission notifies the registered entity during the 90-day time period that it objects to the proposed certification on the grounds that the proposed rule or rule amendment is inconsistent with the Act or the Commission's regulations.

(4) *Stay of effectiveness of rules or rule amendments already implemented.* The Commission may stay the effectiveness of an implemented rule during the pendency of Commission proceedings for filing a false certification or during the pendency of a petition to alter or amend the rule pursuant to section 8a(7) of the Act. The decision to stay the effectiveness of a rule in such circumstances shall not be delegable to any employee of the Commission.

(d) *Notification of rule amendments.* Notwithstanding the rule certification requirement of Section 5c(c)(1) of the Act and paragraph (a) of this section, a registered entity may place the following rules or rule amendments into effect on the following business day without certification to the Commission if the following conditions are met:

(1) The registered entity provides to the Commission at least weekly a summary notice of all rule amendments made effective pursuant to this paragraph during the preceding week. Such notice must be labeled "Weekly Notification of Rule Amendments" and need not be filed for weeks during which no such actions have been taken. One copy of each such submission shall be furnished electronically in a format specified by the Secretary of the Commission; and

(2) The rule governs:

(i) *Non-substantive revisions.* Corrections of typographical errors, renumbering, periodic routine updates to identifying information about approved entities and other such non-substantive revisions of a product's terms and conditions that have no effect on the economic characteristics of the product;

(ii) *Delivery standards set by third parties.* Changes to grades or standards of commodities deliverable on a product that are established by an independent third party and that are incorporated by reference as product terms, provided that the grade or standard is not established, selected or calculated solely for use in connection with futures or option trading and such changes do not affect deliverable supplies or the pricing basis for the product;

(iii) *Index products.* Routine changes in the composition, computation, or method of selection of component entities of an index (other than routine changes to securities indexes to the extent that such changes are not described in paragraph (d)(3)(ii)(F) of this section) referenced and defined in the product's terms, that do not affect the pricing basis of the index, which are made by an independent third party whose business relates to the collection or dissemination of price information and which was not formed solely for the purpose of compiling an index for use in connection with a futures or option product;

(iv) *Option contract terms.* Changes to option contract rules, which may qualify for implementation without notice pursuant to paragraph (d)(3)(ii)(G) of this section, relating to the strike price listing procedures, strike price intervals, and the listing of strike prices on a discretionary basis;

(v) *Fees.* Fees or fee changes, other than fees or fee changes associated with market making or trading incentive programs, that:

(A) Total $1.00 or more per contract, and

(B) Are established by an independent third party or are unrelated to delivery, trading, clearing or dispute resolution.

(vi) *Survey lists.* Changes to lists of banks, brokers, dealers, or other entities that provide price or cash market information to an independent third party and that are incorporated by reference as product terms;

(vii) *Approved brands.* Changes in lists of approved brands or markings pursuant to previously certified or Commission approved standards or criteria;

(viii) *Delivery facilities and delivery service providers.* Changes in lists of approved delivery facilities and delivery service providers (including weigh masters, assayers, and inspectors) at a delivery location, pursuant to previously certified or Commission approved standards or criteria;

(ix) *Trading months.* The initial listing of trading months, which may qualify for implementation without notice pursuant to (d)(3)(ii)(H) of this section, within the currently established cycle of trading months; or

(x) *Minimum tick.* Reductions in the minimum price fluctuation (or "tick").

(3) *Notification of rule amendments not required.* Notwithstanding the rule certification requirements of section 5c(c)(1) of the Act and paragraph (a) of this section, a registered entity may place the following rules or rule amendments into effect without certification or notice to the Commission if the following conditions are met:

(i) The registered entity maintains documentation regarding all changes to rules; and

(ii) The rule governs:

(A) *Transfer of membership or ownership.* Procedures and forms for the purchase, sale or transfer of membership or ownership, but not including qualifications for membership or ownership, any right or obligation of membership or ownership or dues or assessments;

(B) *Administrative procedures.* The organization and administrative procedures of a registered entity governing bodies such as a Board of Directors, Officers and Committees, but not voting requirements, Board of Directors or Committee composition requirements or procedures, decision making procedures, use or disclosure of material non-public information gained through the performance of official duties, or requirements relating to conflicts of interest;

(C) *Administration.* The routine, daily administration, direction and control of employees, requirements relating to gratuity and similar funds, but not guaranty, reserves, or similar funds; declaration of holidays, and changes to facilities housing the market, trading floor or trading area;

(D) *Standards of decorum.* Standards of decorum or attire or similar provisions relating to admission to the floor, badges, or visitors, but not the establishment of penalties for violations of such rules; and

(E) *Fees.* Fees or fee changes, other than fees or fee changes associated with market making or trading incentive programs, that:

(*1*) Are less than $1.00; or

(*2*) Relate to matters such as dues, badges, telecommunication services, booth space, real time quotations, historical information, publications, software licenses or other matters that are administrative in nature.

(F) *Securities indexes.* Routine changes to the composition, computation or method of security selection of an index that is referenced and defined in the product's rules, and which is made by an independent third party.

(G) *Option contract terms.* For registered entities that are in compliance with the daily reporting requirements of § 16.01 of this chapter, changes to option contract rules relating to the strike price listing procedures, strike price intervals, and the listing of strike prices on a discretionary basis.

(H) *Trading months.* For registered entities that are in compliance with the daily reporting requirements of § 16.01 of this chapter, the initial listing of trading months which are within the currently established cycle of trading months.

§ 40.7 Delegations.

(a) *Procedural matters.* (1) The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Clearing and Intermediary Oversight and, separately, to the Director of the Division of Market Oversight, to be exercised by either Director, as appropriate, or by such employees of the Commission that either Director may designate from time to time, the following authorities, with the concurrence of the General Counsel or the General Counsel's delegate:

(i) To request, pursuant to § 40.3(c)(2) or § 40.5(c)(1)(B) of this part, that the registered entity requesting approval amend the proposed product, rule or rule amendment, or supplement the submission to the Commission;

(ii) To notify the registered entity, pursuant to § 40.3(e) or § 40.5(e) of this part, that the Commission is not approving, or is unable to approve, the proposed product, rule or rule amendment;

(iii) To make all determinations reserved to the Commission in § 40.10.

(2) The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Clearing and Intermediary Oversight and, separately, to the Director of the Division of Market Oversight, to be exercised by either Director, as appropriate, or by such employees of the Commission that either Director may designate from time to time, the following authorities, after consultation with the Office of General Counsel or the General Counsel's delegate to notify a registered entity:

(i) Pursuant to § 40.3(d) of this part, that the time for review of the submission has been extended because the product raises novel or complex issues that require additional time for review;

(ii) Pursuant to § 40.5(d) of this part, that the time for review of the submission has been extended because the proposed rule or rule amendment raises novel or complex issues that require additional time for review or is of major economic significance;

(iii) Pursuant to § 40.6(c) of this part, that the proposed rule or rule amendment has been stayed because there exist novel or complex issues that require additional time to analyze, or there is potential inconsistency with the Act or the Commission's regulations.

(3) The Commission hereby delegates, until it orders otherwise, to the Director

of the Division of Clearing and Intermediary Oversight and, separately, to the Director of the Division of Market Oversight, to be exercised by either Director, as appropriate, or by such employees of the Commission that either Director may designate from time to time, the authority to notify a registered entity, pursuant to § 40.3(d) or § 40.5(d) of this part, that the time for review of the submission has been extended, or that a rule certified pursuant to § 40.6(c) has been stayed, because the submission is incomplete or provides an inadequate explanation.

(4) *Emergency rules.* The Commission hereby delegates to the Director of the Division of Market Oversight and, separately, to the Director of the Division of Clearing and Intermediary Oversight, to be exercised by either Director, as appropriate, or by such other employee or employees of the Commission that either Director may designate from time to time, authority to receive notification of emergency rules under § 40.6(a)(6)(ii) of this part.

(5) The Commission hereby delegates to the Director of the Division of Market Oversight, to be exercised by the Director or by such employees of the Commission that the Director may designate from time to time, with the concurrence of the General Counsel or the General Counsel's delegate, the authority to determine whether a rule change submitted by a designated contract market for a materiality determination under § 40.4(b)(5) of this part is not material (in which case it may be reported pursuant to the provisions of § 40.6(d) of this part), or is material, in which case he or she shall notify the registered entity that the rule change must be submitted for the Commission's prior approval.

(b) *Approval authority.* The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Clearing and Intermediary Oversight and, separately, to the Director of the Division of Market Oversight, to be exercised by either Director, as appropriate, or by such employees of the Commission that either Director may designate from time to time, with the concurrence of the General Counsel or the General Counsel's delegate, the authority to approve, pursuant to section 5c(c)(3) of the Act and § 40.5 of this part, rules or rule amendments of a registered entity that:

(1) Relate to, but do not substantially change, the quantity, quality, or other delivery specifications, procedures, or obligations for delivery, cash settlement, or exercise under an agreement, contract or transaction approved for trading by the Commission; daily settlement prices; clearing position limits; requirements or procedures for governance of a registered entity; procedures for transfer trades; trading hours; minimum price fluctuations; and maximum price limit and trading suspension provisions;

(2) Reflect routine modifications that are required or anticipated by the terms of the rule of a registered entity;

(3) Establish or amend speculative limits or position accountability provisions that are in compliance with the requirements of the Act and the Commission's regulations;

(4) Are in substance the same as a rule of the same or another registered entity which has been approved previously by the Commission pursuant to section 5c(c)(3) of the Act;

(5) Are consistent with a specific, stated policy or interpretation of the Commission; or

(6) Relate to the listing of additional trading months of approved contracts.

(c) Notwithstanding the provisions of this section, the Director of the Division of Clearing and Intermediary Oversight and, separately, the Director of the Division of Market Oversight may submit to the Commission for its consideration any matter that has been delegated pursuant to this section.

(d) Nothing in this section shall be deemed to prohibit the Commission, at its election, from exercising any of the authority delegated pursuant to this section.

§ 40.8 Availability of public information.

(a) The following sections of all applications to become a designated contract market, a swap execution facility, a derivatives clearing organization, or a swap data repository shall be made publicly available: Transmittal letter, proposed rules, the applicant's regulatory compliance narrative, documents establishing the applicant's legal status, documents setting forth the applicant's corporate and governance structure, and any other part of the application not covered by a request for confidential treatment.

(b) The following submissions provided by an electronic trading facility on which significant price discovery contracts are traded or executed will be public: Rulebook, the facility's regulatory compliance chart, documents establishing the facility's legal status, documents setting forth the facility's governance structure, and any other parts of the submissions not covered by a request for confidential treatment (§ 40.8(b) will be removed on July 20, 2012).

(c) A registered entity's filing of new products pursuant to the self-certification procedures of § 40.2 of this part, new products for Commission review and approval pursuant to § 40.3 of this part, new rules and rule amendments for Commission review and approval pursuant to § 40.4 or § 40.5 of this part, and new rules and rule amendments pursuant to the self-certification procedures of § 40.6 and § 40.10 of this part shall be treated as public information unless accompanied by a request for confidential treatment. If a registered entity files a request for confidential treatment, the following procedures shall apply:

(1) A detailed written justification of the confidential treatment request must be filed simultaneously with the request for confidential treatment. The form and content of the detailed written justification shall be governed by § 145.9 of this chapter;

(2) All material for which confidential treatment is requested must be segregated in an Appendix to the submission;

(3) The submission itself must indicate that material has been segregated and, as appropriate, an additional redacted version provided;

(4) Commission staff may make an initial determination with respect to the request for confidential treatment without regard to whether a request for the information has been sought under the Freedom of Information Act;

(5) All requests for confidential treatment shall be subject to the process provided by § 145.9 of this chapter.

(6) A submitter of information under this part may appeal an adverse decision by staff to the Commission's Office of General Counsel. The form and content of such appeal shall be governed by § 145.9(g) of this chapter.

(7) The grant of any part of a request for confidential treatment under this section may be reconsidered if a subsequent request under the Freedom of Information Act is made for the information

(d) Commission staff will not consider confidential treatment requests for information that is required to be made public under Section 5(d)(7) of the Act. The terms and conditions of a product submitted to the Commission pursuant to § 40.2, § 40.3 or § 40.5 of this part shall be made publicly available at the time of submission.

§ 40.9 Corporate Governance [Reserved]

§ 40.10 Special certification procedures for submission of rules by systemically important derivatives clearing organizations.

(a) *Advance notice.* A registered derivatives clearing organization that has been designated by the Financial Stability Oversight Council as a systemically important derivatives clearing organization shall provide notice to the Commission not less than 60 days in advance of any proposed change to its rules, procedures, or operations that could materially affect the nature or level of risks presented by the systemically important derivatives clearing organization. A notice submitted under this section shall be subject to the filing requirements of § 40.6(a)(1) and the Web site publication requirements of § 40.6(a)(2).

(1) The notice of a proposed change shall provide the information required to be submitted under § 40.6(a)(7) and shall specifically describe:

(i) The nature of the change and expected effects on risks to the systemically important derivatives clearing organization, its clearing members, or the market; and

(ii) How the systemically important derivatives clearing organization plans to manage any identified risks.

(2) Concurrent with providing the Commission with the advance notice or any request or other information related to the advance notice, the systemically important derivatives clearing organization shall provide the Board of Governors of the Federal Reserve System with a copy of such notice, request or other information.

(b) *Materiality.* The term "materially affect the nature or level of risks presented," when used to qualify determinations on a change to rules, procedures, or operations of a systemically important derivatives clearing organization, means matters as to which there is a reasonable possibility that the change could affect the performance of essential clearing and settlement functions or the overall nature or level of risk presented by the systemically important derivatives clearing organization. Such changes may include, but are not limited to, changes that materially affect financial resources, participant and product eligibility, risk management (including matters relating to margin and stress testing), daily or intraday settlement procedures, default procedures, system safeguards (business continuity and disaster recovery), and governance. If a systemically important derivatives clearing organization determines that a proposed change is not material and therefore does not file an advance notice under this § 40.10, but the Commission determines that the change is material, the Commission may require the systemically important derivatives clearing organization to withdraw the proposed change and provide notice pursuant to this section.

(c) *Further information.* The Commission may require the systemically important derivatives clearing organization to provide any further information necessary to assess the effect the proposed change would have on the nature or level of risks associated with the systemically important derivatives clearing organization's payment, clearing, or settlement activities and the sufficiency of any proposed risk management techniques.

(d) *Notice of objection.* A systemically important derivatives clearing organization shall not implement a change to which the Commission has an objection on the grounds that the proposed change is not consistent with the Act or the Commission's regulations, or the purposes of the Dodd-Frank Act or any applicable rules, orders, or standards prescribed under Section 805(a) of the Dodd-Frank Act. The Commission will notify the systemically important derivatives clearing organization in writing of any objection regarding the proposed change within 60 days from the later of:

(1) The date that the notice of the proposed change was received; or

(2) The date the Commission received any further information it had requested for consideration of the notice.

(e) *Implementation of change absent Commission objection.* A systemically important derivatives clearing organization may implement a change if it has not received an objection to the proposed change within 60 days from the later of:

(1) The date that the Commission received the notice of proposed change; or

(2) The date the Commission received any further information it had requested for consideration of the notice.

(f) *Extended review.* The Commission may, during the 60-day review period, extend the review period if the proposed change raises novel or complex issues. A notification by the Commission pursuant to this paragraph will extend the review for an additional 60 days. Any extension under this paragraph will extend the time periods under paragraphs (d) and (e) of this section for an additional 60 days.

(g) *Change allowed earlier if notified of no objection.* A systemically important derivatives clearing organization may implement a change in less than 60 days from the date the Commission receives the notice of proposed change or the date the Commission receives any further information it has requested, if the Commission notifies the systemically important derivatives clearing organization in writing that it does not object to the proposed change and authorizes implementation of the change on an earlier date, subject to any conditions imposed by the Commission.

(h) *Emergency changes.* A systemically important derivatives clearing organization may implement a change that would otherwise require advance notice under this section if it determines that an emergency exists and immediate implementation of the change is necessary for the systemically important derivatives clearing organization to continue to provide its services in a safe and sound manner.

(1) The systemically important derivatives clearing organization shall provide notice of any such emergency change to the Commission as soon as practicable, which shall be no later than 24 hours after implementation of the change.

(2) The notice of an emergency change shall:

(i) Provide the information required for advance notice as set forth in paragraph (a) of this section;

(ii) Describe the nature of the emergency; and

(iii) Describe the reason the change was necessary for the systemically important derivatives clearing organization to continue to provide its services in a safe and sound manner.

(3) The Commission may require modification or rescission of the emergency change if it finds that the change is not consistent with the Act or the Commission's regulations, or the purposes of the Dodd-Frank Act or any applicable rules, orders, or standards prescribed under Section 805(a) of the Dodd-Frank Act.

§ 40.11 Review of event contracts based on certain excluded commodities.

(a) *Prohibition.* A registered entity shall not list for trading or clearing on or through the registered entity any of the following:

(1) An agreement, contract, transaction, or swap based on an excluded commodity, as defined in Section 1a(19)(iv) of the Act, that involves, relates to, or references terrorism, assassination, war, gaming, or an activity that is unlawful under any State or Federal law; or

(2) An agreement, contract, transaction, or swap based on an excluded commodity, as defined in Section 1a(19)(iv) of the Act, which involves, relates to, or references an activity that is similar to an activity enumerated in § 40.11(a)(1) of this part, and that the Commission determines, by rule or regulation, to be contrary to the public interest.

(b) [Reserved.]

(c) *90-day review and approval of certain event contracts.* The Commission may determine, based upon a review of the terms or conditions of a submission under § 40.2 or § 40.3, that an agreement, contract, transaction, or swap based on an excluded commodity, as defined in Section 1a(19)(iv) of the Act, which may involve, relate to, or reference an activity enumerated in § 40.11(a)(1) or § 40.11(a)(2), be subject to a 90-day review. The 90-day review shall commence from the date the Commission notifies the registered entity of a potential violation of § 40.11(a).

(1) The Commission shall request that a registered entity suspend the listing or trading of any agreement, contract, transaction, or swap based on an excluded commodity, as defined in Section 1a(19)(iv) of the Act, which may involve, relate to, or reference an activity enumerated in § 40.11(a)(1) or § 40.11(a)(2), during the Commission's 90-day review period. The Commission shall post on the Web site a notification of the intent to carry out a 90-day review.

(2) *Final determination.* The Commission shall issue an order approving or disapproving an agreement, contract, transaction, or swap that is subject to a 90-day review under § 40.11(c) no later than 90 days subsequent to the date that the Commission commences review, or if applicable, at the conclusion of such extended period agreed to or requested by the registered entity.

§ 40.12 Tolling of review period pending jurisdictional determination.

(a) *Notice of novel derivative products.* (1) A registered entity certifying, submitting for approval, or otherwise filing a proposal to list, trade, or clear an agreement, contract, transaction, or swap having elements of both a security and a derivative, including a contract for the sale of a commodity for future delivery, may provide notice of its proposal to the Commission and the Securities and Exchange Commission with a statement that written notice has been provided to both agencies through an appropriate means provided in each Commission's regulations.

(2) If concurrent notice is not provided pursuant to § 40.12(a)(1), the Commission shall notify the Securities and Exchange Commission of the registered entity's submission of a novel derivative product and accompany such notice with a copy of the submission. The Commission shall determine whether a particular submission is a novel derivative product requiring notice to the Securities and Exchange Commission not later than five business days subsequent to the date that the registered entity submits the product for Commission review.

(b) *Tolling of review period.* Upon receipt of a request for a jurisdictional determination, pursuant to Section 718(a)(2) of the Dodd-Frank Act, by the Commission or the Securities and Exchange Commission, the product certification or the approval review period for the submitted agreement, contract, transaction, or swap shall be tolled until a final determination order is issued.

(1) The Commission will provide the registered entity with a written notice of stay pending issuance of a final determination order by the Commission or the Securities and Exchange Commission.

(2) The submission review period will resume upon the Commission's or the Securities and Exchange Commission's issuance of a final determination order finding that the Commission has jurisdiction over the submission.

(3) *Determination order.* A final determination, for purposes of § 40.12(b) of this part, shall be a determination order issued by the Commission or the Securities and Exchange Commission pursuant to Section 718(a)(3) of the Dodd-Frank Act.

(c) *Judicial review of determination order.* The filing of a petition by a complaining Commission, pursuant to Section 718(b) of the Dodd-Frank Act, shall operate as a stay of the agency order.

(1) The stay shall remain in effect until the date on which the United States Court of Appeals for the District of Columbia Circuit issues a final determination pursuant to Section 718(b)(4) of the Dodd-Frank Act, or until such date that there is a final disposition of an appeal of that determination.

(2) The submission review period shall resume upon issuance of a final determination, as described in § 40.12(c)(1), that the Commission has jurisdiction over the submission.

Appendix A to Part 40—Schedule of Fees

(a) *Applications for product approval.* Each application for product approval under § 40.3 must be accompanied by a check or money order made payable to the Commodity Futures Trading Commission in an amount to be determined annually by the Commission and published in the **Federal Register**.

(b) Checks and applications should be sent to the attention of the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. No checks or money orders may be accepted by personnel other than those in the Office of the Secretariat.

(c) Failure to submit the fee with an application for product approval will result in return of the application. Fees will not be returned after receipt.

Appendix B to Part 40—[Reserved]

Appendix C to Part 40—[Reserved]

Appendix D to Part 40—Submission Cover Sheet and Instructions

(a) A properly completed submission cover sheet shall accompany all rule and product submissions submitted electronically by a registered entity to the Secretary of the Commodity Futures Trading Commission, at *submissions@cftc.gov* in a format specified by the Secretary of the Commission. A properly completed submission cover sheet shall include all of the following:

1. *Identifier Code (optional)*—A registered entity Identifier Code at the top of the cover sheet, if applicable. Such codes are commonly generated by registered entities to provide an identifier that is unique to each filing (*e.g.,* NYMEX Submission 03–116).

2. *Date*—The date of the filing.

3. *Organization*—The name of the organization filing the submission (*e.g.,* CBOT).

4. *Filing as a*—Check in the appropriate box indicating that the rule or product is being submitted by a designated contract market (DCM), derivatives clearing organization (DCO), swap execution facility (SEF), or swap data repository (SDR), electronic trading facility with a significant price discovery contract (the term will be removed on July 20, 2012).[1]

5. *Type of Filing*—An indication as to whether the filing is a new rule, rule amendment or new product. The registered entity should check the appropriate box to indicate the applicable category under that heading.

6. *Rule Numbers*—For rule filings, the rule number(s) being adopted or modified in the case of rule amendment filings.

7. *Description*—For rule or rule amendment filings a description of the new rule or rule amendment, including a discussion of its expected impact on the

[1] Even though ECM–SPDC was eliminated by the Dodd-Frank Act, the Commission proposes to retain references to this entity in the cover sheet since ECM may be allowed to operate until July 20, 2012, pursuant to grandfather relief issued by the Commission. *See* 75 FR 56513 (Sept. 16, 2010).

registered entity, market participants, and the overall market. The narrative should describe the substance of the submission with enough specificity to characterize all material aspects of the filing.

(b) *Other Requirements*—A submission shall comply with all applicable filing requirements for proposed rules, rule amendments, or products. The filing of the submission cover sheet does not obviate the registered entity's responsibility to comply with applicable filing requirements (*e.g.,* rules submitted for Commission approval under § 40.5 must be accompanied by an explanation of the purpose and effect of the proposed rule along with a description of any substantive opposing views).

(c) Checking the box marked "confidential treatment requested" on the Submission Cover Sheet does not obviate the submitter's responsibility to comply with all applicable requirements for requesting confidential treatment in § 40.8 and, where appropriate, § 145.9 of this chapter, and will not substitute for notice or full compliance with such requirements.

Issued in Washington, DC, on October 26, 2010, by the Commission.

David A. Stawick,

Secretary of the Commission.

Note: The following attachment will not appear in the Code of Federal Regulations.

Statement of Chairman Gary Gensler Provisions Common to Registered Entities October 26, 2010

I support the proposal to publish for comment the proposed rule on the Commission's process for certification and approval of rules and new products for designated contract markets (DCMs), derivatives clearing organizations (DCOs), swap execution facilities (SEFs) and swap data repositories (SDRs). The Dodd-Frank Act establishes enhanced procedures for Commission review and certification of new rules, rule amendments and products. Today's rule gives important procedural guidance to registered entities on how to comply with Congress's mandate for the Commission's review of new rules and products.

[FR Doc. 2010–27533 Filed 11–1–10; 8:45 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Chapter I

RIN Number 3038–AD26

Antidisruptive Practices Authority Contained in the Dodd-Frank Wall Street Reform and Consumer Protection Act

AGENCY: Commodity Futures Trading Commission.

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: The Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") amends section 4c(a) of the Commodity Exchange Act ("CEA") in section 747 to expressly prohibit certain trading practices deemed disruptive of fair and equitable trading. The Commodity Futures Trading Commission ("Commission") is issuing this advance notice of proposed rulemaking and request for public comment to assist the Commission in promulgating such rules and regulations to meet the requirements of section 747.

DATES: Comments must be in writing and received by January 3, 2011.

ADDRESSES: You may submit comments, identified by RIN number AD26, by any of the following methods:

- *Agency Web site, via its Comments Online process:* Comments may be submitted to: *http://comments.cftc.gov.* Follow the instructions for submitting comments on the Web site.
- *Mail:* David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as mail above.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the established procedures in CFTC Regulation 145.9.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Robert Pease, Counsel to the Director of Enforcement, 202–418–5863, *rpease@cftc.gov,* or Mark D. Higgins, Counsel to the Director of Enforcement, 202–418–5864, *mhiggins@cftc.gov,* Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1151 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

On July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act").[2] Title VII of the Dodd-Frank Act[3] amended the Commodity Exchange Act ("CEA")[4] to establish a comprehensive new regulatory framework for swaps and security-based swaps. The legislation was enacted to reduce risk, increase transparency, and promote market integrity within the financial system by, among other things: (1) Providing for the registration and comprehensive regulation of swap dealers and major swap participants; (2) imposing clearing and trade execution requirements on standardized derivative products; (3) creating robust recordkeeping and real-time reporting regimes; and (4) enhancing the Commission's rulemaking and enforcement authorities with respect to, among others, all registered entities and intermediaries subject to the Commission's oversight. Section 747 of the Dodd-Frank Act amends section 4c(a) of the CEA to add a new section entitled "Disruptive Practices."

II. Solicitation for Comments About Disruptive Practices Pursuant to Dodd-Frank Act Section 747

In section 747 of the Dodd-Frank Act, Congress amended the CEA to expressly prohibit certain trading practices that it determined were disruptive of fair and equitable trading. Dodd-Frank section 747 amends section 4c(a) of the CEA to make it unlawful for any person to engage in any trading, practice, or conduct on or subject to the rules of a registered entity that—

(A) violates bids or offers;

(B) demonstrates intentional or reckless disregard for the orderly execution of transactions during the closing period; or

(C) is, is of the character of, or is commonly known to the trade as,

[1] 17 CFR 145.9.

[2] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law No. 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at *http://www.cftc.gov./LawRegulation/OTCDERIVATIVES/index.htm.*

[3] Pursuant to Section 701 of the Dodd-Frank Act, Title VII may be cited as the "Wall Street Transparency and Accountability Act of 2010."

[4] 7 U.S.C. 1 *et seq.* (2006).

"spoofing" (bidding or offering with the intent to cancel the bid or offer before execution).

Dodd-Frank section 747 also amends section 4c(a) by granting the Commission authority to promulgate such "rules and regulations as, in the judgment of the Commission, are reasonably necessary to prohibit the trading practices" enumerated in section 747 "and any other trading practice that is disruptive of fair and equitable trading." The prohibition on the disruptive practices specified in new section 4c(a) will become effective 360 days after the enactment of the Dodd-Frank Act.

The Commission invites comment on all aspects of Dodd-Frank Act section 747. In particular, commenters are encouraged to address the following questions:

1. Should the Commission provide additional guidance as to the nature of the conduct that is prohibited by the specifically enumerated practices in paragraphs (A–C)?

2. With respect to the practice enumerated in paragraph (A)—violating bids and offers—how should the provision be applied in the context of electronic trading platforms with pre-determined order-matching algorithms that preclude a trader from executing an order against a quote other than the best one available? In particular, should the provision apply to "buying the board" in an illiquid market? [5]

3. How should the Commission distinguish between orderly and disorderly trading during the closing period as articulated in paragraph (B)? What factors should a factfinder consider in this inquiry?

4. How should "orderly execution" be defined? How should the closing period be defined? Should the definition of closing period include:

a. Daily settlement periods?

b. Some period prior to contract expiration?

c. Trading periods used to establish indices or pricing references?

5. Should the Commission recognize that a trading practice or conduct outside of the closing period is actionable so long as it "demonstrates intentional or reckless disregard for the execution of transactions during the closing period?"

6. Should (B) extend to order activity as well as consummated transactions?

7. Should executing brokers have an obligation to ensure that customer trades are not disruptive trade practices? If so, in what circumstances? What pre-trade risk checks should executing brokers have in place to ensure customers using their automated trading systems, execution systems or access to their trading platforms do not engage in disruptive trade practices?

8. How should the Commission distinguish "spoofing," as articulated in paragraph (C), from legitimate trading activity where an individual enters an order larger than necessary with the intention to cancel part of the order to ensure that his or her order is filled?

9. Should the Commission separately specify and prohibit the following practices as distinct from "spoofing" as articulated in paragraph (C)? Or should these practices be considered a form of "spoofing" that is prohibited by paragraph (C)?

a. Submitting or cancelling bids or offers to overload the quotation system of a registered entity, or delay another person's execution of trades;

b. Submitting or cancelling multiple bids or offers to cause a material price movement;

c. Submitting or cancelling multiple bids or offers to create an appearance of market depth that is false.

10. Does partial fill of an order or series of orders necessarily exempt that activity from being defined as "spoofing"?

11. Are there ways to more clearly distinguish the practice of spoofing from the submission, modification, and cancelation of orders that may occur in the normal course of business?

12. Should the Commission specify an additional disruptive trading practice concerning the disorderly execution of particularly large orders during periods other than the closing period? If so, at what size should this provision become effective and how should the Commission distinguish between orderly and disorderly trading?

13. Should the Commission specify and prohibit other additional practices as disruptive of fair and equitable trading?

14. Should the Commission articulate specific duties of supervision relating to the prohibited trading practices articulated in paragraphs (A–C) (as well as any other trading practice that the Commission determines to be disruptive of fair and equitable trading) to supplement the general duty to supervise contained in Commission Regulation 166.3? To which entities should these duties of supervision apply?

15. Should the Commission consider promulgating rules to regulate the use of algorithmic or automated trading systems to prevent disruptive trading practices? If so, what kinds of rules should the Commission consider?

16. Should the Commission consider promulgating rules to regulate the design of algorithmic or automated trading systems to prevent disruptive trading practices? If so, what kinds of rules should the Commission consider?

17. Should the Commission consider promulgating rules to regulate the supervision and monitoring of algorithmic or automated trading systems to prevent disruptive trading practices? If so, what kinds of rules should the Commission consider?

18. Should the Commission promulgate additional rules specifically applicable to the use of algorithmic trading methodologies and programs that are reasonably necessary to prevent algorithmic trading systems from disrupting fair and equitable markets? If so, what kinds of rules should the Commission consider?

19. Should algorithmic traders be held accountable if they disrupt fair and equitable trading? If so, how?

When commenting on the above questions, please comment generally and specifically, and please include empirical data and other information in support of such comments, where appropriate and available, regarding any of the comments provided and please also take into account the statutory text of Dodd-Frank Act section 747, reprinted herein as follows:

Sec. 747. ANTIDISRUPTIVE PRACTICES AUTHORITY

Section 4c(a) of the Commodity Exchange Act (7 U.S.C. 6c(a)) (as amended by section 746) is amended by adding at the end the following:

"(5) Disruptive practices.—It shall be unlawful for any person to engage in any trading, practice, or conduct on or subject to the rules of a registered entity that—

"(A) violates bids or offers;

"(B) demonstrates intentional or reckless disregard for the orderly execution of transactions during the closing period; or

"(C) is, is of the character of, or is commonly known to the trade as, 'spoofing' (bidding or offering with the intent to cancel the bid or offer before execution).

"(6) Rulemaking authority.—The Commission may make and promulgate such rules and regulations as, in the judgment of the Commission, are reasonably necessary to prohibit the trading practices described in paragraph (5) and any other trading practice that is disruptive of fair and equitable trading.

"(7) Use of swaps to defraud.—It shall be unlawful for any person to enter into a swap knowing, or acting in reckless disregard of the fact, that its counterparty will use the swap as part of a device, scheme, or artifice to defraud any third party."

Dated: October 26, 2010.

By the Commodity Futures Trading Commission.

David A. Stawick,

Secretary of the Commission.

Statement of Chairman Gary Gensler Anti-Disruptive Practices Authority Contained in Title VII of Dodd-Frank Wall Street Reform and Consumer Protection Act, October 26, 2010

I support the proposed Advanced Notice of Proposed Rulemaking concerning disruptive trading practices. Congress expressly prohibited three trading practices that it deemed were disruptive of fair and equitable trading. In addition, Congress granted the Commission authority to prohibit other

[5] Specifically, in a sufficiently illiquid market, a trader might enter an order for a large quantity at a price that is so far beyond the best available resting quote that the order executes against all resting quotes. In doing so, the trader would establish a new artificial best bid or offer that does not reflect market forces. *See In re Henner,* 30 Agric. Dec. 1151, 1155 (1971) (Defendant "bought the board"—accepted all outstanding offers—and then bid for a single contract well in excess of the previously prevailing price. He was sanctioned for manipulating the price of egg futures; the fact that he paid more than necessary for shell egg futures was the basis for finding an artificial price).

trading practices that are disruptive of fair and equitable trading. Today's advanced notice of proposed rulemaking asks 18 questions, the answers to which will inform moving forward with a proposed rule on this issue. Commission staff also will lead a roundtable on December 2 on disruptive trading practices. I am particularly interested in hearing from the public on algorithmic trading. In addition to the public comments and the December 2 roundtable, we will benefit from the input of the Joint CFTC–SEC Advisory Committee on Emerging Regulatory Issues.

[FR Doc. 2010–27547 Filed 11–1–10; 8:45 am]

BILLING CODE 6351–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–R09–OAR–2010–0718; FRL–9219–8]

Determinations of Attainment by the Applicable Attainment Date for the Hayden, Nogales, Paul Spur/Douglas PM_{10} Nonattainment Areas, Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to determine that the Hayden, Nogales, and Paul Spur/Douglas nonattainment areas in Arizona attained the National Ambient Air Quality Standard (NAAQS) for particulate matter with an aerodynamic diameter of less than or equal to a nominal ten micrometers (PM_{10}) by the applicable attainment date of December 31, 1994. On the basis of this proposed determination, EPA concludes that these three "moderate" nonattainment areas are not subject to reclassification by operation of law to "serious." Lastly, on the basis of a review of more recent ambient monitoring data, EPA also is proposing to determine that the Hayden, Nogales and Paul Spur/Douglas nonattainment areas are not currently attaining the PM_{10} standard.

DATES: Comments must be received on or before December 2, 2010.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2010–0718, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions.
2. *E-mail: tax.wienke@epa.gov.*
3. *Mail or Deliver:* Wienke Tax, Air Planning Office, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Wienke Tax at telephone number: (415) 947–4192; e-mail address: *tax.wienke@epa.gov,* or the above EPA, Region IX address.

SUPPLEMENTARY INFORMATION: For further information, please see the direct final action, of the same title, which is located in the Rules section of this **Federal Register**. EPA is determining that the Hayden, Nogales, and Paul Spur/Douglas nonattainment area attained the PM_{10} standard by the applicable attainment date (1994), and that the three areas are not currently attaining the standard, as a direct final rule without prior proposal because EPA views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the determinations is set forth in the preamble to the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule.

If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if we receive adverse comment on one of the determinations, EPA may adopt as final those determinations that are not the subject of an adverse comment.

Dated: October 25, 2010.

Jared Blumenfeld,

Regional Administrator, EPA Region IX.

[FR Doc. 2010–27635 Filed 11–1–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 5

Negotiated Rulemaking Committee on Designation of Medically Underserved Populations and Health Professional Shortage Areas; Notice of Meeting

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Negotiated Rulemaking Committee meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting of the Negotiated Rulemaking Committee on Designation of Medically Underserved Populations and Health Professional Shortage Areas.

DATES: Meetings will be held on November 17, 2010, 9:30 a.m. to 6 p.m. and November 18, 2010, 8 a.m. to 4:30 p.m.

ADDRESSES: Meetings will be held at the Legacy Hotel and Meeting Centre, Georgetown Room, 1775 Rockville Pike, Rockville, Maryland 20852, (301) 881–2300.

FOR FURTHER INFORMATION CONTACT: For more information, please contact Nicole Patterson, Office of Shortage Designation, Bureau of Health Professions, Health Resources and Services Administration, Room 9A–18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–9027, *E-mail: npatterson@hrsa.gov* or visit *http://www.hrsa.gov/advisorycommittees/shortage/.*

SUPPLEMENTARY INFORMATION:

Status: The meeting will be open to the public.

Purpose: The purpose of the Negotiated Rulemaking Committee on Designation of Medically Underserved Populations and Health Professional Shortage Areas is to establish a comprehensive methodology and criteria for Designation of Medically Underserved Populations and Primary Care Health Professional Shortage Areas, using a Negotiated Rulemaking (NR) process. It is hoped that use of the NR process will yield a consensus among technical experts and stakeholders on a new rule, which will then be published as an Interim Final Rule in accordance with Section 5602 of Public Law 111–148, the Patient Protection and Affordable Care Act of 2010.

Agenda: The meeting will be held on Wednesday, November 17 and Thursday, November 18. It will include a discussion of the various components of a possible methodology for identifying areas of shortage and underservice, based on the recommendations of the Committee in the previous meeting. The Thursday meeting will also include development of the agenda for the next meeting, as well as an opportunity for public comment.

Requests from the public to make oral comments or to provide written comments to the Committee should be sent to Nicole Patterson at the contact address above at least 10 days prior to the meeting. The meetings will be open

to the public as indicated above, 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 above at least 10 days prior to the meeting. Members of the public will have the opportunity to provide comments during the meeting on Thursday afternoon.

Dated: October 27, 2010.

Robert Hendricks,

Director, Division of Policy and Information Coordination.

[FR Doc. 2010–27554 Filed 11–1–10; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2010–0003; Internal Agency Docket No. FEMA–B–1152]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part 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, these elevations, once finalized, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before January 31, 2011.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community is available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–1152, to Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3461, or (e-mail) *roy.e.wright@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3461, or (e-mail) *roy.e.wright@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs 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 BFEs and modified BFEs, 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 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.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

Executive Order 13132, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This proposed rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

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	
Fremont County, Colorado, and Incorporated Areas				
Arkansas River	Approximately 600 feet upstream of the confluence with Coal Creek East Overflow.	+5130	+5129	City of Florence, Unincorporated Areas of Fremont County.
	Approximately 1,330 feet downstream of Minnequa Dam Road.	+5203	+5206	
Coal Creek	Approximately 0.99 mile upstream of Railroad Street	+5224	+5222	City of Florence, Town of Coal Creek, Unincorporated Areas of Fremont County.
	Approximately 0.57 mile upstream of Coal Creek Drive.	None	+5435	
Coal Creek Tributary 1	At the confluence with Coal Creek	None	+5335	Town of Coal Creek, Unincorporated Areas of Fremont County.
	Approximately 1,600 feet upstream of Main Street	None	+5420	
Coal Creek Tributary 2	Just upstream of the confluence with Coal Creek	None	+5400	Town of Coal Creek, Unincorporated Areas of Fremont County.
	Approximately 0.75 mile upstream of the confluence with Coal Creek.	None	+5489	
Coal Creek Tributary 3	Just upstream of the confluence with Coal Creek	None	+5422	Town of Coal Creek, Unincorporated Areas of Fremont County.
	Approximately 1,100 feet upstream of the confluence with Coal Creek.	None	+5440	
Forked Gulch	Approximately 300 feet upstream of the confluence with the Arkansas River.	+5340	+5336	City of Canon City, Unincorporated Areas of Fremont County.
	Approximately 275 feet upstream of North Eagle Drive.	None	+5888	
Oak Creek	Just upstream of the unnamed railroad	+5256	+5253	Town of Rockvale, Town of Williamsburg, Unincorporated Areas of Fremont County.
	Approximately 1,350 feet upstream of Mesa Avenue	None	+5471	
South Oak Creek	Just upstream of the confluence with Oak Creek	None	+5424	Town of Rockvale, Unincorporated Areas of Fremont County.
	Approximately 580 feet upstream of Oak Creek Avenue.	None	+5438	
West Branch Forked Gulch	Approximately 90 feet upstream of Temple Canyon Road.	+5474	+5473	City of Canon City, Unincorporated Areas of Fremont County.
	Approximately 525 feet upstream of Lela Lane	None	+6082	
West Oak Creek	Just upstream of the confluence with Oak Creek	None	+5268	Town of Rockvale, Town of Williamsburg, Unincorporated Areas of Fremont County.
	Approximately 0.87 mile upstream of Smith Gulch Road.	None	+5534	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ 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 Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Canon City
Maps are available for inspection at 128 Main Street, Canon City, CO 81212.
City of Florence

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	

Maps are available for inspection at 300 West Main Street, Florence, CO 81226.

Town of Coal Creek

Maps are available for inspection at 400 Railroad Street, Coal Creek, CO 81221.

Town of Rockvale

Maps are available for inspection at 510 Railroad Street, Rockvale, CO 81244.

Town of Williamsburg

Maps are available for inspection at 1 John Street, Williamsburg, CO 81226.

Unincorporated Areas of Fremont County

Maps are available for inspection at 615 Macon Avenue, Canon City, CO 81212.

Scott County, Missouri, and Incorporated Areas

Headwater Diversion Channel (backwater effects from Mississippi River).	From the Cape Girardeau County boundary to approximately 1.33 miles upstream of the Cape Girardeau County boundary.	+353	+350	Unincorporated Areas of Scott County.
Mississippi River	At the Mississippi County boundary	+338	+335	Unincorporated Areas of Scott County.
	At the Alexander County boundary	+349	+351	
Ramsey Creek Diversion Channel (backwater effects from Mississippi River).	From the confluence with Headwater Diversion Channel to approximately 3.6 miles upstream of Headwater Diversion Channel.	+353	+350	City of Scott City, Unincorporated Areas of Scott County.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ 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 Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

ADDRESSES

City of Scott City

Maps are available for inspection at 215 Chestnut Avenue, Scott City, MO 63780.

Unincorporated Areas of Scott County

Maps are available for inspection at 131 South Winchester Street, Benton, MO 63736.

Hunterdon County, New Jersey (All Jurisdictions)

Brookville Creek	At the confluence with the Delaware and Raritan Canal.	+81	+78	Borough of Stockton, Township of Delaware.
	Approximately 275 feet upstream of State Route 29 (South Main Street).	+81	+78	
Delaware River	At the Mercer County boundary	+64	+65	Borough of Frenchtown, Borough of Milford, Borough of Stockton, City of Lambertville, Township of Alexandria, Township of Delaware, Township of Holland, Township of Kingwood, Township of West Amwell.
	At the Warren County boundary	+158	+159	
Little Nishisakawick Creek	At the confluence with the Delaware River	+124	+123	Borough of Frenchtown.
	Approximately 590 feet upstream of State Route 29 (Trenton Avenue).	+124	+123	
Milford Creek	At the confluence with the Delaware River	+136	+134	Borough of Milford
	Approximately 1,100 feet downstream of Bridge Road	+136	+134	
Musconetcong River	At the confluence with the Delaware River	+158	+159	Township of Holland.
	Approximately 1,100 feet downstream of Mountain Joy Road.	+158	+159	
Nishisakawick Creek	At the confluence with the Delaware River	+124	+123	Borough of Frenchtown.
	Approximately 150 feet upstream of State Route 12 (Kingwood Avenue).	+124	+123	
Swan Creek	At the confluence with the Delaware River	+68	+69	City of Lambertville.

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	
	Approximately 40 feet upstream of State Route 29 (South Main Street).	+68	+69	
Tributary No. 1 to Delaware River.	At the confluence with the Delaware River	+147	+144	Township of Holland.
	Approximately 775 feet upstream of the railroad bridge.	+147	+144	
Wickecheoke Creek	At the confluence with the Delaware River	+86	+84	Borough of Stockton, Township of Delaware.
	Approximately 600 feet upstream of State Route 29	+86	+84	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ 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 Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Borough of Frenchtown
Maps are available for inspection at the Borough Hall, 29 2nd Street, Frenchtown, NJ 08825.

Borough of Milford
Maps are available for inspection at the Borough Hall, 30 Water Street, Milford, NJ 08848.

Borough of Stockton
Maps are available for inspection at the Borough Hall, 2 South Main Street, Stockton, NJ 08559.

City of Lambertville
Maps are available for inspection at City Hall, 18 York Street, Lambertville, NJ 08530.

Township of Alexandria
Maps are available for inspection at the Alexandria Township Municipal Office, 782 Frenchtown Road, Milford, NJ 08848.

Township of Delaware
Maps are available for inspection at the Delaware Township Municipal Building, 570 Rosemont-Ringoes Road, Sergeantsville, NJ 08557.

Township of Holland
Maps are available for inspection at the Holland Township Municipal Building, 61 Church Road, Milford, NJ 08848.

Township of Kingwood
Maps are available for inspection at the Kingwood Township Municipal Building, 599 Oak Grove Road and County Road 519, Frenchtown, NJ 08825.

Township of West Amwell
Maps are available for inspection at the West Amwell Township Municipal Building, 150 Rocktown-Lambertville Road, Lambertville, NJ 08530.

Armstrong County, Pennsylvania (All Jurisdictions)

Allegheny River	Approximately 0.2 mile downstream of the confluence with Allegheny River Tributary 1.	None	+785	Township of Boggs, Township of Bradys Bend, Township of Cadogan, Township of Hovey, Township of Madison, Township of North Buffalo, Township of Pine, Township of Rayburn.
	Approximately 1.12 miles upstream of State Route 58	None	+876	
Buffalo Creek	Approximately 1.31 miles upstream of State Route 228.	None	+873	Township of North Buffalo.
	Approximately 1.35 miles upstream of State Route 228.	None	+873	
Carnahan Run	Just downstream of State Route 66	None	+784	Township of Parks.
	Approximately 655 feet upstream of State Route 66	None	+784	
Garretts Run	Just downstream of State Route 359	None	+1022	Township of Kittanning.
	Approximately 271 feet upstream of State Route 359	None	+1026	
Guffy Run	Approximately 80 feet downstream of State Route 66	None	+780	Township of Gilpin, Township of Parks.
	Approximately 826 feet upstream of State Route 66	None	+780	

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	
Kiskiminetas River	Approximately 4.9 miles upstream of the confluence with the Allegheny River.	None	+774	Borough of Apollo, Borough of Leechburg, Borough of North Apollo.
	Approximately 1,025 feet upstream of State Route 66 Alternate.	None	+799	
Redbank Creek	Approximately 648 feet downstream of West Broad Street (State Route 28).	None	+1063	Borough of South Bethlehem, Township of Mahoning.
	Approximately 0.96 mile upstream of West Broad Street (State Route 28).	None	+1067	
Tub Mill Run	Approximately 100 feet upstream of State Route 66	None	+787	Township of Manor.
	Approximately 606 feet upstream of State Route 66	None	+787	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ 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 Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Borough of Apollo
Maps are available for inspection at the Borough Council Chambers, 616 1st Street, Apollo, PA 15613.

Borough of Leechburg
Maps are available for inspection at the Borough Office, 260 Market Street, Leechburg, PA 15656.

Borough of North Apollo
Maps are available for inspection at the Borough Building, 1421 Leonard Avenue, North Apollo, PA 15673.

Borough of South Bethlehem
Maps are available for inspection at the South Bethlehem Borough Building, 217 West Broad Street, New Bethlehem, PA 16242.

Township of Boggs
Maps are available for inspection at the Boggs Township Hall, 292 Mountain Trails Road, Templeton, PA 16259.

Township of Bradys Bend
Maps are available for inspection at the Bradys Bend Township Municipal Building, 1004 State Route 68, East Brady, PA 16028.

Township of Cadogan
Maps are available for inspection at the Township Hall, 333 1st Avenue, Cadogan, PA 16212.

Township of Gilpin
Maps are available for inspection at the Gilpin Township Municipal Building, 589 State Route 66, Leechburg, PA 15656.

Township of Hovey
Maps are available for inspection at the Hovey Township Building, 217 Washington Street, Parker, PA 16049.

Township of Kittanning
Maps are available for inspection at the Kittanning Township Municipal Building, 395 Township Shed Road, Kittanning, PA 16201.

Township of Madison
Maps are available for inspection at the Madison Township Building, 107 Lawsonham Road, Templeton, PA 16259.

Township of Mahoning
Maps are available for inspection at the Mahoning Township Municipal Building, 987 State Route 1025, New Bethlehem, PA 16242.

Township of Manor
Maps are available for inspection at the Manor Township Municipal Building, 306 Byron Street, McGrann, PA 16236.

Township of North Buffalo
Maps are available for inspection at the North Buffalo Township Municipal Building, 149 McHaddon Road, Kittanning, PA 16201.

Township of Parks
Maps are available for inspection at the Parks Township Community Building, 26 Jackson Street, North Vandergrift, PA 15690.

Township of Pine
Maps are available for inspection at the Pine Township Hall, 100 1st Street, Templeton, PA 16259.

Township of Rayburn
Maps are available for inspection at the Rayburn Township Hall, 105 McGregor Road, Kittanning, PA 16201.

Washington County, Pennsylvania (All Jurisdictions)

Brush Run to Little Tenmile Creek.	At the confluence with Little Tenmile Creek	None	+962	Township of North Bethlehem, Township of West Bethlehem.

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	
	Approximately 0.67 mile upstream of Dynamite Road	None	+1121	
Catfish Creek	Approximately 500 feet upstream of West Chestnut Street.	None	+1034	Township of North Franklin.
	Approximately 1,500 feet upstream of West Maiden Street.	None	+1044	
Chartiers Creek	Approximately 0.50 mile upstream of Mounts Road	None	+1080	Borough of Green Hills.
	Approximately 0.34 mile downstream of Vaneal Road	None	+1092	
Georges Run	Approximately 1,300 feet upstream of North Hewitt Avenue.	+1004	+1006	Township of Canton, Township of Chartiers.
	Approximately 1,400 feet upstream of Mulberry Hill Road.	None	+1106	
Little Chartiers Creek	Just downstream of U.S. Route 19	None	+922	Township of Peters, Township of Somerset.
	Approximately 0.40 mile downstream of Simmons Road.	None	+1024	
Little Tenmile Creek	At the confluence with Tenmile Creek	None	+897	Township of West Bethlehem.
	Approximately 0.76 mile upstream of the confluence with Tenmile Creek.	None	+898	
Little Tenmile Creek	Approximately 1,800 feet downstream of the confluence with Brush Run to Little Tenmile Creek.	None	+961	Township of West Bethlehem.
	At the confluence with Brush Run to Little Tenmile Creek.	None	+962	
Maple Creek	Approximately 0.40 mile downstream of Fox Stop Road.	None	+786	Borough of Twilight.
	Approximately 1,800 feet downstream of Fox Stop Road.	None	+789	
Peters Creek	Approximately 500 feet downstream of Venetia Road	None	+955	Township of Nottingham, Township of Union.
	Approximately 0.90 mile upstream of Lutes Road	None	+1026	
Pigeon Creek (area previously shown within Township of Somerset).	Approximately 400 feet upstream of Monongahela-Bentleyville Road.	None	+900	Borough of Ellsworth.
	Approximately 0.45 mile upstream of Monongahela-Bentleyville Road.	None	+906	
Pigeon Creek	Approximately 810 feet upstream of Oliver Avenue	None	+953	Township of Fallowfield.
	Approximately 1,090 feet upstream of Oliver Avenue	None	+956	
Robinson Run	Approximately 0.40 mile downstream of Saint Johns Street.	None	+1050	Township of Robinson.
	Approximately 0.30 mile downstream of Saint Johns Street.	None	+1056	
Tenmile Creek	Just downstream of Jefferson Avenue	None	+877	Borough of Marianna, Township of West Bethlehem.
	Approximately 300 feet downstream of Hufford Run Road.	None	+901	
Tenmile Creek	Approximately 1.30 miles downstream of Pleasant Road.	None	+1025	Township of Morris.
	Approximately 1.21 miles downstream of Pleasant Road.	None	+1026	
Tributary 4.1 (backwater effects from Tributary 4).	From approximately 380 feet upstream of the confluence with Tributary 4 to approximately 880 feet upstream of the confluence with Tributary 4.	None	+1015	Township of North Strabane.

* National Geodetic Vertical Datum.
+North American Vertical Datum.
Depth in feet above ground.
∧ 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 Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Borough of Ellsworth

Maps are available are available for inspection at the Borough Building, 23 Main Street, Ellsworth, PA 15331.

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	

Borough of Green Hills
Maps are available are available for inspection at the Green Hills Borough Hall, 96 North Main Street, Washington, PA 15301.

Borough of Marianna
Maps are available are available for inspection at the Borough Building, 1 Procasky Road, Marianna, PA 15345.

Borough of Twilight
Maps are available are available for inspection at the Twilight Borough Building, 8 Chestnut Road, Charleroi, PA 15022.

Township of Canton
Maps are available are available for inspection at the Canton Township Hall, 655 Grove Avenue, Washington, PA 15301.

Township of Chartiers
Maps are available are available for inspection at the Chartiers Township Hall, 2 Buccaneer Drive, Houston, PA 15342.

Township of Fallowfield
Maps are available are available for inspection at the Fallowfield Township Hall, 9 Memorial Drive, Charleroi, PA 15022.

Township of Morris
Maps are available are available for inspection at the Morris Township Hall, 473 Sparta Road, Prosperity, PA 15329.

Township of North Bethlehem
Maps are available for inspection at the North Bethlehem Township Municipal Building, 2116–R East National Pike, Scenery Hill, PA 15360.

Township of North Franklin
Maps are available are available for inspection at the North Franklin Township Hall, 620 Franklin Farms Road, Washington, PA 15301.

Township of North Strabane
Maps are available are available for inspection at the North Strabane Municipal Building, 1929 State Route 519 South, Canonsburg, PA 15317.

Township of Nottingham
Maps are available are available for inspection at the Nottingham Township Hall, 909 Sugar Run Road, Eighty Four, PA 15330.

Township of Peters
Maps are available are available for inspection at the Peters Township Municipal Building, 610 East McMurray Road, McMurray, PA 15317.

Township of Robinson
Maps are available are available for inspection at the Robinson Township Office, 8400 Noblestown Road, McDonald, PA 15057.

Township of Somerset
Maps are available are available for inspection at the Somerset Township Office, 615 Vanceville Road, Eighty Four, PA 15330.

Township of Union
Maps are available are available for inspection at the Union Township Municipal Building, 3904 Finleyville-Elrama Road, Finleyville, PA 15332.

Township of West Bethlehem
Maps are available are available for inspection at the West Bethlehem Township Municipal Building, 247 Jefferson Avenue, Marianna, PA 15345.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: October 15, 2010.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2010–27583 Filed 11–1–10; 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–1148]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part 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, these elevations, once finalized, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before January 31, 2011.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community is available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–1148, to Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3461, or (e-mail) *roy.e.wright@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3461, or (e-mail) *roy.e.wright@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs 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 BFEs and modified BFEs, 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 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.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

Executive Order 13132, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This proposed rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

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	
Indian River County, Florida, and Incorporated Areas				
Collier Creek	Approximately 550 feet upstream of the confluence with South Prong Creek.	+4	+5	City of Sebastian, Unincorporated Areas of Indian River County.
	Approximately 1,320 feet upstream of Fleming Street	None	+19	
FT–1	Within area of multiple ponding areas bounded by 17th Street Southwest to the north, 27th Avenue Southwest to the west, 21st Street Southwest to the south, and 20th Avenue Southwest to the east.	None	+21	Unincorporated Areas of Indian River County.
Lateral J Tributary 1	At the confluence with Lateral J	None	+18	Unincorporated Areas of Indian River County.
	Approximately 1,450 feet upstream of the confluence with Lateral J.	None	+20	
Lateral J Tributary 1–1	Just upstream of 18th Place Southwest	None	+18	Unincorporated Areas of Indian River County.
	Approximately 1,750 feet upstream of 18th Place Southwest.	None	+20	
Lateral J Tributary 1–2	At the confluence with Lateral J Tributary 1	None	+18	Unincorporated Areas of Indian River County.
	Approximately 1.1 mile upstream of the confluence with Lateral J Tributary 1.	None	+22	
ML–1	Within area of multiple ponding areas bounded by 17th Street Southwest to the north, 43rd Avenue Southwest to the west, 25th Street Southwest to the south, and 27th Avenue Southwest to the east.	None	+21	Unincorporated Areas of Indian River County.

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	
ML–2	Within area of multiple ponding areas bounded by 17th Street Southwest to the north, 43rd Avenue Southwest to the west, 25th Street Southwest to the south, and 27th Avenue Southwest to the east.	None	+22	Unincorporated Areas of Indian River County.
ML–3	Within area of multiple ponding areas bounded by 17th Street Southwest to the north, 43rd Avenue Southwest to the west, 25th Street Southwest to the south, and 27th Avenue Southwest to the east.	None	+21	Unincorporated Areas of Indian River County.
ML–4	Within area of multiple ponding areas bounded by 17th Street Southwest to the north, 43rd Avenue Southwest to the west, 25th Street Southwest to the south, and 27th Avenue Southwest to the east.	None	+21	Unincorporated Areas of Indian River County.
ML–5	Within area of multiple ponding areas bounded by 17th Street Southwest to the north, 43rd Avenue Southwest to the west, 25th Street Southwest to the south, and 27th Avenue Southwest to the east.	None	+21	Unincorporated Areas of Indian River County.
ML–6	Within area of multiple ponding areas bounded by 17th Street Southwest to the north, 43rd Avenue Southwest to the west, 25th Street Southwest to the south, and 27th Avenue Southwest to the east.	None	+20	Unincorporated Areas of Indian River County.
ML–7	Within area of multiple ponding areas bounded by 17th Street Southwest to the north, 43rd Avenue Southwest to the west, 25th Street Southwest to the south, and 27th Avenue Southwest to the east.	None	+21	Unincorporated Areas of Indian River County.
ML–8	Within area of multiple ponding areas bounded by 17th Street Southwest to the north, 43rd Avenue Southwest to the west, 25th Street Southwest to the south, and 27th Avenue Southwest to the east.	None	+20	Unincorporated Areas of Indian River County.
ML–9	Within area of multiple ponding areas bounded by 17th Street Southwest to the north, 43rd Avenue Southwest to the west, 25th Street Southwest to the south, and 27th Avenue Southwest to the east.	None	+20	Unincorporated Areas of Indian River County.
ML–10	Within area of multiple ponding areas bounded by 17th Street Southwest to the north, 43rd Avenue Southwest to the west, 25th Street Southwest to the south, and 27th Avenue Southwest to the east.	None	+20	Unincorporated Areas of Indian River County.
ML–11	Within area of multiple ponding areas bounded by 17th Street Southwest to the north, 43rd Avenue Southwest to the west, 25th Street Southwest to the south, and 27th Avenue Southwest to the east.	None	+20	Unincorporated Areas of Indian River County.
ML–12	Within area of multiple ponding areas bounded by 17th Street Southwest to the north, 43rd Avenue Southwest to the west, 25th Street Southwest to the south, and 27th Avenue Southwest to the east.	None	+20	Unincorporated Areas of Indian River County.
ML–13	Within area of multiple ponding areas bounded by 17th Street Southwest to the north, 43rd Avenue Southwest to the west, 25th Street Southwest to the south, and 27th Avenue Southwest to the east.	None	+20	Unincorporated Areas of Indian River County.
ML–14	Within area of multiple ponding areas bounded by 17th Street Southwest to the north, 43rd Avenue Southwest to the west, 25th Street Southwest to the south, and 27th Avenue Southwest to the east.	None	+21	Unincorporated Areas of Indian River County.
ML–15	Within area of multiple ponding areas bounded by 17th Street Southwest to the north, 43rd Avenue Southwest to the west, 25th Street Southwest to the south, and 27th Avenue Southwest to the east.	None	+22	Unincorporated Areas of Indian River County.
ML–16	Within area of multiple ponding areas bounded by 17th Street Southwest to the north, 43rd Avenue Southwest to the west, 25th Street Southwest to the south, and 27th Avenue Southwest to the east.	None	+20	Unincorporated Areas of Indian River County.
ML–17	Within area of multiple ponding areas bounded by 17th Street Southwest to the north, 43rd Avenue Southwest to the west, 25th Street Southwest to the south, and 27th Avenue Southwest to the east.	None	+20	Unincorporated Areas of Indian River County.

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	
ML–18	Within area of multiple ponding areas bounded by 17th Street Southwest to the north, 43rd Avenue Southwest to the west, 25th Street Southwest to the south, and 27th Avenue Southwest to the east.	None	+20	Unincorporated Areas of Indian River County.
ML–19	Within area of multiple ponding areas bounded by 17th Street Southwest to the north, 43rd Avenue Southwest to the west, 25th Street Southwest to the south, and 27th Avenue Southwest to the east.	None	+20	Unincorporated Areas of Indian River County.
ML–20	Within area of multiple ponding areas bounded by 17th Street Southwest to the north, 43rd Avenue Southwest to the west, 25th Street Southwest to the south, and 27th Avenue Southwest to the east.	None	+20	Unincorporated Areas of Indian River County.
ML–21	Within area of multiple ponding areas bounded by 17th Street Southwest to the north, 43rd Avenue Southwest to the west, 25th Street Southwest to the south, and 27th Avenue Southwest to the east.	None	+21	Unincorporated Areas of Indian River County.
ML–22	Within area of multiple ponding areas bounded by 17th Street Southwest to the north, 43rd Avenue Southwest to the west, 25th Street Southwest to the south, and 27th Avenue Southwest to the east.	None	+21	Unincorporated Areas of Indian River County.
ML–23	Within area of multiple ponding areas bounded by 17th Street Southwest to the north, 43rd Avenue Southwest to the west, 25th Street Southwest to the south, and 27th Avenue Southwest to the east.	None	+21	Unincorporated Areas of Indian River County.
ML–24	Within area of multiple ponding areas bounded by 17th Street Southwest to the north, 43rd Avenue Southwest to the west, 25th Street Southwest to the south, and 27th Avenue Southwest to the east.	None	+20	Unincorporated Areas of Indian River County.
ML–25	Within area of multiple ponding areas bounded by 17th Street Southwest to the north, 43rd Avenue Southwest to the west, 25th Street Southwest to the south, and 27th Avenue Southwest to the east.	None	+22	Unincorporated Areas of Indian River County.
ML–26	Within area of multiple ponding areas bounded by 17th Street Southwest to the north, 43rd Avenue Southwest to the west, 25th Street Southwest to the south, and 27th Avenue Southwest to the east.	None	+20	Unincorporated Areas of Indian River County.
P–1	Within area of multiple ponding areas bounded by Barber Street to the north and west, 85th Street to the south, and U.S. Route 1 to the east.	None	+19	City of Sebastian.
P–2	Within area of multiple ponding areas bounded by Barber Street to the north and west, 85th Street to the south, and U.S. Route 1 to the east.	None	+18	City of Sebastian.
P–3	Within area of multiple ponding areas bounded by Barber Street to the north and west, 85th Street to the south, and U.S. Route 1 to the east.	None	+18	City of Sebastian.
SH–1	Within area of multiple ponding areas bounded by Main Street to the north and west, and Sebastian Boulevard to the south and east.	None	+22	City of Sebastian.
SH–2	Within area of multiple ponding areas bounded by Main Street to the north and west, and Sebastian Boulevard to the south and east.	None	+22	City of Sebastian.
SH–3	Within area of multiple ponding areas bounded by Main Street to the north and west, and Sebastian Boulevard to the south and east.	None	+22	City of Sebastian.
SH–4	Within area of multiple ponding areas bounded by Main Street to the north and west, and Sebastian Boulevard to the south and east.	None	+22	City of Sebastian.
SH–5	Within area of multiple ponding areas bounded by Main Street to the north and west, and Sebastian Boulevard to the south and east.	None	+22	City of Sebastian.
SH–6	Within area of multiple ponding areas bounded by Main Street to the north and west, and Sebastian Boulevard to the south and east.	None	+22	City of Sebastian.

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	
SH–7	Within area of multiple ponding areas bounded by Main Street to the north and west, and Sebastian Boulevard to the south and east.	None	+22	City of Sebastian.
SH–8	Within area of multiple ponding areas bounded by Main Street to the north and west, and Sebastian Boulevard to the south and east.	None	+21	City of Sebastian.
SH–9	Within area of multiple ponding areas bounded by Main Street to the north and west, and Sebastian Boulevard to the south and east.	None	+21	City of Sebastian.
SH–10	Within area of multiple ponding areas bounded by Main Street to the north and west, and Sebastian Boulevard to the south and east.	None	+20	City of Sebastian.
SH–11	Within area of multiple ponding areas bounded by Main Street to the north and west, and Sebastian Boulevard to the south and east.	None	+21	City of Sebastian.
SH–12	Within area of multiple ponding areas bounded by Main Street to the north and west, and Sebastian Boulevard to the south and east.	None	+22	City of Sebastian.
SH–13	Within area of multiple ponding areas bounded by Main Street to the north and west, and Sebastian Boulevard to the south and east.	None	+23	City of Sebastian.
SL–1	Within area of multiple ponding areas bounded by Sebastian Boulevard to the north and west, Genesee Avenue to the south, and Laconia Street to the east.	None	+21	City of Sebastian.
SL–5	Within area of multiple ponding areas bounded by Sebastian Boulevard to the north and west, Genesee Avenue to the south, and Laconia Street to the east.	None	+20	City of Sebastian.
SL–6	Within area of multiple ponding areas bounded by Sebastian Boulevard to the north and west, Genesee Avenue to the south, and Laconia Street to the east.	None	+20	City of Sebastian.
SL–7	Within area of multiple ponding areas bounded by Sebastian Boulevard to the north and west, Genesee Avenue to the south, and Laconia Street to the east.	None	+20	City of Sebastian.
SL–8	Within area of multiple ponding areas bounded by Sebastian Boulevard to the north and west, Genesee Avenue to the south, and Laconia Street to the east.	None	+21	City of Sebastian.
SL–9	Within area of multiple ponding areas bounded by Sebastian Boulevard to the north and west, Genesee Avenue to the south, and Laconia Street to the east.	None	+20	City of Sebastian.
SL–10	Within area of multiple ponding areas bounded by Sebastian Boulevard to the north and west, Genesee Avenue to the south, and Laconia Street to the east.	None	+20	City of Sebastian.
SL–11	Within area of multiple ponding areas bounded by Sebastian Boulevard to the north and west, Genesee Avenue to the south, and Laconia Street to the east.	None	+20	City of Sebastian.
SL–12	Within area of multiple ponding areas bounded by Sebastian Boulevard to the north and west, Genesee Avenue to the south, and Laconia Street to the east.	None	+21	City of Sebastian.
SL–13	Within area of multiple ponding areas bounded by Sebastian Boulevard to the north and west, Genesee Avenue to the south, and Laconia Street to the east.	None	+20	City of Sebastian.
SL–14	Within area of multiple ponding areas bounded by Sebastian Boulevard to the north and west, Genesee Avenue to the south, and Laconia Street to the east.	None	+20	City of Sebastian.
SL–15	Within area of multiple ponding areas bounded by Sebastian Boulevard to the north and west, Genesee Avenue to the south, and Laconia Street to the east.	None	+20	City of Sebastian.
SL–16	Within area of multiple ponding areas bounded by Genesee Avenue to the north, Stony Point Drive to the west, and Stonecrop Street to the south and east.	None	+14	City of Sebastian.
SL–17	Within area of multiple ponding areas bounded by Crystal Mist Avenue to the north, Laconia Street to the west, Concha Drive to the south, and Clearbrook Street to the east.	None	+15	City of Sebastian.

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	
SL–18	Within area of multiple ponding areas bounded by Benedictine Terrace to the north, Cheltenham Street to the west, Rolling Hill Drive to the south, and Cownie Lane to the east.	None	+19	City of Sebastian.
SL–19	Within area of multiple ponding areas bounded by Belfast Terrace to the north, Haverford Lane to the west, Browning Terrace to the south, and Coverbrook Lane to the east.	None	+20	City of Sebastian.
Schumann Waterway	Approximately 250 feet downstream of Schumann Drive.	None	+15	City of Sebastian, Unincorporated Areas of Indian River County.
	Approximately 0.7 mile upstream of Schumann Drive	None	+23	
Stream 1	Approximately 207 feet upstream of 14th Street Southwest.	None	+22	Unincorporated Areas of Indian River County.
	Just upstream of 17th Street Southwest	None	+22	
Vero Lakes Channel A (Landward of Right Levee).	Just upstream of 85th Street	None	+20	Unincorporated Areas of Indian River County.
	Approximately 2.7 miles upstream of 85th Street	None	+23	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ 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 Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Sebastian

Maps are available for inspection at City Hall, 1225 Main Street, Sebastian, FL 32958.

Unincorporated Areas of Indian River County

Maps are available for inspection at the Indian River County Administration Building, 1840 25th Street, Vero Beach, FL 32960.

Boone County, Indiana, and Incorporated Areas

Etter Ditch	Approximately 530 feet downstream of Wilson Road	None	+914	Town of Whitestown, Unincorporated Areas of Boone County.
	Just upstream of Indianapolis Road	None	+928	
Fishback Creek	Approximately 0.53 mile downstream of County Road 550 South.	None	+897	City of Lebanon, Town of Whitestown, Unincorporated Areas of Boone County.
	Approximately 0.61 mile upstream of County Road 400 East.	None	+949	
Green Ditch	At the confluence with Etter Ditch	None	+916	Town of Whitestown.
	Just upstream of South Cozy Lane	None	+922	
Mann Ditch	At the confluence with Prairie Creek	+935	+932	City of Lebanon, Unincorporated Areas of Boone County.
	Approximately 0.46 mile upstream of the confluence with Prairie Creek.	+935	+933	
Prairie Creek	Approximately 1,320 feet downstream of 221st Street	None	+875	City of Lebanon, Unincorporated Areas of Boone County.
	Approximately 0.94 mile upstream of Indianapolis Road.	+950	+945	
White Lick Creek	Approximately 0.22 mile downstream of County Road 650 South.	None	+929	Town of Whitestown, Unincorporated Areas of Boone County.
	Approximately 0.53 mile upstream of State Road 267	None	+947	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.

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	

Depth in feet above ground.
∧ 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 Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Lebanon
Maps are available for inspection at the Lebanon Municipal Building, 401 South Meridian Street, Lebanon, IN 46052.

Town of Whitestown
Maps are available for inspection at the Town Hall, 3 South Main Street, Whitestown, IN 46075.

Unincorporated Areas of Boone County
Maps are available for inspection at the Boone County Area Plan Commission, 116 West Washington Street, Lebanon, IN 46052.

Marshall County, Indiana, and Incorporated Areas

Yellow River	At East 4th Road	None	+800	Unincorporated Areas of Marshall County.
	Approximately 0.57 mile upstream of East 4th Road	None	+800	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ 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 Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Marshall County
Maps are available for inspection at the Marshall County Government Office, 112 West Jefferson Street, Plymouth, IN 46563.

Perry County, Mississippi, and Incorporated Areas

Leaf River	Approximately 0.6 mile downstream of State Highway 15.	None	+89	Unincorporated Areas of Perry County.
	Approximately 0.5 mile upstream of State Highway 15	None	+91	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ 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 Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Perry County
Maps are available for inspection at the Perry County Courthouse, 103 1st Street, New Augusta, MS 39462.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: October 15, 2010.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2010–27584 Filed 11–1–10; 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–1149]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part 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, these elevations, once finalized, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before January 31, 2011.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community is available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–1149, to Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3461, or (e-mail) *roy.e.wright@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3461, or (e-mail) *roy.e.wright@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs 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 BFEs and modified BFEs, 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 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.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

Executive Order 13132, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This proposed rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location **	* Elevation in feet (NGVD + Elevation in feet (NAVD) # Depth in feet bove ground ∧ Elevation in meters (MSL)	
				Existing	Modified
Unincorporated Areas of Butte-Silver Bow County, Montana					
Montana	Unincorporated Areas of Butte-Silver Bow County.	Basin Creek	Approximately 1,000 feet upstream of I–90.	+5468	+5469
			Approximately 40 feet downstream of Mormon Church Road.	+5495	+5494
Montana	Unincorporated Areas of Butte-Silver Bow County.	Sand Creek	Approximately 90 feet downstream of Evans Avenue.	+5460	+5456
			Approximately 50 feet upstream of Chicago, Milwaukee, St. Paul and Pacific Railroad.	+5545	+5547
Montana	Unincorporated Areas of Butte-Silver Bow County.	Sand Creek Diversion	Approximately 500 feet upstream of Elizabeth Warren Avenue.	None	+5484
			Approximately 100 feet downstream of Harrison Avenue.	None	+5514

* 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 Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Butte-Silver Bow County

Maps are available for inspection at 155 West Granite Street, Room 108, Butte, MT 59701.

City of Sioux Falls, South Dakota					
South Dakota	City of Sioux Falls	Big Sioux River	Approximately 0.5 mile downstream of Cliff Avenue, landward of north levee.	None	+1320
			Approximately 1,800 feet upstream of Cliff Avenue, landward of north levee.	None	+1324

* 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 Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Sioux Falls

Maps are available for inspection at 224 West 9th Street, Sioux Falls, SD 57117.

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	
Jackson County, Arkansas, and Incorporated Areas				
Cache River	Approximately 1.06 mile downstream of the confluence with Browns Creek Ditch.	None	+223	Unincorporated Areas of Jackson County.
	Approximately 0.57 mile downstream of the confluence with Browns Creek Ditch.	None	+224	
Swan Pond Ditch	Just upstream of the confluence with Tuckerman Ditch.	None	+227	Unincorporated Areas of Jackson County.
	Just upstream of State Highway 37	None	+227	
Tuckerman Ditch	Just upstream of the confluence with Village Creek	None	+236	City of Tuckerman, Unincorporated Areas of Jackson County.
	Approximately 0.57 mile downstream of County Road 620.	None	+242	
Village Creek	Just upstream of the confluence with the White River	None	+227	Unincorporated Areas of Jackson County.
	Just downstream of State Highway 37	None	+242	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ 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 Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Tuckerman

Maps are available for inspection at 200 West Main Street, Tuckerman, AR 72473.

Unincorporated Areas of Jackson County

Maps are available for inspection at the Jackson County Courthouse, 208 Main Street, Newport, AR 72112.

Hernando County, Florida, and Incorporated Areas				
Blue Sink Watershed	Approximately 700 feet downstream of Duck Pond Road (at Junction 1NP0170).	None	+41	City of Brooksville, Unincorporated Areas of Hernando County.
	Approximately 100 feet upstream of Chinsegut Hill Road (at Junction 1NE0500).	None	+236	
Bystre Lake Watershed	Approximately 280 feet downstream of Weatherly Road (at Junction 2NG1980).	None	+56	City of Brooksville, Unincorporated Areas of Hernando County.
	Approximately 2,800 feet upstream of Griffin Road (at Junction 2NC1010).	None	+256	
Centralia Watershed	Approximately 1 mile downstream of the intersection of U.S. Route 19 and Knuckey Road (at Junction 3NJ1550).	None	+8	Unincorporated Areas of Hernando County.
	Approximately 1,200 feet upstream of Barrientos Lane (at Junction 3NR2100).	None	+186	
Chassahowitzka River Watershed.	Approximately 850 feet downstream of the intersection U.S. Route 19 and Nicasio Jay Avenue (at Junction 4NK1450).	None	+7	Unincorporated Areas of Hernando County.
	Approximately 2,000 feet upstream of the intersection of Citrus Road and Thompson Loop (at Junction 4NC0900).	None	+158	
Croom Watershed	Approximately 1,000 feet downstream of Malvern Street (at Junction 6NA0266).	None	+42	City of Brooksville, Unincorporated Areas of Hernando County.
	Approximately 400 feet upstream of La Ruth Road (at Junction 6NC0405).	None	+201	
Eastern Hernando Withlacoochee River Watershed.	Approximately 2,600 feet downstream of the intersection of Nobleton Croom Road and Trail 9 (at Junction 7NB1530).	None	+41	Unincorporated Areas of Hernando County.

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	
	Approximately 2,000 feet upstream of the intersection of Poe County Lane and Power Line Road (at Junction 7NH0398).	None	+152	
Little Withlacoochee River Watershed.	Approximately 2,300 feet downstream of End of Nations Road, at the confluence of the Withlacoochee and Little Withlacoochee Rivers (at Junction 8NE0020).	None	+56	Unincorporated Areas of Hernando County.
	Approximately 600 feet upstream of Carter Pond Road (at Junction 8NA9044).	None	+90	
Lizzie Hart Sink Watershed ..	Approximately 50 feet downstream of the intersection of Brittle Road and Forest 24 Road (at Junction 9NF0040).	None	+43	Unincorporated Areas of Hernando County.
	Approximately 5,000 feet upstream of the intersection of Jones Road and Snow Hill Road (at Junction 9NC0330).	None	+164	
McKethan Watershed	Approximately 3,000 feet downstream of U.S. Route 41 and the Citrus County boundary (at Junction 10NF1000).	None	+38	Unincorporated Areas of Hernando County.
	Approximately 850 feet upstream of the intersection of Chinsegut Hill Road and Pilots Path (at Junction 10NC0012).	None	+233	
Oman Quarry Watershed	Approximately 220 feet downstream of Windjammer Drive (at Junction 11NB0070).	None	+9	Unincorporated Areas of Hernando County.
	Approximately 50 feet upstream of the intersection of Gerbert Street and William Street (at Junction 11NI0080).	None	+37	
Powell Watershed	Approximately 750 feet downstream of State Prison Drive (at Junction 13NB0095).	+69	+62	City of Brooksville, Unincorporated Areas of Hernando County.
	Approximately 2,000 feet upstream of the intersection of Powell Road and Mars Road (at Junction 13NK0240).	None	+134	
Spring Hill Lakes Watershed	Approximately 4,500 feet downstream of intersection at Suzanne Drive and Commercial Way (at Junction 14NAA0080).	None	+10	Town of Weeki Wachee, Unincorporated Areas of Hernando County.
	Approximately 50 feet upstream of the intersection of Palmgren Lane and Mariner Boulevard (at Junction 14NG0425).	None	+69	
Toachodka Watershed	Approximately 600 feet downstream of the intersection of Hickory Hill Road and Lockhart Road (at Junction 16NE0510).	None	+64	Unincorporated Areas of Hernando County.
	Approximately 2,100 feet upstream of the intersection of Spring Hill Highway and Rosecrans Street (at Junction 16NA2680).	None	+225	
Tooke Watershed	Approximately 1,600 feet downstream of Porpoise Street (at Junction 17NK1000).	None	+1	Town of Weeki Wachee, Unincorporated Areas of Hernando County.
	Approximately 100 feet upstream of the intersection of Star Road and Madison Street (at Junction 17NB5230).	None	+107	
Weeki Wachee Prairie Watershed.	Approximately 400 feet downstream of the intersection of Azora Road and Watt Avenue (at Junction 18NA2170).	None	+19	Unincorporated Areas of Hernando County.
	Approximately 100 feet upstream of the intersection of Spring Hill Drive and Whitewood Avenue (at Junction 18NB1065).	None	+76	
Willow Sink Watershed	Approximately 100 feet downstream of the intersection of Lynn Road and India Drive (at Junction 19NG2360).	None	+19	Unincorporated Areas of Hernando County.
	Approximately 100 feet upstream of the intersection of Star Road and Jayson Road (at Junction 19WISCON1).	None	+101	
Wiscon Watershed	Approximately 380 feet downstream of the intersection of Elwood Road and Tacoma Avenue (at Junction 20NS0200).	None	+25	Unincorporated Areas of Hernando County.

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	
	Approximately 800 feet upstream of Dusty Pine Trail (at Junction 20NK0034).	None	+153	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
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Send comments to Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Brooksville
Maps are available for inspection at 201 Howell Avenue, Brooksville, FL 34601.

Town of Weeki Wachee
Maps are available for inspection at 6131 Commercial Way, Weeki Wachee, FL 34606.

Unincorporated Areas of Hernando County
Maps are available for inspection at 20 North Main Street, Brooksville, FL 34601.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: October 15, 2010.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2010–27585 Filed 11–1–10; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 9 and 20

[Docket No. 07–114; WC Docket No. 05–196; FCC 10–177]

Wireless E911 Location Accuracy Requirements; E911 Requirements for IP-Enabled Service Providers

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The purpose of this document is to seek comment on improving the Commission's existing Enhanced 911 (E911) rules to further improve the location capability of 911 and E911 services for existing and new voice communications technologies, including new broadband technologies associated with deployment of Next Generation 911 (NG911) networks.

DATES: Submit comments on or before January 3, 2011. Submit reply comments on or before January 31, 2011.

ADDRESSES: You may submit comments, identified by PS Docket No. 07–114 and WC Docket No. 05–196, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments on the Commission's Electronic Comment Filing System (ECFS).
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, *etc.*) by e-mail: FCC504@fcc.gov or phone: (202) 418–0530 or TTY: (202) 418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Patrick Donovan, Public Safety and Homeland Security Bureau, at (202) 418–2413, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554; or via the Internet to *Patrick.Donovan@fcc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

1. As mobile communications technology evolves, one of the great potential benefits it provides is to enhance the public's ability to contact emergency services personnel during times of crisis. To ensure this benefit is realized, such technology must enable public safety personnel to obtain accurate information regarding the location of the caller. The Commission's existing Enhanced 911 (E911) rules require wireless carriers to meet standards for provision of location information when emergency calls are made via mobile telephone networks. In this *Further Notice of Proposed Rulemaking (FNPRM)* and *Notice of Inquiry* (NOI), as recommended in the National Broadband Plan, we explore how to further improve the location capability of 911 and E911 services for existing and new voice communications technologies, including new broadband technologies associated with deployment of Next Generation 911 (NG911) networks. Our aim is to ensure that the Commission is doing everything within its power, in conjunction with the public safety community and service providers, to ensure that Americans have access to the most forward-thinking technologically advanced emergency response systems in the world.

2. Today we take additional steps to improve wireless E911 location accuracy and reliability by examining

the next stage of potential regulations that would be commensurate with the surge in wireless usage, encompassing additional voice over Internet Protocol (VoIP) and wireless services, devices, and applications. In this *FNPRM* and *NOI,* we seek comment on several issues with regard to amending the Commission's wireless 911 and E911 requirements and extending 911 and E911 requirements to additional VoIP and wireless services. In our continuing endeavor to ensure that wireless E911 service meets the needs of the American people and public safety, we request comment on the ongoing evolution in the use of wireless devices and the development of location technologies. As recommended in the National Broadband Plan, the issues we examine also address the impact of NG911 deployment on 911 and E911 location accuracy requirements. NG911 will integrate the core functions and capabilities of E911 while adding new 911 capabilities in multiple formats, such as texting, photos, video and e-mail. This will vastly improve the quality and speed of response, and provide a more interoperable and integrated emergency response capability for PSAPs, first responders, hospitals and other emergency response professionals.

3. First, in the *FNPRM,* we seek comment on proposals to improve wireless location accuracy. In this regard, the *FNPRM* builds upon the second part of the preceding Notice of Proposed Rulemaking that the Commission released on June 1, 2007 and published in the **Federal Register** at 72 FR 33948, Jun. 20, 2007. We seek comment on a number of issues initially raised in the *Location Accuracy NPRM,* including: Whether we should consider more stringent location parameters in Section 20.18(h) of the Commission's rules, which specifies the standards for wireless E911 Phase II location accuracy and reliability; what methodology carriers should employ to verify compliance, both initially and during ongoing testing; the format in which accuracy data should be automatically provided to PSAPs; how to address location accuracy while roaming; how location information and accuracy can be improved in more challenging environments; and whether location accuracy standards should include an elevation (Z-axis) component.

4. In the *NOI,* we request comment on whether we should require interconnected VoIP service providers to automatically identify the geographic location of a customer without the customer's active cooperation. We also seek comment on what E911 obligations, if any, should apply to VoIP services that are not fully interconnected to the public switched telephone network (PSTN). Additionally, we seek comment on the impact of NG911 developments on location accuracy and automatic location identification (ALI). Finally, we request comment on the applicability of 911 and E911 requirements to additional wireless communications services, devices and applications.

II. Background

5. In this section, we review the prior Commission actions leading up to the present rules and proposals concerning 911 and E911 requirements for wireless and VoIP services. The Commission has adopted rules requiring commercial wireless carriers to provide both basic 911 service, which connects the caller to a PSAP, and E911 service, which provides call-back and location information. The E911 information requirements consist of two parts: Phase I—which requires wireless carriers to deliver to a PSAP the telephone number of the wireless 911 caller and the location of the cell site or base station that received the call, and Phase II—which requires wireless carriers to provide the location (latitude and longitude) of the caller within particular accuracy parameters, depending on the location technology that the carriers have chosen. In its initial E911 *Report and Order,* released on July 26, 1996 and published in the **Federal Register** at 61 FR 40374, Aug. 2, 1996, the Commission adopted Section 20.18(h), which specifies the accuracy requirements for the provision of E911 by wireless carriers. As amended by today's *Second Report and Order,* Section 20.18(h) requires licensees subject to the wireless E911 requirements, to ultimately comply with the following Phase II location accuracy and reliability standards at the county or PSAP service area level, based on certain benchmarks, limitations, and exclusions: For network-based technologies: 100 Meters for 67 percent of calls, 300 meters for 90 percent of calls; for handset-based technologies: 50 Meters for 67 percent of calls, 150 meters for 90 percent of calls.

6. In April 2000, the Commission's Office of Engineering and Technology (OET) issued Bulletin No. 71 to provide assistance in determining whether wireless licensees comply with the accuracy standards set by the Commission. The OET Bulletin did not establish mandatory procedures; rather, it stated that compliance with the OET guidelines would establish "a strong presumption that appropriate means have been applied to ensure that an ALI system complies with the Commission's rules." The OET Bulletin sets forth the Commission's expectations regarding location accuracy measurement and testing.

7. In June 2005, the Commission released a *First Report and Order and Notice of Proposed Rulemaking* (VoIP 911 Order and VoIP 911 NPRM), published in the **Federal Register** at 70 FR 37273, Jun. 29, 2005, and adopting rules requiring providers of interconnected VoIP service to supply E911 capabilities to their customers as a standard feature from wherever the customer is using the service. The rules adopted by the *VoIP 911 Order* apply only to providers of interconnected VoIP services, which are services that (1) enable real-time, two-way voice communications; (2) require a broadband connection from the user's location; (3) require Internet protocol-compatible customer premises equipment (CPE); and (4) permit users generally to receive calls that originate on the PSTN and to terminate calls to the PSTN. Interconnected VoIP service providers generally must provide consumers with E911 service and transmit all 911 calls, including Automatic Number Identification (ANI) and the caller's Registered Location for each call, to the PSAP, designated statewide default answering point, or appropriate local emergency authority.

8. In the *VoIP 911 Order,* the Commission stated its intent to adopt a future order containing an advanced E911 solution for portable interconnected VoIP service, which would include a method for determining a user's location without assistance from the user as well as a firm implementation deadline. To that end, the *VoIP 911 NPRM* sought comment on what additional steps should be taken to determine whether there may be ways to automatically identify the location of a user of a portable interconnected VoIP service, whether to extend the requirements to other VoIP services, such as services that are not fully interconnected to the PSTN but may permit users to make calls to or receive calls from landline and mobile phones, whether providers of wireless interconnected VoIP service would be more appropriately subject to the existing commercial mobile radio service (CMRS) 911/E911 rules (contained in Part 20), and whether there are any steps the Commission should take to ensure that people with disabilities who desire to use interconnected VoIP service can obtain access to E911 services.

9. In June 2007, the Commission released the *Location Accuracy NPRM* seeking comment on several issues relating to wireless E911 location accuracy and reliability requirements, in addition to the issue that we address in the companion *Second Report and Order, i.e.* the geographic level at which wireless licensees have to meet the location accuracy requirements under Section 20.18(h). The Commission requested comment on these additional issues to ensure that wireless E911 service meets the needs of public safety and the American people, while taking into account the evolution in the use of wireless devices and the further development of location technologies. Specifically, the Commission sought comment on the capabilities and limitations of existing and new location technologies, the advantages of combining handset-based and network-based location technologies (a hybrid solution), the prospect of adopting more stringent location accuracy requirements, and compliance testing methodologies in regard to different environments, such as indoor versus outdoor use and rural areas. Also, the Commission invited comment on how to address location accuracy issues for 911 calls placed when roaming, particularly between carriers employing different location technologies. Further, the Commission requested comment on a number of tentative conclusions and proposals, including establishing a single location accuracy standard rather than the separate accuracy requirements for network and handset-based technologies, adopting a mandatory schedule for accuracy testing, and applying the same location accuracy standards that apply to circuit-switched CMRS services to interconnected VoIP services used in more than one location.

10. In response to the *Location Accuracy NPRM,* a number of parties filed comments, including public safety organizations, commercial carriers, and location technology vendors. Comments regarding the prospect of adopting of a single location accuracy requirement varied, with some supporting an open forum to gather more information. In regard to the impact of advances in location technologies and the use of hybrid technologies on location accuracy, commenters noted the benefits and drawbacks of the underlying technologies for handset-based and network-based solutions. Commenters provided a variety of specific suggestions regarding whether more stringent accuracy requirements should be adopted. Also, commenters addressed whether the Commission should adopt different standards based on topographical environments. Some commenters supported the inclusion of elevation standards and others believed that there must be more research and development conducted before the Commission adopts standards for indoor settings, particularly in regard to high-rise buildings.

11. In October 2008, the Commission released a *Report and Order (NET 911 Improvement Act Report and Order)* adopting rules providing "interconnected VoIP providers rights of access to any and all capabilities necessary to provide 911 and E911 service from entities that own or control those capabilities." In the *NET 911 Improvement Act Report and Order,* the Commission declined to "issue highly detailed rules listing capabilities or entities with ownership or control of these capabilities" because the nation's 911 system varies depending on the locality and "overly specific rules would fail to reflect these local variations." The Commission also declined "to expand the applicability of the rights granted in the NET 911 Act to entities beyond those encompassed within that statute."

12. In April 2009, we released a *public notice* seeking nominations for membership on the Communications Security, Reliability, and Interoperability Council (CSRIC). CSRIC is a Federal Advisory Committee that provides guidance and expertise on the nation's communications infrastructure and public safety communications. The committee's duties include recommending best practices and actions the Commission can take to ensure the security, reliability, operability and interoperability of public safety communications systems, and improve reliability and resiliency of communications infrastructure. One of the Working Groups within CSRIC, Group 4C—Technical Options for E911 Location Accuracy, is responsible for examining E911 and public safety location technologies in use today, identifying current performance and limitations for use in next generation public safety applications, examining emerging E911 public safety location technologies, and recommending options to CSRIC for the improvement of E911 location accuracy timelines.

13. On March 16, 2010, the Commission delivered to Congress the National Broadband Plan in which it stated that the Commission should examine approaches for leveraging broadband technologies to enhance emergency communications with the public by moving towards NG911, because NG911 will provide a "more interoperable and integrated emergency response capability for PSAPs, first responders, hospitals and other emergency response professionals." Further, the National Broadband Plan notes that the Commission is "considering changes to its location accuracy requirements and the possible extension of * * * ALI * * * requirements to interconnected VoIP services," and recommends that the Commission "expand [the *Location Accuracy NPRM*] proceeding to explore how NG911 may affect location accuracy and ALI."

III. Further Notice of Proposed Rulemaking

14. As noted at the outset, today we adopted the *Location Accuracy Second Report and Order* that established an eight-year timeframe, consisting of interim benchmarks, requiring handset-based and network-based carriers to meet amended wireless location accuracy requirements at the county or PSAP-based level. The rule changes we adopted in this companion order complete one of our proceedings and will lead to significant improvements in wireless location accuracy, thereby saving lives and property and improving emergency response. At the same time, we have more work to do to update and complete the remaining inquiries initiated by the Commission in 2007 to improve wireless E911 service, particularly as wireless communications continue to proliferate as the primary or sole means for many Americans to reach 911. Accordingly, consistent with our devotion to continually improving public safety and homeland security, this *FNPRM* expands upon the *Location Accuracy NPRM,* in order to ensure that wireless E911 service meets the needs of public safety and the American people, while taking into account the evolution in the use of wireless devices and the further development of location technologies. The following discussion includes proposals for improving wireless 911 location accuracy requirements.

15. Existing and Prospective Location Technologies. We begin by seeking current information on the state of wireless location technologies, particularly since the Commission explored these issues in 2007, as well as in light of market trends resulting in increasing consumer adoption of location-based services. We seek to develop a full understanding of the capabilities and limitations of existing location technologies, as well as any new technologies that may provide improvements in location accuracy. In response to the *Location Accuracy NPRM,* a few location technology

vendors noted that improvements in location accuracy were possible with some modifications or additional investment. While the existing location accuracy requirements, particularly when complied with at the county or PSAP service area level, often provide PSAPs with good indications of the location of a 911 caller, the limitations of existing location determining technologies in use by carriers can lead to variations of up to 300 meters, or more. How can location determination be improved upon? Are there existing location technologies available today that carriers can immediately adopt? If so, what are the relative quantitative advantages versus costs of deployment? What new or prospective location technologies might be utilized to improve accuracy? What would be the feasibility of incorporating newer technologies into wireless networks? What market incentives, such as for location-based services, might drive the need for improved accuracy technologies, and thus for application to 911? Commenters, particularly location technology vendors, should provide quantitative data that provides a basis for understanding the relative performance capabilities and commercial feasibility of the available and prospective location technologies. We also seek information concerning whether certain technologies are better suited or targeted to perform best in certain environments. As noted above, the CSRIC is exploring issues related to wireless location technologies. In this regard, we look forward to receiving the recommendations of this committee. We also want to ensure that our E911 policies properly consider the interests of people living with disabilities. Should we make any changes to our rules to better accommodate persons with disabilities who use E911 wireless services? Are there technologies that can help ensure that E911 services address the interests of those living with disabilities?

16. In today's Location Accuracy *Second Report and Order,* we also adopted confidence and uncertainty requirements sought by the PSAP community, which should permit improved expectations concerning the location information delivered with wireless 911 calls. How does the availability of this information impact the need for changes or improvements to location accuracy information?

17. Potential Modifications to Accuracy Standard. We seek comment on whether we should consider changing the current location accuracy requirements of Section 20.18(h). Should we modify the current location accuracy standard for network-based and handset-based providers? Should we adopt a single location accuracy standard, rather than maintaining the network/handset distinction? Would a single standard provide more consistency for PSAPs? The Commission previously sought comment on these issues in the *Location Accuracy NPRM.* In response, APCO noted that it "agrees with the Commission's inclination to require a 'uniform accuracy standard at least as stringent as that currently in place for handset-based technologies'" and supported "the Commission's desire for even greater accuracy." Sprint Nextel argued that, "while a single standard is an admirable goal, the reality is that wireless voice service is provided over numerous, ever-increasing varieties of networks and technologies." T-Mobile stated that, "[u]nifying the CMRS accuracy requirements by requiring the network-based providers to meet handset-based standards would be grossly inequitable, ignoring the substantial benefits of network-based technologies." We now seek to expand and update the record, particularly as the CMRS marketplace has evolved over the past few years with the deployment of advanced networks and devices.

18. We also seek comment on whether carriers can employ a combination of handset-based and network-based location technologies (a hybrid solution), rather than employing one or the other, to achieve improved location accuracies. As the Texas 9–1–1 Agencies noted, "handset solutions generally work better outdoors and in rural areas, while network solutions generally work better indoors and may have issues in rural areas." TruePosition commented that "a hybrid network-GPS technology consisting of U–TDOA and A–GPS is well within the realm of technical feasibility and it would produce enhanced location accuracy." Another technology vendor, Polaris, argued that "a hybrid system is the best long-term approach to improve location accuracy and consistency." Polaris considers the ideal hybrid solution to be "the pairing of a network-based and a handset-based technology," which "leverages the strengths of two highly complementary technologies." In addition to the use of both handset-based and network-based technologies in a single solution, what other technical features provide an appropriate basis for a definition of hybrid solutions? Are hybrid solutions better defined as location determination systems that can use multiple position location technologies either individually, or in combination, to achieve better performance, accuracy, or reliability? Would hybrid technologies provide greater location accuracy than either network-based or handset-based solutions alone? How can hybrid solutions improve location performance aspects other than accuracy, such as increased percentage yield of success of location determinations? Has the existence of different accuracy requirements for handset-based and network-based systems influenced the focus and direction of research and development in location based services and 911 technology solutions? How does the implementation of 3G and 4G networks, services, and devices impact wireless E911 requirements? For example, as indicated in today's Location Accuracy *Second Report and Order,* the roll-out of 3G networks incorporates A–GPS handsets, which will improve accuracy over time as they are blended into each carrier's subscriber base. How else might 3G, and 4G, technologies lead to improved means or methods of location accuracy? Are there any specific ways that burgeoning 4G networks, or subsequent technology releases, can be implemented that would achieve location benefits? What are 4G industry standards setting bodies considering for location identification, and how might such activities impact the Commission's flexibility in determining the best solution or solutions? Are there ways to provide incentives for wireless carriers to exceed the Commission's baseline location accuracy requirements? How should the Commission implement a changed location accuracy requirement? Should the Commission continue to define a particular minimum accuracy requirement, rather than specifying a particular solution?

19. Compliance Testing. We seek to refresh the record on what methodology carriers should employ to verify compliance, both initially and during ongoing testing. In response to the *Location Accuracy NPRM,* APCO and the Texas 9–1–1 Agencies argued that OET Bulletin No. 71 should be revised to increase the number of indoor test calls to at least 30 percent. According to TruePosition, "[w]ith consumers increasingly substituting wireless devices for wireline service, approximately 40%-60% of E911 calls are now made indoors." As a result, TruePosition argues that "the Commission's rules should require carrier E911 compliance testing to include measurements in indoor environments; a carrier's indoor test results for E911 location accuracy

should be weighted in accordance with its estimated percentage of indoor E911 calls." Qualcomm, however, argued that the Commission should neither convert OET Bulletin No. 71 guidelines into requirements, nor impose a specified level of indoor testing. According to Qualcomm, "the mandate has always covered 67% and 95% of the calls to 911, period. The proportion of mobile phone calls to 911 placed from indoors varies from PSAP to PSAP, from town to town, from county to county, and from state to state. Accordingly, it would be the height of arbitrary decision making for the Commission to pick a particular level of indoor testing and to simply impose it, now, over a decade after it adopted the original mandate." We seek comment on these views.

20. If we were to require compliance testing, should we use OET Bulletin No. 71 as the basis, which provides guidelines for testing and verifying the accuracy of wireless E911 location systems to verify compliance? Should we make OET Bulletin No. 71 mandatory? Should we establish a measurement procedure in our rules for testing and verifying the accuracy of wireless E911 location systems? If so, what measurement procedure would be appropriate? For example, should our rules specify a certain level of indoor versus outdoor testing in order to reflect the proportion of indoor versus outdoor use? Should the Commission update OET Bulletin No. 71 to include measurements in indoor environments? What percentage of wireless 911 calls is made indoors? What trends reflect the growing number of indoor 911 calls? How about testing in other challenging environments, such as dense urban settings, or heavily forested or mountainous terrain? Further, what mix of equipment (*i.e.,* carrier-provided handsets, base stations, or other facilities) should be employed for accuracy testing? How many test points should we require within a PSAP service area and how should the test points be distributed? What special considerations, if any, should we establish for tests in rural areas? Should we impose other testing parameters to accurately assess a consumer's experience when using a carrier's E911 service? As an alternative, would it beneficial to enable consumers to test wireless 911 and E911 capabilities, such as by making test calls and seeing the identified location data, as well as the PSAP that would receive the call?

21. Schedule for Testing. In the *Location Accuracy NPRM,* the Commission tentatively concluded that it would establish a mandatory schedule for accuracy testing, and sought comment on the appropriate schedule for such testing. Corr Wireless disagreed with the tentative conclusion and argued that, "[t]here is no need for periodic testing of E–911 compliance. Once accuracy levels are attained, the level of accuracy typically only gets better, not worse." Is there any data to support this conclusion? We seek to refresh the record on the appropriate schedule for accuracy testing and the appropriate statistical methodology for determining compliance. Should we require testing every two years, as APCO suggested, or should we adopt a different schedule? As Phase II service is extended into new areas, at what point should carriers be required to conduct compliance testing? Should carriers be required to file compliance and maintenance testing data with the Commission, one or more national public safety organizations (such as NENA, APCO, and NASNA), local PSAPs, or some combination of these entities? Should test results be made available to the public? Should we treat this information in a confidential manner? Should carriers be required to provide consolidated performance statistics to illustrate accuracy levels for various topologies or for other reasons? Consistent with the *Location Accuracy NPRM,* we tentatively conclude that we should establish a mandatory schedule for accuracy testing.

22. Challenging Environments. We also seek to refresh the record on how location information and accuracy can be improved in more challenging environments, including indoor settings, urban canyons, buildings including high-rises, rural environments characteristic of heavy forestation, mountainous terrain, or sparsely located wireless towers. Do accuracy needs differ for indoor, outdoor, rural, and urban location determinations? Would it be appropriate to establish different threshold criteria depending on the environment? For example, whether a caller is located deep within a large building, or near a window, might have a significant impact on whether it is possible to achieve a location fix. How should trends in usage (such as increasing use of wireless inside buildings) impact accuracy requirements? What expectations do consumers hold in terms of the ability for PSAPs to locate them in various environments? Do some technologies perform better under certain challenging circumstances? What factors influence how well a particular accuracy solution performs? How best can the Commission spur innovation in location accuracy in both the short term and the future in challenging environments? What is a reasonable timeframe for carriers to significantly improve location accuracy in challenging environments? Would service providers be sufficiently motivated to achieve such improvements absent a regulatory deadline? How can technologies combine information from diverse sources, such as Wi-Fi access points or other ubiquitous sources, to improve location accuracy or other performance characteristics? If a service provider provisions Wi-Fi access points for which it knows the address, should it use this information in lieu of end user-supplied location information? We ask parties to comment on any other potential revisions to our current location accuracy requirements that could help carriers improve location accuracy in challenging environments.

23. Vertical Location Information. There has never been a requirement for service providers subject to the CMRS 911 rules to include vertical or Z-axis information with location data. Of course, a third dimension of location information could greatly enhance accuracy, and have particular benefit in buildings in terms of identifying the floor where the 911 caller is located. We seek comment on how location information can include an accurate Z-axis component. In response to the *Location Accuracy NPRM,* APCO argued that, "the increased use of wireless phones in multiple-story buildings also requires potential inclusion of elevation information if technologically feasible." ATIS stated that, "[c]urrently no industry criterion exists for elevation and * * * before such information could be included in the location standard, greater research and development must occur." The Texas 9–1–1 Agencies noted that, "realizing the conceptual potential value of elevation, we would like to see more information on how 'elevation' would specifically be proposed for use in practice at the PSAP before it would be considered further to become a requirement." What technologies incorporate the use of Z-axis components for location awareness? What levels of accuracy do these technologies support? Would an accuracy requirement for a vertical component need to be stringent enough to distinguish building floors? What is the state of industry standardization of Z-axis components in geolocation? How should evolving standards and consumer expectations guide future rules? If handsets employ a vertical sensor, such as an altimeter, how could

such information be incorporated into location data sent to a PSAP? If delivering vertical information were possible, are PSAPs capable of using such information and, if not, what would be necessary to enable receipt of vertical information? What is a reasonable timeframe for carriers to include an accurate Z-axis component with location data? Would service providers be sufficiently motivated to implement a vertical location component absent a regulatory deadline?

24. Location Accuracy While Roaming. We next seek to refresh the record with regard to location accuracy while roaming. As the Commission noted in the *Location Accuracy NPRM,* we are concerned that a wireless caller whose carrier employs one type of location technology may not be provided Phase II service at all when roaming on the network of another carrier that relies on a different technology, or when there is no roaming agreement between carriers using compatible technologies. In response to the *Location Accuracy NPRM,* APCO stated that the Commission "should require that wireless carriers develop a viable technical solution to this [roaming] problem by a specific deadline." NENA stated that, "[a]s a general matter, NENA believes the obligation to deliver 9–1–1 calls should be met for roamers as well as native subscribers, no matter what the differences in technologies." Motorola, however, argued that full, seamless E911 roaming is not achievable in near term for carriers deploying disparate technologies. Corr Wireless meanwhile argued that while different location technologies might not serve the needs of roamers, "adoption of a proposal to mandate AGPS technology * * * would effectively eliminate this issue;" however, it also noted that, "so long as there are incompatible technologies, it would plainly be irrational to expect or require carriers to provide a solution to roamers that their network is incapable of providing to their own customers." How can these issues be addressed? Should we require carriers to ensure delivery of location information to PSAPs for every call handled on their networks, including calls made by customers of another carrier ("roaming calls") that has deployed a different technology in its own network or with whom the carrier handling the call has no automatic roaming relationship?

IV. Notice of Inquiry

25. In this NOI, we launch a broader inquiry into how we can ensure that providers of VoIP services can offer improved or expanded 911 service. We begin by focusing on whether we should require providers of interconnected VoIP services to provide location information to PSAPs without the customer's active cooperation. We also explore whether the Commission's 911 and E911 rules should apply to non-interconnected VoIP service providers. We next explore how location accuracy and ALI requirements will be impacted by the deployment of NG911 systems. Finally, we will seek comment on the applicability of 911 and E911 requirements to additional wireless communications services, devices, and applications.

A. 911 and E911 Requirements for VoIP Services

26. The Commission's E911 rules presently apply to interconnected VoIP services, specifically services that (1) enable real-time, two-way voice communications; (2) require a broadband connection from the user's location; (3) require Internet protocol-compatible customer premises equipment (CPE); and (4) permit users generally to receive calls that originate on the PSTN and to terminate calls to the PSTN. In this section, we explore whether to impose additional requirements upon one subset of interconnected VoIP services—those that are portable, or "nomadic," meaning they can be used from any available broadband Internet access service connection.

27. Automatic Location Identification. The Commission's rules currently do not require providers of portable interconnected VoIP service to automatically provide location information to PSAPs without the customer's active cooperation. In the VoIP 911 NPRM, the Commission requested comment on whether there may be ways for portable interconnected VoIP service providers to automatically identify the geographic location of a customer without the customer's active cooperation. In the *Location Accuracy NPRM,* the Commission tentatively concluded that "to the extent that an interconnected VoIP service may be used in more than one location, providers must employ an automatic location technology that meets the same accuracy standards that apply to those CMRS services."

28. Several commenters generally concurred with the Commission's tentative conclusion. For example, APCO stated that "where [an] interconnected VoIP service connects to a PSAP through a wireless network, then the location information should be delivered in the same form as required of other wireless service providers." RCA noted that it "supports the position that standards for [VoIP] service should remain equivalent to those for CMRS [and it] is both reasonable and appropriate that these interconnected services be treated in the same manner as competing services." However, a number of commenters opposed the tentative conclusion. For example, TIA argued that "if the FCC decides to impose similar location accuracy standards on interconnected VoIP providers that are applicable to CMRS services, the Commission would be forced to regulate the entity providing the broadband Internet connection (*i.e.* restaurants, coffee shops, hotels, municipalities, *etc.*)." Nokia stated that interconnected VoIP services "should not be subject to the Commission's CMRS E911 location requirements without ensuring that time is taken to study location technologies that can be used when a wireless 911 call is made using VoIP, standards are developed for delivering location technology over the Internet when a wireless VoIP 911 call is made, and technologies to be utilized for location are tested and finally deployed." WCA argued that the Commission "fails to appreciate the enormous technical, operational and economic challenges wireless broadband network operators and their equipment suppliers will face if [the Commission] prematurely imposes ALI and location accuracy requirements on interconnected VoIP service without further study." A number of commenters recommended that the Commission form an advisory committee comprised of Commission staff, representatives of the VoIP industry, equipment vendors, state and local public safety officials, and consumer groups to study the technical, operational and economic issues related to the provision of ALI for interconnected VoIP services.

29. In light of the passage of time, we seek to refresh the record and revisit the tentative conclusion from the *Location Accuracy NPRM.* Specifically, what advanced technologies, if any, permit portable interconnected VoIP service providers to provide ALI? Have portable interconnected VoIP service providers implemented any practices or methods to provide ALI? If not, what can the Commission do to facilitate the development of techniques for automatically identifying the geographic location of users of this service? Should interconnected VoIP service providers incorporate an ability to automatically detect a user's Internet connectivity, identify a user's location, and prompt a user to confirm his/her location, prior to

enabling calling features? What technologies exist that could locate a VoIP user using a standard broadband Internet connection? Should we require the automatic detection of a subscriber's location prior to enabling calling features for a VoIP service, application, or device? Should the Commission clarify that CMRS operators providing interconnected VoIP services may deliver location information to a PSAP in the same manner as for CMRS, specifically, delivering longitude and latitude coordinates to the PSAP in lieu of a street address?

30. What have PSAPs experienced when VoIP users move to a different location and do not update their address? Is this scenario common? When it does occur, does the PSAP receive incorrect location information? Would requiring interconnected VoIP service providers to provide ALI minimize the reporting of erroneous location information, whether mistakenly or intentionally? What is the experience of PSAPs in receiving incorrect registered location information? How frequently do PSAPs receive fraudulent or malicious calls from users of interconnected VoIP services that appear to intentionally report false registered location information? Do industry standards and commercial trends indicate that ALI technologies exist for interconnected VoIP services that would be technically feasible and commercially viable? What privacy concerns are posed by requiring the automatic detection of VoIP users' movement on Internet networks? Should we require that all terminal adapters or other equipment used in the provision of portable interconnected VoIP service sold as of a certain date be capable of providing location information automatically, whether embedded in other equipment or sold to customers at a separate price? Under what authority could the Commission take such actions? If the Commission were to develop an automatic location identification requirement for portable interconnected VoIP service providers, should it also establish a deadline for compliance and, if so, what should that deadline be?

31. Additional VoIP Services. Thus far, the Commission's VoIP 911 rules have been limited to providers of interconnected VoIP services. Since these rules were adopted, however, there has been a significant increase in the availability and use of portable VoIP services and applications that do not meet one or more prongs of the interconnected VoIP definition. In light of the increase in use of these services, we seek comment on whether we should extend 911 and E911 obligations to providers of VoIP services that are not currently covered by the rules. For instance, what 911/E911 obligations, if any, should apply to VoIP services that are not fully interconnected to the PSTN? Specifically, should 911/E911 obligations apply to VoIP services that enable users to terminate calls to the PSTN, but do not permit users to receive calls that originate on the PSTN? Should 911/E911 obligations apply to VoIP services that enable users to receive calls from the PSTN, but do not permit the user to make calls terminating to the PSTN? Should 911/E911 obligations apply to VoIP services that enable users to receive calls from the PSTN and terminate calls to the PSTN but as separately elective services? Even though such VoIP services do not fully meet the definition of "interconnected VoIP," should such service providers assume the same public safety responsibilities? Does it continue to make sense that because a VoIP service permits, for example, only out-bound calls to the PSTN, that there should be no 911 obligations? Is there a need to modify the definition of "interconnected VoIP" or create a new definition to cover the range of VoIP services that should be subject to 911/E911 requirements? How do consumer expectations, and the needs of PSAPs and emergency responders, factor into whether we should extend 911 and E911 obligations to additional VoIP services not meeting the interconnected definition? Would adopting additional 911 and E911 requirements for VoIP services help to further ensure that people with disabilities who desire to use interconnected VoIP service can obtain access to 911/E911 services? Would it be necessary to extend to non-interconnected VoIP providers rights of access to any and all capabilities necessary to provide 911 and E911 service from entities that own or control those capabilities? Would such extension of capabilities impact requirements for mobile handsets, terminal adapters or other equipment that may be outside the control of the non-interconnected VoIP service provider? What is a reasonable timeframe for providers of VoIP services and applications that do not meet the interconnected VoIP definition to comply with the Commission's 911 rules?

32. Authority. The VoIP 911 Order rested on ancillary jurisdiction principles in adopting 911 requirements for interconnected VoIP services. Subsequently, the NET 911 Act required interconnected VoIP providers to comply with the rules the Commission adopted in 2005 "as such requirements may be modified by the Commission from time to time." Accordingly, we seek comment on the FCC's jurisdiction to extend 911 requirements to VoIP services that would not meet the "interconnected VoIP" definition. Under what authority should the Commission adopt any such rules?

B. Impact of NG911 Deployments on Location Accuracy and ALI

33. The National Broadband Plan recommends that the Commission consider how NG911 deployments may affect location accuracy and ALI requirements. We seek to examine how we may need to revise our location accuracy and ALI requirements to account for the deployment of NG911 systems. Although deployments of NG911 systems have been limited to date, we seek to build a record on the expected impact of NG911 deployments on the existing wireless location accuracy and ALI requirements. What has been the nature to date of NG911 deployments, and what currently might be in the planning or deployment stages? How will the identification and delivery of location information be incorporated by NG911 PSAPs? What technological or operational changes might service providers, applications developers, and device manufacturers implement that would complement NG911 capabilities? As the regulatory framework for wireless and VoIP E911 evolves, what specific considerations should the Commission heed as NG911 systems are deployed throughout the nation? Are there a minimum set of network, software and/or device criteria that would afford flexibility in providing location accuracy, but also meet consumers' expectations and facilitate the deployment of NG911?

C. Applicability of 911 and E911 Requirements to Additional Wireless Communications Services, Devices and Applications

34. IP-Based Voice Communications Services, Devices, and Applications. The wireless 911 and E911 requirements currently apply only to CMRS carriers meeting the criteria of Section 20.18(a). However, many new forms of IP-based voice communications are being offered to consumers via a variety of wireless services, devices and applications for use on a wide range of new devices. These IP-based communications are being carried over CMRS circuit-switched and data networks, unlicensed Wi-Fi networks, or some combination of both.

35. In its recent survey of "the current state of the [broadband] ecosystem," the National Broadband Plan found that "[d]evices continue to grow in number and variety as more computers, phones and other machines connect to the Internet. New devices have repeatedly revolutionized the personal computer (PC) market in the past three decades [and] about 80% of U.S. households have some sort of personal computer [and] although desktops initially dominated the market, 74% of all new personal computers sold today are laptops [and] over the next 5 years, growth in the netbook and tablet markets will far outpace growth in the traditional PC market." Similarly, the National Broadband Plan reported that the "mobile phone market has also seen robust innovation. There were more than 850 different certified mobile products in the United States in 2009. In that same year, approximately 172 million mobile phones were sold in the United States. Of these, 27% were Internet-capable smartphones manufactured by a wide variety of firms, including Apple, HTC, LG, Motorola, Nokia, Palm, RIM, Samsung and Sony-Ericsson." The distinguishing features of a smartphone are "an HTML browser that allows easy access to the full, open Internet; an operating system that provides a standardized interface and platform for application developers; and a larger screen size than a traditional handset." Many smartphones also have touch screens and/or a QWERTY keypad, and "run an operating system that offers a standard platform for application developers to create and sell device software through an application store." In contrast to traditional handsets with applications that include voice and messaging, smartphones have more user-friendly interfaces that facilitate access to the Internet and software applications.

36. The widespread and increasing availability and use of smartphones, mobile computing devices (*e.g.,* laptops, netbooks), and applications are leading to many new voice calling capabilities. We seek comment on what wireless devices, services and applications provide the equivalent of mobile telephony or interconnected VoIP, whether using CMRS, Wi-Fi or other combination of wireless connectivity, yet are not subject to the interconnected VoIP or CMRS 911 and E911 rules. For such voice-based services and applications, what are the expectations of consumers using such technologies in terms of being able to dial 911, and having the PSAP know where they are located? Would adopting 911 and E911 requirements for additional IP-based devices, services and applications help to further ensure that people with disabilities who desire to use such technologies can obtain access to E911 services? Which if any such devices, services and applications should be made subject to 911 and E911 requirements? What is a reasonable timeframe for providers of these services, devices, and applications to comply with the Commission's 911 rules? What would be the source of the Commission's jurisdiction to impose any such requirements?

37. If we were to apply 911 and E911 requirements to these additional broadband-enabled voice technologies, or to amend the rules that currently apply to interconnected VoIP services, what approach should we take? What technical and economic factors should we consider? For any new devices, services, and applications that would become subject to 911 and E911 requirements, would we need to extend rights of access to any and all capabilities necessary to provide 911 and E911 service from entities that own or control those capabilities? Should we distinguish the applicability of 911 and E911 requirements based on the device used, and if so, should any distinction be drawn between devices authorized for use under parts 22, 24, 27 or 90 of the Commission's rules, which generally place the responsibility for compliance on the licensee, from devices authorized under part 15, which places responsibility for compliance on manufacturers? Since a number of VoIP services and applications are offered by third party software developers, should we extend 911 and E911 requirements to such entities? We seek comment on whether the Commission has the jurisdiction to impose 911 and E911 requirements particularly upon software application developers. If we adopt new rules for these services, devices, and applications, should we impose these requirements after a date certain? How do consumer usage patterns, marketing practices, consumer expectations, and the needs of the public safety community, including PSAPs and first responders, impact whether these additional communication services should be required to provide access to emergency services? As an alternative to adopting regulatory requirements, should the Commission encourage industry solutions? Would an industry-developed "model 911 voice app" be helpful? Could mobile voice applications be programmed to recognize a 911 attempt, and automatically engage the CMRS component of the device (if available)?

38. What particular capabilities or limitations might be presented by extending the wireless 911 and E911 requirements to additional voice communications methods? Would there always be a call-back number? Would it be necessary or helpful to distinguish those services, devices, and applications that utilize the macro CMRS network, as opposed to a Wi-Fi connection? If a Wi-Fi connection is utilized, does it further make a difference if the Wi-Fi connection is in-home, as opposed to a public hotspot, such as at a coffee shop, airport, bookstore, municipal park, *etc.*? Should devices supporting voice-based applications, including those that access the macro cellular network, Wi-Fi, or both, incorporate the capability to become location aware or require subscriber self-reporting of location? Should the Commission clarify that CMRS operators providing interconnected VoIP services may deliver location information to a PSAP in the same manner as for CMRS, specifically, delivering longitude and latitude coordinates to the PSAP in lieu of a street address. Would incorporating A–GPS chips or passive CMRS wireless receivers be effective in triangulating position? What would be the costs of doing so?

39. Consumer Disclosures. Some IP-based voice services offered via an Internet connection, and/or as a smartphone application, contain various forms of disclosures indicating that such services do not provide access to emergency services. For those voice-based communications services, devices, and applications that do not support 911, what disclosures are currently being provided to the public and PSAPs about the lack of 911 capability? What do consumers expect concerning 911 and E911 for voice-calling services and applications? Are such voice-based services and applications the sole means for certain consumers to place voice calls, and thus to access 911? Should we adopt disclosure requirements for certain types of communications services, devices, and applications if they do not support 911 access? If so, what type of disclosure requirements should we adopt? Is there a basis for distinguishing certain VoIP services, such as those offered over a standard broadband Internet connection, or those that are used with mobile smartphones, or other devices such as netbooks, etc.? What would be the Commission's best source of authority for adopting such consumer disclosure requirements?

40. Emerging Network Devices. In connection with the provision of existing CMRS offerings, wireless carriers are incorporating a variety of network components that enhance coverage, capacity, and spectrum efficiency. Examples include femtocells, picocells, microcells, and distributed antenna systems. A femtocell is a miniature base station that transmits in a wireless carrier's licensed spectrum and provides improved coverage within a subscriber's home. Femtocells typically use a subscriber's home broadband connection for backhaul. A picocell offers a wider range of connectivity than a femtocell, but still has a limited range of connectivity and is often employed to provide coverage over an area such as a single floor of a building, a train station platform, or an airport terminal. A microcell offers a larger deployment footprint than a picocell, such as a residential neighborhood, an office complex, or an entire airport. A distributed antenna system is a network of spatially separated antenna sites called "nodes" connected to a common source that provides wireless service within a geographic area or structures.

41. Since carriers are deploying these network components, it may be very helpful to consider the prospect of leveraging these devices to enhance location accuracy. Therefore, we seek to understand the capabilities and limitations of imposing location accuracy requirements that utilize these types of network components. In what ways can these devices and technologies be used to improve location accuracy? For example, a femtocell could be viewed as typically installed in a semi-permanent manner at a particular home or office, that could thus be programmed with an exact address, or even have an embedded A–GPS chip. If that address could be transported with a 911 call, that would lead to significant improvement in location accuracy, akin to the location quality of wireline networks. Similarly, the location of a picocell alone could provide greater location accuracy for 911 calls handled by a picocell. Are there opportunities for these network elements to provide a means to transmit more accurate location information? If so, how can we best incorporate these capabilities into the location information transmitted with a wireless 911 call?

V. Procedural Matters

A. Ex Parte Rules—Permit-But-Disclose

42. This is a permit-but-disclose notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed pursuant to the Commission's rules.

B. Comment Period and Procedures

43. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

44. Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/*or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments. All comments shall be filed in PS Docket No. 07–114 and WC Docket No. 05–196. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov,* and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

45. Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

46. People with Disabilities: To request materials in accessible formats for people with disabilities (Braille), large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

47. The public may view the documents filed in this proceeding during regular business hours in the FCC Reference Information Center, Federal Communications Commission, 445 12th Street, SW., Room CY–A257, Washington, DC 20554, and on the Commission's Internet Home Page: *http://www.fcc.gov.* Copies of comments and reply comments are also available through the Commission's duplicating contractor: Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, 1–800–378–3160.

C. Initial Regulatory Flexibility Analysis

48. As required by the Regulatory Flexibility Act of 1980 (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in the NPRM portion of this document. We request written public comment on the IRFA analysis. Comments must be filed by the same dates as listed in the first page of this document, and must have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

Need for, and Objectives of, the Proposed Rules

49. The Further Notice of Proposed Rulemaking and Notice of Inquiry seek comments on how to ensure that wireless E911 service meets the needs of public safety and the American people, while taking into account the evolution in the use of wireless devices and the further development of location technologies. The Further Notice of Proposed Rulemaking part of this item seeks comment on the impact of technological changes in the use of wireless devices and the further

development in the capabilities of location technologies on the standards for E911 Phase II location accuracy and reliability under Section 20.18(h) of the Commission's rules. As amended by the companion Second Report and Order, Section 20.18(h) requires licensees subject to the Commission's E911 requirements to meet those standards at the county or PSAP-based level.

50. The Further Notice of Proposed Rulemaking expands upon the second part of the preceding Notice of Proposed Rulemaking that the Commission released on June 1, 2007 (Location Accuracy NPRM) and seeks to update the other inquiries and tentative conclusions that the Commission initiated and reached, respectively. Specifically, the Further Notice of Proposed Rulemaking seeks comment on a number of issues raised in the Location Accuracy NPRM, including the following tentative conclusions by the Commission.

51. The Further Notice of Proposed Rulemaking tentatively concludes that the Commission should establish a mandatory testing and compliance regime and invites comment on the format in which accuracy data should be automatically provided to PSAPs.

52. The Further Notice of Proposed Rulemaking also tentatively concludes that "to the extent that an interconnected VoIP service may be used in more than one location, providers must employ an automatic location technology that meets the same accuracy standards that apply to those CMRS services," and asks for updated comment on whether the Commission should require carriers to ensure delivery of location information to PSAPs for every call handled on their networks, including calls made by customers of another carrier ("roaming calls") that has deployed a different technology in its own network or with whom the carrier handling the call has no automatic roaming relationship. The Commission seeks comment on the foregoing tentative conclusions.

53. Additionally, the Commission seeks comment on the other issues related to E911 location accuracy on which it previously sought comment in the Location Accuracy NPRM.

Legal Basis

54. The legal basis for any action that may be taken pursuant to this Further Notice of Proposed Rulemaking and Notice of Inquiry is contained in Sections 4(i) and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 332.

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Would Apply

55. 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 proposed rules. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. 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 Small Business Administration (SBA).

56. Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data. A "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 2002, there were approximately 1.6 million small organizations. The term "small governmental jurisdiction" is defined generally as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States. We estimate that, of this total, 84,377 entities were "small governmental jurisdictions." Thus, we estimate that most governmental jurisdictions are small.

Telecommunications Service Entities

Wireless Telecommunications Service Providers

57. Pursuant to 47 CFR 20.18(a), the Commission's 911 Service requirements are only applicable to Commercial Mobile Radio Service (CMRS) "[providers], excluding mobile satellite service operators, to the extent that they: (1) Offer real-time, two way switched voice service that is interconnected with the public switched network; and (2) Utilize an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls. These requirements are applicable to entities that offer voice service to consumers by purchasing airtime or capacity at wholesale rates from CMRS licensees."

58. Below, for those services subject to auctions, we note that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

59. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of "Paging" and "Cellular and Other Wireless Telecommunications." Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. Because Census Bureau data are not yet available for the new category, we will estimate small business prevalence using the prior categories and associated data. For the category of Paging, data for 2002 show that there were 807 firms that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. For the category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year.

60. *Broadband Personal Communications Service.* The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years." These standards defining "small entity" in the context of broadband PCS auctions have been approved by the SBA. No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001,

the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as "small" or "very small" businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

61. *Narrowband Personal Communications Services.* To date, two auctions of narrowband personal communications services (PCS) licenses have been conducted. For purposes of the two auctions that have already been held, "small businesses" were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the Narrowband PCS Second Report and Order. A "small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A "very small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards. In the future, the Commission will auction 459 licenses to serve Metropolitan Trading Areas (MTAs) and 408 response channel licenses. There is also one megahertz of narrowband PCS spectrum that has been held in reserve and that the Commission has not yet decided to release for licensing. The Commission cannot predict accurately the number of licenses that will be awarded to small entities in future auctions. However, four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined. The Commission assumes, for purposes of this analysis, that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission's partitioning and disaggregation rules.

62. *Specialized Mobile Radio.* The Commission awards "small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years. The Commission awards "very small entity" bidding credits to firms that had revenues of no more than $3 million in each of the three previous calendar years. The SBA has approved these small business size standards for the 900 MHz Service. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction was completed in 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels was conducted in 1997. Ten bidders claiming that they qualified as small businesses under the $15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band. A second auction for the 800 MHz band was conducted in 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.

63. The auction of the 1,050 800 MHz SMR geographic area licenses for the General Category channels began was conducted in 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard. In an auction completed in 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded. Of the 22 winning bidders, 19 claimed "small business" status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

64. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. In addition, we do not know how many of these firms have 1500 or fewer employees. We assume, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

65. *Mobile Satellite Service Carriers.* Neither the Commission nor the U.S. Small Business Administration has developed a small business size standard specifically for mobile satellite service licensees. The appropriate size standard is therefore the SBA standard for Satellite Telecommunications, which provides that such entities are small if they have $13.5 million or less in annual revenues. Currently, the Commission's records show that there are 31 entities authorized to provide voice and data MSS in the United States. The Commission does not have sufficient information to determine which, if any, of these parties are small entities. The Commission notes that small businesses are not likely to have the financial ability to become MSS system operators because of high implementation costs, including construction of satellite space stations and rocket launch, associated with satellite systems and services.

66. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz Band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to Wireless Telecommunications Carriers (except Satellite). This category provides that a small business is a wireless company employing no more than 1,500 persons. The Commission estimates that most such licensees are small businesses under the SBA's small business standard.

67. *220 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz Third Report and Order, the Commission adopted a small business size standard for defining "small" and "very small" businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. This small business standard indicates that a "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. A "very small business" is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3

million for the preceding three years. The SBA has approved these small size standards. Auctions of Phase II licenses commenced on and closed in 1998. In the first auction, 908 licenses were auctioned in three different sized geographic areas: Three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won 373 licenses in the first 220 MHz auction. A second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses. A third auction included four licenses: 2 BEA licenses and 2 EAG licenses in the 220 MHz Service. No small or very small business won any of these licenses. In 2007, the Commission conducted a fourth auction of the 220 MHz licenses. Bidding credits were offered to small businesses. A bidder with attributed average annual gross revenues that exceeded $3 million and did not exceed $15 million for the preceding three years ("small business") received a 25 percent discount on its winning bid. A bidder with attributed average annual gross revenues that did not exceed $3 million for the preceding three years received a 35 percent discount on its winning bid ("very small business"). Auction 72, which offered 94 Phase II 220 MHz Service licenses, concluded in 2007. In this auction, five winning bidders won a total of 76 licenses. Two winning bidders identified themselves as very small businesses won 56 of the 76 licenses. One of the winning bidders that identified themselves as a small business won 5 of the 76 licenses won.

68. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services (PCS), and specialized mobile radio (SMR) telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite). Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to Trends in Telephone Service data, 434 carriers reported that they were engaged in wireless telephony. Of these, an estimated 222 have 1,500 or fewer employees and 212 have more than 1,500 employees. We have estimated that 222 of these are small under the SBA small business size standard.

69. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System ("BETRS"). In the present context, we will use the SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.,* an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

70. *Air-Ground Radiotelephone Service.* The Commission has previously used the SBA's small business definition applicable to Wireless Telecommunications Carriers (except Satellite), i.e., an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and under that definition, we estimate that almost all of them qualify as small entities under the SBA definition. For purposes of assigning Air-Ground Radiotelephone Service licenses through competitive bidding, the Commission has defined "small business" as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $40 million. A "very small business" is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $15 million. These definitions were approved by the SBA. In 2006, the Commission completed an auction of nationwide commercial Air-Ground Radiotelephone Service licenses in the 800 MHz band (Auction 65). Later in 2006, the auction closed with two winning bidders winning two Air-Ground Radiotelephone Services licenses. Neither of the winning bidders claimed small business status.

71. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico. There is presently 1 licensee in this service. We do not have information whether that licensee would qualify as small under the SBA's small business size standard for Wireless Telecommunications Carriers (except Satellite) services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.

72. The Commission has not developed a small business size standard specifically for providers of international service. The appropriate size standards under SBA rules are for the two broad census categories of "Satellite Telecommunications" and "All Other Telecommunications." Under both categories, such a business is small if it has $13.5 million or less in average annual receipts.

73. *Satellite Telecommunications and All Other Telecommunications.* These two economic census categories address the satellite industry. The first category has a small business size standard of $13.5 million or less in average annual receipts, under SBA rules. The second has a size standard of $23.5 million or less in annual receipts. The most current Census Bureau data in this context, however, are from the (last) economic census of 2002, and we will use those figures to gauge the prevalence of small businesses in these categories.

74. The category of Satellite Telecommunications "comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications." For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year. Of this total, 307 firms had annual receipts of under $10 million, and 26 firms had receipts of $10 million to $24,999,999. Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

75. The second category of Other Telecommunications "comprises establishments primarily engaged in (1) providing specialized telecommunications applications, such as satellite tracking, communications telemetry, and radar station operations; or (2) providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems." For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year. Of this total, 303 firms had annual receipts of under $10 million and 15 firms had annual receipts of $10 million to $24,999,999. Consequently, we estimate that the majority of Other Telecommunications

firms are small entities that might be affected by our action.

Equipment Manufacturers

76. *Wireless Communications Equipment Manufacturing.* 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. According to Census Bureau data for 2002, there were a total of 1,041 establishments in this category that operated for the entire year. Of this total, 1,010 had employment of under 500, and an additional 13 had employment of 500 to 999. Thus, under this size standard, the majority of firms can be considered small.

77. *Semiconductor and Related Device Manufacturing.* These establishments manufacture "computer storage devices that allow the storage and retrieval of data from a phase change, magnetic, optical, or magnetic/optical media." The SBA has developed a small business size standard for this category of manufacturing; that size standard is 500 or fewer employees. According to Census Bureau data for 1997, there were 1,082 establishments in this category that operated for the entire year. Of these, 987 had employment of under 500, and 52 establishments had employment of 500 to 999.

78. *Computer Storage Device Manufacturing.* These establishments manufacture "computer storage devices that allow the storage and retrieval of data from a phase change, magnetic, optical, or magnetic/optical media." The SBA has developed a small business size standard for this category of manufacturing; that size standard is 1,000 or fewer employees. According to Census Bureau data for 1997, there were 209 establishments in this category that operated for the entire year. Of these, 197 had employment of under 500, and eight establishments had employment of 500 to 999.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

79. The Further Notice of Proposed Rulemaking and Notice of Inquiry seeks comment broadly on certain modifications to the compliance levels set forth in rules section 20.18(h).

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

80. The RFA requires an agency to describe any significant, specifically small business 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) and exemption from coverage of the rule, or any part thereof, for small entities."

81. The Further Notice of Proposed Rulemaking and Notice of Inquiry seeks comment on various proposed changes to location accuracy standards. To assist in the analysis, commenters are requested to provide information regarding how small entities would be affected if the Commission were to adopt its proposed changes or any alternative proposals offered by other commenters.

82. With regard to accuracy testing, we tentatively concluded that we should adopt a mandatory testing regime. We seek comments both as to the parameters of this testing regime and any alternative testing regimes that may assist small business in complying with the requirements. Should we require testing every two years or would a different schedule be more appropriate? We seek comment on various alternatives for tracking compliance with the location accuracy requirements.

83. With regard to interconnected VoIP, the Commission tentatively concluded that "to the extent that an interconnected VoIP service may be used in more than one location, providers must employ an automatic location technology that meets the same accuracy standards that apply to those CMRS services." Should interconnected VoIP providers be subject to the Commission's CMRS E911 location requirements? Should the Commission consider first appointing an advisory committee to examine the technological and economic impacts of such a requirement? We seek comment on this and any other alternative proposals.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

84. None.

D. Initial Paperwork Reduction Analysis

85. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2010–27579 Filed 11–1–10; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 03–123; WC Docket No. 05–196; WC Docket No. 10–191; FCC 10–161]

Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities, E911 Requirements for IP-Enabled Service Providers, Internet-Based Telecommunications Relay Service Numbering

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) seeks comment on steps the Commission should take to improve assignment of telephone numbers associated with Internet-based Telecommunications Relay Service (iTRS), specifically, Video Relay Service (VRS) and IP Relay.

DATES: Comments on the proposed rules are due on or before December 2, 2010 and reply comments are due on or before December 17, 2010. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before January 3, 2011. If you anticipate that you will be submitting comments, but find it

difficult to do so within the period of time allowed by this summary, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit comments, identified by WC Docket No.10–191, by any of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the instructions for submitting comments.

• *Federal Communications Commission's Web site: http://fjallfoss.fcc.gov/ecfs2/*. Follow the instructions for submitting comments.

• *People with Disabilities*: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by *e-mail*: *FCC504@fcc.gov* or *phone*: (202) 418–0530 or *TTY*: (202) 418–0432.

• In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to the Federal Communications Commission via e-mail to *PRA@fcc.gov* and to Nicholas A. Fraser, Office of Management and Budget, via e-mail to *Nicholas_A._Fraser@omb.eop.gov* or via fax at 202–395–5167.

For detailed instructions for submitting comments and additional information on the rulemaking process, *see* the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Heather Hendrickson at (202) 418–7295, Wireline Competition Bureau, Competition Policy Division. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, send an e-mail to *PRA@fcc.gov* or contact Cathy Williams at 202–418–2918.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking in CG Docket No. 03–123; WC Docket No. 05–196; WC Docket No. 10–191; FCC 10–161, adopted September 16, 2010, and released September 17, 2010. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863- 2893, facsimile (202) 863–2898, or via the Internet at *http://www.bcpiweb.com.* It is also available on the Commission's Web site at *http://www.fcc.gov.*

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121, May 1, 1998.

• *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments.

○ For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov*, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

○ *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

○ The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.

○ Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

○ U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY). Contact the FCC to request reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CART, etc.) by *e-mail: fcc504@fcc.gov; phone:* (202) 418–0530 or (202) 418–0432 (TTY).

In addition, one copy of each pleading must be sent to each of the following:

○ The Commission's duplicating contractor, Best Copy and Printing, Inc, 445 12th Street, SW., Room CY–B402, Washington, DC 20554; Web site: *http://www.bcpiweb.com*; phone:1–800–378–3160; and

○ Heather Hendrickson, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, SW., Room 5–C225, Washington, DC 20554; *e-mail: Heather.Hendrickson@fcc.gov* or telephone number (202) 418–7295.

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. Copies may also be purchased from the Commission's duplicating contractor, BCPI, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI through its Web site: *www.bcpiweb.com*, by e-mail at *fcc@bcpiweb.com,* by telephone at (202) 488–5300 or (800) 378–3160 (voice), (202) 488–5562 (TTY), or by facsimile at (202) 488–5563.

Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with § 1.49 and all other applicable sections of the Commission's rules. We direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their

submission. We also strongly encourage parties to track the organization set forth in the NPRM in order to facilitate our internal review process.

Initial Paperwork Reduction Act of 1995 Analysis:

This document contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due January 3, 2011.

Comments on the proposed information collection requirements should address: (a) 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; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

OMB Control Number: 3060–1089.

Title: Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; E911 Requirements for IP–Enabled Service Providers; Internet-Based Telecommunications Relay Service Numbering, CG Docket No. 03–123, WC Docket No. 05–196, and WC Docket No. 10–191; FCC 08–151, FCC 08–275, and FCC 10–161.

Form Number(s): Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; Individuals or households; State, local or tribal government.

Number of Respondents and Responses: 15 respondents and 5,763,199 responses.

Estimated Time per Response: .25–1.5 hours (average time per response).

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for the collection is contained in Sections 1, 2, 4(i), 4(j), 225, 251, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 225, 251, 303(r).

Frequency of Response: On occasion, quarterly and one time reporting requirements, recordkeeping and third party disclosure requirements.

Total Annual Burden: 279,891 hours.

Total Annual Cost: $4,269,135.

Privacy Act Impact Assessment: No impact(s).

Nature of Extent of Confidentiality: An assurance of confidentiality is not offered because the Commission has no direct involvement in the collection of personally identifiable information (PII) from individuals and/or household.

Needs and Uses: On September 16, 2010, the Commission adopted Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; E911 Requirements for IP–Enabled Service Providers; Internet-Based Telecommunications Relay Service Numbering, CG Docket No. 03–123, WC Docket No. 05–196, and WC Docket No. 10–191, Notice of Proposed Rulemaking, FCC 10–161 (the iTRS Toll Free NPRM) seeking comment on steps the Commission should take to improve assignment of telephone numbers associated iTRS, specifically, VRS and IP Relay. The Commission proposes several requirements to both encourage use of geographically appropriate local numbers, and ensure that the deaf and hard-of-hearing community has access to toll free telephone numbers that is equivalent to access enjoyed by the hearing community. The iTRS Toll Free NPRM proposes to revise the "User Notification" information collection requirement adopted in the First and Second Numbering Orders to add additional requirements. Specifically, in addition to provisioning their registered users' routing information to the TRS Numbering Directory and maintaining such information in the database, the Commission proposes that VRS and IP relay providers must: (1) Remove from the Internet-based TRS Numbering Directory any toll free number that has not been transferred to a subscription with a toll free service provider and for which the user is the subscriber of record, and (2) ensure that the toll free number of a user that is associated with a geographically appropriate NANP number will be associated with the same Uniform Resource Identifier URI as that geographically appropriate NANP telephone number.

In addition to the information that the Commission instructed VRS and IP Relay providers to include in the consumer advisories required by the First and Second Numbering Orders, the Commission proposed that VRS and IP Relay providers include certain additional information in their consumer advisories under the iTRS Toll Free NPRM. Specifically, the consumer advisories must explain: (1) The process by which a VRS or IP Relay user may acquire a toll free number from a toll free service provider, or transfer control of a toll free number from a VRS or IP Relay provider to the user; and (2) the process by which persons holding a toll free number may have that number linked to their ten-digit telephone number in the TRS Numbering Directory. The Commission also proposes that VRS and IP Relay providers that have already assigned or provided a toll free number to a VRS or IP Relay user must, at the VRS or IP Relay user's request, facilitate the transfer of the toll free number to a toll free subscription with a toll free service provider that is under the direct control of the user.

To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called "Currently Under Review," (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared the present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities that might result from this Notice of Proposed Rulemaking (NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided above. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the NPRM and the IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objective of, the Proposed Rules

2. In the NPRM, the Commission seeks comment on steps the Commission should take to improve toll free access for Internet-based Telecommunications Relay Service (iTRS). Specifically, as a continuation of the Commission's ten-digit numbering plan for iTRS, we propose rules, and seek comment, to ensure that toll free numbers are as available, and used, by deaf and hard-of-hearing users as they are for hearing users. For example, the Commission seeks comment on ways to ensure that iTRS users in most cases use a local number as the primary telephone number. The Commission seeks comment on prohibiting iTRS providers from assigning new toll free numbers to users. The Commission also seeks comment on methods for an iTRS provider to assist an iTRS user in the process of transferring his or her assigned toll free number to a subscription with a toll free service provider. The Commission seeks comment on a proposal that a deaf or hard-of-hearing iTRS user that obtains a toll free number from, or ports a toll free number to, a toll free service provider that has mapped the number to the user's local number in the SMS/800 Database, may also have that toll free number mapped to the user's local number in the iTRS Directory. The Commission seeks comment on a one-year transition period for iTRS users to transfer toll free numbers to a direct subscription with a toll free service provider. The Commission also seeks comment on whether there is any reason not to remove any non-user selected toll free numbers from the iTRS database. The Commission seeks comment on consumer outreach efforts to educate and assist iTRS users with the changes to toll free access.

B. Legal Basis

3. The legal basis for any action that may be taken pursuant to this *Notice of Proposed Rulemaking* is contained in sections 1, 4(i), 4(j), 225, 251(e), and 255 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 225, 251(e), and 255, and §§ 0.91, 0.141, 0.291, 0.361, and 1.3 of the Commission's rules, 47 CFR 0.91, 0.141, 0.291, 0.361, 1.3.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

4. 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 adopted herein. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. 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.

5. With regard to whether a *substantial number* of small entities may be affected by the requirements proposed in this, the Commission notes that, of the fifteen providers affected by the NPRM, four meet the definition of a small entity. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which is: All such firms having 1,500 or fewer employees. The fifteen providers currently receiving compensation from the Interstate TRS Fund for providing any form of TRS are: American Network, AT&T Corp.; CSDVRS; CAC; GoAmerica; Hamilton Relay, Inc.; Hands On; Healinc; Kansas Relay Service, Inc.; Michigan Bell; Nordia Inc.; Snap Telecommunications, Inc; Sorenson; Sprint; and State of Michigan.

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

6. Should the Commission decide to adopt any of the proposed rules to improve toll free access for iTRS, such action could potentially result in increased, reduced, or otherwise modified recordkeeping, reporting, or other compliance requirements for affected iTRS providers. For instance, VRS and IP Relay providers would be required to include an advisory on their Web sites describing the process by which a VRS or IP Relay user may acquire a toll free number from a toll free service provider, or transfer control of a toll free number from a VRS or IP Relay provider to the user; and the process by which persons holding a toll free number may have that number linked to their ten-digit telephone number in the TRS Numbering Directory. We seek comment on the effect of these proposals, and commenters are encouraged to quantify the costs and benefits of any reporting, recordkeeping, or compliance requirement that may be established in this proceeding.

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

7. 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 and 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 part thereof, for small entities. As stated above, only four current providers would be affected by this NPRM.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

I. Introduction

1. In this Notice of Proposed Rulemaking (NPRM), we seek comment on steps the Commission should take to improve assignment of telephone numbers associated with Internet-based Telecommunications Relay Service (iTRS), specifically, Video Relay Service (VRS) and IP Relay. VRS allows individuals with hearing and speech disabilities to communicate using sign language through video equipment, and IP Relay allows these individuals to communicate in text using a computer. We seek to encourage use of geographically appropriate local numbers, and ensure that the deaf and hard-of-hearing community has access to toll free telephone numbers that is equivalent to access enjoyed by the hearing community.

2. In June 2008, the Commission instituted a ten-digit numbering plan for iTRS in order to make access by deaf and hard-of-hearing people functionally equivalent to access enjoyed by the hearing community, as required by statute. The Commission recognized that doing so would further the functional equivalency mandate by ensuring that Internet-based TRS users can be reached by voice telephone users in the same way that voice telephone users are called. The Commission sought to ensure that iTRS users can be reached via telephone, just as hearing users can be reached via telephone. As a result of that order, most deaf and hard-of-hearing iTRS users have obtained local telephone numbers.

Although iTRS providers are required to assign local numbers to their customers, at least some iTRS providers assign a toll free number as well, even if the customer does not request one. Thus, a large number of personal toll free numbers have been issued to iTRS users.

3. The automatic issuance and prevalence of toll free iTRS numbers presents several concerns. For example, the use of toll free numbers increases the risk of confusion and delay during an emergency call. The automatic issuance of toll free numbers also may be inconsistent with the statutory requirement to provide service that is functionally equivalent to hearing individuals, and is at odds with other Commission policies such as local number portability (LNP). Consumer groups representing deaf and hard-of-hearing users have raised similar concerns, and agreed with the Commission on the need to limit or prohibit the distribution of toll free numbers by iTRS providers. In this NPRM, we seek comment on proposed rules designed to align access to local and toll free numbers by iTRS users more closely with the way that hearing users obtain toll free numbers. We expect to establish rules that will ensure that an iTRS user's local number is used routinely as the primary telephone number that hearing users dial to reach the deaf or hard-of-hearing user via an iTRS provider and that deaf and hard-of-hearing users employ for point-to-point calling with other deaf and hard-of-hearing users.

II. Background

4. *Authority.* The Commission has authority to adopt and implement a system for assigning iTRS users local numbers linked to the NANP pursuant to sections 225 and 251(e) of the Communications Act of 1934, as amended (the Act). Section 225 requires the Commission to ensure that functionally equivalent TRS be available nationwide to the extent possible and in the most efficient manner, and directs the Commission to adopt regulations to govern the provision and compensation of TRS. Section 251 grants the Commission authority to oversee numbering administration in the United States. Establishing rules governing the use of toll free numbers by iTRS providers in connection with iTRS services is a continuation of the implementation of the Commission's numbering plan, and is essential to the Commission's goal of making the numbering system used by deaf and hard-of-hearing individuals functionally equivalent to the system used by hearing individuals.

5. *Internet-based TRS Orders.* On June 24, 2008, the Commission issued the *First Internet-based TRS Order,* (73 FR 41307, July 18, 2010) in which it adopted a uniform numbering system for iTRS. Prior to the Commission's numbering plan, there was no uniform numbering system for iTRS. Rather, iTRS users were reached at a dynamic IP address, a proxy or alias number, or a toll free number. In the case of toll free numbers, an iTRS user would provide the number to any hearing user. When a hearing user dialed the iTRS user's toll free number, the voice call was routed by the PSTN to the provider that had subscribed to the number and assigned it to a user. That toll free number was not linked to a user-specific local number but the provider would be able to translate the toll free number dialed by the hearing user to the iTRS user's IP address in the provider's database. However, prior to December 31, 2008, iTRS providers did not share databases, and therefore, the iTRS user and people calling that user were forced to use the service of the iTRS provider that gave the user the toll free number. This arrangement was in tension with the Commission's interoperability requirements, which prohibit a VRS provider that seeks compensation from the Interstate TRS Fund from restricting the use of its equipment or service so that a VRS user cannot place or receive a call through a competing VRS provider.

6. The Commission established the numbering system to advance functional equivalency by ensuring that deaf and hard-of-hearing iTRS users can be reached by hearing telephone users in the same way that hearing telephone users are reached. The numbering system was designed to ensure that emergency calls placed by iTRS users would be directly and automatically routed to the appropriate emergency services authorities. The system also provides the benefits of local number portability, to allow deaf and hard-of-hearing iTRS users to port their telephone numbers from one iTRS provider to another. The Commission's numbering plan included the creation of a central database mechanism that maps the NANP telephone numbers assigned to iTRS users' devices to an appropriate IP address known as a Uniform Resource Identifier (URI). In the *First Internet-based TRS Order's Further Notice of Proposed Rulemaking,* the Commission sought comment on issues involved in using toll free numbers for iTRS, including any impact that such numbers may have on the provision of 911 service and whether iTRS users should be subject to a fee for use of a personal toll free number, as hearing users are.

7. In the *Second Internet-based TRS Order*, FCC 08–275 (75 FR 29914, May 28, 2010) released on December 19, 2008, the Commission addressed issues included in *the First Internet-based TRS Order's Further Notice of Proposed Rulemaking*, FCC 08–151 (73 FR 41307, July 18, 2008). Among other things, the Commission provided existing users a three-month "registration period," during which iTRS users could select a default provider, provide their Registered Location, and obtain their new ten-digit NANP telephone numbers, followed by a three-month "permissive calling period," which ended on November 12, 2009. During these registration and permissive calling periods, existing iTRS users were able to place and receive calls via the method used prior to implementation of the Commission's numbering plan. At the conclusion of the permissive calling period, however, providers were required to register any unregistered user before completing a non-emergency VRS or IP Relay call.

8. The Commission also found that, to further the goals of the numbering system, "Internet-based TRS users should transition away from the exclusive use of toll free numbers" and required all iTRS users to obtain "ten-digit geographically appropriate numbers, in accordance with our numbering system." The Commission reasoned that local numbers, and not toll free numbers, should be used when contacting Public Safety Answering Points (PSAPs). Accordingly, the Commission stated that a user's toll free number must be mapped to the user's local, geographically appropriate number. Moreover, the Commission found that, just as voice telephone users are responsible for the costs of obtaining and using toll free numbers, the TRS fund should not compensate providers for the use of toll free numbers by iTRS users.

9. *Toll Free Clarification Public Notice*. In August 2009, the Consumer and Governmental Affairs Bureau and the Wireline Competition Bureau (the Bureaus) released the *Toll Free Clarification Public Notice* (24 FCC Rcd 10626, August 11, 2010) to clarify the intent of the *Second Internet-based TRS Order* that any toll free number retained or acquired by an iTRS user must be directed to the user's local number in the Service Management System (SMS)/800 database by November 12, 2009, and that a toll free number and a local number should not be directed to the

same URI in the iTRS Directory. Additionally, the Bureaus acknowledged that certain point-to-point calls, as well as inbound dial-around calls, would require the use of a local number.

10. *CSDVRS and TDI Petitions.* On September 10, 2009, CSDVRS filed a petition for expedited reconsideration of the *Toll Free Clarification Public Notice.* CSDVRS claimed, among other things, that the *Toll Free Clarification Public Notice* violated the Administrative Procedure Act, impeded VRS interoperability, and undermined functional equivalency by eliminating toll free numbers for point-to-point and dial-around calls. Subsequently, the TDI Coalition, which represents deaf and hard-of-hearing iTRS users, filed a Petition for Emergency Stay and a Request to Return to the Status Quo Ante. The TDI Coalition asked the Commission to stay certain portions of the *Toll Free Clarification Public Notice,* and direct any iTRS provider that had removed toll free numbers from the iTRS Directory to reinstate those numbers. The TDI Coalition claimed that this relief was necessary to avoid "disruption of service to the severe detriment of people who are deaf, hard-of-hearing, deaf-blind or have speech disabilities who currently use toll free numbers."

11. *Toll Free Waiver Order and Extensions.* In response to TDI's concerns that certain point-to-point calls would not be completed, on December 4, 2009, the Bureaus waived the portion of the *Toll Free Clarification Public Notice* that stated that a toll free number and a local geographic number should not be directed to the same URI in the iTRS Directory. Also, the Bureaus directed those iTRS providers that had removed working, assigned toll free numbers that did not point to the iTRS user's local number in the SMS/800 database in accordance with the *Toll Free Clarification Public Notice,* to reinstate those toll free numbers to the iTRS Directory. This four-month waiver was designed to give the Commission time to consider the CSDVRS petition for reconsideration as well as iTRS toll free issues generally. The Commission also recognized that it would take consumers and certain small businesses time to transition to geographically appropriate local numbers. On April 2, 2010, the Bureaus extended the waiver for an additional four months, until August 4, 2010, and on August 4, 2010, the Bureaus further extended the waiver until February 4, 2011.

12. *Continued Distribution of Toll Free Numbers.* Although Commission rules require iTRS providers to give each customer a local number, some providers are routinely distributing toll free numbers in addition to local numbers. These toll free numbers are being distributed at no charge to the user and are provided even if the iTRS user does not request it. This practice encourages the use of toll free numbers, which is inconsistent with the Commission's ruling that iTRS users should "transition away from the exclusive use of toll-free numbers to ten-digit, geographically appropriate numbers, in accordance with our numbering system."

13. There are several problems with the use of toll free numbers in the context of iTRS.

- *Lack of Functional Equivalency and Consumer Confusion.* The *First Internet-based TRS Order* attempted to ensure that "Internet-based TRS users can be reached by voice telephone users in the same way that voice telephone users are called." Hearing users are not typically reached via personal toll free numbers, nor are they automatically provided a personal toll free number when they sign up for service. Moreover, evidence in prior proceedings reflects that the automatic issuance of toll free numbers can cause confusion and frustration. An iTRS user may not understand the purpose of the toll free number, or understand that it is duplicative of the local number. In addition, many iTRS users do not want to receive a toll free number, even if it is provided free of charge. Finally, because iTRS customers are issued a local number, they do not need toll free numbers to achieve functional equivalency.
- *Emergency Calling.* One of the primary purposes for developing a numbering system for iTRS that is linked to the NANP was to ensure that emergency calls placed by iTRS users "will be routed directly and automatically to the appropriate emergency services authorities" by iTRS providers. The Commission reaffirmed that the local numbers will ensure automatic routing. In a typical 911 call, the call taker at the PSAP will see the user's local number displayed and will verbally confirm that number as the call-back number. If the person placing an emergency call through iTRS provides a toll free number as the call-back number (for example, out of habit), there will be a discrepancy with the local number displayed. This discrepancy could cause confusion and in turn affect critical response time.
- *Lack of Portability and Impairment of Full Competition.* When an iTRS provider secures a toll free number for one of its users, the "toll free subscriber," for porting purposes of the toll free number, is the iTRS provider and not the user. Thus, when an iTRS user leaves the service provider, the user cannot easily and reliably take the toll free number with him or her. For example, many iTRS providers that would otherwise be a competitive alternative to that service provider simply do not support provider-paid personal toll free numbers. As a result, an iTRS user that has relied heavily on a personal toll free number may be reluctant to switch providers. Further, although the Commission has found that iTRS providers are obligated to take all steps necessary to port on behalf of the user, we do not believe this is consistently achievable for toll free numbers. Moreover, as a technical matter, the Commission's iTRS Directory is not able to automatically synchronize the porting of a device's local number and toll free number from one provider to another.

Because local numbers are readily portable and toll free numbers are not, the automatic issuance of personal toll free numbers limits user choice and reduces competition, raising concerns about functional equivalency. One policy goal of the Commission's numbering plan was to create competition in the iTRS market and enhance consumer choice. For example, the Commission made clear that iTRS users could "dial around" their default provider in order to utilize the services of a different iTRS provider. Moreover, the Commission stated that an iTRS user could select and register with a new default provider at any time and have his or her number ported to that provider. To the extent that iTRS providers promote the use of toll free numbers, that practice is at odds with our interoperability requirements and competitive goals.

- *Number Conservation.* To the extent that iTRS providers automatically provide a personal toll free number at the same time they provide the requisite local number, the toll free number is duplicative. The Commission has articulated a policy of promoting number conservation. Issuing toll free numbers that do not serve a unique purpose, and indeed, that the customer does not request, undermines that policy. While iTRS users are free to obtain a toll free number in the same manner as hearing users do, we seek to discontinue the automatic and unnecessary dissemination of toll free numbers.
- *Costs to the Fund. In the Second Internet-based TRS Order,* the Commission concluded that costs associated with iTRS users' toll free numbers are not compensable from the

TRS Fund. We remain concerned, however, that costs associated with obtaining and distributing toll free numbers may be directly or indirectly compensated. We are also concerned that extensive use of toll free numbers may increase per-minute costs to the Fund. Although staff analysis cannot determine whether "unlimited free calling" encourages more calls to be placed from hearing people to iTRS users, analysis does indicate that "unlimited free calling" encourages such calls to be held longer than otherwise would be the case; the extra minutes of traffic that toll free numbers generate in this fashion are compensable from the Fund.

III. Discussion

14. In this NPRM, we seek comment on proposed rules intended to improve access to telephone numbers associated with iTRS and to ensure that such numbers are assigned in the same manner as numbers are assigned to hearing telephone users. While iTRS users are of course free to obtain toll free numbers, our goal is to encourage iTRS users to use the local number as their primary—and in most cases exclusive—telephone number, as this is the case for hearing users. Similarly, the local number should be the number that the user gives out for contact information, applications and resumes, and online purchases, and that is presented, for example, for Caller ID purposes. We are not seeking to prevent deaf or hard-of-hearing individuals who want the use of a toll free number from obtaining one. Instead, we are seeking to ensure that toll free numbers do not serve as default personal numbers simply because a customer is deaf or hard-of-hearing. Deaf and hard-of-hearing users who wish to use a toll free number for business or personal use may acquire a toll free number, or keep a toll free number that an iTRS provider has already assigned, in a manner consistent with how toll free numbers are used by hearing individuals.

15. Pursuant to our authority under sections 225 and 251 of the Act, we propose rules to address the problems identified above that are caused by the promotion and disproportionately high use of toll free numbers in connection with iTRS services. Moreover, we seek comment on ways to ensure that those iTRS users who have a need for toll free numbers for business purposes or who wish to obtain a toll free number for personal use are able to use toll free numbers in the same manner as hearing users. Our specific requests for comment are set forth below.

16. *User-Selected Toll Free Use.* We propose that the first step in reforming the use of toll free numbers for iTRS be to prohibit iTRS providers, acting in the capacity of a user's default number provider, from also automatically assigning a new toll free number to the user. The Commission's previous efforts have not led to a significant reduction in the assignment of toll free numbers by iTRS providers. We therefore believe that immediately prohibiting iTRS providers from automatically issuing toll free numbers is the best way to achieve the goal of encouraging the use of local numbers. Furthermore, the consumer groups representing iTRS users support this approach. Indeed, consumer groups have expressed a desire to work with the Commission to promote use of local numbers as the primary contact for deaf and hard-of-hearing persons. We seek comment on this approach.

17. *Continuing Use of and Access to Toll Free Numbers.* We emphasize that our proposed rules do not preclude iTRS users from having toll free numbers if they want them. On the contrary, we believe that iTRS users should have the same access to toll free numbers that hearing users do. A hearing user who wants a toll free number for personal or business use contacts a toll free service provider to obtain a toll free number; we believe that deaf and hard-of-hearing users should do the same. Moreover, we recognize that it would be disadvantageous to iTRS users who want to continue to use a toll free number to have to obtain a new number and inform people of that new number. Accordingly, we propose that any iTRS user who wants to keep a toll free number that was issued by an iTRS provider may do so. At the user's request, the iTRS provider must facilitate the transfer of the user's toll free number to a direct subscription with a toll free service provider, making the iTRS user the toll free subscriber for that number. At that point, the iTRS user will be a customer of the toll free service provider: The toll free service provider will bill the iTRS user directly, and the iTRS provider that originally provided the toll free number will have no continuing role in administering the toll free number on the user's behalf.

18. *No Support for Toll Free Numbers from TRS Fund.* The Commission has concluded that the costs associated with assigning and providing to iTRS users toll free numbers are not compensable from the TRS Fund. Thus, if an iTRS user transfers his or her toll free number from an iTRS provider to a toll free service provider (or obtains a toll free number directly from a toll free service provider), the user assumes responsibility for all costs associated with the toll free number.

19. *Transfer of Toll Free Numbers.* We seek comment on ways that iTRS providers can help transfer a toll free number assigned by the iTRS provider to the user's direct subscription with a toll free service provider. We seek comment on any jurisdictional or policy issues the Commission should consider in regard to this change in toll free subscription. Consistent with our *Toll Free Clarification Public Notice,* toll free numbers that are used in conjunction with the iTRS Numbering Directory will be mapped to the user's local number. We seek comment on any technical or policy issues involved with this proposal or mapping the toll free number to the user's local number in the SMS/800 database.

20. We also seek comment on how iTRS providers should assist an iTRS user in the process of transferring his or her toll free number to a toll free service provider. We propose that, at a minimum, iTRS providers modify the user notifications they currently provide to include information on how users can acquire or transfer a toll free number and how toll free numbers may be linked to ten-digit telephone numbers in the iTRS Directory. We also seek comment on whether there are any additional steps the Commission should take to protect users or ensure they get unbiased and full information? We want to make the transition to a new toll free number process as easy as possible for iTRS users. Commenters should therefore address what information would be most helpful to users, and what steps the Commission can take to minimize customer confusion.

21. *Toll Free Numbers in the iTRS Directory.* When a hearing customer obtains a toll free number from a toll free provider, that number is mapped to the user's local number in the SMS/800 database. We believe that when a deaf or hard-of-hearing person obtains a toll free number from a toll free provider, the number should also be mapped to the user's local number in the iTRS Directory. This will permit a deaf or hard-of-hearing user to be reached at a toll free number both by other deaf and hard-of-hearing users on direct calls that are completely Internet-based, and by hearing users who "dial around" the user's default provider.

22. Parties have identified routing problems that occur when toll free numbers are not linked to the associated local numbers in the iTRS Directory. We also recognize that these routing problems can create a "walled garden"

for the dominant iTRS provider. Therefore, we believe that mapping the toll free number to the local number in the iTRS directory is an important aspect of functional equivalency because it allows deaf and hard-of-hearing users to receive calls through any iTRS provider, and propose that such mapping to the iTRS directory be mandatory. We seek comment on that proposal.

23. *Transition Period.* We recognize that it would take time for iTRS users to become aware of and conform to the toll free number procedures that may result from this NPRM. We agree with the TDI Coalition that we need to allow a reasonable period of time for consumer outreach and education to transition consumers from toll free numbers to local numbers. We believe that a one-year transition period would be sufficient. During this time, the Commission, iTRS providers, and consumer groups can engage in outreach efforts to educate users on the problems of toll free numbers in the iTRS context, the benefits of using geographically appropriate numbers in this context, and the steps for obtaining toll free numbers directly from a toll free service provider. Moreover, iTRS users can update contact information, obtain a toll free number from a toll free provider, if desired, and make any other necessary adjustments. We also expect to use the transition period to educate users on the new procedures for obtaining a toll free number. We seek comment on our proposal to allow a one-year transition period. We also seek comment on whether there are any other issues we must consider in connection with the proposed transition period.

24. *Removing Non-Selected Toll Free Numbers from the iTRS Directory.* We believe that an important outcome of this proceeding should be to cleanse the iTRS Directory of extra or unwanted toll free numbers. Accordingly, we propose that after the transition period, any toll free numbers that have not been mapped to local numbers in the SMS/800 database by a toll free service provider be removed from the iTRS Directory. We seek comment on whether there is any reason not to remove these numbers from the iTRS Directory. Moreover, we seek comment on whether there should be a process where, during the transition period, iTRS users who know they do not want their toll free number(s) can request that those numbers be deleted from the iTRS Directory. Such a procedure may help clean up the iTRS Directory on an ongoing basis as opposed to being done all at once at the end of the transition period. We seek comment on whether this proposal may cause any service disruption to users and, if so, steps we can take to minimize such disruption. We also seek comment on whether there are any technical or policy considerations regarding, for example, toll free number administration, that must be addressed.

25. *Consumer Outreach.* We believe that the success of the Commission's numbering plan was in major part due to the outreach efforts by consumer groups, as well as by iTRS providers and the Commission. We believe this will be the case for our efforts to revise the Commission's policies and procedures regarding toll free number use in connection with iTRS service as well. Consumer groups representing deaf and hard-of-hearing iTRS users have stated that iTRS providers have given inconsistent information regarding the use of and need for toll free numbers. We recognize that deaf and hard-of-hearing individuals may be used to the current process for obtaining toll free numbers and that any change will require substantial education and outreach. We also recognize that iTRS providers will need to play a major role in consumer education because of their relationships with the users and their history as providers of toll free numbers. Consumer advocacy groups as well as the Commission will also play a significant role in consumer outreach and education efforts. The Commission is committed as well to playing a significant role in conducting consumer outreach and education on this issue. We seek input on ways to make information about the availability and use of toll free numbers available to iTRS users, such as fact sheets and Web sites. We encourage consumers to assist in outreach efforts through their community contacts, and welcome other ideas about what the Commission might do to help facilitate consumer outreach efforts.

IV. Procedural Matters

1. Ex Parte Presentations

26. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other requirements pertaining to oral and written presentations are set forth in § 1.1206(b) of the Commission's rules.

2. Comment Filing Procedures

27. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments and reply comments regarding the further notice on or before the dates indicated on the first page of this document. All filings should refer to WC Docket No. 10–191. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS); (2) the Federal Government's e-Rulemaking Portal; or (3) by filing paper copies.

28. Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs/* or the Federal e-Rulemaking Portal: *http://www.regulations.gov*.

29. Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

30. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

31. Effective December 28, 2009, all hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington DC 20554.

32. *People with Disabilities:* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

33. Parties should send a copy of their filings to Heather Hendrickson, Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission, Room

5–C225, 445 12th Street, SW., Washington, DC 20554, or by e-mail to *heather.hendrickson@fcc.gov*. Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 488–5300, or via e-mail to *fcc@bcpiweb.com*.

34. Documents in WC Docket No. 10–191 will be available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The documents may also be purchased from BCPI, telephone (202) 488–5300, facsimile (202) 488–5563, TTY (202) 488–5562, e-mail *fcc@bcpiweb.com*.

V. Ordering Clauses

35. Accordingly, *it is ordered,* pursuant to the authority contained in sections 1, 4(i), 4(j), 225, 251(e), and 255 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 225, 251(e), and 255, and §§ 0.91, 0.141, 0.291, 0.361, and 1.3 of the Commission's rules, 47 CFR 0.91, 0.141, 0.291, 0.361, 1.3, that this Notice of Proposed Rulemaking *is adopted*.

36. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this NPRM, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Telecommunications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

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

Authority: 47 U.S.C. 154, 254(k); secs. 403 (b)(2)(B), Pub. L. 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 228, and 254(k) unless otherwise noted.

2. Section 64.611 is amended by redesignating paragraphs (e) and (f) as paragraphs (f) and (g), by adding a new paragraph (e) and by adding paragraph (g)(1)(v) and (g)(1)(vi) to read as follows:

§ 64.611 Internet-based TRS registration.

* * * * *

(e) *Toll free numbers.* A VRS or IP Relay provider:

(1) May not assign or issue a toll free number to any VRS or IP Relay user.

(2) That has already assigned or provided a toll free number to a VRS or IP Relay user must, at the VRS or IP Relay user's request, facilitate the transfer of the toll free number to a toll free subscription with a toll free service provider that is under the direct control of the user.

(3) Must remove from the Internet-based TRS Numbering Directory any toll free number that has not been transferred to a subscription with a toll free service provider and for which the user is the subscriber of record as of [end date of transition period].

* * * * *

(g) * * *

(1) * * *

(v) The process by which a VRS or IP Relay user may acquire a toll free number from a toll free service provider, or transfer control of a toll free number from a VRS or IP Relay provider to the user; and

(vi) The process by which persons holding a toll free number may have that number linked to their ten-digit telephone number in the TRS Numbering Directory.

* * * * *

3. Section 64.613 is amended by redesignating paragraph (a)(3) as (a)(4), by revising paragraphs (a)(1) and (a)(2), and by adding a new paragraph (a)(3) to read as follows:

§ 64.613 Numbering directory for Internet-based TRS users.

(a) * * *

(1) The TRS Numbering Directory shall contain records mapping the geographically appropriate NANP telephone number of each Registered Internet-based TRS User to a unique Uniform Resource Identifier (URI).

(2) For each record associated with a VRS user's geographically appropriate NANP telephone number, the URI shall contain the IP address of the user's device. For each record associated with an IP Relay user's geographically appropriate NANP telephone number, the URI shall contain the user's user name and domain name that can be subsequently resolved to reach the user.

(3) As of [date reserved], Internet-based TRS providers must ensure that the toll free number of a user that is associated with a geographically appropriate NANP number will be associated with the same URI as that geographically appropriate NANP telephone number.

* * * * *

[FR Doc. 2010–27578 Filed 11–1–10; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2010–0055; MO–92210–0–0008–B2]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the Bay Springs Salamander as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce a 90-day finding on a petition to list the Bay Springs salamander (*Plethodon ainsworthi*) as endangered under the Endangered Species Act of 1973, as amended. Based on our review, we find the petition does not present substantial information indicating that listing may be warranted at this time. Therefore, we are not initiating a status review in response to this petition. However, we ask the public to submit to us any new information that becomes available concerning the status of, or threats to, the Bay Springs salamander or its habitat at any time.

DATES: The finding announced in this document was made on November 2, 2010.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov* at Docket Number FWS–R4–ES–2010–0055. Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, MS Field Office, 6578 Dogwood View Parkway, Jackson, Mississippi 39213. Please submit any new information, materials, comments, or questions concerning this finding to the above street address.

FOR FURTHER INFORMATION CONTACT: Stephen Ricks, Field Supervisor, Mississippi Field Office (*see* **ADDRESSES**), by telephone (601–321–1122), or by facsimile (601–965–4340). If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*) requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating the petitioned action may be warranted. We base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise readily available in our files. The Act requires, to the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition, and publish our notice of the finding promptly in the **Federal Register.**

Our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted" (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, the Act requires that we promptly review the status of the species (status review), which is subsequently summarized in our 12-month finding.

Petition History

On February 6, 2006, we received a petition, dated February 2, 2006, from Mr. Jeremy Nichols, Denver, Colorado, requesting that the Bay Springs salamander (*Plethodon ainsworthi*) be listed as endangered under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, as required at 50 CFR 424.14(a). In a March 3, 2006, letter to petitioner, we stated that we did not have sufficient funds to respond to the petition at that time due to a significant number of court orders and judicially approved settlement agreements for other listing-related actions, which had consumed nearly all of our listing and critical habitat funding for fiscal year 2006. On May 1, 2007, we notified Mr. Nichols, by letter, that funding had become available to complete this 90-day finding. This finding addresses the petition.

Species Information

The Bay Springs salamander (*Plethodon ainsworthi*) was described as a species by Lazell (1998) from two badly preserved specimens believed to be collected in a single springhead in 1964 near the town of Bay Springs in Jasper County, Mississippi (Lazell 1998, p. 967; MNHP 1999, p. 3). The Bay Springs salamander was differentiated from other members of the *Plethodon* genus, or woodland salamanders, in its very slender body shape, low costal (side) groove count, and small legs. Because the features of the more derived groups within the genus are present, Lazell (2005, p. 787) speculated that the Bay Springs salamander is distinct and may be close to the ancestral stock of the genus. Based on these unique features, Lazell (1998) recommended the Bay Springs salamander be recognized as a distinct species, *Plethodon ainsworthi.*

The petition did not provide any definitive information on life history, distribution or habitat of this species, and such information does not exist in Service files. The original type locality of the only two specimens collected for this species is described as a 2-hectare (4.9-acre) mixed mesic woodland area (Lazell 1998, pp. 969–970). Lazell noted after a 1991 visit that this site and nearby Six Springs were both intact and in good ecological condition, although much of the surrounding area had been severely altered (Lazell 2005, pp. 787–788). However, this type locality, listed only as "2 Mi S. of Bay Springs" with the notes "In springhead litter. Clear hot day 11 a.m." (Lazell 1998, p. 967), has been questioned. Lazell (1998, pp. 967, 969; 2005, p. 787) refers to the collection location as "presumed." Mississippi Natural Heritage Program (MNHP 1999, p. 2) described the site after a 1997 survey as "springhead on Ainsworth property matches distance from Bay Springs given on collection label, but it is not certain that Ainsworth property is indeed the collection site." Additionally, the petition stated, "it is unclear whether this habitat represents the species' true habitat, or the habitat that existed when the salamander was last collected in 1964, or an altered habitat."

Despite the question of the original collection site, numerous surveys using visual searching and coverboard techniques were conducted at the presumed type locality and at three other possible sites, including Six Springs, by multiple researchers beginning in 1991 (Lazell 1998, p. 970; 2005, p. 787; MNHP 1999). These searches revealed several salamander species, including others in the genus *Plethodon,* and although a night hunt in 1995 produced a glimpse of a possible Bay Springs salamander, subsequent searches in 1995 and 1997 produced no further evidence of the species (Lazell 2005, p. 787).

Therefore, despite numerous searches of the presumed type locality, no extant populations of the Bay Springs salamander have been located (Lazell 1998, p. 967, p. 970; 2005, p. 787). In addition to the failure to find the species during multiple search efforts, other information provided in the petition and in Service files indicates the species is extinct. The petition states several times that the species is "on the brink of extinction" or "already extinct" (pp. 2, 4, 5). Furthermore, the species is considered Historical by the Mississippi Natural Heritage Program (MNHP 1999), listed as extinct by the International Union for Conservation of Nature (IUCN 2004), and is assigned the global rank GH (possibly extinct) by NatureServe (NatureServe 2002). Based on this information, we conclude the species is extinct.

The petition presented information for three of the five listing factors (Factors A, D, and E) in section 4 of the Act in an effort to identify threats that may be leading or have lead to the decline of the Bay Springs salamander. However, these factors are pertinent only in cases where the organism being proposed for listing is present and thus capable of being affected by any threats. Because the information in our files indicates that the Bay Springs salamander is extinct, it does not meet the definition of endangered species or a threatened species under the Act (sections 3(6) and 3(20) of the Act, respectively). Therefore, an analysis of the five threat factors is not appropriate.

Finding

In summary, we reviewed the information presented in the petition and evaluated that information in relation to information readily available in our files. On the basis of our evaluation of this information under section 4(b)(3)(A) of the Act, we conclude that the petition does not present substantial scientific or commercial information indicating that listing the Bay Springs salamander under the Act as endangered may be warranted at this time. This finding is based on information that indicates the species is extinct and, therefore, does not meet the definition of either an endangered species or a threatened species under the Act.

Although we will not review the status of the species at this time, we encourage interested parties to continue to submit to us any new information regarding the Bay Springs salamander. If you wish to provide information regarding the Bay Springs salamander, you may submit your information or materials to the Field Supervisor, Mississippi Field Office (*see* **ADDRESSES**), at any time.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Mississippi Field Office (*see* **ADDRESSES**).

Authors

The primary authors of this notice are the staff members of the Mississippi Field Office (*see* **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: October 15, 2010.

Gary D. Frazer,

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

[FR Doc. 2010–27514 Filed 11–1–10; 8:45 am]

BILLING CODE P

Notices

Federal Register

Vol. 75, No. 211

Tuesday, November 2, 2010

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

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended), the Rural Utilities Service (RUS) an agency delivering the U.S. Department of Agriculture (USDA) Rural Development Utilities Programs invites comments on this information collection for which approval from the Office of Management and Budget (OMB) will be requested.

DATES: Comments on this notice must be received by January 3, 2011.

FOR FURTHER INFORMATION CONTACT: Thomas P. Dickson, Deputy Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 5159 South Building, Washington, DC 20250–1522. FAX: (202) 720–8435. Telephone: (202) 690–4492. Fax: (202) 720–8435. E-mail: *thomas.dickson@wdc.usda.gov*.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for extension.

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 collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Michele L. Brooks, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. FAX: (202) 720–8435.

Title: Electric Loan Application and Related Reporting Burdens.

OMB Number: 0572–0032.

Type of Request: Revision of a currently approved information collection.

Abstract: The Rural Electrification Act of 1936 (7 U.S.C. 901 *et seq.*), as amended (RE Act) authorizes and empowers the Administrator of RUS to make and guarantee loans to furnish and improve electric service in rural areas. These loans are amortized over a period of up to 35 years and secured by the borrower's electric assets. The information collection covered by OMB Control Number 0572–0032 consists of written materials, reports, forms, and certifications to support an application for a Distribution loan from RUS. In addition, the collection covers an annual submission by Distribution borrowers and Generation and Transmission Borrowers (G&Ts) of operation report data. Entities applying for a loan follow the procedures outlined in 7 CFR 1710, subpart I, to determine the required documentation for a loan application.

At this time, RUS is revising the information collection to require additional data to be submitted by Distribution and G&T borrowers related to Renewable Energy and Energy Efficiency.

Data Pertaining to Renewable Energy Generation

The current standard form of loan contract has annual reporting requirements and these reporting requirements capture all generation investment as a generic matter today. The revised data collection related to the RUS Form 12 will break out renewable investments as a separate line item. Accordingly, the total burden hours total associated with reporting these data elements is not materially different from before but we will now see investment and project size data itemized by type of renewable fuel.

Data Pertaining to Energy Efficiency

The Agency is implementing an effort to make loans to our utility borrowers who will in turn make retail loans to their electric consumers to finance energy efficiency improvements on the consumer premises. The utilities will design their own energy efficiency programs depending on the needs and profile of their service territory. The revised data collection related to the RUS Form 7 will capture the type of energy efficiency program, the number of customers involved, the amount invested and estimated Million British Thermal Unit savings.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 15.51 hours per response.

Respondents: Businesses or other for profits; not-for-profit institutions.

Estimated Number of Respondents: 650.

Estimated Number of Responses per Respondent: 6.60.

Estimated Total Annual Burden on Respondents: 66,548.

Copies of this information collection, and related form and instructions, can be obtained from Thomas P. Dickson, Program Development and Regulatory Analysis, at (202) 690–4492. FAX: (202) 720–8435. E-mail: *thomas.dickson@wdc.usda.gov.*

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: October 27, 2010.

Jonathan Adelstein,

Administrator, Rural Utilities Service.

[FR Doc. 2010–27565 Filed 11–1–10; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Agricultural Policy Advisory Committee for Trade and the Agricultural Technical Advisory Committees for Trade; Reestablishment and Nominations

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice and request for nominations.

SUMMARY: Pursuant to the Federal Advisory Committee Act, notice is hereby given that the Secretary of Agriculture (Secretary), in coordination with the United States Trade Representative (USTR), intends to reestablish the Agricultural Policy Advisory Committee (APAC) for Trade and the six Agricultural Technical Advisory Committees (ATAC) for Trade. The Foreign Agricultural Service (FAS) is requesting nominations for persons to serve on these seven committees for a term of 4 years.

DATES: Written nominations must be received by FAS by 5 p.m. on December 17, 2010.

ADDRESSES: Nominations must be hand-delivered (including FedEx, DHL, UPS, *etc.*) to the Office of Negotiations and Agreements, Foreign Agricultural Service, USDA, Room 5603–S, 1400 Independence Avenue, SW., Mail Stop 1048, Washington, DC 20250–1001.

FOR FURTHER INFORMATION CONTACT: Inquiries or comments regarding the reestablishment of these committees may be sent by electronic mail to: *Lorie.Fitzsimmons@fas.usda.gov* and *Steffon.Brown@fas.usda.gov,* or by fax to (202) 720–0340. The Office of Negotiations and Agreements may be reached by telephone at (202) 720–6219, with inquiries directed to Lorie Fitzsimmons or Steffon Brown.

SUPPLEMENTARY INFORMATION:

Introduction

The APAC and the ATACs are authorized by sections 135(c)(1) and (2) of the Trade Act of 1974, as amended (Pub. L. 93–618, 19 U.S.C. 2155). The purpose of these committees is to advise the Secretary and USTR concerning agricultural trade policy. The committees are intended to ensure that representative elements of the private sector have an opportunity to express their views to the U.S. government.

Rechartering of Existing Committees

Pursuant to the Federal Advisory Committee Act (5 U.S.C. App. II), FAS gives notice that the Secretary and USTR intend to reestablish the APAC and the following six ATACs:

- Animals and Animal Products;
- Fruits and Vegetables;
- Grains, Feed, Oilseeds and Planting Seeds;
- Processed Foods;
- Sweeteners and Sweetener Products; and,
- Tobacco, Cotton and Peanuts.

In 1974, Congress established a private sector advisory committee system to ensure that U.S. trade policy and negotiation objectives adequately reflect U.S. commercial and economic interests. The private sector advisory committee system currently consists of three tiers:

- The President's Advisory Committee on Trade and Policy Negotiations;
- Five general policy advisory committees, including the APAC; and,
- Twenty-two technical advisory committees, including the ATACs.

The establishment and renewal of such committees is in the public interest in connection with the duties of the USDA imposed by the Trade Act of 1974, as amended.

Committee Membership Information

- All committee members are appointed by the Secretary and USTR, and serve at the discretion of the Secretary and the USTR.
- Committee size will be limited up to approximately 35 members each.
- All committee appointments will expire in 4 years, but the Secretary and USTR may renew an appointment for one or more additional terms.
- All committee members must be U.S. citizens and must represent a U.S. entity with an interest in agricultural trade, and must not be registered with the Department of Justice under the Foreign Agents Registration Act.
- Committee members must not be federally-registered lobbyists.
- To attend certain meetings, committee members must have a current security clearance or have submitted an application for a security clearance.
- Committee members serve without compensation; they are not reimbursed for their travel expenses.
- No person may serve on more than one USDA advisory committee at the same time.

General Committee Information

- Each committee has a chairperson, who is elected from the membership of that committee.
- Committees meet as needed, and all committee meetings are held in Washington, DC.
- Committee meetings may be closed if USTR determines that a committee will be discussing issues that justify closing a meeting or portions of a meeting, in accordance with 19 U.S.C. 2155(f).
- Throughout the year, members are requested to review sensitive trade policy information via a secure Web site, and provide comments regarding trade negotiations.
- In addition to their other advisory responsibilities, at the conclusion of negotiations of any trade agreement, all committees are required to provide a report on each agreement to the President, Congress, and USTR.

Agricultural Policy Advisory Committee for Trade

The APAC is composed of a broad spectrum of agricultural interests. The APAC provides advice concerning the following:

- Negotiating objectives and bargaining positions before the United States enters into a trade agreement;
- The operation of various U.S. trade agreements; and
- Other matters arising from the administration of U.S. trade policy.

Agricultural Technical Advisory Committees for Trade

The ATACs provide advice and information regarding trade issues that affect both domestic and foreign production in the commodities of the respective sector, drawing upon the technical competence and experience of the members. There will be six ATACs, one for each of the following sectors:

- Animals and Animal Products;
- Fruits and Vegetables;
- Grains, Feed, Oilseeds and Planting Seeds;
- Processed Foods;
- Sweeteners and Sweetener Products; and
- Tobacco, Cotton and Peanuts.

Nominations and Appointment of Members

Nominations for APAC and ATAC membership are open to individuals representing U.S. entities with an interest in agricultural trade without regard to race, color, religion, sex, national origin, age, mental or physical handicap, marital status, or sexual orientation. To ensure that the recommendations of the committees take into account the needs of the diverse groups served by USDA, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Members must represent a U.S. entity with an interest in agricultural trade and

should have expertise and knowledge of agricultural trade as it relates to policy and commodity specific products. No person, company, producer, farm organization, trade association, or other entity has a right to membership on a committee. In making appointments, every effort will be made to maintain balanced representation on the committees: Representation from producers, farm and commodity organizations, processors, traders, and consumers. Geographical balance on each committee will also be sought.

Nominations: Nominating a person to serve on any of the committees requires submission of a current résumé for the nominee and the following form: AD–755 (Advisory Committee Membership Background Information), available on the Internet at: *http://www.fas.usda.gov/admin/ad755.pdf.* In addition, FAS encourages the submission of the optional form AD–1086 (Applicant for Advisory Committees Supplemental Sheet), available on the Internet at: *http://www.fas.usda.gov/admin/ad1086.pdf.* Forms may also be requested by sending an e-mail to *Steffon.Brown@fas.usda.gov,* or by phone at (202) 720–6219.

Federally Registered Lobbyists: In order to be considered for advisory committee membership, nominees should submit an affirmative statement that the applicant is not a federally registered lobbyist, and that the applicant understands that if appointed, the applicant will not be allowed to continue to serve as an advisory committee member if the applicant becomes a federally registered lobbyist.

Foreign Firms: Persons who are employed by firms that are 50 percent plus one share foreign-owned must state the extent to which the organization or interest to be represented by the nominee is owned by non-U.S. citizens, organizations, or interests. If the nominee is to represent an entity or corporation with ten percent or greater non-U.S. ownership, the nominee must demonstrate at the time of nomination that this ownership interest does not constitute control and will not adversely affect his or her ability to serve as an advisor on the U.S. agriculture advisory committee for trade.

Dated: October 26, 2010.

John D. Brewer,

Administrator, Foreign Agricultural Service.

[FR Doc. 2010–27630 Filed 11–1–10; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Topographic and Bathymetric Data Inventory Survey.

OMB Control Number: None.

Form Number(s): NA.

Type of Request: Regular submission (new information collection).

Number of Respondents: 283.

Average Hours per Response: Preliminary telephone interview, 5 minutes; data form, 15 minutes.

Burden Hours: 59.

Needs and Uses: In compliance with Executive Order 12862, Setting Customer Service Standards, this survey will be used by the NOAA Coastal Services Center to obtain information from our customers on the location of topographic and bathymetric data that are publicly available. The information about the data will be used to construct a Topographic and Bathymetric Data Inventory, an index of the best-available elevation data sets by region. Twenty-one pieces of information about each dataset will be collected to give an accurate picture of data quality and give users of the Topographic and Bathymetric Data Inventory access to each dataset. The end goal of this collection is to provide a comprehensive, publicly available, topographic and bathymetric data web resource.

Affected Public: State, local and tribal government.

Frequency: Once.

Respondent's Obligation: Voluntary.

OMB Desk Officer: *OIRA_Submission@omb.eop.gov.*

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: October 28, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–27622 Filed 11–1–10; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–831]

Stainless Steel Plate in Coils from South Korea: Correction to Final Results of the Expedited Sunset Review of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* November 2, 2010.

FOR FURTHER INFORMATION CONTACT: Hector Rodriguez or Elizabeth Eastwood, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0629 and (202) 482–3874, respectively.

SUPPLEMENTARY INFORMATION:

Correction

On October 7, 2010, the Department of Commerce (the Department) published in the **Federal Register** the following notice: *Certain Stainless Steel Sheet and Strip in Coils From Germany, Japan, the Republic of Korea, and Taiwan: Final Results of the Expedited Second Sunset Reviews of the Antidumping Duty Orders,* 75 FR 62014 (Oct. 7, 2010) (*Final Sunset Notice*). After the publication of this notice in the **Federal Register,** we identified an inadvertent error in the *Final Sunset Notice.* The Department made an error in the "Final Results of Reviews" section of the notice by inadvertently including an incorrect weighted-average margin for the South Korean respondent Pohang Iron & Steel Co., Ltd. (POSCO), as well as the "all others" rate for South Korea. Specifically, the weighted-average margin for POSCO and the "all others" rate for South Korea, listed as 16.26 percent, should have been listed as 6.08 percent pursuant to implementation of the findings of the World Trade Organization Panel in *United States—Anti-Dumping Measures on Stainless Steel Plate in Coils and Stainless Steel Sheet and Strip From Korea. See Notice of Amendment of Final Determinations of Sales at Less Than Fair Value: Stainless Steel Plate in Coils From the*

Republic of Korea; and Stainless Steel Sheet and Strip in Coils From the Republic of Korea, 66 FR 45279, 45283 (Aug. 28, 2001).

Conclusion

The Department clarifies that the "Final Results of Reviews" section of the *Final Sunset Notice* inadvertently listed the weighted-average margin for POSCO and the "all others" rate for South Korea as 16.26 percent; however, the correct rate is 6.08 percent. The Department intends to notify the International Trade Commission of this correction to its determination.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: October 27, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–27639 Filed 11–1–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA009

Marine Mammals; File No. 14326

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

ACTION: Notice; issuance of permit amendment.

SUMMARY: Notice is hereby given that the NMFS National Marine Mammal Laboratory (NMML), Seattle, WA (Responsible Party: John Bengton, Ph.D.), has been issued a minor amendment to Permit No. 14326.

ADDRESSES: The permit amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376;

Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206) 526–6150; fax (206) 526–6426; and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907) 586–7221; fax (907) 586–7249.

FOR FURTHER INFORMATION CONTACT: Tammy Adams or Amy Sloan, (301) 713–2289.

SUPPLEMENTARY INFORMATION: On August 31, 2009, notice was published in the **Federal Register** (74 FR 44822) that Permit No. 14326 to conduct research on Steller sea lions (*Eumetopias jubatus*) had been issued to the above-named applicant under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226). The permit is valid through August 31, 2014, and authorizes takes of Steller sea lions throughout their range in the U.S. during capture, tissue sampling, marking, attachment of scientific instruments, and surveys. The permit also authorizes a limited number of research-related mortalities.

The amended permit allows takes of up to 20 adult female Steller sea lions annually by capture using additional drug combinations in the remotely delivered darts. It does not change the number of animals that may be taken or any other terms and conditions of the permit. The amendment is effective through the original expiration date of the permit.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), NMFS determined that the activities proposed are consistent with the Preferred Alternative in the Final Programmatic Environmental Impact Statement for Steller Sea Lion and Northern Fur Seal Research (NMFS 2007), and that issuance of the permit would not have a significant adverse impact on the human environment.

As required by the ESA, issuance of this permit was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: October 27, 2010.

Tammy C. Adams,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–27660 Filed 11–1–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Materials Technical Advisory Committee; Notice of Partially Closed Meeting

The Materials Technical Advisory Committee will meet on November 12, 2010, 10 a.m., Herbert C. Hoover Building, Room 3884, 14th Street between Constitution & Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials and related technology.

Agenda

Open Session

1. Opening remarks by the Chairman and Introduction.
2. Opening remarks by the Bureau of Industry and Security.
3. Report of the Composite Working Group (CWG).
4. Presentation on Battelle Programs Supporting U.S. Biological and Chemical Defense.
5. Update on Regime activities.
6. Comments from the Public and new business.

Closed Session

7. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 sections 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yspringer@bis.doc.gov* no later than November 5, 2010.

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the materials should be forwarded prior to the meeting to Ms. Springer via e-mail.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 27, 2010, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended, that the portion of the meeting dealing with matters the

premature disclosure of which would likely frustrate the implementation of a proposed agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 sections 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Dated: October 27, 2010.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2010–27516 Filed 11–1–10; 8:45 am]

BILLING CODE 3510–JT–P

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the U.S. Commission of Fine Arts is scheduled for 18 November 2010, at 10 a.m. in the Commission offices at the National Building Museum, Suite 312, Judiciary Square, 401 F Street, NW., Washington DC, 20001–2728. Items of discussion may include buildings, parks and memorials.

Draft agendas and additional information regarding the Commission are available on our Web site: *http://www.cfa.gov.* Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Thomas Luebke, Secretary, U.S. Commission of Fine Arts, at the above address; by e-mailing *staff@cfa.gov;* or by calling 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated: October 27, 2010 in Washington DC.

Thomas Luebke,

AIA Secretary.

[FR Doc. 2010–27616 Filed 11–1–10; 8:45 am]

BILLING CODE 6330–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: Wednesday, November 3, 2010, 10 a.m.–11 a.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Commission Meeting—Open to the Public.

Matter To Be Considered

Briefing Matter: Notice of Accreditation Requirements for Third Party Conformity Assessment Bodies to Test Children's Sleepwear.

A live Webcast of the Meeting can be viewed at *http://www.cpsc.gov/webcast.*

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: October 27, 2010.

Todd A. Stevenson,

Secretary.

[FR Doc. 2010–27747 Filed 10–29–10; 4:15 pm]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: Wednesday, November 3, 2010; 11 a.m.–12 Noon.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

Matter To Be Considered

Compliance Status Report

The Commission staff will brief the Commission on the status of compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: October 27, 2010.

Todd A. Stevenson,

Secretary.

[FR Doc. 2010–27748 Filed 10–29–10; 4:15 pm]

BILLING CODE 6355–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning its proposed information collection request for the National Service Trust Voucher and Payment Request Form. The Voucher and Payment Request Form is used by AmeriCorps members to request a payment from their Segal Education Award account; by schools and lenders to verify eligibility for the payment; and by both parties to satisfy certain legal requirements.

Copies of the information collection request can be obtained by contacting the office listed in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by January 3, 2011.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) *By mail sent to:* Corporation for National and Community Service, National Service Trust; Attention: Bruce Kellogg; 1201 New York Avenue, NW., Washington, DC 20525.

(2) By hand delivery or by courier to the Corporation's mailroom at Room 8100 at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

(3) *By fax to:* (202) 606–3484, Attention: Bruce Kellogg.

(4) *Electronically through the Corporation's e-mail address system: bkellogg@cns.gov.* Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 606–3472 between 8:30 a.m. and 5 p.m. eastern time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Bruce Kellogg, (202) 606–6954 or e-mail to *bkellogg@cns.gov.*

SUPPLEMENTARY INFORMATION: The Corporation is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary

for the proper performance of the functions of the Corporation, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are expected 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 submissions of responses).

Background

An AmeriCorps member is an individual who is enrolled in an approved national service position and engages in community service. Members may receive a living allowance and other benefits while serving. Upon successful completion of their service, members receive a Segal AmeriCorps Education Award from the National Service Trust.

Current Action

This is a renewal of an approved information collection request.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: Voucher and Payment Request Form.

OMB Number: 3045–0014.

Agency Number: None.

Affected Public: AmeriCorps members.

Total Respondents: 45,000.

Frequency: Once.

Average Time per Response: 5 minutes.

Estimated Total Burden Hours: 3,750 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: October 27, 2010.

William Anderson,

Chief Financial Officer, Office of Strategy.

[FR Doc. 2010–27553 Filed 11–1–10; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Record of Decision for the Northwest Training Range Complex

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy (Navy), after carefully weighing the operational and environmental consequences of the Proposed Action, announces its decision to continue to support and conduct current, emerging, and future training and research, development, test, and evaluation activities in the Northwest Training Range Complex (NWTRC) to achieve required levels of operational readiness. This decision allows the Navy to meet its statutory mission to deploy worldwide naval forces equipped and trained to meet existing and emergent threats and to enhance its ability to operate jointly with other components of the armed forces.

In its decision, the Navy considered applicable laws, regulations and executive orders, including an analysis of the effects of its actions outside the United States or its territories under Executive Order (EO) 12114, Environmental Effects Abroad of Major Federal Actions.

The proposed action will be accomplished as set out in Alternative 2, described in the Final Environmental Impact Statement/Overseas Environmental Impact Statement (EIS/OEIS) as the preferred alternative. Implementation of the preferred alternative could begin immediately.

SUPPLEMENTARY INFORMATION: The Record of Decision (ROD) has been distributed to all those individuals who requested a copy of the Final EIS/OEIS and agencies and organizations that received a copy of the Final EIS/OEIS. The complete text of the ROD is available for public viewing on the project Web site at *http://www.nwtrangecomplexeis.com/*, along with copies of the Final EIS/OEIS and supporting documents. Single copies of the ROD will be made available upon request by contacting: Kimberly Kler, Naval Facilities Engineering Command Northwest, 1101 Tautog Circle, Suite 203, Silverdale, Washington 98315–1101; *telephone:* 360–396–0927.

Dated: October 26, 2010.

L. R. Almand,

Office of the Judge Advocate General, U.S. Navy, Administrative Law Division, Federal Register Liaison Officer.

[FR Doc. 2010–27598 Filed 11–1–10; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before December 2, 2010.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to ICDocketMgr@ed.gov. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: October 27, 2010.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title of Collection: Jacob K. Javits Fellowship Program Final Performance Report.

OMB Control Number: 1840–0752.

Agency Form Number(s): N/A.

Frequency of Responses: Annually.

Affected Public: Not-for-profit institutions.

Total Estimated Number of Annual Responses: 20.

Total Estimated Annual Burden Hours: 120.

Abstract: The purpose of the Jacob K. Javits Fellowship Program is to award fellowships to eligible students of superior ability, selected on the basis of demonstrated achievement, financial need, and exceptional promise; to undertake graduate study in selected fields in the arts, humanities, and social sciences leading to a doctoral degree in those fields in which the master's degree is the terminal highest degree awarded in the selected field of study at accredited institutions of higher education. Grants are awarded to institutions of higher education that disburse funds to fellows. This Final Performance Report will be used by these institutions to report information on the fellowships administered during the four-year project period.

Requests for copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4369. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–27620 Filed 11–1–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Department of Education (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 3, 2011.

ADDRESSES: Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: October 27, 2010.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title of Collection: Written Application for the Independent Living Services for Older Individuals Who are Blind Formula Grant.

OMB Control Number: 1820–0660.

Agency Form Number(s): N/A.

Frequency of Responses: Every three years.

Affected Public: State, Local, or Tribal Government, State Educational Agencies or Local Educational Agencies.

Total Estimated Number of Annual Responses: 56.

Total Estimated Number of Annual Burden Hours: 9.

Abstract: This document is used by States to request funds to administer the Independent Living Services for Older Individuals Who are Blind (IL–OIB) program. The IL–OIB program is provided for under Title VII, Chapter 2 of the Rehabilitation Act of 1973, as amended to assist individuals who are age 55 or older whose significant visual impairment makes competitive employment difficult to attain, but for whom independent living goals are feasible.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4444. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–27619 Filed 11–1–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Advisory Board

AGENCY: Department of Energy.

ACTION: Notice of Open Teleconference.

SUMMARY: This notice announces a teleconference of the Environmental Management Advisory Board (EMAB). The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this teleconference be announced in the **Federal Register**.

DATES: Wednesday, November 17, 2010, 3 p.m.–4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Terri Lamb, Designated Federal Officer, EMAB (EM–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Phone (202) 586–9007; fax (202) 586–0293 or e-mail: *terri.lamb@em.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of EMAB is to provide the Assistant Secretary for Environmental Management (EM) with advice and recommendations on corporate issues confronting the EM program. EMAB will contribute to the effective operation of the program by providing individual citizens and representatives of interested groups an opportunity to present their views on issues facing EM and by helping to secure consensus recommendations on those issues.

Tentative Agenda: The main meeting topic will be a discussion of EM's response to the September 2010 EMAB Acquisition and Project Management Subcommittee report and recommendations.

Public Participation: The teleconference is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda should contact Terri Lamb at the address or telephone number listed above. Requests must be received five days prior to the teleconference 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 comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Terri Lamb at the address or phone number listed above. Minutes will also be available at the following Web site *http://www.em.doe.gov/stakepages/emabmeetings.aspx.*

Issued at Washington, DC on October 28, 2010.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. 2010–27623 Filed 11–1–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Nuclear Energy Advisory Committee

AGENCY: Office of Nuclear Energy, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Nuclear Energy Advisory Committee (NEAC). The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, December 9, 2010; 8:30 a.m.–4:30 p.m.

ADDRESSES: L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Kenneth Chuck Wade, Designated Federal Officer, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; telephone (301) 903–6509; e-mail *Kenneth.wade@nuclear.energy.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Nuclear Energy Advisory Committee (NEAC), formerly the Nuclear Energy Research Advisory Committee (NERAC), was established in 1998 by the U.S. Department of Energy (DOE) to provide advice on complex scientific, technical, and policy issues that arise in the planning, managing, and implementation of DOE's civilian nuclear energy research programs. The committee is composed of 16 individuals of diverse backgrounds selected for their technical expertise and experience, established records of distinguished professional service, and their knowledge of issues that pertain to nuclear energy.

Purpose of the Meeting: To inform the committee of recent developments and current status of research programs and projects pursued by the Department of Energy's Office of Nuclear Energy and receive advice and comments in return from the committee.

Tentative Agenda: The meeting is expected to include presentations that cover such topics as the Office of Advanced Reactor Concept's Small Modular Reactor program and presentations by four NEAC subcommittees. The Fuel Cycle Research and Development subcommittee and the Facilities subcommittee will present reports to the full committee. The International and the Nuclear Reactor Technology subcommittees will present a status of their current work. The agenda may change to accommodate committee business. For updates, one is directed to the NEAC Web site: *http://www.ne.doe.gov/neac/neNeacMeetings.html.*

Public Participation: Individuals and representatives of organizations who would like to offer comments and suggestions may do so on the day of the meeting, Thursday, December 9, 2010. Approximately thirty minutes will be reserved for public comments. Time allotted per speaker will depend on the number who wish to speak but is not expected to exceed 5 minutes. Anyone who is not able to make the meeting or has had insufficient time to address the committee is invited to send a written statement to Kenneth Chuck Wade, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, or e-mail *Kenneth.wade@nuclear.energy.gov.*

Minutes: The minutes of the meeting will be available by contacting Mr. Wade at the address above or on the Department of Energy, Office of Nuclear Energy Web site at *http://www.ne.doe.gov/neac/neNeacMeetings.html.*

Issued in Washington, DC, on October 28, 2010.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. 2010–27624 Filed 11–1–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–12–000]

ANR Pipeline Company; Notice of Application

October 26, 2010.

Take notice that on October 18, 2010, ANR Pipeline Company (ANR), 717 Texas Street, Houston, Texas 77002–2761, filed with the Commission an application under section 7(b) of the Natural Gas Act (NGA) for authorization to abandon by sale to Apache Corporation (Apache) approximately 4.07 miles of 10-inch diameter pipeline, 0.2 miles of 8-inch diameter pipeline, and related appurtenances located in federal waters offshore Louisiana in the

Gulf of Mexico. ANR also requests a determination that upon abandonment, Apache's ownership and operation of the subject facilities will be exempt from the Commission's jurisdiction under section 1(b) of the NGA, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding the petition should be directed to Rene Staeb, ANR Pipeline Company, 717 Texas Street, Houston, Texas 77002–2761, by telephone at (832) 320–5215, by facsimile at (832) 320–6215, or by e-mail at *rene_staeb@transcanada.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, on or before the comment date stated below 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 seven copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. 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.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and seven copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: November 16, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–27560 Filed 11–1–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–10–000]

Liberty Natural Gas, LLC; Notice of Application

October 26, 2010.

On October 14, 2010, Liberty Natural Gas, LLC (Liberty) filed with the Federal Energy Regulatory Commission (Commission) an application under section 7 of the Natural Gas Act and section 157 of the Commission's Regulations requesting: (1) A certificate of public convenience and necessity to construct and operate a 9.2-mile natural gas pipeline and ancillary facilities (Onshore Pipeline); (2) a blanket certificate to perform routine activities and operations; (3) authorization to operate on a sole-use, proprietary basis; and, (4) a waiver of certain Commission Regulations, all as more fully detailed in the application which is on file with the Commission and open to public inspection.

The Onshore Pipeline will extend from the high water mark on the shoreline in Amboy, Middlesex County, New Jersey to Linden, in Union County, New Jersey, interconnections with the interstate pipeline systems of Texas Eastern Transmission, L.P. and Transcontinental Gas Pipeline Company. It is designed to transport up to 2.4 billion cubic feet per day of natural gas to serve markets in New Jersey, New York, and surrounding areas.

The Onshore Pipeline is a part of the Liberty Natural Gas Project, which will include a deepwater port (Port), located approximately 16.2 miles offshore along the New Jersey coastline. The Port, which will remain fully submerged when not in use, will be served by LNG Regasification Vessels that will transport natural gas from sources around the world in a liquid state (LNG) and will regasify the LNG onboard when they reach the Port. The regasified natural gas will then be transported through the proposed Port and a submerged pipeline to the Onshore Pipeline. In conjunction with this Application, Liberty is also filing an application for a license to own, construct, and operate its Port and submerged pipeline with the Maritime Administration and the United States Coast Guard pursuant to the Deepwater Port Act of 1974, 33 U.S.C. 1501, *et seq.,* as amended.

Questions concerning this application may be directed to Jason Goldstein, Liberty Natural Gas, LLC, 15 Exchange

Street, Suite 1120, Jersey City, NJ 07302, by calling 201–985–8600, by faxing 201–985–8604, or by e-mailing *jgoldstein@libertynaturalgas.com* or to Beth L. Webb, Dickstein Shapiro LLP, 1825 Eye Street, NW., Washington, DC 20006, by calling 202–420–2200, by faxing 202–379–9389, or by e-mailing *webbb@dicksteinshapiro.com.*

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify Federal and State agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all Federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

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, on or before the comment date stated below, 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 seven 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 encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.fere.gov.* Persons unable to file electronically should submit an original and seven copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. This filing is accessible on-line at *http://www.ferc.gov.* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on November 16, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–27558 Filed 11–1–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2000–083]

New York Power Authority; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

October 26, 2010.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License.

b. *Project No.* 2000–083.

c. *Date Filed:* March 22, 2010.

d. *Applicant:* New York Power Authority.

e. *Name of Project:* St. Lawrence-FDR Power Project.

f. *Location:* The project is located on the St. Lawrence River, in Massena, St. Lawrence County, New York.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Charles I. Lipsky, New York Power Authority, 123 Main Street, White Plains, NY 10601. Phone: (914) 681–6758.

i. *FERC Contact:* Any questions on this notice should be addressed to Shana High at (202) 502–8674.

j. *Deadline for filing comments, motions to intervene, and protests:* November 26, 2010.

All documents (original and eight copies) should be filed with: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–2000–083) on any comments or motions filed.

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 at *http://www.ferc.gov* under the "e-Filing" link.

The Commission's Rules of Practice require all interveners 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 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 any motion to intervene must also be served upon each representative of the applicant specified in the particular application.

k. *Description of the Application:* The applicant is seeking Commission authorization to amend the project boundary to remove four parcels of land totaling 4.6 acres of lands from the project boundary. The amendment would rationalize the project boundary and applies criteria in the Settlement Agreement, approved in the project license, to identify surplus lands that do not serve project purposes.

l. *Location 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 e-mail of new filings and issuances

related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *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. Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–27557 Filed 11–1–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

October 22, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER97–2801–030; ER99–2156–021; ER96–719–028; ER07–1236–005.

Applicants: PacifiCorp; Cordova Energy Company LLC; MidAmerican Energy Company; Yuma Cogeneration Associates.

Description: PacifiCorp *et al.,* submits a supplement to the Triennial Market Power Update.

Filed Date: 10/19/2010.

Accession Number: 20101021–0006.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 9, 2010.

Docket Numbers: ER03–329–010; ER07–597–005.

Applicants: Northwestern Corporation; Montana Generation, LLC.

Description: NorthWestern Corp submits a supplement to the Triennial Market Update Analysis for Northwest Region.

Filed Date: 10/18/2010.

Accession Number: 20101019–0043.

Comment Date: 5 p.m. Eastern Time on Monday, November 8, 2010.

Docket Numbers: ER10–1820–002.

Applicants: Northern States Power Company, a Wisconsin Corporation.

Description: Northern States Power Company, a Wisconsin corporation submits tariff filing per 35: 20101021—Amendment to baseline concurrence to be effective 7/20/2010.

Filed Date: 10/21/2010.

Accession Number: 20101021–5118.

Comment Date: 5 p.m. Eastern Time on Friday, November 12, 2010.

Docket Numbers: ER10–2097–002.

Applicants: KCP&L Greater Missouri Operations Company.

Description: KCP&L Greater Missouri Operations Company submits tariff filing per 35: GMO MBR Mitigation Compliance Filing to be effective 8/2/2010.

Filed Date: 10/22/2010.

Accession Number: 20101022–5055.

Comment Date: 5 p.m. Eastern Time on Friday, November 12, 2010.

Docket Numbers: ER10–2240–001.

Applicants: Portland General Electric Company.

Description: Portland General Electric Company submits tariff filing per 35: PGE 12 Baseline Filing to be effective 8/16/2010.

Filed Date: 10/22/2010.

Accession Number: 20101022–5084.

Comment Date: 5 p.m. Eastern Time on Friday, November 12, 2010.

Docket Numbers: ER10–2245–001.

Applicants: Portland General Electric Company.

Description: Portland General Electric Company submits tariff filing per 35: PGE 13 Ancillary Services Tariff Baseline to be effective 8/16/2010.

Filed Date: 10/22/2010.

Accession Number: 20101022–5111.

Comment Date: 5 p.m. Eastern Time on Friday, November 12, 2010.

Docket Numbers: ER10–2248–001.

Applicants: Portland General Electric Company.

Description: Portland General Electric Company submits tariff filing per 35: PGE–2 Filing of CBR to be effective 8/17/2010.

Filed Date: 10/22/2010.

Accession Number: 20101022–5128.

Comment Date: 5 p.m. Eastern Time on Friday, November 12, 2010.

Docket Numbers: ER10–2249–001.

Applicants: Portland General Electric Company.

Description: Portland General Electric Company submits tariff filing per 35: MBR Baseline eTariff Filing to be effective 8/17/2010.

Filed Date: 10/22/2010.

Accession Number: 20101022–5125.

Comment Date: 5 p.m. Eastern Time on Friday, November 12, 2010.

Docket Numbers: ER10–2707–001.

Applicants: Mid-Continent Energy Marketers Association.

Description: Mid-Continent Energy Marketers Association submits tariff filing per 35: Amendment to Pending Baseline Tariff Filing to be effective 10/22/2010.

Filed Date: 10/22/2010.

Accession Number: 20101022–5085.

Comment Date: 5 p.m. Eastern Time on Friday, November 12, 2010.

Docket Numbers: ER10–2710–004.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits tariff filing per 35: PJM submits an Errata filing to the RAA in PJM's Baseline filing in ER10–2710 to be effective 9/17/2010.

Filed Date: 10/21/2010.

Accession Number: 20101021–5131.

Comment Date: 5 p.m. Eastern Time on Friday, November 12, 2010.

Docket Numbers: ER10–2765–001.

Applicants: Dighton Power, LLC.

Description: Dighton Power, LLC submits tariff filing per 35: Amendment to Baseline Tariff Filing to be effective 9/20/2010.

Filed Date: 10/22/2010.

Accession Number: 20101022–5038.

Comment Date: 5 p.m. Eastern Time on Friday, November 12, 2010.

Docket Numbers: ER10–2766–001.

Applicants: Lake Road Generating Company, L.P.

Description: Lake Road Generating Company, L.P. submits tariff filing per 35: Amendment to Baseline Tariff Filing to be effective 9/20/2010.

Filed Date: 10/22/2010.

Accession Number: 20101022–5069.

Comment Date: 5 p.m. Eastern Time on Friday, November 12, 2010.

Docket Numbers: ER10–2767–001.

Applicants: MASSPOWER.

Description: MASSPOWER submits tariff filing per 35: Amendment to

Baseline Tariff Filing to be effective 9/20/2010.
Filed Date: 10/22/2010.
Accession Number: 20101022–5072.
Comment Date: 5 p.m. Eastern Time on Friday, November 12, 2010.

Docket Numbers: ER10–2768–001.
Applicants: Empire Generating Co, LLC.
Description: Empire Generating Co, LLC submits tariff filing per 35: Amendment to Baseline Tariff Filing to be effective 9/20/2010.
Filed Date: 10/22/2010.
Accession Number: 20101022–5062.
Comment Date: 5 p.m. Eastern Time on Friday, November 12, 2010.

Docket Numbers: ER10–2769–001.
Applicants: ECP Energy I, LLC.
Description: ECP Energy I, LLC submits tariff filing per 35: Amendment to Baseline Tariff Filing to be effective 9/20/2010.
Filed Date: 10/22/2010.
Accession Number: 20101022–5047.
Comment Date: 5 p.m. Eastern Time on Friday, November 12, 2010.

Docket Numbers: ER10–2770–001.
Applicants: EquiPower Resources Management, LLC.
Description: EquiPower Resources Management, LLC submits tariff filing per 35: Amendment to Baseline Tariff Filing to be effective 9/20/2010.
Filed Date: 10/22/2010.
Accession Number: 20101022–5064.
Comment Date: 5 p.m. Eastern Time on Friday, November 12, 2010.

Docket Numbers: ER10–2802–001.
Applicants: Kimberly-Clark Corporation.
Description: Kimberly-Clark Corporation submits tariff filing per 35: Compliance Baseline Tariff Filing to be effective 9/21/2010.
Filed Date: 10/21/2010.
Accession Number: 20101021–5143.
Comment Date: 5 p.m. Eastern Time on Friday, November 12, 2010.

Docket Numbers: ER11–1863–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc., submits tariff filing per 35.13(a)(2)(iii): Duke-Vectren IA to be effective 10/23/2010.
Filed Date: 10/22/2010.
Accession Number: 20101022–5028.
Comment Date: 5 p.m. Eastern Time on Friday, November 12, 2010.

Docket Numbers: ER11–1864–000.
Applicants: Societe Generale Energie (USA) Corp.
Description: Societe Generale Energie (USA) Corp. submits tariff filing per 35: SocGen Order 697 Compliance Filing to be effective 10/12/2010.
Filed Date: 10/22/2010.
Accession Number: 20101022–5049.
Comment Date: 5 p.m. Eastern Time on Friday, November 12, 2010.

Docket Numbers: ER11–1865–000.
Applicants: Tucson Electric Power Company.
Description: Tucson Electric Power Company submits tariff filing per 35: OATT Reassignment Compliance Filing to be effective 10/1/2010.
Filed Date: 10/22/2010.
Accession Number: 20101022–5058.
Comment Date: 5 p.m. Eastern Time on Friday, November 12, 2010.

Docket Numbers: ER11–1866–000.
Applicants: Duke Energy Carolinas, LLC.
Description: Duke Energy Carolinas, LLC submits tariff filing per 35.13(a)(2)(iii): NERC Assessment Tariff Filing to be effective 1/1/2011.
Filed Date: 10/22/2010.
Accession Number: 20101022–5070.
Comment Date: 5 p.m. Eastern Time on Friday, November 12, 2010.

Docket Numbers: ER11–1867–000.
Applicants: Public Service Company of New Mexico.
Description: Public Service Company of New Mexico submits tariff filing per 35: PNM Compliance Filing in Docket No. EL10–61 to be effective 10/25/2010.
Filed Date: 10/22/2010.
Accession Number: 20101022–5074.
Comment Date: 5 p.m. Eastern Time on Friday, November 12, 2010.

Docket Numbers: ER11–1868–000.
Applicants: Louisville Gas and Electric Company.
Description: Louisville Gas and Electric Company submits tariff filing per 35: Order No 739 Compliance Filing OATT Section 23 to be effective 10/1/2010.
Filed Date: 10/22/2010.
Accession Number: 20101022–5086.
Comment Date: 5 p.m. Eastern Time on Friday, November 12, 2010.

Docket Numbers: ER11–1869–000.
Applicants: UNS Electric, Inc.
Description: UNS Electric, Inc. submits tariff filing per 35: OATT Reassignment Compliance Filing to be effective 10/1/2010.
Filed Date: 10/22/2010.
Accession Number: 20101022–5089.
Comment Date: 5 p.m. Eastern Time on Friday, November 12, 2010.

Docket Numbers: ER11–1870–000.
Applicants: Consolidated Edison Company of New York, Inc.
Description: Consolidated Edison Company of New York, Inc. submits tariff filing per 35.13(a)(2)(iii): Amendment to PASNY and EDDS tariffs for DR to be effective 12/22/2010.
Filed Date: 10/22/2010.
Accession Number: 20101022–5096.
Comment Date: 5 p.m. Eastern Time on Friday, November 12, 2010.

Docket Numbers: ER11–1871–000.
Applicants: Mississippi Power Company.
Description: Mississippi Power Company submits tariff filing per 35.13(a)(1): 2010 MRA Rate Case to be effective 12/21/2010.
Filed Date: 10/22/2010.
Accession Number: 20101022–5118.
Comment Date: 5 p.m. Eastern Time on Friday, November 12, 2010.

Docket Numbers: ER11–1872–000.
Applicants: Carolina Power & Light Company.
Description: Carolina Power & Light Company submits tariff filing per 35.13(a)(2)(iii): Rate Schedule No. 173 of Carolina Power and Light Co. to be effective 12/11/2010.
Filed Date: 10/22/2010.
Accession Number: 20101022–5127.
Comment Date: 5 p.m. Eastern Time on Friday, November 12, 2010.

Docket Numbers: ER11–1873–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii): First Revised Service Agreement No. 871—BGE ad Constellation to be effective 9/17/2010.
Filed Date: 10/22/2010.
Accession Number: 20101022–5129.
Comment Date: 5 p.m. Eastern Time on Friday, November 12, 2010.

Any person desiring to intervene or to protest in any of the above 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 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. 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 Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification]

simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings 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 e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–27648 Filed 11–1–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

October 21, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP11–1418–000.

Applicants: Gulf South Pipeline Company, LP.

Description: Gulf South Pipeline Company, LP submits tariff filing per 154.204: HK to Sequent CR to be effective 11/1/2010.

Filed Date: 10/20/2010.

Accession Number: 20101020–5070.

Comment Date: 5 p.m. Eastern Time on Monday, November 1, 2010.

Docket Numbers: RP11–1419–000.

Applicants: Northern Natural Gas Company.

Description: Northern Natural Gas Company submits tariff filing per 154.203: 20101020 NAESB 1.9 to be effective 9/29/2010.

Filed Date: 10/20/2010.

Accession Number: 20101020–5127.

Comment Date: 5 p.m. Eastern Time on Monday, November 1, 2010.

Docket Numbers: RP11–1420–000.

Applicants: ETC Tiger Pipeline, LLC.

Description: ETC Tiger Pipeline, LLC submits tariff filing per 154.203: Tiger NAESB Version 1.9 Compliance Filing to be effective 12/1/2010.

Filed Date: 10/20/2010.

Accession Number: 20101020–5147.

Comment Date: 5 p.m. Eastern Time on Monday, November 1, 2010.

Docket Numbers: RP11–1421–000.

Applicants: East Tennessee Natural Gas, LLC.

Description: East Tennessee Natural Gas, LLC submits tariff filing per 154.204: Negotiated Rate Agreement—Range Resources to be effective 10/20/2010.

Filed Date: 10/21/2010.

Accession Number: 20101021–5029.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 2, 2010.

Docket Numbers: RP11–1422–000.

Applicants: Dominion Transmission, Inc.

Description: Dominion Transmission, Inc. submits tariff filing per 154.204: DTI—CP09–44 Volume 1A Change to be effective 11/1/2010.

Filed Date: 10/21/2010.

Accession Number: 20101021–5030.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 2, 2010.

Docket Numbers: RP11–1423–000.

Applicants: Transcontinental Gas Pipe Line Company, LLC.

Description: Transcontinental Gas Pipe Line Company, LLC submits tariff filing per 154.204: GSS LSS Tracker Filing to be effective 11/1/2010.

Filed Date: 10/21/2010.

Accession Number: 20101021–5052.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 2, 2010.

Any person desiring to intervene or to protest in any of the above 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 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. 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 Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings 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 e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–27650 Filed 11–1–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 1

October 25, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP11–1424–000.
Applicants: Natural Gas Pipeline Company of America.
Description: Natural Gas Pipeline Company of America LLC submits tariff filing per 154.204: Revisions to Form of Service Agreements to be effective 11/21/2010.
Filed Date: 10/21/2010.
Accession Number: 20101021–5063.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 2, 2010.

Docket Numbers: RP11–1425–000.
Applicants: Texas Gas Transmission, LLC.
Description: Texas Gas Transmission, LLC submits tariff filing per 154.204: Remove References to Expired Lease to be effective 12/1/2010.
Filed Date: 10/21/2010.
Accession Number: 20101021–5065.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 2, 2010.

Docket Numbers: RP11–1426–000.
Applicants: Bobcat Gas Storage.
Description: Bobcat Gas Storage submits tariff filing per 154.204: Cleanup GT&C Section 23 to be effective 11/1/2010.
Filed Date: 10/21/2010.
Accession Number: 20101021–5119.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 2, 2010.

Docket Numbers: RP11–1427–000.
Applicants: Rockies Express Pipeline LLC.
Description: Rockies Express Pipeline LLC submits tariff filing per 154.204: Restructure Negotiated Rates to be effective 11/22/2010.
Filed Date: 10/22/2010.
Accession Number: 20101022–5063.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 3, 2010.

Docket Numbers: RP11–1428–000.
Applicants: Texas Eastern Transmission, LP.
Description: Texas Eastern Transmission, LP submits tariff filing per 154.403(d)(2): ASA TETLP DEC 2010 FILING to be effective 12/1/2010.
Filed Date: 10/22/2010.
Accession Number: 20101022–5071.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 3, 2010.

Any person desiring to intervene or to protest in any of the above 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 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. 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 Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings 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 e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–27651 Filed 11–1–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

October 26, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP11–1429–000.
Applicants: Trans-Union Interstate Pipeline, L.P.
Description: Trans-Union Interstate Pipeline, L.P. submits tariff filing per 154.203: Resubmittal of Order 587–U Compliance Filing to Modify Tariff to be effective 11/1/2010.
Filed Date: 10/25/2010.
Accession Number: 20101025–5125.
Comment Date: 5 p.m. Eastern Time on Thursday, October 28, 2010.

Docket Numbers: RP11–1430–000.
Applicants: Texas Eastern Transmission, LP.
Description: Texas Eastern Transmission, LP submits tariff filing per 154.204: Capacity Reservation to be effective 11/24/2010.
Filed Date: 10/25/2010.
Accession Number: 20101025–5132.
Comment Date: 5 p.m. Eastern Time on Monday, November 8, 2010.

Docket Numbers: RP11–1431–000.
Applicants: Northern Natural Gas Company.
Description: Northern Natural Gas Company submits tariff filing per 154.204: 20101025 Winter Fuel Rates 2010 to be effective 11/1/2010.
Filed Date: 10/25/2010.
Accession Number: 20101025–5248.
Comment Date: 5 p.m. Eastern Time on Monday, November 8, 2010.

Docket Numbers: RP11–1432–000.
Applicants: ETC Tiger Pipeline, LLC.
Description: ETC Tiger Pipeline, LLC submits tariff filing per 154.203: Tiger FTSA Non-Conforming Agreement Filing to be effective 12/1/2010.
Filed Date: 10/25/2010.
Accession Number: 20101025–5271.
Comment Date: 5 p.m. Eastern Time on Monday, November 8, 2010.

Docket Numbers: RP11–1433–000.
Applicants: Central New York Oil and Gas, LLC.
Description: Central New York Oil and Gas, LLC submits tariff filing per 154.203: Compliance filing of CNYOG in Docket Nos. RP10–1258–000 and RP10–1258–001 to be effective 10/25/2010.
Filed Date: 10/25/2010.
Accession Number: 20101025–5288.
Comment Date: 5 p.m. Eastern Time on Monday, November 8, 2010.

Any person desiring to intervene or to protest in any of the above 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 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. 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 Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings 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 e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–27649 Filed 11–1–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 2

October 25, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–1009–002.
Applicants: Carolina Gas Transmission Corporation.
Description: Carolina Gas Transmission Corporation submits tariff filing per 154.203: Order 587–U Compliance Filing (NAESB Vs. 1.9) to be effective 11/1/2010.
Filed Date: 10/22/2010.
Accession Number: 20101022–5099.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 3, 2010.

Docket Numbers: RP10–658–001.
Applicants: ANR Pipeline Company.
Description: ANR Pipeline Company submits tariff filing per 154.203: RP10–658 Compliance to be effective 4/28/2010.
Filed Date: 10/22/2010.
Accession Number: 20101022–5035.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 3, 2010.

Docket Numbers: RP10–772–001.
Applicants: Blue Lake Gas Storage Company.
Description: Blue Lake Gas Storage Company submits tariff filing per 154.203: RP10–772 Compliance to be effective 5/27/2010.
Filed Date: 10/22/2010.
Accession Number: 20101022–5073.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 3, 2010.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed on or before 5 p.m. Eastern time on the specified comment date. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–27652 Filed 11–1–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–1–000]

Pine Prairie Energy Center, LLC; Notice of Intent to Prepare an Environmental Assessment for the Proposed Phase III Expansion Project and Request for Comments on Environmental Issues

October 26, 2010.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Phase III Expansion Project (Project), involving construction and operation of facilities by Pine Prairie Energy Center, LLC (Pine Prairie) in Evangeline Parish, Louisiana. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine what issues need to be evaluated in the EA. Please note that the scoping period will close on November 27, 2010.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives are asked to notify their constituents of this planned project and encourage them to comment on their areas of concern.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice Pine Prairie provided to landowners. This fact sheet addresses a

number of typically-asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

The Phase III Expansion Project consists of:

- Construction of two new natural gas storage caverns (*i.e.,* Cavern Nos. 6 and 7) with individual total working gas capacity of 12 billion cubic feet (Bcf) and total storage capacities (working gas plus base gas) of 15.4 Bcf;
- Construction of approximately 2 miles of 24-inch diameter brine disposal pipeline;
- Constructing approximately 0.10 mile of 16-inch diameter low pressure raw water pipeline and 0.40 mile of 20-inch diameter brine return pipeline;
- Converting approximately 2.20 miles of existing 16-inch diameter brine disposal pipeline into raw water pipeline;
- Installation of two 5,750 horsepower electric motor drive compression units in an expansion of the electric compressor building; and
- Installation of one filter separator and one meter tube to the existing Texas Gas Transmission interconnect.

The Phase III Expansion Project would expand Pine Prairie's currently certificated working gas capacity from 48 to 80 Bcf. The general location of the project facilities is shown in Appendix 1.[1]

Land Requirements for Construction

Construction of the planned facilities would disturb about 23.9 acres of land for the aboveground facilities and the pipeline. Following construction, about 12.3 acres would be maintained for permanent operation of the project's facilities; the remaining acreage would be restored and allowed to revert to former uses.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[2] to discover and address concerns the public may have about proposals. This process is referred to as "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. All comments received will be considered during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- Land use;
- Water resources, fisheries, and wetlands;
- Cultural resources;
- Vegetation and wildlife;
- Endangered and threatened species;
- Air quality and noise; and
- Public safety.

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be presented in the EA. The EA will be placed in the public record and, depending on the comments received during the scoping process, may be published and distributed to the public. A comment period will be allotted if the EA is published for review. We will consider all comments on the EA before we make our recommendations to the Commission. To ensure your comments are considered, please carefully follow the instructions in the Public Participation section below.

With this notice, we are asking agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with applicable State Historic Preservation Office (SHPO), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[3] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO(s) as the project is further developed. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that they will be received in Washington, DC on or before November 27, 2010.

For your convenience, there are three methods which you can use to submit your comments to the Commission. In all instances please reference the project docket number (CP11–1–000) with your submission. The Commission encourages electronic filing of comments and has expert eFiling staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You may file your comments electronically by using the *eComment* feature, which is located on the Commission's Web site at *http://www.ferc.gov* under the link to *Documents and Filings.* An eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments electronically by using the eFiling feature, which is located on the Commission's Web site at *http://www.ferc.gov* under the link to *Documents and Filings.* With eFiling you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling

[1] The appendices referenced in this notice are not being printed in the **Federal Register.** Copies of appendices were sent to all those receiving this notice in the mail and are available at *http://www.ferc.gov* using the link called "eLibrary" or from the Commission's Public Reference Room, 888 First Street, NE, Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] "We", "us", and "our" refer to the environmental staff of the Commission's Office of Energy Projects.

[3] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Historic properties are defined in those regulations as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register for Historic Places.

users must first create an account by clicking on "eRegister." You will be asked to select the type of filing you are making. A comment on a particular project is considered a "Comment on a Filing"; or

(3) You may file a paper copy of your comments at the following address:

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.

Environmental Mailing List

The environmental mailing list includes Federal, State, and local parish government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own land within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If the EA is published for distribution, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (Appendix 2).

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an "intervenor" which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the "e-filing" link on the Commission's Web site.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site at *http://www.ferc.gov* using the "eLibrary" link. Click on the eLibrary link, click on "General Search" and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.,* CP11–1). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–27561 Filed 11–1–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–11–000]

El Paso Natural Gas Company; Notice of Request Under Blanket Authorization

October 26, 2010.

Take notice that on October 18, 2010, El Paso Natural Gas Company (El Paso), Post Office Box 1087, Colorado Springs, CO, 80944, filed a prior notice request pursuant to sections 157.205(b) and 157.208(f) of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act (NGA) and El Paso's blanket certificates issued in Docket Nos. CP82–435–000 and CP88–433–000. El Paso proposes to decrease the certificated Maximum Allowable Operating Pressure (MAOP) of two 1.16 mile, 30 inch outer-diameter segments of pipe located in Mohave County, Arizona. Specifically, El Paso requests authorization to decrease the certificated MAOP of each 1.16 mile segment of Line from California Line to Topock (Line No. 1104) and 1st Loop Line from California Line to Topock (Line No. 1112) from 845 psig to 809 psig. El Paso states the decrease in MAOP is due to a class location change from Class I to Class II under the Department of Transportation regulations. El Paso also states no service will be abandoned and all current contractual obligations will be met, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the 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 or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to Susan C. Stires, Post Box Office 1087, Colorado Springs, CO 80944, telephone no. (719) 667–7514, facsimile no. (719) 667–7534, and e-mail: *EPNGregulatoryaffairs@elpaso.com.*

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

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 (*http://www.ferc.gov*) under the "e-Filing" link.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–27559 Filed 11–1–10; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2008–0015; FRL–9219–1]

Release of Final Document Related to the Review of the National Ambient Air Quality Standards for Carbon Monoxide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability.

SUMMARY: The Office of Air Quality Planning and Standards (OAQPS) of EPA is announcing the availability of a final document titled *Policy Assessment for the Review of the Carbon Monoxide National Ambient Air Quality Standards* (PA). The PA contains staff analyses of the scientific bases for alternative policy options for consideration by the Agency prior to rulemaking.

DATES: The PA is now available.

ADDRESSES: The document will be available primarily via the Internet at the following Web site: *http://www.epa.gov/ttn/naaqs/standards/co/s_co_index.html.*

FOR FURTHER INFORMATION CONTACT: For questions related to this document, please contact Dr. Deirdre Murphy, Office of Air Quality Planning and Standards (Mail code C504–06), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; e-mail: *murphy.deirdre@epa.gov;* telephone: 919–541–0729; fax: 919–541–0237.

SUPPLEMENTARY INFORMATION: Under section 108(a) of the Clean Air Act (CAA), the Administrator identifies and lists certain pollutants which "cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare." The EPA then issues air quality criteria for these listed pollutants, which are commonly referred to as "criteria pollutants." The air quality criteria are to "accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air, in varying quantities." Under section 109 of the CAA, EPA establishes primary (health-based) and secondary (welfare-based) national ambient air quality standards (NAAQS) for pollutants for which air quality criteria are issued. Section 109(d) of the CAA requires periodic review and, if appropriate, revision of existing air quality criteria. The revised air quality criteria reflect advances in scientific knowledge on the effects of the pollutant on public health or welfare. The EPA is also required to periodically review and revise the NAAQS, if appropriate, based on the revised criteria.

Presently, EPA is reviewing the NAAQS for carbon monoxide (CO).[1] The document announced today, *Policy Assessment for the Review of the Carbon Monoxide National Ambient Air Quality Standards,* contains staff analyses of the scientific bases for alternative policy options for consideration by the Agency prior to rulemaking. This document, which builds upon the historical "Staff Paper," will serve to "bridge the gap" between the available scientific information and the judgments required of the Administrator in determining whether it is appropriate to retain or revise the standards.[2] The PA builds upon information presented in the *Integrated Science Assessment for Carbon Monoxide and the Quantitative Risk and Exposure Assessment for Carbon Monoxide—Amended.* An earlier draft of the PA document was released for the Clean Air Scientific Advisory Committee (CASAC) review and public comment in March 2010 (75 FR 10252), and was the subject of a CASAC review meeting on March 22–23, 2010 (74 FR 54042). In preparing the final PA, EPA has considered comments received from CASAC and the public on the earlier draft document. This final PA document is available through the Agency's Technology Transfer Network (TTN) Web site at *http://www.epa.gov/ttn/naaqs/standards/co/s_co_index.html.* This document may be accessed in the "Documents from Current Review" section under "Policy Assessments."

Dated: October 26, 2010.

Mary E. Henigin,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 2010–27633 Filed 11–1–10; 8:45 am]

BILLING CODE 6560–50–P

[1] The EPA's overall plan and schedule for this review is presented in the *Plan for Review of the National Ambient Air Quality Standards for Carbon Monoxide* (EPA 452R–08–005; August 2008); Available at: *http://www.epa.gov/ttn/naaqs/standards/co/s_co_cr_pd.html.*

[2] See *http://www.epa.gov/ttn/naaqs/review.html* for a copy of Administrator Jackson's May 21, 2009, memorandum and for additional information on the NAAQS review process.

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

October 22, 2010.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. Comments are requested concerning: (a) 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; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) 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 (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before January 3, 2011. 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 Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at 202–395–5167, or via the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to Federal Communications Commission (FCC) via e-mail to: *PRA@fcc.gov.*

To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page

called "Currently Under Review", (3) click the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Judith B. Herman, OMD, on 202–418–0214 or e-mail *Judith-b.herman@fcc.gov.*

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 3060–0626.

Title: Section 90.483, Permissible Methods and Requirements of Interconnecting Private and Public Systems of Communications.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 100 respondents; 100 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits Statutory authority for this information collection is contained in 47 U.S.C. sections 154(i), 161, 303(g), 303(r), and 332(c)(7).

Total Annual Burden: 100 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: This collection does not request information of a confidential nature.

Needs and Uses: The Commission will submit this expiring information collection to the Office of Management and Budget (OMB) after this 60 day comment period in order to obtain the full three year clearance from them. The Commission is requesting an extension (no change in the reporting requirement and third party disclosure requirements) of this information collection. There is no change in the Commission's burden estimates.

Section 90.483 contains the permissible methods and requirements of interconnecting private and public systems of communications. This section allows Part 90 Commercial Mobile Radio Service (CMRS) providers to interconnect by any technically feasible means. Various subsections require that licensees obtain the consent of co-channel licensees within a 120 km (75 mile) radius of the interconnected base station transmitter and submit a submit a statement to the Commission indicating that all co-channel licensees have consented to operate without the monitoring equipment.

The information is used by Commission staff in carrying out its duties under the Communications Act. Without this information, the Commission would not be able to carry out its statutory responsibilities.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2010–27580 Filed 11–1–10; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review and Approval to the Office of Management and Budget (OMB), Comments Requested

October 26, 2010.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501—3520. Comments are requested concerning: (a) 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; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

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: Submit written Paperwork Reduction Act (PRA) comments on or before December 2, 2010. 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 all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or the Internet at *Nicholas_A._Fraser@omb.eop.gov;* and to *Judith-B. Herman@fcc.gov,* Federal Communications Commission. Send your PRA comments by e-mail to PRA@fcc.gov. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called "Currently Under Review", (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 3060–0957.

Title: Section 20.18(i) and (g), Requests for Waiver of Deadline on Location-Capable Handset Deployment, Fourth Memorandum Opinion and Order in CC Docket No. 94–102.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions and state, local or tribal government.

Number of Respondents: 2,500 respondents; 2,500 responses.

Estimated Time Per Response: 3 hours.

Frequency of Response: On occasion 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 154, 160, 251–254, 303 and 332.

Total Annual Burden: 7,500 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There are no questions of a confidential nature are asked.

Needs and Uses: The Commission will submit this expiring information collection (IC) to the OMB as an extension during this comment period to obtain the full three-year clearance from them. The Commission is reporting no change in burden estimates and no change in the reporting requirement.

The Commission responded to petitions for reconsideration of certain aspects of the *Third Report and Order,* FCC 99–245, in the proceeding concerning the establishment of a nationwide wireless enhanced 911 (E911) emergency communications service.

The *Fourth Report and Order,* FCC 00–236, revised and made adjustments to the deployment schedule that must be followed by wireless carriers that chose to implement E911 service using a handset-based technology. The Commission also deferred the date for initial distribution of Automatic Location Identification (ALI)-capable handsets by seven months; adjusting the timetable for carriers to meet certain interim benchmarks for activating new ALI-capable handsets; deferred the date by which a carrier must achieve full penetration of ALI-capable handsets by one year; modified the manner in which the Commission defined full penetration; eliminated the separate handset phase-in schedule triggered by a request from a Public Safety Answering Point (PSAP), and addressed several other issues regarding implementation of enhanced 9111 Phase II. The Commission also discussed its general approach toward possible request for waiver of the E911 Phase II requirements. As a general rule, the Commission's rules may be waived for good cause shown and that waivers are only appropriate if special circumstances warrant a deviation from the general rule and will serve the public interest. Wireless carriers are instructed to submit waiver requests that are specific, focused and limited in scope, and with a clear path to full compliance. A waiver request must specify the solutions considered and explain why none could be employed in a way that complies to the Phase II rules. If deployment must be delayed, the carrier should specify the reason for the delay and provide a revised schedule.

The Commission found that waivers of the E911 Phase II requirements should not generally be warranted, especially in light of the vital public safety benefits of Phase II. However, in those particular cases where waivers may be justified, broad generalized waivers should not be necessary and will not be granted. Further, carriers should undertake concrete steps necessary to come as close as possible to full compliance and should document their efforts aimed at compliance in support of any waiver requests. Carriers seeking a waiver will be expected to specify the solutions they considered and explain why none could be employed in a way that complies with the Phase II rules. If deployment is scheduled but for some reason must be delayed, the carrier should specify the reason for the delay and provide a revised schedule.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2010–27582 Filed 11–1–10; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

October 22, 2010.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501–3520. Comments are requested concerning: (a) 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; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) 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 (e) 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 Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before January 3, 2011. 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: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to the Federal Communications Commission via e-mail to *PRA@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Judith B. Herman, OMD, 202–418–0214 or e-mail *Judith-b.herman@fcc.gov.*

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 3060–0809.

Title: Communications Assistance for Law Enforcement Act (CALEA).

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 200 respondents; 285 responses.

Estimated Time per Response: 12 hours average (range of 7.5 hours–80 hours).

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Obligation To Respond: Mandatory. Statutory authority for this information collection is contained in sections 105, 107(c), 109(b) and 301 of the Communications Assistance for Law Enforcement Act (CALEA), 47 U.S.C. sections 1004, 1006(c), 1008(c), and 229.

Total Annual Burden: 3,475 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: Pursuant to section 0.457(g) of the Commission's rules, the information in the CALEA security system filings and petitions will not be made routinely available for public inspection.

Section 107(c) and section 109(c) filings are entitled to confidential treatment under the Freedom of Information Act (FOIA). The Commission has directed respondents to file their petitions under a general claim of confidentiality or proprietary protection, subject only to scrutiny by the Commission and the Attorney General who is consulted in section 107(c) adjudications and is a party to all section 109(c) adjudications.

Needs and Uses: The Commission will submit this revised collection to the Office of Management and Budget (OMB) after this comment period to

obtain the full three-year approval from them. The Commission is revising this information collection to eliminate the recordkeeping burden estimated associated in 47 CFR 1.20004. This estimate has been eliminated by 1,655 hours because the nature and extent of the requirement is usual and customary. Telecommunications carriers must keep such records to demonstrate that they are in compliance with Federal and State wiretapping laws and regulations that have existed for the past 40 years.

The Communications Assistance for Law Enforcement Act (CALEA) requires the Commission to create rules that regulate the conduct and recordkeeping of lawful electronic surveillance. CALEA was enacted in October 1994 to respond to rapid advances in telecommunications technology and eliminates obstacles faced by law enforcement personnel in conducting electronic surveillance. Section 105 of CALEA requires telecommunications carriers to protect against the unlawful interception of communications passing through their systems. Law enforcement officials use the information maintained by telecommunications carriers to determine the accountability and accuracy of telecommunications carriers' compliance with lawful electronic surveillance orders.

On May 12, 2006, the Commission adopted and released a *Second Report and Order* and *Memorandum Opinion and Order* in ET Docket No. 04–195, FCC 06–56, which became effective August 4, 2006, except for sections 1.20004 and 1.20005 of the Commission's rules, which became effective on February 12, 2007. The *Second Report and Order* established new guidelines for filing section 107(c) petitions, section 109(b) petitions, and monitoring reports (formerly FCC Form 445). CALEA section 107(c)(1) permits a petitioner to apply for an extension of time, up to two years from the date that the petition is filed, and to come into compliance with a particular CALEA section 103 capability requirement. CALEA section 109(b) permits a telecommunications carrier covered by CALEA to file a petition with the FCC and an application with the Department of Justice (DoJ) to request that DoJ pay the costs of the carrier's CALEA compliance (cost-shifting relief) with respect to any equipment, facility or service installed or deployed after January 1, 1995. The *Second Report and Order* required several different collections of information:

(1) Within 90 days of the effective date of the *Second Report and Order,* facilities based broadband Internet access and interconnected Voice over Internet Protocol (VoIP) providers newly identified in the *First Report and Order* in this proceeding were required to file system security statements under the Commission's rules. (Security systems are currently approved under this information collection.)

(2) All telecommunications carriers, including broadband Internet access and interconnected VoIP providers, must file updates to their systems security statements on file with the Commission as their information changes.

(3) Petitions filed under Section 107(c), requires for additional time to comply with CALEA; these provisions apply to all carriers subject to CALEA and are voluntary filings.

(4) Section 109(b), request for reimbursement of CALEA; these provisions apply to all carriers subject to CALEA and are voluntary filings.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2010–27581 Filed 11–1–10; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Decision To Evaluate a Petition To Designate a Class of Employees From Clinton Engineering Works in Oak Ridge, TN, To Be Included in the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice as required by 42 CFR 83.12(e) of a decision to evaluate a petition to designate a class of employees from Clinton Engineering Works in Oak Ridge, Tennessee, to be included in the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000. The initial proposed definition for the class being evaluated, subject to revision as warranted by the evaluation, is as follows:

Facility: Clinton Engineering Works.

Location: Oak Ridge, Tennessee.

Job Titles and/or Job Duties: All guards and service workers who worked in or around the warehouses at the Elza Gate area.

Period of Employment: January 1, 1943 through May 18, 1947.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Interim Director, Division of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 877–222–7570. Information requests can also be submitted by e-mail to *DCAS@CDC.GOV.*

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2010–27597 Filed 11–1–10; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Final Effect of Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice concerning the final effect of the HHS decision to designate a class of employees from the Blockson Chemical Company, Joliet, Illinois, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On September 3, 2010, as provided for under 42 U.S.C. 7384q(b), the Secretary of HHS designated the following class of employees as an addition to the SEC:

All Atomic Weapons Employer employees who worked at the Blockson Chemical Company in Joliet, Illinois from March 1, 1951 to June 30, 1960, for a number of work days aggregating at least 250 work days, occurring either solely under this employment, or in combination with work days within the parameters established for one or more other classes of employees included in the Special Exposure Cohort.

This designation became effective on October 3, 2010, as provided for under 42 U.S.C. 7384l(14)(C). Hence, beginning on October 3, 2010, members of this class of employees, defined as reported in this notice, became members of the Special Exposure Cohort.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Interim Director, Division of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 877–222–7570. Information requests can

also be submitted by e-mail to *DCAS@CDC.GOV.*

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2010–27595 Filed 11–1–10; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30-Day–11–0255]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 359–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Resources and Services Database for the CDC National Prevention Information Network (formerly Information Collection of the Resources and Services Database of the National Prevention Information Network)—Reinstatement with Change—National Center for HIV/AIDS, Viral Hepatitis, STD, & TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP) proposes to continue data collection for the Resources and Services Database of the CDC National Prevention Information Network.

The CDC, NCHHSTP program has the primary responsibility within the CDC and the U.S. Public Health Service for the prevention and control of HIV infection, viral hepatitis, sexually transmitted diseases (STDs), and tuberculosis (TB), as well as for community-based HIV prevention activities, syphilis and TB elimination programs. To support NCHHSTP's mission and to link Americans to prevention, education, and care services, the CDC National Prevention Information Network (NPIN) serves as the U.S. reference, referral, and distribution service for information on HIV/AIDS, viral hepatitis, STDs, and TB. NPIN is a critical member of the network of government agencies, community organizations, businesses, health professionals, educators, and human services providers that educate the American public about the grave threat to public health posed by HIV/AIDS, viral hepatitis, STDs, and TB, and provides services for persons infected with human immunodeficiency virus (HIV).

Established in 1988, the NPIN Resources and Services Database contains entries on approximately 10,000 organizations and is the most comprehensive listing of HIV/AIDS, STD and TB resources and services available throughout the country. This database describes national, state and local organizations that provide services related to HIV/AIDS, viral hepatitis, STDs, and TB services such as counseling and testing, prevention, education and support. The NPIN reference staff relies on the Resources and Services Database to respond to thousands of requests each year for information or referral from community-based organizations, state and local health departments, and health professionals working in HIV/AIDS, STD and TB prevention. The CDC–INFO (formerly the CDC National AIDS Hotline) staff also uses the NPIN Resources and Services Database to refer up to 110,000 callers each year to local programs for information, services, and treatment. The American public can also access the NPIN Resources and Services database through the NPIN Web site. More than 29 million hits by the public to the website are recorded annually.

A representative from each new organization identified will be administered the resource organization questionnaire via the telephone. Representatives may include registered nurses, social and community service managers, health educators, or social and human service assistants. As part of the verification process for organizations currently included in the Resources and Services Database, about 30 percent of the organization's representatives will receive a copy of their current database entry by electronic mail, including an introductory message and a list of instructions. The remaining 70 percent will receive a telephone call to review their database record. This request is for a 3-year renewal of clearance. There are no costs to respondents other than their time. The total estimated annual burden hours are 2,600.

Form	Respondents	Number of respondents	Number of responses per respondent	Average burden per response
Initial Questionnaire Telephone Script	Registered Nurses	120	1	20/60
	Social and Community Service Managers	20	1	10/60
	Health Educators	20	1	13/60
	Social and Human Service Assistants	160	1	15/60
Telephone Verification	Registered Nurses	4,000	1	10/60
	Social and Community Service Managers	700	1	10/60
	Health Educators	700	1	10/60
	Social and Human Service Assistants	5,600	1	9/60
Email Verification	Registered Nurses	1,567	1	10/60
	Social and Community Service Managers	300	1	12/60
	Health Educators	300	1	10/60
	Social and Human Service Assistants	2,400	1	10/60

Dated: October 27, 2010.

Carol Walker,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–27601 Filed 11–1–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30-Day–11–0307]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call 404–639–4604 or send comments to Carol Walker, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Gonococcal Isolate Surveillance Project (GISP), (OMB No. 0920–0307)—Extension—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC is requesting a 3-year extension without change for this project. The objectives of GISP are to monitor trends in antimicrobial susceptibility of *Neisseria gonorrhoeae* strains in the U.S. and to characterize resistant isolates. Monitoring antibiotic susceptibility is critical since *Neisseria gonorrhoeae* has demonstrated the consistent ability to gain antibiotic resistance. GISP provides critical surveillance for antimicrobial resistance, allowing for informed treatment recommendations.

This project involves 5 regional laboratories and 30 sexually transmitted disease (STD) clinics operated by the local health departments around the country. The STD clinics submit up to 25 gonococcal isolates per month to the Regional laboratories to measure susceptibility to a panel of antibiotics. Limited demographic and clinical information corresponding to the isolates are submitted directly by the STD clinics to CDC.

During 1986–2009, GISP has demonstrated the ability to effectively achieve its objectives. The emergence of resistance in the United States to penicillin, tetracyclines, and fluoroquinolones among N. gonorrhoeae isolates was identified through GISP. Increased prevalence of *fluoroquinolone-resistant N. gonorrhoeae* (QRNG), as documented by GISP data, prompted CDC to update the treatment recommendations for gonorrhea in CDC's Sexually Transmitted Diseases Treatment Guidelines, 2006 and to release an MMWR article stating that CDC no longer recommended fluoroquinolones for treatment of gonococcal infections. There are no costs to respondents other than their time. Respondents receive Federal funds to participate in this project. The total annual burden is estimated to be 8,568 hours.

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Clinic	Form 1	30	240	11/60
Laboratory	Form 2	5	1,440	1
	Form 3	5	48	12/60
Total		40		

Dated: October 27, 2010.

Carol Walker,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–27604 Filed 11–1–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: "AHRQ Grants Reporting System (GRS)." In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3520, AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on August 31st, 2010 and allowed 60 days for public comment. No comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by December 2, 2010.

ADDRESSES: Written comments should be submitted to: AHRQ's OMB Desk Officer by fax at (202) 395–6974 (attention: AHRQ's desk officer) or by e-mail at *OIRA_submission@omb.eop.gov* (attention: AHRQ's desk officer).

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by e-mail at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

AHRQ Grants Reporting System (GRS)

AHRQ seeks to renew the Agency's Grants Reporting System (GRS), a systematic method for its grantees to report project progress and important preliminary findings for grants funded by the Agency. This system was first approved by OMB on November 10, 2004 (OMB Control Number 0935–0122). The system addressed the shortfalls in the previous reporting process and established a consistent and comprehensive grants reporting solution for AHRQ. The GRS provides a centralized repository of grants research

progress and additional information that can be used to support initiatives within the Agency. This includes future research planning and support to administration activities such as performance monitoring, budgeting, knowledge transfer as well as strategic planning.

The overall intent of the GRS project is to establish and document a systematic process that provides grantees with the ability to submit critical information in a timely manner throughout the lifecycle of a grant. In addition, the GRS project includes an infrastructure that is scalable and flexible to support information exchange throughout the Agency.

The GRS is based on a review of the previous processes that supported the solicitation and submission of data associated with patient safety grants. Following this review, a recommended process was prepared and presented to AHRQ stakeholders. The project team developed an initial system that addresses the immediate needs of the stakeholder community.

The project team, in conjunction with the stakeholder community will establish follow-on activities which will expand the capabilities of the initial system to meet the longer term goals of the project as directed by the executive management team of the agency. The specific activities that were accomplished in the short term and those established for the longer term are outlined below.

Short-Term Objectives

The following initial objectives for the GRS project have been:

- Establish and document a systematic process which supports the voluntary reporting of project progress and important preliminary findings associated with patient safety research grants
- Collect, document, and prioritize the long-term objectives of the GRS
- Establish an infrastructure that satisfies the short-term objectives of the project and can be leveraged to meet the long-term objectives and anticipated expansion
- Establish an automated user-friendly resource that will be used by grantees, regardless of mechanism, for reporting to AHRQ
- Establish an automated user-friendly resource that will be utilized by Agency staff for preparing, distributing, and reviewing reporting requests to patient safety grantees
- Ensure that the necessary security requirements are established and implemented in order to maintain the intellectual property or publication rights of grantees
- Establish a solution that is consistent with the AHRQ enterprise architecture model and aligned with AHRQ systems development standards.

Long-Term Objectives

The AHRQ project team will continue to enhance the GRS to establish a single, common reporting system for research related activities by:

- Enhancing the initial system as necessary to accommodate features not addressed by the short-term solution.
- Modifying the short-term solution to address new requirements and refine existing functionality for use across the agency for other programs and mechanisms.
- Expanding the deployment of the system to accommodate additional grants programs and other agency information exchange mechanisms.

Method of Collection

Grantees are required to enter data related to the progress of their grant funded research quarterly through a secure online interface which requires a user id and password.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the respondents. It will take grantees an estimated 10 minutes to enter the necessary data into the Grant Reporting System (GRS) and reporting will occur four times annually. The total annualized burden hours are estimated to be 333 hours.

Exhibit 2 shows the estimated annualized cost burden for the respondents. The total estimated cost burden for respondents is $11,159.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total burden
Data entry into GRS	500	4	10/60	333
Total	500	na	na	333

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents	Total burden hours	Average hourly wage rate *	Total cost burden
Data entry into GRS	500	333	$33.51	$11,159
Total	500	333	na	11,159

* Based upon the average wages for Healthcare Practitioner and Technical Occupations (29–0000), "National Compensation Survey: Occupational Wages in the United States, May 2009," U.S. Department of Labor, Bureau of Labor Statistics.

Estimated Annual Costs to the Federal Government

The annual cost to the government is $100,000 for licensing, support and maintenance.

Request for Comments

In accordance with the above-cited Paperwork Reduction Act legislation, comments on AHRQs information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ healthcare research and healthcare information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of

the proposed collection(s) of information; (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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: October 19, 2010.

Carolyn M. Clancy,

Director.

[FR Doc. 2010–27571 Filed 11–1–10; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: "The Agency for Health Care Research and Quality (AHRQ) Health Care Innovations Exchange Innovator Interview and Innovator E-mail Submission Guidelines." In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3520, AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by January 3, 2011.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by e-mail at *doris.lefkowitz@AHRQ.hhs.gov.*

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by e-mail at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

The Agency for Healthcare Research and Quality (AHRQ) Health Care Innovations Exchange Innovator Interview and Innovator E-mail Submission Guidelines

This request for Office of Management and Budget (OMB) review is for renewal of the existing collection that is currently approved under OMB Control No. 0935–0147, AHRQ Health Care Innovations Exchange Innovator Interview and AHRQ Health Care Innovations Exchange Innovator E-mail Submission Guidelines, which expires on March 31, 2011.

The Health Care Innovations Exchange provides a national-level information hub to foster the implementation and adaptation of innovative strategies that improve health care quality and reduce disparities in the care received by different populations. The Innovations Exchange's target audiences, broadly defined, are current and potential change agents in the U.S. health care system, including clinicians (*e.g.,* physicians, nurses, and other providers), health system administrators, health plan managers, health service purchasers, regulators, and policymakers from relevant Federal and state agencies.

To develop the target of 150 profiles per year, a purposively selected group of approximately 167 health care innovations will be selected annually for potential consideration. These 167 innovations will be selected to ensure that innovations included in the Innovations Exchange cover a broad range of health care settings, care processes, priority populations, and clinical conditions.

The goals of the Health Care Innovations Exchange are to:

(1) Identify health care service delivery innovations and provide a national level repository of searchable innovations and Quality Tools that enables health care decisionmakers to quickly identify ideas and tools that meet their needs. These innovations come from many care settings including inpatient facilities, outpatient facilities, long term care organizations, health plans and community care settings. They also represent many patient populations, disease conditions, and processes of care such as preventive, acute, and chronic care;

(2) Foster the implementation and adoption of health care service delivery innovations that improve health care quality and reduce disparities in the care received by different populations.

This data collection is being conducted by AHRQ through its contractor, Westat, pursuant to AHRQ's statutory authority to conduct and support research on healthcare and on systems for the delivery of such care, including activities (1) With respect to the quality, effectiveness, efficiency, appropriateness and value of healthcare services, 42 U.S.C. 299a(a), and (2) to promote innovation in evidence-based health care practices and technologies. 42 U.S.C. 299b–5.

Method of Collection

To achieve the first goal of the Innovations Exchange the following data collections will be implemented:

(1) E-mail submission—Based on experience during the current approval period, approximately 10% of the 167 health care innovations considered for inclusion annually, and their associated innovators, will submit their innovations via e-mail to the Innovations Exchange without prior contact (about 17 annually). Innovators who submit their innovations for possible publication through the e-mail submission guidelines process will be considered as will innovations identified by project staff through an array of sources that include: published literature, conference proceedings, news items, list servs, Federal agencies and other government programs and resources, health care foundations, and health care associations.

(2) Health care innovator interview—To collect and verify the information required for the innovation profiles, health care innovators will be interviewed by telephone about the following aspects of their innovation: health care problem addressed, impetus for the innovation, goals of the innovation, description of the innovation, sources of funding, evaluation results for the innovation, setting for the innovation, history of planning and implementation for the innovation, and lessons learned concerning the implementation of the innovation. Interviews will be conducted with innovators identified by project staff and those identified through e-mail submission.

(3) Annual follow-up reviews—After the innovation profile is published, on a yearly basis, innovators will be contacted by e-mail to review and update their profiles.

The second goal of the Innovations Exchange is achieved by serving as a "one-stop shop" that provides:

(1) Digested and reliable information about innovations in an adoption-friendly format;

(2) Learning resources including expert commentaries, articles, adoption guides and educational Web events, and

(3) Networking opportunities that allow innovators and potential adopters to share information about implementation strategies and lessons learned, including in-person meetings, interactive online events, and the ability for users to post comments and engage in discussions on specific innovations.

The ultimate decision to publish a detailed profile of an innovation depends on several factors, including an evaluation by AHRQ, AHRQ's priorities, and the number of similar ideas in the Innovations Exchange. AHRQ's priorities include identifying and highlighting innovations (1) that will help reduce disparities in health care and health status; (2) that will have significant impact on the overall value of health care; (3) where the innovators have a strong interest in participating; and (4) that have been supported by AHRQ.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the respondents' time to participate in this project. Approximately 167 innovators will participate in the initial data collection each year with 150 of those being added to the Innovations Exchange. About 17 innovations will be submitted by e-mail, which requires 30 minutes. All 167 potential innovations will participate in the health care innovator interview, including the 17 submitted via e-mail. The interview will last about 60 minutes and an additional 15 minutes is typically required for the innovator to review and comment on the written profile.

Based on experience, approximately 10% of the candidate innovations either will not meet the inclusion criteria or their innovators will decide not to continue their participation, after the interview. Therefore, about 90% (150) of the 167 candidate innovations will move into the publication stage each year. Annual follow-up reviews will be conducted with all innovations that have been in the Innovations Exchange for at least one full year. With an expected total of 575 innovations in the Exchange by the end of the current approval period, and an additional 450 to be added over the course of the next 3 year approval period, an average of 725 reviews will be conducted annually and will require about 30 minutes to complete. The total annualized burden is estimated to be 581 hours.

Exhibit 2 shows the estimated annualized cost burden associated with the respondents' time to participate in this research. The total annualized cost burden is estimated to be $19,754.

EXHIBIT 1: ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
E-mail submission	17	1	30/60	9
Health care innovator interview	167	1	75/60	209
Annual follow-up reviews	725	1	30/60	363
Total	909			581

EXHIBIT 2: ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents	Total burden hours	Average hourly wage rate*	Total cost burden
E-mail submission	17	9	$34	$306
Health care innovator interview	167	209	34	7,106
Annual follow-up reviews	725	363	34	12,342
Total	909	581		19,754

* Based upon the mean hourly wage for healthcare practitioners and technical occupations, Bureau of Labor Statistics, U.S. Department of Labor, Occupational Employment and Wages, May 2009.

Estimated Annual Costs to the Federal Government

Exhibit 3 shows the estimated annualized costs to the Government. The total cost to the Government of this data collection is approximately $592,922 over three years (on average, $197,642 per year). These costs cover data collection efforts for contacting candidate health care innovators, conducting innovator interviews, and contacting innovators annually to update profiles.

EXHIBIT 3: ESTIMATED TOTAL AND ANNUALIZED COST

Cost Component	Total Cost	Annualized Cost
Data Collection Activities	$82,260	$27,420
Website Maintenance	64,172	21,391
Project Management	27,096	9,032
Overhead	419,395	139,799
Total	592,922	197,642

Request for Comments

In accordance with the above-cited Paperwork Reduction Act legislation, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ healthcare research and healthcare information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: October 25, 2010.

Carolyn M. Clancy,

Director.

[FR Doc. 2010–27570 Filed 11–1–10; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: "Synthesis Reports for Grants and Cooperative Agreements for Transforming Healthcare Quality through Information Technology (THQIT)." In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3520, AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by January 3, 2011.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by e-mail at *doris.lefkowitz@AHRQ.hhs.gov.*

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by e-mail at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Synthesis Reports for Grants and Cooperative Agreements for Transforming Healthcare Quality Through Information Technology (THQIT)

AHRQ's health information technology initiative is part of the Nation's strategy to put information technology to work in health care. By developing secure and private electronic health records and making health information available electronically when and where it is needed, health IT can improve the quality of care, even as it makes health care more cost effective. This proposed information collection will help AHRQ enhance the evidence base to support effective information technology (IT) implementation and add to knowledge about health IT by synthesizing and drawing lessons from its Transforming Healthcare Quality through Information Technology (THQIT) program.

From 2004–2010, the THQIT program has supported the adoption of health IT through 118 grants and cooperative agreements. These grants fall into three main categories: Planning grants, implementation grants and value demonstration grants. Planning grants are intended to develop health IT infrastructure and data-sharing capacity among clinical provider organizations in their communities by (1) creating multidisciplinary collaboratives and coalitions of health care providers, (2) conducting needs assessments and feasibility studies, and (3) developing plans to implement electronic health records. Implementation grants support community-wide and regional health IT systems by (1) developing shared registries, electronic health record systems, and telemedicine networks, (2) integrating clinical data from a variety of health IT systems, including pharmacy, laboratory, and public health organizations, (3) redesigning clinical workflow to improve patient care and provider access to information and (4) creating novel methods for delivering information to providers. Value demonstration grants evaluate how the adoption of health IT will (1) impact quality, safety, and resource use in large, integrated delivery systems, (2) advance the effectiveness of Web-based, patient education tools and (3) improve patient transitions between health care facilities and their homes. The program places an emphasis on grants to rural health organizations.

AHRQ does not currently have a system in place for assessing the overall outcomes and lessons learned from these health IT grants. This project seeks to create such a system and has the following goals:

(1) Further the state of knowledge of health IT planning, implementation, and effects by synthesizing the experiences of THQIT grantees and the reported effects of the grants;

(2) Translate this knowledge into a practical tool to assist rural hospitals with electronic health record implementations; and

(3) Translate this knowledge into recommendations for AHRQ activities.

This study is being conducted by AHRQ through its contractor, Mathematica Policy Research, Inc. (Mathematica), pursuant to AHRQ's statutory authority to conduct and support research (1) on healthcare and on systems for the delivery of such care, 42 U.S.C. 299a, and (2) on information systems for health care improvement. 42 U.S.C. 299b–3.

Method of Collection

To achieve the goals of this project the following data collections will be implemented:

(1) Planning Grant Survey for all grantees that received a planning grant;

(2) Implementation Grant Survey for all grantees that received an implementation grant;

(3) Value Grant Survey for all grantees that received a value grant; and

(4) In-Depth Interviews will be conducted via telephone with a sample of grantees from each of the three types of grants. Given the complex nature of many of the projects conducted under these grants, from each selected grantee organization 1 to 3 persons with different areas of expertise will participate in the interview with the most knowledgeable person responding to a given question. Questions vary by grant type.

These proposed data collections will gather information from grantee principal investigators on topics including: (1) Partnerships, which were required of all the grantees-what types are most effective and long-lasting and

how partnerships can be made more effective; (2) planning for health IT-information that can help identify successful pathways; (3) implementation of health IT-including common and unique barriers and facilitators to implementation across types of health IT and care settings; (4) the outcomes, benefits, and drawbacks of the grant projects; and (5) the sustainability and expansion of implemented health IT.

Collecting this information will assist AHRQ in its mission of supporting the synthesis and dissemination of available evidence for the planning, implementation, and use of health IT by patients, practitioners, providers, purchasers, policymakers, and educators.

The proposed data collection is also designed to assist AHRQ in improving the effectiveness with which it supports future research, synthesis, and initiatives on health IT topics. The grantees' experiences with the THQIT grant process and features is an important topic covered including feedback on whether the funding and time period were sufficient, how effective the grant was in furthering health IT in grantee organizations, and whether planning grants are a useful mechanism to prepare health care organizations and researchers to participate in future large-scale research.

This research also supports AHRQ's mission, 42 U.S.C. 299(c), to specifically focus on rural populations and priority populations by collecting information on special factors affecting rural health care grantees, and the outcomes of the grant projects for AHRQ priority populations.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours associated with the respondents' time to participate in this research. The Value Grant Survey will be completed by the 24 grantees that received a value grant and takes 30 minutes to complete. The Planning Grant Survey will be completed by all 38 recipients of a planning grant and requires 30 minutes to complete. The Implementation Grant Survey will be completed by the 56 grantees that received an implementation grant and takes 45 minutes to complete. In-depth interviews will be conducted with 1 to 3 persons (2 on average) from each of 30 different grantee organizations and is estimated to average 1.8 hours; actual burden will vary since some sections apply to specific grant types. The total annualized burden is estimated to be 181 hours.

Exhibit 2 shows the estimated annualized cost burden associated with the respondents' time to participate in this research. The total annualized cost burden is estimated to be $7,917.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Value Grant Survey	24	1	30/60	12
Planning Grant Survey	38	1	30/60	19
Implementation Grant Survey	56	1	45/60	42
In-Depth Interviews	30	2	1.8	108
Total	148	n/a	n/a	181

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents	Total burden hours	Average hourly wage rate*	Total cost burden
Value Grant Survey	24	12	43.74	$525
Planning Grant Survey	38	19	43.74	831
Implementation Grant Survey	56	42	43.74	1,837
In-Depth Interviews	30	108	43.74	4,724
Total	148	181	na	7,917

*Based upon the mean of the average wages for medical and health services managers, Department of Labor, Bureau of Labor Statistics, Occupational and Employment Wages. May 2009. Accessed at: *http://www.bls.gov/news.release/pdf/ocwage.pdf.*

Estimated Annual Costs to the Federal Government

Exhibit 3 shows the estimated total and annualized cost for this project. Although data collection activities will last for one year, the entire project will span 2.25 years; therefore, the annualized costs cover two and a quarter years. The total project cost is estimated to be $600,055.

EXHIBIT 3—ESTIMATED TOTAL AND ANNUALIZED COST

Cost component	Total cost	Annualized cost
Project Development	$80,584	$35.815
Data Collection Activities	72,198	32,088
Data Processing and Analysis	52,389	23,284
Publication of Results	149,476	66,434
Project Management	70,313	31,250
Overhead	175,095	77,820

EXHIBIT 3—ESTIMATED TOTAL AND ANNUALIZED COST—Continued

Cost component	Total cost	Annualized cost
Total	600,055	266,691

Request for Comments

In accordance with the above-cited Paperwork Reduction Act legislation, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ healthcare research and healthcare information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: October 21, 2010.

Carolyn M. Clancy,

Director.

[FR Doc. 2010–27568 Filed 11–1–10; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: "Understanding Patients' Knowledge and Use of Acetaminophen—Phase 2." In accordance with the Paperwork Reduction Act, 44 U.S.C. 35013520, AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on August 30th 2010 and allowed 60 days for public comment. No comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by December 2, 2010.

ADDRESSES: Written comments should be submitted to: AHRQ's OMB Desk Officer by fax at (202) 395–6974 (attention: AHRQ's desk officer) or by e-mail at *OIRA_submission@omb.eop.gov* (attention: AHRQs desk officer).

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by e-mail at *doris.lefkowitz@AHRQ.hhs.gov*.

SUPPLEMENTARY INFORMATION:

Proposed Project

Understanding Patients' Knowledge and Use of Acetaminophen—Phase 2

AHRQ proposes a cross-sectional prospective survey to identify issues that relate to the misuse and overdosing of over-the-counter (OTC) acetaminophen. The survey was developed based on results from a previous data collection (OMB control number 0935–0154, approved on 10/13/2009). Acetaminophen is the most widely used analgesic and antipyretic drug in the U.S. When appropriately used, it is a very safe agent. However, a single large overdose, or several supratherapeutic dosages in a short period of time, has been associated with acute liver failure, which can occur with dosages over 250 mg/kg over a 24-hour period, or > 12 g in an adult. Toxicity from acetaminophen has been on the rise in the past 3 decades, and is now the most common cause of acute liver failure in the U.S., surpassing viral hepatitis.

This project has the following aims:

(1) To estimate frequency of use, knowledge, and practices regarding use of OTC acetaminophen, and

(2) Evaluate potential determinants of misuse in community-based samples.

This information will be useful for policy makers to consider and to evaluate regulations and legislation with respect to the distribution, dispensing and sales of OTC acetaminophen.

This study is being conducted by AHRQ through its contractor, the University of Texas. This project supports AHRQ's Centers for Education and Research on Therapeutics initiative to promote the safe and effective use of therapeutics. See 42 U.S.C. 299b–1(b). It also supports AHRQ's mandate for the inclusion of priority populations. See 42 U.S.C. 299(c).

Method of Collection

To achieve the projects' aims the following data collections will be implemented:

(1) Surveys with parents of young children (age < 8 years). The purpose of this survey is to learn how parents administer acetaminophen to their children and to identify determinants of misuse of acetaminophen;

(2) Surveys with adolescents (ages 13 to 20 years of age). The purpose of this survey is to learn how adolescents use acetaminophen and to identify determinants of misuse of acetaminophen;

(3) Surveys with adults (21 to 65 years of age). The purpose of this survey is to learn how adults use acetaminophen and to identify determinants of misuse of acetaminophen;

(4) Surveys with adults (greater than 65 years of age). The purpose of this survey is to learn how older adults use acetaminophen and to identify determinants of misuse of acetaminophen, particularly in regards to age-related factors.

(5) Telephone screener. The telephone screener will be used to recruit a subset of respondents for which a contact telephone number is available.

Data will be collected in-person using paper questionnaires administered by the project personnel.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the respondent's time to participate in this project. Each of the four questionnaires used in the planned face-to-face surveys will require approximately 30 minutes

to complete. The telephone screener will be used with a subset of 500 potential respondents, 300 of which are expected to screen-in. The telephone screener takes about 2 minutes to complete. The total annualized burden for all participants is estimated to be 417 hours.

Exhibit 2 shows the estimated annualized cost burden for the respondent's time to participate in the project. The total annualized cost burden is estimated to be $8,716.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Data collection mode	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Surveys with Parents of children < 8 years of age	300	1	30/60	150
Surveys with Adolescents (13 to 20 years of age)	200	1	30/60	100
Surveys with Adults (20 to 65 years)	150	1	30/60	75
Surveys with Adults (greater than 65 years)	150	1	30/60	75
Telephone Screener	500	1	2/60	17
Total	1,300	na	na	417

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Data collection mode	Number of respondents	Total burden hours	Average hourly wage rate	Total cost burden
Surveys with Parents of children < 8 years of age	300	150	$20.90	$3,135
Surveys with Adolescents (13 to 20 years of age)	200	100	20.90	2,090
Surveys with Adults (20 to 65 years)	150	75	20.90	1,568
Surveys with Adults (greater than 65 years)	150	75	20.90	1,568
Telephone Screener	500	17	20.90	355
Total	1,300	417	na	8,716

* Based upon the mean of the average wages, National Compensation Survey: Occupational wages in the United States May 2009, U.S. Department of Labor, Bureau of Labor Statistics.

Estimated Annual Costs to the Federal Government

Exhibit 3 shows the estimated annualized cost to the Federal government for this six month project. The total cost is $280,269. This amount includes all direct and indirect costs of the design, data collection, analysis, and reporting phase of the study.

EXHIBIT 3—ESTIMATED ANNUALIZED COST

Cost component	Total cost
Project Development	$33,590
Data Collection Activities	85,760
Data Processing and Analysis.	30,800
Publication of Results	750
Project Management	31,093
Overhead	98,276
Total	280,269

Request for Comments

In accordance with the above-cited Paperwork Reduction Act legislation, comments on AHRQs information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ healthcare research and healthcare information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: October 19, 2010.

Carolyn M. Clancy,

Director.

[FR Doc. 2010–27566 Filed 11–1–10; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30-Day–11–0199]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Importation of Etiologic Agents (42 CFR 71.54)—(OMB Control No. 0920–0199 exp. 1/31/2011)—Revision—Office of Public Health Preparedness and Response (OPHPR), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Foreign Quarantine Regulations (42 CFR part 71) set forth provisions to prevent the introduction, transmission, and spread of communicable disease from foreign countries into the United States. Subpart F—Importations—contains provisions for importation of etiologic agents, hosts, and vectors (42 CFR 71.54), requiring persons that import these materials to obtain a permit issued by the CDC. This request is for the information collection requirements contained in 42 CFR 71.54 for issuance of permits by CDC to importers of etiologic agents, hosts, or vectors of human disease. The revisions to the "Application for Permit to Import or Transport Etiologic Agents, Hosts, or Vectors of Human Disease are primarily changes to forms to clarify instructions, correct editorial errors from previous submission, and reformat the structure of the forms based on the day-to-day processing of these forms. The "Application for Permit to Import or Transport Live Bats" is not being revised at this time.

CDC is requesting continued OMB approval to collect this information through the use of two separate forms for a 3 year period. These forms are: (1) Application for Permit to Import or Transport Etiologic Agents, Hosts, or Vectors of Human Disease and (2) Application for Permit to Import or Transport Live Bats.

The Application for Permit to Import or Transport Etiologic Agents, Hosts, or Vectors of Human Disease will be used by laboratory facilities, such as those operated by government agencies, universities, research institutions, and zoologic exhibitions, and also by importers of nonhuman primate trophy materials, such as hunters or taxidermists, to request permits for the importation of etiologic agents, hosts, or vectors of human disease. The Application for Permit to Import or Transport Etiologic Agents, Hosts, or Vectors of Human Disease requests applicant and sender contact information; description of material for importation; facility isolation and containment information; and personnel qualifications.

The Application for Permit to Import or Transport Live Bats will be used by laboratory facilities such as those operated by government agencies, universities, research institutions, and zoologic exhibitions entities to request importation and subsequent distribution after importation of live bats. The Application for Permit to Import or Transport Live Bats requests applicant and sender contact information; a description and intended use of bats to be imported; facility isolation and containment information; and personnel qualifications.

There is no cost to respondents except their time. The total estimated annual burden hours are 670.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Responses per respondent	Average burden per response (in hours)
Applicants Requesting to Import Etiologic Agents.	71.54 Application Permit for Etiologic Agents.	2,000	1	20/60
Applicants Requesting to Import Bats	71.54 Application Permit to Import or Transport Live Bats.	10	1	20/60

Dated: October 27, 2010.

Carol E. Walker,

(Acting) Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–27606 Filed 11–1–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30-Day–11–10CB]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

A Survey to Evaluate Occupational Safety and Health Educational Materials for Home Care Workers—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The mission of the National Institute for Occupational Safety and Health (NIOSH) is to promote safety and health at work for all people through research and prevention. Under Public Law 91–596, Sections 20 and 22 (section 20–22, Occupational Safety and Health Act of 1970); NIOSH has the responsibility to conduct research to advance the health and safety of workers. In this capacity, NIOSH will conduct a survey of home care workers to evaluate newly developed educational intervention materials.

Home care workers who provide housekeeping and routine personal care services to elderly, disabled or ill individuals in their homes, constitute one of the fastest growing occupational groups, estimated at about 1,500,000 workers. In 1997, the U.S. Bureau of Labor Statistics issued a special report on work-related injuries to home care workers showing an injury rate which was 50% higher than that of workers employed in the private hospital sector and 70% higher than the overall rate for all private industry workers.

NIOSH has developed educational intervention materials for home care workers to prevent exposure to work-related hazards. The intervention materials consist of a printed handbook and a training session that explains how to use the handbook. The primary goal of the handbook and training session is to help home care workers and their clients identify hazards, discuss these hazards and identify accessible and low cost tips and tools for minimizing exposures to hazards. These materials have been developed and piloted in Alameda County, California. The goal of this data collection is to evaluate these materials before disseminating them more broadly.

The study population for this survey includes current home care workers and their clients who are enrolled in the In-

Home Supportive Services (IHSS) Program in Alameda County, California.

NIOSH has obtained input on the content and operational aspects of the survey through local stakeholder meetings. The survey instrument has been reviewed by subject matter experts and cognitive interviews have been conducted using the survey instrument. Input received was used to guide development of the survey instrument and plans for survey implementation.

Rather than inviting all 15,000 home care workers to participate through a mailing, as was stated in the 60 day notice, instead we will recruit participants through a mailing to a stratified random sample of 5000 current home care workers extracted from the regularly updated Alameda County IHSS program employee database. The sample will be stratified to reflect approximately equal numbers of English, Spanish and Chinese speaking home care workers using the preferred language variable included in the employee database. The mailing will include a letter explaining the study and an interest response form. Interested workers who would like to volunteer to participate in the study will complete the interest response form and return it in a self addressed envelope to the study contractor. The first 107 home care worker volunteers from each of the three language groups (320 total home care workers) who return their interest response forms will be randomized in equal groups into either an intervention or a control group and will be called and enrolled in the study by the survey contractor. The change from sending recruitment letters to all 15,000 workers to a more targeted recruitment pool of 5,000 English, Spanish, and Chinese speakers was made following additional input from our community partners. They considered the 5,000 to be sufficient to recruit the necessary 320 volunteers.

The primary client for each home care worker participant will also be called by the contractor and invited to participate in the study but the clients' willingness to participate will not affect whether a home care workers can remain as a study participant. Both the home care worker and their primary client will complete a pre- and a post-intervention telephone survey with a two-month interval between the two surveys. Data from the telephone surveys will be captured directly into an electronic database. Home care workers in the intervention group will receive the intervention materials and training during the interval between the pre and the post surveys. Home care workers in the control group will receive the intervention materials and training after the completion of the post survey. Each telephone survey will last approximately 30 minutes for home care workers and 15 minutes for clients. Because of the demographics of the population intervention materials as well as the evaluation surveys are in three languages: English, Spanish and Chinese.

Information will be collected on demographic variables including age, sex, race, education, income, primary language, and marital status. Information will be collected on the number of years a worker has been employed as a home care worker and the number of years a client has received home care services. Information will also be collected on working conditions and occupational exposures, work related injuries, knowledge of work-related health risks and workers' perception of the ease of controlling hazards. Finally, information will be collected from workers on their job satisfaction and clients on their satisfaction with caregiver services, on the quality of the caregiver and client relationships, and specific questions regarding use of the intervention materials.

The purpose of this information collection is to evaluate whether or not the educational materials (the Home Care Worker Handbook and training session) are effective in (1) conveying the intended message and (2) encouraging home care workers and their clients to make changes to reduce hazards. Without benefit of the evaluation, CDC will be unable to determine the effectiveness of the materials or formulate recommendations on their appropriate use and broader dissemination.

Once the study is completed, results will be made available via various means including the NIOSH internet site. NIOSH expects to complete data collection no later than spring of 2011. There is no cost to respondents other than their time.

The total estimated annual burden hours are 842.

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Home care workers	Home care worker interest response form	500	1	5/60
	Home care worker pre survey	320	1	30/60
	Home care worker training program	320	1	1
	Home care worker post survey	320	1	30/60
Home care clients	Client pre survey	320	1	15/60
	Client post survey (post)	320	1	15/60

Dated: October 27, 2010.

Carol Walker,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–27605 Filed 11–1–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day–11–0794]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Carol E. Walker, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.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 shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Transgender HIV Behavioral Survey (THBS) (0920–0794 exp. 12/31/2010)—Reinstatement with change—National Center for HIV, Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Transgender persons, who were born male (male-to-female) are considered to be a high risk group for acquiring Human Immunodeficiency Virus (HIV) infection. The National HIV/AIDS Strategy for the United States calls for reducing new infections, in part, by intensifying HIV prevention efforts in communities where HIV is most heavily concentrated. The strategy also calls for state and local health departments as well as federal agencies to monitor progress towards the strategy's goal. This project addresses national goals by providing a mechanism for describing and monitoring the HIV risk behaviors and HIV prevention experiences of transgender persons.

The Centers for Disease Control and Prevention request approval for a 3-year reinstatement with change of the previously approved Transgender HIV Behavioral Survey (THBS)—(OMB No. 0920–0794, expires December 31, 2010). The previously approved project was a pilot. The purpose of this request is to conduct a behavioral survey among male-to-female transgender persons to assess prevalence of and trends in: (1) Risk behaviors for HIV infection, (2) HIV testing behaviors, and (3) exposure to, use of, and impact of HIV prevention services. The results of this data collection will be used to assess progress toward CDC's goals to increase the proportion of people who consistently engage in behaviors that reduce risk of HIV transmission or acquisition; and to monitor behaviors that increase the risk of HIV infection (among those who are not infected).

For the proposed data collection, the questionnaire used for the previously approved pilot has been shortened and a recruiter debriefing instrument has been added. The project activities and methods will remain the same as those used in the previously approved pilot.

Data will be collected through in-person, computer-assisted interviews conducted by trained interviewers in 5 Metropolitan Statistical Areas (MSA) or MSA Divisions in the United States. The MSAs chosen will be among those currently participating in the National HIV Behavioral Surveillance system (*see* **Federal Register** dated January 19, 2007: Vol. 72, No. 12, pages 2529–2530).

Respondent Driven Sampling (RDS) will be used to recruit participants. Except for a few initial ("seed") recruits, persons will be recruited by peers for participation in THBS. A screener questionnaire will be used to determine eligibility for participation. In one year, approximately 1,100 individuals will be approached and screened (through a 5-minute interview) for eligibility to participate. Approximately 1,000 individuals are expected to be eligible and participate in the 40-minute behavioral assessment interview each year. After the interview, the interviewer will train the respondent to recruit up to five of her peers. When she returns to the field site, she will be debriefed using a computer-assisted, interviewer-administered recruiter debriefing instrument. Approximately 600 peer recruiters are expected to participate as peer recruiters, about 500 of whom will return to be debriefed through a 2-minute interview. Participation of respondents is voluntary and there is no cost to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Persons Referred by Peer Recruiters.	Screener	1,100	1	5/60	92
Eligible Transgender Persons	Behavioral assessment	1,000	1	40/60	667
Peer Recruiters	Recruiter Debriefing	500	1	2/60	17
Total					776

Dated: October 27, 2010.

Carol E. Walker,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–27603 Filed 11–1–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: Tracking of Participants in the Early Head Start Research and Evaluation Project.

OMB No.: New Collection.

Description: The Administration for Children and Families (ACF) within the Department of Health and Human Services (HHS) will conduct tracking of children/families who participated in the Early Head Start Research and Evaluation Project (EHSREP). The purpose of tracking these participants is to maintain up-to-date contact information for the children/families in the event that the Administration for Children and Families (ACF) determines that a future follow-up to the EHSREP will take place.

The EHSREP is a longitudinal study designed to meet the requirement in the 1994 reauthorization (continued in the 1998 reauthorization) for a national evaluation of the new infant-toddler

program. 3001 children and families in 17 sites were randomly assigned either to the program group (allowed to enroll in EHS), or to the control group (precluded from enrolling in EHS, although they could receive other services in the community). Child and family assessments were conducted when children were 14 months old, 24 months old, 36 months old, in the spring prior to kindergarten entry, and again in the spring of the sixth year of formal schooling (5th grade for most children).

If the decision is made to follow the sample through high school, it is important to maintain contact with the participants so that response rates at follow-up points will be maximized and will not further deteriorate. The success that the contractor has in contacting the sample members will be taken into consideration in the decision whether to pursue further follow up. It is hoped that this strenuous effort in location and tracking will re-establish contact with participants who were not reached in the fifth grade data collection wave. Telephone interviews will be conducted in order to update the respondent's location and contact information. This information will be collected from parents or guardians in the spring of 2011. A small set of additional items will provide information on the parents' perception of the children's status.

Respondents: Treatment and control group members in the Early Head Start Research and Evaluation Project.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Tracking interview	2,700	1	0.25	675

Estimated Total Annual Burden Hours: 675.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: October 28, 2010.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2010–27593 Filed 11–1–10; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: Reunification Procedures for Unaccompanied Alien Children.

OMB No.: 0970–0278.

Description: Following the passage of the 2002 Homeland Security Act (Pub. L. 107–296), the Administration for Children and Families (ACF), Office of Refugee Resettlement (ORR), is charged with the care and placement of unaccompanied alien children in Federal custody, and implementing a policy for the release of these children, when appropriate, upon the request of suitable sponsors while awaiting immigration proceedings. In order for ORR to make determinations regarding the release of these children, the potential sponsors must meet certain conditions pursuant to section 462 of the Homeland Security Act and the Flores v. Reno Settlement Agreement No. CV85–4544–RJK (C.D. Cal. 1997).

The proposed information collection requests information to be utilized by ORR for determining the suitability of a sponsor/respondent for the release of a minor from ORR custody. The proposed instruments are the Sponsors Agreement to Conditions of Release, Verification of Release, Family Reunification Packet, and the Authorization for Release of Information.

Respondents: Sponsors requesting release of unaccompanied alien children to their custody.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Sponsor's Agreement to Conditions of Release	4,288	2	0.08	686.08
Verification of Release	4,288	1	0.17	728.96
Family Reunification Packet	4,288	18	0.04	3,087.36
Authorization for Release of Information	4,288	15	0.22	14,150.40

Estimated Total Annual Burden Hours: 18,652.80.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and

Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: October 28, 2010.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2010–27596 Filed 11–1–10; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Ancillary Study in Necrotizing Enterocolitis.

Date: December 1, 2010.

Time: 3 p.m. to 5 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: Maria E. Davila-Bloom, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 758, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7637, *davila-bloomm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: October 26, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–27569 Filed 11–1–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No FDA–2010–N–0001]

Pediatric 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: Pediatric 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 December 7, 2010, from 8 a.m. to 6 p.m.

Location: Bethesda Marriott Hotel, 5151 Pooks Hill Rd., Bethesda, MD 20814.

Contact Person: Walter Ellenberg, Office of Pediatric Therapeutics, Office of Special Medical Programs, Office of the Commissioner, Food and Drug Administration, 10903 New Hampshire Ave., Bldg 32, rm. 5154, Silver Spring, MD 20993, 301–796–0885, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 8732310001. Please call the Information Line for up-to-date information on this meeting. 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 and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: The Pediatric Advisory Committee will meet to discuss pediatric-focused safety reviews, as mandated by the Best Pharmaceuticals for Children Act and the Pediatric Research Equity Act, for Prevista (darunavir ethanolate), PegIntron (peginterferon alfa–2b), Xyzal (levocetirizine dihydrochloride) tablet and solution, Flovent HFA (fluticasone propionate), Acanya Gel (clindamycin/benzoyl peroxide combination), Epiduo Gel (adapalene and benzoyl peroxide), Ulesfia Lotion 5% (benzyl alcohol), Axert (almotriptan), Gardasil (human papillomavirus quadrivalent types 6, 11, 16, 18, vaccine recombinant), Lamictal and Lamictal XR (lamotrigine), and Neulasta (pegfilgrastim). The committee will also receive a followup on Depakote ER (divalproex sodium). Committee members who participated in the Cardiovascular and Renal Drugs Advisory Committee and the Gastrointestinal Drugs Advisory Committee meetings held on July 29, 2010, and November 5, 2010, respectively, will provide a brief summary of the meetings.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before November 29, 2010. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those desiring to make 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 November 18, 2010. 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 November 19, 2010.

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 Walter Ellenberg 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: October 27, 2010.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2010–27539 Filed 11–1–10; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Mental Health Disparities Supplements.

Date: November 17, 2010.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call)

Contact Person: Vinod Charles, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9606, Bethesda, MD 20892–9606, 301–443–1606, *charlesvi@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: October 26, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–27628 Filed 11–1–10; 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: Weight Loss, Obesity and Physical Activity.

Date: November 15, 2010.

Time: 10 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Lee S. Mann, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, 301–435–0677, *mannl@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR 10–021: AIDS–Science Track Award for Research Transition (A–START) in Drug Abuse and HIV/AIDS.

Date: November 29, 2010.

Time: 11 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jose H. Guerrier, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1137, *guerriej@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: October 26, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–27627 Filed 11–1–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; SPORE in Prostate, Skin, Pancreatic and other GI Cancers.

Date: February 2–4, 2011.

Time: 8 a.m. to 12 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: Caron A Lyman, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd, Room 8119, Bethesda, MD 20892–8328, 301–451–4761, *lymanc@mail.nih.gov.*

(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: October 27, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–27626 Filed 11–1–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Epilepsy Clinical Trials Review.

Date: November 19, 2010.

Time: 12 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call)

Contact Person: William Benzing, Ph.D., Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Room 3204, MSC 9529, Bethesda, MD 20892, 301–496–0660, *Benzingw@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: October 27, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–27625 Filed 11–1–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Inherited Disease Research Access Committee.

Date: November 17, 2010.

Time: 12:30 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Suite 4069, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Ken D. Nakamura, PhD, Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 5635 Fishers Lane, Suite 4076, MSC 9306, Rockville, MD 20852, 301–402–0838.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: October 26, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–27562 Filed 11–1–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director; 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 the following meeting.

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 section 552b(c)(10), Title 5 U.S.C., as amended. This portion of the meeting will be closed for discussions regarding pending civil legal proceedings.

Name of Committee: Advisory Committee to the Director, National Institutes of Health.

Date: December 9, 2010.

Open: 8 a.m. to 3 p.m.

Agenda: NIH Director's Report, Lasker Clinical Research Program; ACD TRND Working Group Report; Update on Enhancing Peer Review; Approaches to Implementing SMRB Recommendations; Review of Outside Awards for ACD Approval; Biomedical Workforce Issues; ACD Stem Cell Working Group Report.

Place: Building 31, C–Wing, 6th Floor, Conference Room 6, National Institutes of Health, Bethesda, MD 20892.

Closed: 3:15 p.m. to 4:15 p.m.

Agenda: Discussion of Pending Civil Litigation.

Place: Building 31, C–Wing, 6th Floor, Conference Room 6, National Institutes of Health, Bethesda, MD

Contact Person: Gretchen S. Wood, Immediate Office of the Director, National Institutes of Health, One Center Drive, Room 114. Bethesda, Maryland 20892–0147, e-mail: *woodgs@od.nih.gov.*

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 Advisory Committee to the Director, NIH home page: *http://acd.od.nih.gov*, where an agenda and any additional information for the meeting will be posted when available.

Dated: October 25, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–27573 Filed 11–1–10; 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 Channels, GPCRs, and Proteins of Neurodegeneration.

Date: November 22, 2010.

Time: 1:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Geoffrey G. Schofield, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040–A, MSC 7850, Bethesda, MD 20892, 301–435–1235. *geoffreys@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Genomics and Signal Transduction in Cancer Cells.

Date: November 23–24, 2010.

Time: 10 p.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Elaine Sierra-Rivera, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7804, Bethesda, MD 20892, 301–435–1779. *riverase@csr.nih.gov.*

(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: October 26, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–27575 Filed 11–1–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel HIV, HAART and AGING.

Date: November 23, 2010.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute On Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Elaine Lewis, PhD, Scientific Review Branch, National Institute on Aging, Gateway Building, Suite 2C212, MSC–9205, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–402–7707. *elainelewis@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health, HHS).

Dated: October 25, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–27576 Filed 11–1–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental and Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, Review R01.

Date: November 3, 2010.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892.

Contact Person: Mary Kelly, Scientific Review Officer, Scientific Review Branch, National Inst. of Dental & Craniofacial Research, NIH, 6701 Democracy Blvd., Room 672, MSC 4878, Bethesda, MD 20892–4878, 301–594–4809. *mary_kelly@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the intramural research review cycle.

(Catalogue of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: October 26, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–27572 Filed 11–1–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2010–0040]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, OMB No. 1660–0015; Revisions to National Flood Insurance Program Maps: Application Forms and Instructions for (C)LOMAs and (C)LOMR–Fs

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 30-day notice and request for comments; revision of a currently approved information collection; OMB No. 1660–0015; FEMA Form 086–0–26 (formerly 81–87) Property Information; FEMA Form 08–0–26A (formerly 81–87A) Elevation; FEMA Form 086–0–26B (formerly 81–87B) Community Acknowledgement; FEMA Form 086–0–22, Application Form for Single Residential Lot or Structure Amendments to National Flood Insurance Program Maps; FEMA Form 086–0–22A, Application Form for Single Residential Lot or Structure Amendments to National Flood Insurance Program Maps (Spanish).

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission describes the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before December 2, 2010.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 1800 South Bell Street, Arlington, VA 20598–3005, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections-Management@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Collection of Information

Title: Revisions to National Flood Insurance Program Maps: Application Forms and Instructions for (C)LOMAs and (C)LOMR–Fs.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0015.

Form Titles and Numbers: FEMA Form 086–0–26 (formerly FEMA Form 81–87) Property Information; FEMA Form 08–0–26A (formerly FEMA Form 81–87A) Elevation; FEMA Form 086–0–26B (formerly FEMA Form 81–87B) Community Acknowledgement; FEMA Form 086–0–22, Application Form for Single Residential Lot or Structure Amendments to National Flood Insurance Program Maps; FEMA Form 086–0–22A, Application Form for Single Residential Lot or Structure Amendments to National Flood Insurance Program Maps (Spanish).

Abstract: This collection of information allows owners of structures that have been found to be in a designated Special Flood Hazard Area (SFHA) the opportunity to request a review of this determination. With the submission of the appropriate documentation, FEMA will conduct a review of the structure in question and either certify the original finding or modify the designation so that it no longer indicates a SFHA identifier. If the structure is found to not be in a SFHA, FEMA will issue a written determination and modify the appropriate map by a Letter of Map Amendment (LOMA) or a Letter of Map Revision—Based on Fill (LOMR–F). The structure then qualifies for a waiver of flood insurance.

Affected Public: Individuals or households; business or other for profit.

Estimated Number of Respondents: 97,865.

Frequency of Response: On occasion.

Estimated Average Hour Burden per Respondent: FEMA Form 086–0–26 (1.63 hours), FEMA Form 086–0–26A (1.25 hours), FEMA Form 086–0–26B (1.38 hours), FEMA Form 086–0–22 English (2.4 hours), FEMA Form 086–0–22A Spanish (2.4 hours).

Estimated Total Annual Burden Hours: 129,320 hours.

Estimated Cost: The estimated annual operations and maintenance costs for technical services is $20,540,250. There is no annual start-up or capital costs.

Dated: October 27, 2010.

Lesia M. Banks,

Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2010–27655 Filed 11–1–10; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2010–0044]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, OMB No. 1660–0016; Revision to National Flood Insurance Program Maps: Application Forms for LOMRs and CLOMRs

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 30-day notice and request for comments; revision of a currently approved information collection; OMB No. 1660–0016; FEMA Form 086–0–27 (formerly FEMA Form 81–89), Overview and Concurrence Form; FEMA Form 086–0–27A (formerly FEMA Form 81–89A), Riverine Hydrology and Hydraulics Form; FEMA Form 086–0–27B (formerly FEMA Form 81–89B), Riverine Structures Form; FEMA Form 086–0–27C (formerly FEMA Form 81–89C), Coastal Analysis Form; FEMA Form 086–0–27D (formerly FEMA Form 81–89D), Coastal Structures Form; FEMA Form 086–0–27E (formerly FEMA Form 81–89E), Alluvial Fan Flooding Form.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission describes the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before December 2, 2010.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland

Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 1800 South Bell Street, Arlington, VA 20598–3005, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections-Management@dhs.gov.*

SUPPLEMENTARY INFORMATION: One comment was received in response to the 60-day **Federal Register** Notice published July 27, 2010, 75 FR 43998. The comment asked for clarification on the difference in notification requirements for Letter of Map Revisions (LOMRs) and Physical Map Revisions (PMRs). The reason for the difference is explained in FEMA Form 086–0–27A (formerly FEMA Form 81–89A), Riverine Hydrology and Hydraulics Form. The commenter also was concerned that the notification is costly and time consuming and mentioned that the notifications must be sent using certified mail, but that is not a requirement.

Collection of Information

Title: Revision to National Flood Insurance Program Maps: Application Forms for LOMRs and CLOMRs.

Type of information collection: Revision of a currently approved information collection.

OMB Number: 1660–0016.

Form Titles and Numbers: FEMA Form 086–0–27 (formerly FEMA Form 81–89), Overview and Concurrence Form; FEMA Form 086–0–27A (formerly FEMA Form 81–89A), Riverine Hydrology and Hydraulics Form; FEMA Form 086–0–27B (formerly FEMA Form 81–89B), Riverine Structures Form; FEMA Form 086–0–27C (formerly FEMA Form 81–89C), Coastal Analysis Form; FEMA Form 086–0–27D (formerly FEMA Form 81–89D), Coastal Structures Form; FEMA Form 086–0–27E (formerly FEMA Form 81–89E), Alluvial Fan Flooding Form.

Abstract: The certification forms are designed to assist requesters in gathering information that FEMA needs to revise a National Flood Insurance Program (NFIP) map. This data is required to ensure that requested revisions are in compliance with NFIP regulations. These revisions are granted if the technical information submitted demonstrates that the prior determination of a Special Flood Hazard Area, floodway or Base Flood Elevation on a flood map is no longer valid.

Affected Public: Business or other for-profit; State, local or Tribal Government.

Estimated Number of Respondents: 1,500.

Frequency of Response: On Occasion.

Estimated Average Hour Burden per Respondent: 11.8 hours.

Estimated Total Annual Burden Hours: 17,700 hours.

Estimated Cost: The estimated annual operations and maintenance cost is $26,250,000. There is no annual or capital start-up cost.

Dated: October 27, 2010.

Lesia M. Banks,

Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2010–27656 Filed 11–1–10; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2497–99; DHS Docket No. USCIS 2010–0010]

RIN 1615–ZA99

Extension of the Designation of Somalia for Temporary Protected Status

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security (DHS).

ACTION: Notice.

SUMMARY: This Notice announces that the Secretary of Homeland Security (Secretary) has extended the designation of Somalia for temporary protected status (TPS) for 18 months, from its current expiration date of March 17, 2011 through September 17, 2012. The Secretary has determined that an 18-month extension is warranted because conditions in Somalia prompting the TPS designation continue to be met. Armed conflict in Somalia is ongoing and, due to such conflict and other extraordinary and temporary conditions, requiring the return of eligible individuals with TPS to Somalia would pose a serious threat to their personal safety.

This Notice also sets forth procedures necessary for nationals of Somalia (or aliens having no nationality who last habitually resided in Somalia) with TPS to re-register and to apply for an extension of their employment authorization documents (EADs) with U.S. Citizenship and Immigration Services (USCIS). Re-registration is limited to persons who previously registered for TPS under the designation of Somalia and whose applications have been granted or remain pending. Certain nationals of Somalia (or aliens having no nationality who last habitually resided in Somalia) who have not previously applied for TPS may be eligible to apply under the late initial registration provisions. Information on late initial registration can be found on the USCIS Web site at *http://www.uscis.gov* on the "Temporary Protected Status" homepage.

USCIS will issue new EADs with a September 17, 2012 expiration date to eligible TPS beneficiaries who timely re-register and apply for EADs.

DATES: The extension of the TPS designation of Somalia is effective March 18, 2011, and will remain in effect through September 17, 2012. The 60-day re-registration period begins November 2, 2010 and will remain in effect until January 3, 2011.

FOR FURTHER INFORMATION CONTACT:

- For further information on TPS, including guidance on the application process and additional information on eligibility, please visit the USCIS Web site at *http://www.uscis.gov.* Select "Temporary Protected Status" from the homepage under "Humanitarian Relief." You can find detailed information about this TPS extension on our Web site at the Somali Questions & Answers Section.
- You can also contact the TPS Operations Program Manager, Status and Family Branch, Service Center Operations Directorate, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., Washington, DC 20529–2060, telephone (202) 272–1533. This is not a toll-free call.

Note: The phone number provided here is solely for questions regarding this TPS notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online available at the USCIS Web site at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at 1–800–375–5283 (TTY 1–800–767–1833).

- Further information will also be available at local USCIS offices upon publication of this Notice.

SUPPLEMENTARY INFORMATION:

Abbreviations and Terms Used in This Document

Act—Immigration and Nationality Act
AI—Amnesty International
DHS—Department of Homeland Security
DOS—Department of State

EAD—Employment Authorization Document
OSC—U.S. Department of Justice, Office of Special Counsel for Immigration Related Unfair Employment Practices
Secretary—Secretary of Homeland Security
TFG—Transitional Federal Government
TPS—Temporary Protected Status
UN—United Nations
UNHCR—United Nations High Commissioner for Refugees
USCIS—U.S. Citizenship and Immigration Services

What Is Temporary Protected Status?

- TPS is an immigration status granted to eligible nationals of a country designated for TPS under the Act (or to persons with no nationality who last habitually resided in the designated country).
- During the TPS designation period, TPS beneficiaries are eligible to remain in the United States and may obtain work authorization, so long as they continue to meet the requirements of their TPS status.
- The granting of TPS does not lead to permanent resident status.
- When the Secretary terminates a country's TPS designation, beneficiaries return to the same immigration status they maintained before TPS (unless that status has since expired or been terminated) unless they lawfully obtained another immigration status while registered for TPS.

What authority does the Secretary of Homeland Security have to extend the designation of Somalia for TPS?

Section 244(b)(1) of the Immigration and Nationality Act (Act), 8 U.S.C. 1254a(b)(1), authorizes the Secretary, after consultation with appropriate agencies of the government, to designate a foreign State (or part thereof) for TPS.[1] The Secretary may then grant TPS to eligible nationals of that foreign State (or aliens having no nationality who last habitually resided in that State). Section 244(a)(1)(A) of the Act, 8 U.S.C. 1254a(a)(1)(A).

At least 60 days before the expiration of a TPS designation, the Secretary, after consultation with appropriate agencies of the government, must review the conditions in a foreign State designated for TPS to determine whether the conditions for the TPS designation continue to be met and, if so, must determine the length of an extension of the TPS designation. Section 244(b)(3)(A) and (C) of the Act, 8 U.S.C. 1254a(b)(3)(A) and (C). If the Secretary determines that the foreign State no longer meets the conditions for the TPS designation, the Secretary must terminate the designation. Section 244(b)(3)(B) of the Act, 8 U.S.C. 1254a(b)(3)(B).

When was Somalia designated for TPS?

On September 16, 1991, the Attorney General designated Somalia for TPS based on the ongoing armed conflict and extraordinary and temporary conditions within the country. 56 FR 46804. *See* section 244(a)(b)(1)(A) and (C) of the Act, 8 U.S.C. 1254a(b)(1)(A) and (C). On September 4, 2001, the Attorney General redesignated Somalia for TPS. 66 FR 46288. The last extension of TPS for Somalia was announced on July 27, 2009, based on the Secretary's determination that the conditions warranting the designation and redesignation continued to be met. 74 FR 37043. This announcement is the eighth extension of TPS for Somalia since the redesignation in 2001.

Why is the Secretary extending the TPS designation for Somalia through September 17, 2012?

Over the past year, DHS and the Department of State (DOS) have continued to review conditions in Somalia. Based on this review, and after consulting with DOS, the Secretary has determined that an 18-month extension is warranted because the conditions prompting designation and redesignation continue to be met. Armed conflict in Somalia is ongoing and, due to such conflict and other extraordinary and temporary conditions requiring the return of eligible individuals with TPS to Somalia would pose a serious threat to their personal safety.

Somalia remains in a state of chaos characterized by the lack of a central government, a crippled economy, the absence of civil structures, destruction of infrastructure, and generalized insecurity in the form of banditry, kidnapping, looting, revenge killings, targeted assassinations, suicide car-bombings, and inter-clan fighting. A total of 7,574 civilians were killed in 2008. An additional 1,739 civilians were killed in 2009. In January 2010 alone, 258 civilians were killed in the escalating conflict. An April 2010 United Nations (UN) report states that trafficking of women and children is widespread. An April 2010 report by Human Rights Watch indicates that men and boys were forcibly recruited into militia forces, and were killed if they refused. An Amnesty International (AI) report covering the period between September 2009 and March 2010 stated that civilians were deliberately targeted for attacks and that opposition groups which continued to control south and central Somalia increasingly subjected civilians living in those areas to serious human rights violations, including abduction, torture, and unlawful killings.

In January 2009, Sheikh Sharif Sheikh Ahmed was appointed as president of the Transitional Federal Government (TFG). De-escalation of violence in Mogadishu and other parts of southern and central Somalia followed and some 60,000 people returned. However, a new offensive in May 2009 against the TFG and resumed fighting resulted in death or injury to thousands of civilians and forced some 255,000 people to flee the city.

As of March 25, 2010, the United Nations High Commissioner for Refugees (UNHCR) estimated the number of people internally displaced within Somalia at 1.4 million. The number of Somalis who sought refuge in neighboring countries in 2008 was 106,909. In 2009, the number rose to 121,177. In the first quarter of 2010, the number of individuals who sought refuge in neighboring countries was 21,730. According to UNHCR figures, the total number of Somali refugees in neighboring countries is 568,640.

In January 2008, the number of Somalis in need of humanitarian assistance was 1.8 million. As of February 2010, the UN Food Security and Nutrition Analysis Unit reported the number at 3.2 million, or 42% of the population. However, humanitarian efforts have been hindered by increasing targeted attacks on humanitarian workers countrywide. Several international assistance organizations have had to suspend most humanitarian feeding operations. According to the March 25, 2010 AI report, "The delivery of emergency humanitarian aid in Somalia is shrinking." The threat of piracy, insecurity, restrictions on movement and operations of aid agencies, and corruption hampered the delivery of humanitarian aid to populations in need.

Based on this review and after consultation with the appropriate Government agencies, the Secretary has determined that:

- The conditions that prompted the September 4, 2001 redesignation of Somalia for TPS continue to be met. *See*

[1] As of March 1, 2003, in accordance with section 1517 of title XV of the Homeland Security Act of 2002 (HSA), Public Law 107–296, 116 Stat. 2135, any reference to the Attorney General in a provision of the Immigration and Nationality Act describing functions transferred under the HSA from the Department of Justice to the Department of Homeland Security "shall be deemed to refer to the Secretary" of Homeland Security. *See* 6 U.S.C. 557 (codifying HSA, tit. XV, sec. 1517).

section 244(b)(3)(A) and (C) of the Act, 8 U.S.C. 1254a(b)(3)(A) and (C).

• Requiring the return of nationals to Somalia continues to pose a serious threat to their personal safety due to an ongoing armed conflict. *See* section 244(b)(1)(A) of the Act, 8 U.S.C. 1254a(b)(1)(A).

• Nationals of Somalia still cannot return to Somalia in safety due to continued extraordinary and temporary conditions. *See* section 244(b)(1)(C) of the Act, 8 U.S.C. 1254a(b)(1)(C).

• It is not contrary to the national interest of the United States to permit aliens who meet the eligibility requirements of TPS to remain in the United States temporarily. *See* section 244(b)(1)(C) of the Act, 8 U.S.C. 1254a(b)(1)(C).

• The designation of Somalia for TPS should be extended for an additional 18-month period. *See* section 244(b)(3)(C) of the Act, 8 U.S.C. 1254a(b)(3)(C).

• There are approximately 300 nationals of Somalia (or aliens having no nationality who last habitually resided in Somalia) who are eligible for TPS under this extended designation.

Notice of Extension of the TPS Designation of Somalia

By the authority vested in me as Secretary of Homeland Security under section 244 of the Act, 8 U.S.C. 1254a, I have determined after consultation with the appropriate government agencies that the conditions that prompted redesignation of Somalia for temporary protected status (TPS) on September 4, 2001, continue to be met. *See* section 244(b)(3)(A) and (C) of the Act, 8 U.S.C. 1254a(b)(3)(A) and (C). On the basis of this determination, I am extending the TPS designation of Somalia for 18 months from March 18, 2011 through September 17, 2012.

Janet Napolitano,

Secretary.

Required Application Forms and Application Fees To Register or Re-register for TPS

To register or re-register for TPS, an applicant must submit:

1. Form I–821, Application for Temporary Protected Status,

• You need to pay the Form I–821 application fee only if you are filing an application for late initial registration;

• You do not need to pay the Form I–821 fee for a re-registration; and

2. Form I–765, Application for Employment Authorization.

• If you are filing for re-registration, you must pay the Form I–765 application fee if you want an employment authorization document (EAD).

• If you are filing for late initial registration and want an EAD, you must pay the Form I–765 fee only if you are age 14 through 65. No EAD fee is required if you are under the age of 14 or over the age of 65 and filing for late initial TPS registration.

• You do not pay the Form I–765 fee if you are not requesting an EAD.

You must submit both completed application forms together. You may apply for application and/or biometrics fee waivers if you are unable to pay and you can provide proof through satisfactory supporting documentation. For more information on the application forms and application fees for TPS, please visit the USCIS Web site at *http://www.uscis.gov.*

Biometric Services Fee

Biometrics (such as fingerprints) are required for all applicants 14 years of age or older. Those applicants must submit a biometric services fee. You may apply for application and/or biometrics fee waivers if you are unable to pay and you can provide proof through satisfactory supporting documentation. For more information on the biometric services fee, please visit the USCIS Web site at *http://www.uscis.gov.*

Mailing Information

Mail your application for TPS to the proper address in Table 1:

TABLE 1—MAILING ADDRESSES

If . . .	Mail to . . .
You are applying for re-registration through US Postal Service	USCIS, Attn: TPS Somalia, P.O. Box 8677, Chicago, IL 60680–8677.
You are applying for the first time as a late initial registrant through US Postal Service	USCIS, Attn: TPS Somalia, P.O. Box 8677, Chicago, IL 60680–8677.
You are using a Non-US Postal Service delivery service for both re-registration and first time late initial registration.	USCIS, Attn: TPS Somalia, 131 S. Dearborn—3rd Floor, Chicago, IL 60603–5517.
You were granted TPS by an Immigration Judge (IJ) or the Board of Immigration Appeals (BIA), and you wish to request an EAD or are re-registering for the first time.	USCIS, Attn: TPS Somalia, P.O. Box 7332, Chicago, IL 60680–7332.

E-Filing

If you are re-registering for TPS during the re-registration period and you do not need to submit any supporting documents or evidence, you are eligible to file your applications electronically. For more information on e-filing, please visit the USCIS E–Filing Reference Guide at the USCIS Web site at *http://www.uscis.gov.*

Employment Authorization Document (EAD)

May I request an interim EAD at my local USCIS office?

No. USCIS will not issue interim EADs to TPS applicants and re-registrants at local offices.

Will my current EAD that is set to expire on March 17, 2011, be automatically extended for 6 months?

No. This notice does not automatically extend previously issued EADs. DHS has announced the extension of the TPS designation of Somalia and established the re-registration period at an early date to allow sufficient time for USCIS to process EAD requests prior to the March 17, 2011 expiration date. You must apply during the 60-day re-registration period. Failure to apply during the re-registration period without good cause may result in a withdrawal of your TPS benefits. DHS strongly encourages you to apply as early as possible within the re-registration period.

What documents may a qualified individual show to his or her employer as proof of employment authorization and identity when completing Form I–9?

After March 17, 2011, a TPS beneficiary who chooses to present an EAD as a List A document may present his or her new EAD (Form I–766) with a new expiration date of September 17, 2012, to his or her employer as proof of employment authorization and identity. The EAD will bear the notation "A–12" or "C–19" on the face of the card in the middle under "Category." After March 17, 2011, employers may not accept EADs that no longer have a valid date.

Employers may not request proof of Somali citizenship. Employers should not ask for additional Form I–9 documentation if presented with a new valid EAD pursuant to this **Federal Register** notice, and the EAD reasonably appears on its face to be genuine and to relate to the employee. Employees also may present any other legally acceptable document or combination of documents listed on the Form I–9 as proof of identity and employment eligibility.

Note to Employers

Employers are reminded that the laws requiring employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This Notice does not supersede or in any way limit applicable employment verification rules and policy guidance, including those rules setting forth re-verification requirements. For questions, employers may call the USCIS Customer Assistance Office at 1–800–357–2099. Employers may also call the U.S. Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) Employer Hotline at 1–800–255–8155.

Note to Employees

Employees or applicants may call the OSC Employee Hotline at 1–800–255–7688 for information regarding the automatic extension. Additional information is available on the OSC Web site at *http://www.justice.gov/crt/osc/.*

[FR Doc. 2010–27613 Filed 11–1–10; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2010–0947]

Policy for Banning of Foreign Vessels From Entry into United States Ports

AGENCY: Coast Guard, DHS.

ACTION: Notice of policy.

SUMMARY: The U.S. Coast Guard announces release of policy letter 10–03, Banning of Foreign Vessels. This policy letter outlines U.S. Coast Guard procedures for denying entry of certain foreign flagged commercial vessels into any port or place in the United States as a result of the vessel's history of operating in a continuous substandard condition in waters subject to United States jurisdiction.

DATES: This policy became effective on September 1, 2010.

ADDRESSES: This notice and the policy letter described within it are available in the docket and can be viewed by going to *http://www.regulations.gov,* inserting USCG–2010–0947 in the "Keyword" box, and then clicking "Search." This policy letter is also available at *http://www.homeport.uscg.mil* under the Port State Control tab; Foreign Vessel Safety; Banning of Foreign Vessels.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice or the policy, call or e-mail Lieutenant Commander Charles Fluke, Foreign and Offshore Vessels Division (CG–5432), U.S. Coast Guard, telephone 202–372–1235. If you have questions on viewing material in the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The U.S. Coast Guard Port State Control (PSC) program began in the United States when Congress, through the 1994 Department of Transportation Appropriations Bill, required the U.S. Coast Guard to change its approach to foreign vessel examinations. The bill required the U.S. Coast Guard to hold those most responsible for substandard ships accountable, including owners, classification societies, and flag States.

Title 33 of the United States Code provides tools and authority for the U.S. Coast Guard to meet this mandate. 33 U.S.C. 1228 prohibits vessels from operating in the navigable waters of the United States or transferring cargo or residue in any port or place under the jurisdiction of the United States if such vessels: Have a history of accidents, pollution incidents, or serious repair problems; fail to comply with applicable regulations, laws, or treaties; discharges oil or hazardous material in violation of law or treaty; or fails to comply with vessel traffic service, manning, and language requirements.

In addition, 33 U.S.C. 1223(b) grants the authority to order any vessel in a port or place subject to the jurisdiction of the United States or in the navigable waters of the United States to operate or anchor as directed if: such vessel does not comply with applicable regulations, law, or treaty; the vessel does not satisfy the conditions for port entry as set out in 33 U.S.C. 1228; or in the interest of safety.

In 1997, the U.S. Coast Guard published regulations to enforce International Maritime Organization (IMO) Resolution A.741 (18), titled "International Management Code for the Safe Operation of Ships and for Pollution Prevention (International Safe Management [ISM] Code)". The U.S. Coast Guard also published the Navigation and Vessel Inspection Circular (NVIC) 04–05, titled, "Port State Control Guidelines for the Enforcement of Management for the Safe Operation of Ships (ISM) Code," to provide guidance to both Coast Guard and industry personnel concerning compliance with the requirements of the International Convention for the Safety of Life at Sea (SOLAS), 1974, Chapter IX and the ISM Code.

The cornerstone for ensuring a vessel is compliant with international standards, laws, and regulations is a well written and properly implemented Safety Management System (SMS). Commitment by top level company management and continuous improvement are two fundamental objectives of an effective SMS. Companies that do not embrace a safety culture and that repeatedly operate vessels in a substandard condition have failed to recognize the importance of complying with international conventions and standards and put their crews, vessels, and the marine environment at risk.

Occasionally, the U.S. Coast Guard intercepts vessels arriving into United States waters that consistently demonstrate a substandard condition and, thus, fail to comply with the requirements found in international conventions and domestic regulations. Previously, there was no mechanism in place to effectively and consistently respond to repeat offenders. The U.S. Coast Guard's Banning of Foreign Vessels policy should provide a systematic approach to addressing these vessels. This policy aligns the U.S. Coast Guard with other SOLAS signatory flag States who currently have policies and procedures in place for processing vessels that repeatedly operate in a substandard condition.

Policy Implementation

The U.S. Coast Guard will continue to screen, prioritize, and coordinate all foreign vessel exams in accordance with existing policies. When a vessel has been repeatedly detained (meaning *three* or more detentions within *twelve* months) and it is determined by the U.S. Coast Guard's Foreign and Offshore Vessels Division (CG–5432) that failure to effectively implement the SMS was a contributing factor for the substandard condition(s) that led to the detentions, the vessel will be denied entry into any port or place in the United States in compliance with 33 U.S.C. 1228 and 1223(b) until specified actions are completed to the satisfaction of the Coast Guard.

Authority: This notice is issued under authority of 5 U.S.C. 552, 33 U.S.C. 1223(b), and 33 U.S.C. 1228.

Dated: October 25, 2010.

Kevin S. Cook,

Rear Admiral, U.S. Coast Guard, Director of Prevention Policy.

[FR Doc. 2010–27592 Filed 11–1–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4211–N–05]

Credit Watch Termination Initiative Termination of Origination Approval Agreements

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice advises of the cause and effect of termination of Origination Approval Agreements taken by HUD's Federal Housing Administration (FHA) against HUD-approved mortgagees through the FHA Credit Watch Termination Initiative. This notice includes a list of mortgagees which have had their Origination Approval Agreements terminated.

FOR FURTHER INFORMATION CONTACT: The Quality Assurance Division, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room B133–P3214, Washington, DC 20410–8000; telephone (202) 708–2830 (this is not a toll-free number). Persons with hearing or speech impairments may access that number through TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: HUD has the authority to address deficiencies in the performance of lenders' loans as provided in HUD's mortgagee approval regulations at 24 CFR 202.3. On May 17, 1999 HUD published a notice (64 FR 26769), on its procedures for terminating Origination Approval Agreements with FHA lenders and placement of FHA lenders on Credit Watch status (an evaluation period). In the May 17, 1999 notice, HUD advised that it would publish in the **Federal Register** a list of mortgagees, which have had their Origination Approval Agreements terminated.

Termination of Origination Approval Agreement: Approval of a mortgagee by HUD/FHA to participate in FHA mortgage insurance programs includes an Origination Approval Agreement (Agreement) between HUD and the mortgagee. Under the Agreement, the mortgagee is authorized to originate single-family mortgage loans and submit them to FHA for insurance endorsement. The Agreement may be terminated on the basis of poor performance of FHA-insured mortgage loans originated by the mortgagee. The termination of a mortgagee's Agreement is separate and apart from any action taken by HUD's Mortgagee Review Board under HUD's regulations at 24 CFR part 25.

Cause: HUD's regulations permit HUD to terminate the Agreement with any mortgagee having a default and claim rate for loans endorsed within the preceding 24 months that exceeds 200 percent of the default and claim rate within the geographic area served by a HUD field office, and also exceeds the national default and claim rate. For the 44th review period, HUD is terminating the Agreement of mortgagees whose default and claim rate exceeds both the national rate and 200 percent of the field office rate.

Effect: Termination of the Agreement precludes that branch(es) of the mortgagee from originating FHA-insured single-family mortgages within the area of the HUD field office(s) listed in this notice. Mortgagees authorized to purchase, hold, or service FHA insured mortgages may continue to do so.

Loans that closed or were approved before the termination became effective may be submitted for insurance endorsement. Approved loans are those already underwritten and approved by a DE underwriter, and cases covered by a firm commitment issued by HUD. Cases at earlier stages of processing cannot be submitted for insurance by the terminated branch; however, they may be transferred for completion of processing and underwriting to another FHA insured mortgagee with direct endorsement approval for the area covered by the termination. Mortgagees are obligated to continue to pay existing insurance premiums and meet all other obligations associated with insured mortgages.

A terminated mortgagee may apply for reinstatement of the Origination Approval Agreement if the Approval for the affected branch or branches has been terminated for at least six months and the mortgagee continues to be an approved mortgagee meeting the requirements of 24 CFR 202.5, 202.6, 202.7, 202.8 and 202.12. However, Mortgagee Letter 2010–20 and Final Rule 5356–F–02 at 24 CFR 202 eliminates FHA approval for loan correspondents after December 31, 2010. Therefore, HUD will not accept requests for reinstatement from loan correspondents after that date. The mortgagee's application for reinstatement must be in a format prescribed by the Secretary and signed by the mortgagee. In addition, the application must be accompanied by an independent analysis of the terminated office's operations as well as its mortgage production, specifically including the FHA-insured mortgages cited in its termination notice. This independent analysis shall identify the underlying cause for the mortgagee's high default and claim rate. The analysis must be prepared by an independent Certified Public Accountant (CPA) qualified to perform audits under Government Auditing Standards as provided by the Government Accountability Office. The mortgagee must also submit a written corrective action plan to address each of the issues identified in the CPA's report, along with evidence that the plan has been implemented. The application for a new Agreement should be in the form of a letter, accompanied by the CPA's report and corrective action plan. The request should be sent to the Director, Office of Lender Activities and Program Compliance, 451 Seventh Street, SW., Room B133–P3214, Washington, DC 20410–8000 or by courier to 490 L'Enfant Plaza, East, SW., Suite 3214, Washington, DC 20024–8000.

Action: The following mortgagees have had their Origination Agreements terminated by HUD:

Mortgagee name	Mortgagee branch address	HUD office jurisdictions	Termination effective date	Homeownership centers
Universal American Mortgage Co..	25 Enterprise, Ste, 100 Aliso Viejo, CA 92656.	Santa Ana	10/4/10	Santana.
Capital Financial Mortgage Corp..	215 Kedron Ave., Folsom, PA 19033	Camden	9/9/2010	Philadelphia.

Mortgagee name	Mortgagee branch address	HUD office jurisdictions	Termination effective date	Homeownership centers
Nationwide Home Loans, Inc..	4100 NE 2nd Ave., Miami, FL 33137	Miami	9/9/2010	Atlanta.
Access National Mortgage Corp..	1800 Robert Fulton Dr., Ste 350, Reston, VA 20191–4346.	Richmond	9/2/2010	Philadelphia.
BJV Financial Bank Services, Inc..	7221 W. Touhy Ave., Chicago, IL 60631	Chicago	8/11/2010	Atlanta.
Globe Mortgage America LLC.	475 Grand Ave. Englewood, NJ 07631	Newark	8/11/2010	Philadelphia.
D and R Mortgage Corp..	29870 Middlebelt Rd., Ste 100, Farmington Hills, MI 48334.	Atlanta	8/1/2010	Atlanta.
Dominion First Mortgage Corp..	9970 Liberia Ave., Manassas, VA 20110	Richmond	8/1/2010	Philadelphia.
Omni Capital Group LLC.	6855 S. Havana St., Ste 500, Centennial, CO 80112.	Denver	8/1/2010	Denver.
Q Financial Direct, Inc..	3155 NW 82nd Ave., Ste 200, Doral, FL 33122.	Miami	8/1/2010	Atlanta.

Dated: October 22, 2010.

David H. Stevens,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2010–27548 Filed 11–1–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5411–N–06]

Credit Watch Termination Initiative; Termination of Direct Endorsement (DE) Approval

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice advises of the cause and effect of termination of Direct Endorsement (DE) Approval taken by HUD's Federal Housing Administration (FHA) against HUD-approved mortgagees through the FHA Credit Watch Termination Initiative. This notice includes a list of mortgagees which have had their DE Approval terminated.

FOR FURTHER INFORMATION CONTACT: The Quality Assurance Division, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room B133–P3214, Washington, DC 20410–8000; telephone (202) 708–2830 (this is not a toll-free number). Persons with hearing or speech impairments may access that number through TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: HUD has the authority to address deficiencies in the performance of lenders' loans as provided in HUD's mortgagee approval regulations at 24 CFR 202.3. On May 17, 1999 HUD published a notice (64 FR 26769), on its procedures for terminating Origination Approval Agreements with FHA lenders and placement of FHA lenders on Credit Watch status (an evaluation period). In the May 17, 1999 notice, HUD advised that it would publish in the **Federal Register** a list of mortgagees, which have had their Approval Agreements terminated. On January 21, 2010 HUD issued Mortgagee Letter 2010–03 which advised the extended procedures for terminating Underwriting Authority of Direct Endorsement mortgagees.

Termination of Direct Endorsement Approval: Approval of a DE mortgagee by HUD/FHA authorizes the mortgagee to underwrite single family mortgage loans and submit them to FHA for insurance endorsement. The Approval may be terminated on the basis of poor performance of FHA-insured mortgage loans underwritten by the mortgagee. The termination of a mortgagee's DE Approval is separate and apart from any action taken by HUD's Mortgagee Review Board under HUD's regulations at 24 CFR part 25.

Cause: HUD's regulations permit HUD to terminate the DE Approval with any mortgagee having a default and claim rate for loans endorsed within the preceding 24 months that exceeds 300 percent of the default and claim rate within the geographic area served by a HUD field office, and also exceeds the national default and claim rate. For quarterly review period ending March 31, 2010, HUD is terminating the DE Approval of mortgagees whose default and claim rate exceeds both the national rate and 300 percent of the field office rate.

Effect: Termination of the DE Approval precludes the mortgagee from underwriting FHA-insured single-family mortgages within the area of the HUD field office(s) listed in this notice. Mortgagees authorized to purchase, hold, or service FHA insured mortgages may continue to do so.

Loans that closed or were approved before the Termination became effective may be submitted for insurance endorsement. Approved loans are those already underwritten and approved by a DE underwriter, and cases covered by a firm commitment issued by HUD. Cases at earlier stages of processing cannot be submitted for insurance by the terminated mortgagee; however, the cases may be transferred for completion of processing and underwriting to another mortgagee with DE Approval in that area. Mortgagees are obligated to continue to pay existing insurance premiums and meet all other obligations associated with insured mortgages.

A terminated mortgagee may apply for reinstatement of the DE Approval if the DE Approval for the affected area or areas has been terminated for at least six months and the mortgagee continues to be an approved mortgagee meeting the requirements of 24 CFR 202.5, 202.6, 202.7, 202.10 and 202.12. The mortgagee's application for reinstatement must be in a format prescribed by the Secretary and signed by the mortgagee. In addition, the application must be accompanied by an independent analysis of the terminated office's operations as well as its mortgage production, specifically including the FHA-insured mortgages cited in its termination notice. This independent analysis shall identify the underlying cause for the mortgagee's high default and claim rate. The analysis must be prepared by an independent Certified Public Accountant (CPA) qualified to perform

audits under Government Auditing Standards as provided by the Government Accountability Office. The mortgagee must also submit a written corrective action plan to address each of the issues identified in the CPA's report, along with evidence that the plan has been implemented. The application for a new Agreement should be in the form of a letter, accompanied by the CPA's report and corrective action plan. The request should be sent to the Director, Office of Lender Activities and Program Compliance, 451 Seventh Street, SW., Room B133–P3214, Washington, DC 20410–8000 or by courier to 490 L'Enfant Plaza, East, SW., Suite 3214, Washington, DC 20024–8000.

Action: The following mortgagees have had their DE Approvals terminated by HUD:

Mortgagee name	Mortgagee branch address	HUD Office jurisdictions	Termination effective date	Homeownership centers
Freedom Mortgage Corp.	907 Pleasant Valley Ave. Mount Laurel, NJ 08054	Fort Worth	10/4/10	Denver.
Freedom Mortgage Corp.	907 Pleasant Valley Ave. Mount Laurel, NJ 08054	Des Moines	10/4/10	Denver.
Alacrity Lending Company.	2535 E. Southlake Blvd., Ste 100 Southlake, TX 76092.	Houston	8/30/10	Denver.
Benefit Funding Corp.	10724 Baltimore Ave. Beltsville, MD 20705	Washington	8/16/10	Philadelphia.
Nichols Mortgage Services Inc..	1811 N. Meridian St. Indianapolis, IN 46202	Indianapolis	8/11/10	Atlanta.
Pine State Mortgage Corp..	6065 Roswell Road NE, Ste 300 Atlanta, GA 30328	Greensboro	8/11/10	Atlanta.
Liberty Mortgage Corp.	3720 Davinci Ct., Ste 150 Norcross, GA 30092	Minneapolis	8/9/10	Denver.
D and R Mortgage Corp.	29870 Middlebelt Rd., Ste 100 Farmington Hills, MI 48334.	Greensboro	8/1/10	Atlanta.
Summit Funding Inc.	2601 Fair Oaks Blvd. Sacramento, CA 95864–4932	Fort Worth	8/1/10	Denver.

Dated: October 22, 2010.

David H. Stevens,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2010–27549 Filed 11–1–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5408–N–02]

Notice of Availability of the Draft Environmental Impact Statement for the Yesler Terrace Redevelopment Project

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The Department of Housing and Urban Development (HUD) gives notice to the public, agencies, and Indian tribes that the Seattle Housing Authority and the City of Seattle Human Services Department (Community Development Block Grant (CDBG) Administration Unit) have prepared a Draft Environmental Impact Statement (DEIS) for the Yesler Terrace Redevelopment Project, located in the City of Seattle, King County, WA. The project proponent is the Seattle Housing Authority. The City of Seattle Human Services Department and the Seattle Housing Authority, acting jointly as lead agencies, have prepared the DEIS under the authority of the City of Seattle Human Services Department as the Responsible Entity for compliance with the National Environmental Policy Act (NEPA) in accordance with 42 U.S.C. 1437x and HUD regulations at 24 CFR 58.4, and under the Seattle Housing Authority's role as lead agency in accordance with the Washington State Environmental Policy Act (SEPA). The DEIS is a joint NEPA and SEPA document. The DEIS satisfies requirements of SEPA (RCW 43.21C) and the SEPA Rules (WAC 197–11) which require that all state and local government agencies consider the environmental consequences of projects over which they have discretionary authority before acting on those projects. The proposed action is subject to compliance with NEPA, because funds from the public housing programs under Title I of the United States Housing Act of 1937 (HOPE VI, Capital Funds, Demolition/Disposition) will be used for this project (24 CFR 58.1(b)(6)(i)). This notice is given in accordance with the Council on Environmental Quality regulations at 40 CFR parts 1500–1508. All interested Federal, State, and local agencies, Indian tribes, groups, and the public are also invited to comment on the DEIS. If you are an agency with jurisdiction by law over natural or other public resources affected by the project, the Seattle Housing Authority and the City of Seattle Human Services Department need to know what environmental information germane to your statutory responsibilities should be included in the DEIS.

ADDRESSES: Comments relating to the DEIS are requested and will be accepted by the contact persons listed below until December 13, 2010. Any person or agency interested in receiving a notice and wishing to make comment on the DEIS should contact the persons listed below.

FOR FURTHER INFORMATION CONTACT: Stephanie Van Dyke, Development Director of the Seattle Housing Authority, *YTEISComments@seattlehousing.org*, P.O. Box 19028, Seattle, WA 98109–1028, (f) 206–615–3539 (SEPA) and Kristen Larson, Project Funding and Agreements Coordinator, City of Seattle Human Services Department, CDBG Administration Unit, *Kristen.Larson@seattle.gov*, P.O. Box 34215, Seattle, WA 98124–4215, (f) 206–621–5003 (NEPA).

For additional background information on the project proposal, please see the Seattle Housing Authority Web site: *http://www.seattlehousing.org/redevelopment/yesler-terrace/*.

Public Participation: A public hearing on the DEIS will be held for the public to provide verbal or written comment on the DEIS. At the meeting, the public will be able to view graphics illustrating preliminary redevelopment concepts associated with the proposed actions and speak with staff of the Seattle Housing Authority, the City of Seattle and members of the consultant team providing technical analyses in support of the project. Written comments may be mailed, sent via fax or e-mailed to the Seattle Housing Authority contact listed above or submitted at the public hearing on the DEIS.

The public hearing will be held at the Yesler Community Center (835 Yesler Way, Seattle, WA 98122) on November 30, 2010 at 6 p.m. For accommodations and translation services in conjunction

with the public hearing, please contact Collette Frazier, (p) (206) 615–3556.

SUPPLEMENTARY INFORMATION:

Project Name and Description

The Seattle Housing Authority and the City of Seattle Human Services Department will consider a proposal for a phased redevelopment of the existing Yesler Terrace residential community to a mixed-use residential community on a 28-acre site on the southern slope of First Hill in Seattle, WA. The proposed project is generally bounded by Interstate 5 on the west, Alder Street and Fir Street on the north, 12th Avenue on the east, and Washington Street on the south.

The proposed project would include development of a mix of affordable and market-rate housing, office and retail uses, as well as parks and open space, enhanced landscaping, improved streets and a system of pedestrian and bike improvements. All existing residential structures on the site would be demolished under the Proposed Action; other structures on the site may also be demolished. The existing Yesler Terrace community center would be retained. It is anticipated that the redevelopment of Yesler Terrace will take approximately 15 to 20 years to complete.

The proposed actions may involve the following: Comprehensive Plan Amendment, text amendment to the Land Use Code to allow a new zone for Yesler Terrace, street vacation, preliminary and final plat approval, adoption of a Planned Action Ordinance, Development Agreement approval, other construction and building permits and other federal, state and local approvals for redevelopment of the Yesler Terrace community.

The EIS is also intended to fulfill SEPA requirements for a Planned Action environmental review for the portion of the site west of Boren Avenue, per RCW 43.21C.031, SMC 25.05.164 [et seq.], and SHA Resolution 4945. According to SEPA, a "Planned Action" is a designation for a project or elements of a project that shifts environmental review from the time a permit application is made to an earlier phase in the process, such as at the Comprehensive Plan amendment and/or rezone phase. The intent of this designation is to provide a more streamlined environmental process by using an existing EIS prepared at this earlier stage for SEPA compliance for long-term actions.

This is to be a combined document—an EIS under the State of Washington State Environmental Policy Act (RCW 43.21C and WAC 197–11) and an EIS under NEPA (42 U.S.C. 4321) and implementing regulations of the Council on Environmental Quality (40 CFR parts 1500–1508) and HUD (24 CFR Part 58).

Alternatives: SHA proposes to redevelop the Yesler Terrace site into a mixed use, mixed income community. The six following alternatives are evaluated in the DEIS, in no order of preference:

Alternative 1 (Lower Density Mixed Use): This alternative represents the lower range of potential mixed use redevelopment of the site, which could include approximately 3,000 housing units; 800,000 square feet (SF) of office use (a portion of which could be hotel use); 40,000 SF of neighborhood commercial; 50,000 SF of neighborhood services (including the Yesler Community Center); 6.0 acres of public open space; 7.3 acres of semi-private and private open space; and 3,900 parking spaces within or under buildings.

Alternative 1A (Lower Density Mixed Use with Less Office): Alternative 1A represents a variation of Alternative 1 wherein most proposed land uses would be similar to Alternative 1. This alternative could include approximately 3,000 housing units; 400,000 square feet (SF) of office use; 40,000 SF of neighborhood commercial; 50,000 SF of neighborhood services (including the Yesler Community Center); 6.0 acres of public open space; 7.8 acres of semi-private and private open space; and 3,300 parking spaces within or under buildings.

Alternative 2 (Medium Density Mixed Use): Alternative 2 represents the middle range of potential mixed use redevelopment of the site, which could include approximately: 4,000 dwelling units; 1,000,000 million SF of office (a portion of which could be hotel use); 60,000 SF of neighborhood commercial; 50,000 SF of neighborhood services (including the Yesler Community Center); 6.5 acres of public open space, 9.4 acres of private and semi-private open space; and 5,100 parking spaces within or under buildings.

Alternative 3 (Higher Density Mixed Use): Alternative 3 represents the higher range of potential mixed use redevelopment of the site, which could include approximately: 5,000 dwelling units; 1,200,000 SF of office (a portion of which could be hotel use); 88,000 SF of neighborhood commercial; 50,000 SF of neighborhood services (including the Yesler Community Center); 6.9 acres of public open space; 9.2 acres of private and semi-private open space; and 6,300 parking spaces within or under buildings.

Alternative 4 (Existing/L–3 Zoning): Alternative 4 represents the lowest amount of residential development among the redevelopment alternatives, and does not include office or hotel uses. The proposed new Lowrise-3 (L3) zoning designation would govern future redevelopment of West of Boren sectors. Redevelopment in the East of Boren sector would occur under existing zoning (MR and NC3). Redevelopment under this alternative would include approximately: 1,523 dwelling units, 10,000 SF of neighborhood commercial (located east of Boren Avenue only); 5.2 acres of public open space; 7.9 acres of private and semi-private open space; and 1,840 parking spaces either within/under buildings and/or located as surface parking stalls (approximately 50 percent of each type).

No-Action Alternative: The no-action alternative represents a continuation of the site in its present condition. As under Alternative 4, the existing City of Seattle Lowrise-3 zoning designations would govern potential replacement of existing buildings west of Boren Avenue and the MR and NC3 zoning designations would govern replacement of existing buildings east of Boren Avenue.

Probable Environmental Effects: The following subject areas will be analyzed in the combined EIS for probable environmental effects: Earth; air quality; water; plants and animals; climate change and greenhouse gas emissions; environmental health; noise; land use; relationship to plans and policies; aesthetics, light and glare, and shadows; historic resources; cultural resources; transportation; utilities; public services; socioeconomics; and environmental justice.

Lead Agencies: As a lead agency, the City of Seattle, through its Human Services Department, is the responsible entity (RE) for this project in accordance with 24 CFR part 58, "Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities." As a RE, the City of Seattle Human Services Department assumes the responsibility for environmental review, decision-making, and action that would otherwise apply to HUD under NEPA. In addition, the Seattle Housing Authority is the State Environmental Policy Act (SEPA) lead agency responsible for preparing an Environmental Impact Statement (EIS).

Questions may be directed to the individuals named in this notice under the heading **FOR FURTHER INFORMATION CONTACT**.

Dated: October 27, 2010.

Mercedes M. Márquez,

Assistant Secretary for Community Planning and Development.

[FR Doc. 2010–27682 Filed 11–1–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5455–N–01]

Notice of Intent To Prepare a Draft Environmental Impact Statement for the West Coast Recycling Group Project in West Sacramento, Yolo County, CA

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: HUD gives notice to the public, agencies, and Indian tribes that the City of West Sacramento, CA, intends to prepare an Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the development of the West Coast Recycling Group project located at the Port of West Sacramento (Port) in West Sacramento, Yolo County, CA. The City of West Sacramento, acting as the lead agency, will prepare the EIS/EIR acting under its authority as the responsible entity for compliance with the National Environmental Policy Act (NEPA) in accordance with 42 U.S.C. 5304(g) and HUD regulations at 24 CFR 58.4, and under its authority as lead agency in accordance with the California Environmental Quality Act (CEQA). The EIS/EIR will be a joint document under NEPA and CEQA. The EIS will satisfy the requirements of NEPA and HUD regulations at 24 CFR part 58. The EIR will satisfy requirements of the CEQA (Public Resources Code 21000 *et seq.*) and State CEQA Guidelines (14 California Code of Regulations 15000 *et seq.*), which require that all State and local government agencies consider the environmental consequences of projects over which they have discretionary authority before acting on those projects. The proposed action is subject to compliance with NEPA because Federal Community Development Block Grant (*i.e.,* CDBG) funds would be used for the design and construction of a new main entrance to the Port. This notice is given in accordance with the Council on Environmental Quality regulations at 40 CFR parts 1500–1508. All interested Federal, State, and local agencies, Indian tribes, groups, and the public are invited to comment on the scope of the EIS. If you are an agency with jurisdiction by law over natural or other public resources affected by the project, the City of West Sacramento needs to know what environmental information germane to your statutory responsibilities should be included in the EIS/EIR.

ADDRESSES: Comments relating to the scope of the EIS are requested and will be accepted by the contact person listed in the **FOR FURTHER INFORMATION CONTACT** section for up to December 2, 2010. Any person or agency interested in receiving a notice and wishing to make comment on the draft EIS should contact the person listed below.

FOR FURTHER INFORMATION CONTACT: David Tilley, Senior Planner, Community Development Department, City of West Sacramento, 1110 West Capitol Avenue, 2nd Floor, West Sacramento, CA 95691; telephone number 916–617–4645, Fax Number: 916–371–0845. Mr. Tilley may also be contacted by e-mail at: *davidt@cityofwestsacramento.org.*

Public Meetings: A public scoping meeting will be held for this EIS/EIR. The public scoping meeting will be held no less than 15 days after the publication of this notice in the **Federal Register.** The scoping meeting will provide an opportunity for the public to learn more about the project and provide input to the environmental process. Written comments and testimony concerning the scope of the EIS/EIR will be accepted at this meeting. The meeting will be preceded by a notice of public hearing which will be published in the local news media at least 15 days before the meeting date.

SUPPLEMENTARY INFORMATION:

Description of the Proposed Action

The West Coast Recycling Group (WCRG) proposes to develop approximately 15 acres at the Port of West Sacramento (Port) in the city of West Sacramento to construct and operate a scrap metal shredding and recycling facility. The project site is on formerly used industrial land at 3125 Industrial Boulevard in Yolo County, California. The Port is located approximately 0.5 mile south of U.S. Highway 50 and 1.25 miles west of Interstate 5, and is bounded by Industrial Boulevard to the north and east, the Sacramento Deep Water Ship Channel (SDWSC) and turning basin to the south, and Lake Washington to the west. The project site is located in the northwestern portion of the Port facility.

Much of the approximately 15-acre project site was previously used as a log export yard. A portion of the site is currently being used as a concrete recycling facility. The remainder of the property is currently composed of vacant industrial land and a heavy equipment storage area. Predominant land uses in the vicinity of the project site are industrial. Land uses adjacent to and surrounding the Port include industrial facilities, warehouses, a firehouse, office buildings, and other commercial land uses. Residential land uses are located south and east of the Port.

The project would require a conditional use permit from the City of West Sacramento and a ground lease from the Port of West Sacramento.

Operations at the proposed facility would include scrap metal sorting and scrap metal shredding, material separation and processing to extract usable material, and stabilization of nonmetallic material to make it useful as sanitary day cover in landfills. The vehicles that are to be shredded on-site will already have been dismantled by other companies to remove vehicle fluids, tires, batteries, and reusable parts. The facility would be a state-of-the-art design, with modern emission controls, and an industrial storm water system to capture and reuse rainwater.

A portion of the metal material delivered for shredding at the facility would include retired automobiles or end-of-life vehicles. However, other sources of scrap metal would also be shredded such as appliances, agricultural equipment, and industrial scrap metal. The scrap metal may be bailed or placed into bins for transport. The project includes design and construction of a new main Port entrance from Industrial Boulevard. The new entrance would be located west of the current main entrance at Harbor Boulevard and approximately 350 feet east of the Beacon Drive/Industrial Boulevard intersection (centerline to centerline).

The proposed metal recycling facility would process automobiles and scrap metals through the shredder at an average hourly throughput of 170 gross tons, with a maximum of 220 gross tons per hour. The maximum daily shredder throughput is estimated to be 1,760 gross tons per day. The monthly throughput is estimated to be 25,000 gross tons.

Alternatives to the Proposed Action

Consistent with the requirements of the State CEQA Guidelines § 15126.6, and § 1502.14 of the Council on Environmental Quality Regulations implementing NEPA, the EIR/EIS will examine a range of reasonable alternatives to the proposed project that are potentially feasible. The alternatives

must feasibly attain most of the objectives of the proposed project while also avoiding or substantially lessening at least one of the significant environmental effects of the proposed project. As required by NEPA, the alternatives will be evaluated at the same level of detail as the proposed project. As a result of the scoping and agency consultation efforts conducted to date, the alternatives currently proposed for evaluation in the EIR/EIS include:

1. No Project/Action Alternative. This alternative, required by both CEQA and NEPA, would evaluate the environmental impacts if the proposed project were not constructed and existing operations on the project site were to continue.

2. Proposed Project. This alternative would evaluate the proposed project as described in the Project Description.

3. One or more other alternatives (to be identified). Alternative(s) will be based on input received during the scoping process and feasible project options that could minimize or avoid significant environmental effects. These alternatives may possibly include a reduced project alternative and/or an alternative site, and will be identified during the scoping process.

One of the purposes of the NOI is to solicit input from the public, agencies, Indian tribes, and interested organizations regarding potential alternatives to the proposed project. Therefore, the City welcomes comments during the public scoping process regarding these alternatives or suggestions for other alternatives to be examined in the EIR/EIS.

Probable Environmental Effects

The following subject areas will be analyzed in the combined EIS/EIR for probable environmental effects: Aesthetics (including light and glare); air quality; biological resources; climate change/greenhouse gases; cultural resources; geology and soils; paleontology; hazards and hazardous materials; hydrology and water quality; land use; noise and vibration; population, employment, and housing; public services; recreation; transportation and traffic; utilities and service systems; environmental justice; cumulative impacts; and growth-inducing impacts.

Lead Agency

For purposes of complying with NEPA and CEQA, the City of West Sacramento is the Lead Agency and as the Responsible Entity under 24 CFR 58.2(a)(7) assumes the responsibility for environmental review, decisionmaking, and action that would otherwise apply to HUD under NEPA. Section 104(g) of Title I of the Housing and Community Development Act (42 U.S.C. 5304[g]) authorizes recipients of HUD assistance to assume NEPA responsibilities in projects involving CDBG for infrastructure development.

Questions may be directed to the individual named in this notice under the heading **FOR FURTHER INFORMATION CONTACT**.

Dated: October 25, 2010.

Mercedes M. Márquez,

Assistant Secretary for Community Planning and Development.

[FR Doc. 2010–27680 Filed 11–1–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5415–N–19]

Notice of Availability: Notice of Funding Availability (NOFA) for HUD's Fiscal Year 2010 Public and Indian Housing Family Self-Sufficiency Program Under the Resident Opportunity and Self-Sufficiency (ROSS) Program

AGENCY: Office of the Chief of the Human Capital Officer, HUD.

ACTION: Notice.

SUMMARY: HUD announces the availability on its Web site of the applicant information, submission deadlines, funding criteria, and other requirements for HUD's Fiscal Year (FY) 2010 Public and Indian Housing Family Self-Sufficiency Program under the Resident Opportunity and Self-Sufficiency (ROSS) Program (PH–FSS). The PH–FSS NOFA makes available approximately $15 million under the Consolidated Appropriations Act 2010. The purpose of the PH–FSS program is to promote the development of local strategies to coordinate the use of assistance under the Public Housing program with public and private resources, enable participating families to increase earned income and financial literacy, reduce or eliminate the need for welfare assistance, and make progress toward achieving economic independence and housing self-sufficiency.

The notice providing information regarding the application process, funding criteria and eligibility requirements can be found using the Department of Housing and Urban Development agency link on the Grants.gov/Find Web site at *http://www.grants.gov/search/agency.do.* A link to Grants.gov is also available on the HUD Web site at *http://www.hud.gov/offices/adm/grants/fundsavail.cfm.* The Catalogue of Federal Domestic Assistance (CFDA) number for PH–FSS program is 14.877. Applications must be submitted electronically through *Grants.gov.*

FOR FURTHER INFORMATION CONTACT: Questions regarding specific program requirements should be directed to the agency contact identified in the program NOFA. Program staff will not be available to provide guidance on how to prepare the application. Questions regarding the 2010 General Section should be directed to the Office of Grants Management and Oversight at (202) 708–0667 or the NOFA Information Center at 800–HUD–8929 (toll free). Persons with hearing or speech impairments may access these numbers via TTY by calling the Federal Information Relay Service at 800–877–8339.

Dated: October 27, 2010.

Barbara S. Dorf,

Director, Office of Departmental Grants Management and Oversight, Office of the Chief of the Human Capital Officer.

[FR Doc. 2010–27542 Filed 11–1–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5415–C–25]

Notice of Availability: HUD's Fiscal Year (FY) NOFA for the Choice Neighborhoods Initiative—Round 1 NOFA Grant Program; Technical Correction and Extension of Deadline Date

AGENCY: Office of the Chief of the Human Capital Officer, HUD.

ACTION: Notice extension of deadline.

SUMMARY: On August 26, 2010, HUD posted on *http://www.Grants.gov* its Notice of Funding Availability (NOFA) for HUD's FY2010 Choice Neighborhoods Initiative—Round 1. Today's **Federal Register** notice announces that HUD has posted on *http://www.Grants.gov* a technical correction that extends the October 26, 2010 deadline date for HUD's FY2010 Choice Neighborhoods Initiative—Round 1 NOFA for at least 30 days. HUD is extending the deadline for application to makes changes to the Mapping Tool used to determine neighborhood eligibility. HUD will post on *http://www.Grants.gov* a subsequent notice with a new deadline date once the Mapping Tool has been revamped.

FOR FURTHER INFORMATION CONTACT: For questions concerning Choice Neighborhoods, please contact Ms. Caroline Clayton, Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington DC, 20410–5000; telephone (202) 402–5461 (this is not a toll-free number); e-mail *Caroline.C.Clayton@hud.gov.* Persons with hearing or speech impairments may access these numbers via TTY by calling the Federal Information Relay Service at (800) 877–8339.

Dated: October 27, 2010.

Barbara S. Dorf,

Director, Office of Departmental Grants Management and Oversight, Office of the Chief of the Human Capital Officer.

[FR Doc. 2010–27545 Filed 11–1–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5415–N–20]

Notice of Availability: Notice of Funding Availability (NOFA) for HUD's Fiscal Year 2010 Resident Opportunity and Self-Sufficiency (ROSS)—Service Coordinators Program

AGENCY: Office of the Chief of the Human Capital Officer, HUD.

ACTION: Notice.

SUMMARY: HUD announces the availability on its Web site of the applicant information, submission deadlines, funding criteria, and other requirements for HUD's Fiscal Year (FY) 2010 Resident Opportunity and Self-Sufficiency (ROSS) Service Coordinators Program. The ROSS Service Coordinator NOFA makes available approximately $35 million under the Consolidated Appropriations Act 2010. The purpose of the ROSS Service Coordinators program is to provide grants to public housing agencies (PHAs), tribes/tribally designated housing entities (TDHEs), Resident Associations (RAs), and nonprofit organizations (including grassroots, faith-based and other community-based organizations) for the provision of a Service Coordinator to coordinate supportive services and other activities designed to help Public and Indian housing residents attain economic and housing self-sufficiency.

The notice providing information regarding the application process, funding criteria and eligibility requirements can be found using the Department of Housing and Urban Development agency link on the Grants.gov/Find Web site at *http://www.grants.gov/search/agency.do.* A link to Grants.gov is also available on the HUD Web site at *http://www.hud.gov/offices/adm/grants/fundsavail.cfm.* The Catalogue of Federal Domestic Assistance (CFDA) number for the ROSS Service Coordinator Program is 14.870. Applications must be submitted electronically through *Grants.gov.*

FOR FURTHER INFORMATION CONTACT: Questions regarding specific program requirements should be directed to the agency contact identified in the program NOFA. Program staff will not be available to provide guidance on how to prepare the application. Questions regarding the 2010 General Section should be directed to the Office of Grants Management and Oversight at (202) 708–0667 or the NOFA Information Center at 800–HUD–8929 (toll free). Persons with hearing or speech impairments may access these numbers via TTY by calling the Federal Information Relay Service at 800–877–8339.

Dated: October 27, 2010.

Barbara S. Dorf,

Director, Office of Departmental Grants Management and Oversight, Office of the Chief of the Human Capital Officer.

[FR Doc. 2010–27543 Filed 11–1–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMTC 00900.L16100000.DP0000]

Notice of Public Meeting, Eastern Montana Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior, Montana, Billings and Miles City Field Offices.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Eastern Montana Resource Advisory Council (RAC), will meet as indicated below.

DATES: The next regular meeting of the Eastern Montana Resource Advisory Council will be held on Dec. 2, 2010 in Billings, Montana. The meeting will start at 8 a.m. and adjourn at approximately 3:30 p.m.

ADDRESSES: When determined, the meeting location will be announced in a news release.

FOR FURTHER INFORMATION CONTACT: Mark Jacobsen, Public Affairs Specialist, BLM Eastern Montana/Dakotas District, 111 Garryowen Road, Miles City, Montana 59301. *Telephone:* (406) 233–2831.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior through the Bureau of Land Management on a variety of planning and management issues associated with public land management in Montana. At these meetings, topics will include: Miles City and Billings Field Office manager updates, subcommittee briefings, work sessions and other issues that the council may raise. All meetings are open to the public and the public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations should contact the BLM as provided above.

Dated: October 25, 2010.

M. Elaine Raper,

Manager, Eastern Montana—Dakotas District.

[FR Doc. 2010–27594 Filed 11–1–10; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCA930000.L58740000.EU0000. LXSS039B0000; CACA 51350]

Notice of Realty Action: Direct Sale of Public Lands in Santa Barbara County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM), Bakersfield Field Office, proposes to sell 7 contiguous parcels of public land consisting of approximately 391 acres in Santa Barbara County, California. Each parcel would be sold to the respective adjacent land owner for the appraised fair market value. The adjacent landowners are Acquistapace Ranches LLC, West Bay LLC, Leo Moore Trust, Tepusquet Ranch LLC, Lenore Penny Revocable Trust,

Lone Pine LLC, and the Charles Minetti Trust. The total appraised value of all 7 parcels is $104,000. The sale will be subject to the applicable provisions of Sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1713 and 1719, respectively, and the BLM land sale and mineral conveyance regulations at 43 CFR 2710 and 2720.

DATES: Comments regarding the proposed sale must be received by the BLM on or before December 17, 2010.

ADDRESSES: Written comments concerning the proposed sale should be sent to the Field Manager, Bureau of Land Management, Bakersfield Field Office, 3801 Pegasus Drive, Bakersfield, California 93308.

FOR FURTHER INFORMATION CONTACT: Diane Simpson, Realty Specialist, BLM Bakersfield Field Office, (661) 391–6000.

SUPPLEMENTARY INFORMATION: The following 7 parcels of public land are proposed for direct sale to the adjacent land owners in accordance with Sections 203 and 209 of FLPMA, as amended (43 U.S.C. 1713 and 1719), at not less than the appraised fair market value:

San Bernardino Meridian

Parcel No. 1

T. 10 N., R. 32 W.,
Sec. 29, lots 22 and 23;
Sec. 30, lot 2;
Sec. 32, lot 3;
Sec. 33, lot 10.

The area described contains 31.68 acres in Santa Barbara County.

Proposed for sale to West Bay LLC, for the appraised fair market value of $8,000.00.

Parcel No. 2

T. 10 N., R. 32 W.,
Sec. 29, lots 20 and 21.

The area described contains 4.59 acres in Santa Barbara County.

Proposed for sale to Leo Moore Trust, for the appraised fair market value $1,150.00.

Parcel No. 3

T. 10 N., R. 32 W.,
Sec. 28, lot 13;
Sec. 29, lots 15 and 19;
Sec. 32, lot 2;
Sec. 33, lot 9;
Sec. 34, lot 8.

The area described contains 94.67 acres in Santa Barbara County.

Proposed for sale to Acquistapace Ranches LLC, for the appraised fair market value of $32,000.00.

Parcel No. 4

T. 10 N., R. 32 W.,
Sec. 33, lot 11.

The area described contains 18.05 acres in Santa Barbara County.

Proposed for sale to Tepusquet Ranch, for the appraised fair market value of $5,000.00.

Parcel No. 5

T. 10 N., R. 32 W.,
Sec. 33, lot 12;
Sec. 34, lot 9.

The area described contains 27.81 acres in Santa Barbara County.

Proposed for sale to Lenore Penny Revocable Trust, for the appraised fair market value of $7,500.00.

Parcel No. 6

T. 9 N., R. 32 W.,
Sec. 3, lot 1.

The area described contains 4.34 acres in Santa Barbara County.

Proposed to be sold to Lone Pine LLC, for the fair market value of $850.00.

Parcel No. 7

T. 9 N., R. 32 W.,
Sec. 1, lots 6, 7, and 8;
Sec. 2, lots 5, 6, 7, and 8.

The area described contains 198.05 acres in Santa Barbara County.

Proposed to be sold to Charles Minetti LLC, for the fair market value of $49,500.00.

The public lands are identified as suitable for disposal in the BLM's 1996 Caliente Resource Management Plan, as amended, and are not needed for any other Federal purpose.

The public lands proposed for sale consist of a long narrow strip that was not conveyed out of Federal ownership with other lands in the area due to an error in the original public land survey. The lands are difficult and uneconomic to manage as part of the public lands because they lack legal access, are isolated from other public lands, and due to the shape of the parcels have no independent utility. The BLM is proposing a direct sale to the adjacent landowners who control access to the public lands. A competitive sale is not considered appropriate because the lands lack legal access and generally only have value or utility to the adjacent landowners. The BLM has concluded the public interest would be best served by a direct sale. With the exception of oil and gas, the lands identified for sale are considered to have no known mineral value and the proposed sale would include the conveyance of both the surface interests and remaining mineral interests of the United States.

On November 2, 2010, the above described lands (Parcels No. 1 through 7) will be segregated from appropriation under the public land laws, including the mining laws, except the sale provisions of FLPMA. Until completion of the sale or termination of the segregation, the BLM will not accept land use applications affecting the identified public lands, except application for the amendment of previously filed right-of-way applications or existing authorizations to increase the term of the grants in accordance with 43 CFR 2802.15 and 2886.15. The segregation terminates upon issuance of a patent, publication in the **Federal Register** of a termination of the segregation, or November 2, 2012, whichever occurs first, unless extended by the BLM State Director in accordance with 43 CFR 2711.1–2(d) prior to the termination date. The lands will not be sold until at least 60 days after the date of publication of this notice in the **Federal Register**. The adjacent landowners would each be required to pay a $50 nonrefundable filing fee for conveyance of the mineral interests. Any patent issued will contain the following numbered reservations, covenants, terms and conditions:

1. All parcels will be conveyed with a reservation of a right-of-way to the United States for ditches and canals constructed by authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945), and a reservation of all oil and gas to the United States together with the right to prospect for, mine, and remove such oil and gas resources under applicable law and any regulations as the Secretary of the Interior may prescribe, along with all necessary access and exit rights;

2. A condition that the conveyance be subject to all valid existing rights of record;

3. An appropriate indemnification clause protecting the United States from claims arising at the patentee's use, occupancy, or occupation of the patented lands;

4. Additional terms and conditions that the authorized officer deems appropriate.

Detailed information concerning the proposed land sale, including the appraisal, planning and environmental documents, and a mineral report, are available for review at the location identified in **ADDRESSES** above.

Public comments regarding the proposed sale may be submitted in writing to the attention of the BLM Bakersfield—Manager (*see* **ADDRESSES** above) on or before December 17, 2010. Comments received in electronic form, such as e-mail or facsimile, will not be considered. Any adverse comments regarding the proposed sale will be reviewed by the BLM State Director or other authorized official of the Department, who may sustain, vacate, or modify this realty action in whole or in part. In the absence of timely filed objections, this realty action will become the final determination of the Department of the Interior.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

Karla Norris,

Assistant Deputy State Director for Natural Resources.

Authority: 43 CFR 2711.1–2(a) and (c).

[FR Doc. 2010–27675 Filed 11–1–10; 8:45 am]

BILLING CODE 4310–40–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–249 and 731–TA–262, 263, and 265 (Third Review)]

Iron Construction Castings From Brazil, Canada, and China; Determinations

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the countervailing duty order on heavy iron construction castings from Brazil, the antidumping duty order on heavy iron construction castings from Canada, and the antidumping duty orders on iron construction castings (both heavy and light) from Brazil and China would be likely to lead to continuation or recurrence of material injury to industries in the United States within a reasonably foreseeable time.

Background

The Commission instituted these reviews on May 3, 2010 (75 FR 23295) and determined on August 6, 2010 to conduct expedited reviews of the countervailing duty and antidumping duty orders (75 FR 49945).

The Commission transmitted its determinations in these reviews to the Secretary of Commerce on October 27, 2010. The views of the Commission are contained in USITC Publication 4191 (October 2010), entitled *Iron Construction Castings from Brazil, Canada, and China: Investigation Nos. 701–TA–249 and 731–TA–262, 263, and 265 (Third Review).*

Issued: October 27, 2010.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–27612 Filed 11–1–10; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–521]

Advice Concerning Possible Modifications to the U.S. Generalized System of Preferences: 2010 Review of Removals

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of hearing.

SUMMARY: Following receipt of a request on October 21, 2010, from the United States Trade Representative (USTR), the U.S. International Trade Commission (Commission) instituted investigation No. 332–521, *Advice Concerning Possible Modifications to the U.S. Generalized System of Preferences: 2010 Review of Removals,* for the purpose of providing advice as to the probable economic effect of the removal of certain products from one or more countries from the list of products eligible for duty-free treatment under the U.S. GSP program.

DATES:

November 15, 2010: Deadline for filing a request to appear at the public hearing.

November 17, 2010: Deadline for filing pre-hearing briefs and statements.

December 1, 2010: Public hearing.

December 8, 2010: Deadline for filing post-hearing briefs and statements.

December 8, 2010: Deadline for filing all other written submissions.

February 7, 2011: Transmittal of Commission report to the United States Trade Representative.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street, SW., Washington, DC. All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://www.usitc.gov/secretary/edis.htm.*

FOR FURTHER INFORMATION CONTACT: Information specific to this investigation may be obtained from Vincent Honnold, Project Leader, Office of Industries (202–205–3314 or *vincent.honnold@usitc.gov*) or Shannon Gaffney, Deputy Project Leader, Office of Industries (202–205–3316 or *shannon.gaffney@usitc.gov*). For information on the legal aspects of these investigations, contact William Gearhart of the Commission's Office of the General Counsel (202–205–3091 or *william.gearhart@usitc.gov*). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819 or *margaret.olaughlin@usitc.gov*). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Background

The USTR requested the advice under authority delegated by the President pursuant to section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)). As requested, the Commission will provide advice as to the probable economic effect on U.S. industries producing like or directly competitive articles, on U.S. imports, and on U.S. consumers of the removal from eligibility for duty-free treatment under the Generalized System of Preferences (GSP) program of the following products/HTS subheadings: (1) HTS subheading 9404.30.80 (sleeping bags, not containing 20 percent or more by weight of feathers and/or down) with respect to all beneficiary countries; and (2) HTS subheadings 3919.10.20 and 3919.90.50 (certain types of self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastics) from Indonesia. As requested, the Commission will provide its advice by February 7, 2011. The USTR indicated that those sections of the Commission's report and related working papers that contain the Commission's advice will be classified as "confidential" and as "privileged."

Public Hearing

A public hearing in connection with this investigation will be held at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC, beginning at 9:30 a.m. on December 1, 2010. Requests to appear at the public hearing should be

filed with the Secretary, no later than 5:15 p.m., November 15, 2010, in accordance with the requirements in the "Submissions" section below. All pre-hearing briefs and statements should be filed not later than 5:15 p.m., November 17, 2010; and all post-hearing briefs and statements should be filed not later than 5:15 p.m., December 8, 2010. In the event that, as of the close of business on November 15, 2010, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or nonparticipant may call the Secretary to the Commission (202–205–2000) after November 15, 2010, for information concerning whether the hearing will be held.

Written Submissions

In lieu of or in addition to participating in the hearing, interested parties are invited to file written submissions concerning this investigation. All written submissions should be addressed to the Secretary, and should be received not later than 5:15 p.m., December 8, 2010. All written submissions must conform with the provisions of section 201.8 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.8). Section 201.8 requires that a signed original (or a copy so designated) and fourteen (14) copies of each document be filed. In the event that confidential treatment of a document is requested, at least four (4) additional copies must be filed, in which the confidential information must be deleted (*see* the following paragraph for further information regarding confidential business information). The Commission's rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000).

Any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the "confidential" or "non-confidential" version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available for inspection by interested parties.

The Commission may include in the report it sends to the President and the USTR some or all of the confidential business information it receives in this investigation. The USTR has asked that the Commission make available a public version of its report shortly after it sends its report to the President and the USTR, with any classified or privileged information deleted. Any confidential business information received in this investigation and used in the preparation of the report will not be published in the public version of the report in such manner as would reveal the operations of the firm supplying the information.

By order of the Commission.

Issued: October 27, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–27617 Filed 11–1–10; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Parole Commission

Meetings; Sunshine Act; Public Announcement Pursuant to the Government in the Sunshine Act (Pub. L. 94–409) [5 U.S.C. 552b]

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

DATE AND TIME: 10:30 a.m., Tuesday, November 9, 2010.

PLACE: U.S. Parole Commission, 5550 Friendship Boulevard, 4th Floor, Chevy Chase, Maryland 20815.

STATUS: Closed.

MATTERS CONSIDERED: The following matter will be considered during the closed meeting: Consideration of ten original jurisdiction cases pursuant to 28 CFR 2.27.

AGENCY CONTACT: Patricia W. Moore, Staff Assistant to the Chairman, United States Parole Commission, (301) 492–5933.

Dated: October 26, 2010.

Rockne Chickinell,

General Counsel, U.S. Parole Commission.

[FR Doc. 2010–27491 Filed 11–1–10; 8:45 am]

BILLING CODE 4410–31–M

LEGAL SERVICES CORPORATION

Sunshine Act Meeting Notice

DATE AND TIME: The Legal Services Corporation Board of Directors will meet telephonically on November 5, 2010 at 2 p.m., Eastern Time.

LOCATION: The Legal Services Corporation, 3rd Floor Conference Center, 3333 K Street, NW., Washington, DC 20007.

STATUS OF MEETING: Closed.—The meeting of the Board of Directors will be closed to the public pursuant to a vote of the Board of Directors to consider and perhaps act on a Management recommendation related to an employee benefits matter, as well as a proposal regarding a research project. The Board will also receive briefings on an internal employment matter, Management's plans to address reported problems at an LSC grantee, and the status of Management's response to the LSC Inspector General's audit report on the Technology Initiatives Grants ("TIG") program.[1]

A *verbatim* written transcript will be made of the closed session of the Board meeting. However, the transcript of any portions of the closed session falling within the relevant provisions of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(2),[2](4),[3] (6),[4] (7)[5] and (9)(B),[6] and the corresponding provisions of the Legal Services Corporation's implementing regulation, 45 CFR 1622.5(a),(c), (e), (f) and (g), will not be available for public inspection. A copy of the General Counsel's Certification that in his opinion the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

[1] Any portion of the closed session consisting solely of staff briefings does not fall within the Sunshine Act's definition of the term "meeting" and, therefore, the requirements of the Sunshine Act do not apply to such portion of the closed session. 5 U.S.C. 552b(a)(2) and (b). *See also* 45 CFR 1622.2 & 1622.3.

[2] 45 CFR 1622.5(a) protects from disclosure information that relates solely to the internal personnel rules and practices of the agency.

[3] 45 CFR 1622.5(c) protects trade secrets and proprietary information from disclosure.

[4] 45 CFR 1622.5(e) protects information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

[5] 45 CFR 1622.5(f) protects from disclosure investigatory records that might interfere with enforcement proceedings, deprive a person of due process, disclose a confidential source, disclose investigative procedures, or endanger the life and safety of law enforcement personnel.

[6] 45 CFR 1622.5(g) protects information the premature disclosure of which would in the case of any agency, be likely to significantly frustrate implementation of a proposed agency action.

Closed Session

1. Approval of agenda.
2. Approval of Minutes of the Board's October 19, 2010 closed session meeting.
3. Briefing on Management's plans for addressing reported problems at one of LSC's grantees.
4. Briefing on status of Management's response to the Inspector General's audit report regarding the Technology Initiatives Grants ("TIG") program.
5. Consider and act on proposal regarding a research project.
6. Consider and act on a Management recommendation regarding an employee benefits matter.
a. Presentation by Alice Dickerson, Director, Office of Human Resources, and David L. Richardson, Comptroller.
7. Briefing on internal employment matter.
a. Presentation by Linda Mullenbach, Senior Assistant General Counsel, and Alice Dickerson, Director, Office of Human Resources.
8. Consider and act on other business.
9. Consider and act on adjournment of meeting.

CONTACT PERSON FOR INFORMATION: Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov.*

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Katherine Ward, at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov.*

Dated: October 29, 2010.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 2010–27809 Filed 10–29–10; 4:15 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting; Notice

TIME AND DATE: The Legal Services Corporation Board of Directors' Search Committee for LSC President ("Search Committee" or "Committee") will meet on November 8, 2010. The meeting will begin at 2 p.m. (Central Time) and continue until conclusion of the Committee's agenda.

LOCATION: Sidley Austin, LLP, 1501 K Street, 1 South Dearborn Street, Chicago, Illinois 60603.

STATUS OF MEETING: Closed. The meeting of the Search Committee will be closed to the public pursuant to a vote of the Board of Directors authorizing the Committee to consider the qualifications of applicants for the position of LSC President for the purpose of identifying candidates to interview.

Such closure is authorized by the relevant provisions of the Government in the Sunshine Act [5 U.S.C. 552b(c)(6)] and LSC's implementing regulation 45 CFR 1622.5(e).[1]

A *verbatim* written transcript will be made of the closed session of the Board meeting. However, the transcript of any portions of the closed session falling within the relevant provisions of the Government in the Sunshine Act [5 U.S.C. 552b(c)(6)] and LSC's implementing regulation 45 CFR 1622.5(e), will not be available for public inspection. A copy of the General Counsel's Certification that in his opinion the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

Closed Session:

1. Approval of agenda.
2. Review and discuss applications for the position of LSC President and select from among those candidates for further consideration.
3. Consider and act on other business.
4. Consider and act on adjournment of meeting.

CONTACT PERSON FOR INFORMATION: Kathleen Connors, Executive Assistant to the President, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov.*

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Kathleen Connors at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov.*

Dated: October 29, 2010.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 2010–27808 Filed 10–29–10; 4:15 pm]

BILLING CODE 7050–01–P

[1] 45 CFR 1622.5(e) protects information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

OFFICE OF MANAGEMENT AND BUDGET

Proposed Guidance on Appointment of Lobbyists to Federal Boards and Commissions

AGENCY: Office of Management and Budget.

ACTION: Notice of proposed guidance.

SUMMARY: The Office of Management and Budget (OMB) is issuing proposed guidance to Executive Departments and agencies concerning the appointment of federally registered lobbyists to boards and commissions. On June 18, 2010, President Obama issued "Lobbyists on Agency Boards and Commissions," a memorandum directing agencies and departments in the Executive Branch not to appoint or re-appoint Federally registered lobbyists to advisory committees and other boards and commissions. The Presidential Memorandum further directed the Director of OMB to "issue proposed guidance to implement this policy to the full extent permitted by law." Final guidance will be issued by OMB after a thirty-day public comment period on the proposed guidance. The Presidential Memorandum is available at *http://www.whitehouse.gov/the-press-office/presidential-memorandum-lobbyists-agency-boards-and-commissions.*

Comment Date: OMB invites comments from interested parties in both the public and private sectors to be considered in the formulation of the final guidance. Interested parties should submit comments in writing to the address below on or before 30 days from the publication of this notice.

ADDRESSES: Comments may be submitted by any of the following methods:

- *E-mail: ogc@omb.eop.gov.*
- *Facsimile:* (202) 395–7289.
- *Mail:* Office of General Counsel, Eisenhower Executive Office Building, Room 289, 1650 Pennsylvania Avenue, NW., Washington, DC 20500.

A. Proposed Guidance

On June 18, 2010, President Obama signed a Presidential Memorandum directing agencies in the Executive Branch not to appoint or re-appoint Federally registered lobbyists to advisory committees and other boards and commissions. That memorandum directed the Office of Management and Budget to propose implementing guidance, which follows in the form of questions and answers:

Q1: Who is affected by the policy directed in the June 18, 2010 Presidential Memorandum (the "Memorandum")?

A1: This policy applies to Federally registered lobbyists and does not apply to individuals who are registered as lobbyists only at the State level. A lobbyist for purposes of the Memorandum is any individual who is subject to the registration and reporting requirements of the Lobbying Disclosure

Act of 1995 (LDA), as amended, 2 U.S.C. 1605, at the time of appointment or reappointment to an advisory board or commission. Databases maintained by the House of Representatives and the Senate may be helpful in identifying Federally registered lobbyists.[1]

Any individual who previously served as a Federally registered lobbyist may be appointed or re-appointed only if he or she has either filed a bona fide de-registration or has been de-listed by his or her employer as an active lobbyist reflecting the actual cessation of lobbying activities or if they have not appeared on a quarterly lobbying report for three consecutive quarters as a result of their actual cessation of lobbying activities.

Q2: Does the policy restrict the appointment of individuals who are themselves not Federally registered lobbyists but are employed by organizations that engage in lobbying activities?

A2: The policy established by the Memorandum applies to Federally registered lobbyists and does not apply to non-lobbyists employed by organizations that lobby.

Q3: What entities constitute "boards and commissions" under the policy?

A3: The policy directed in the Memorandum applies to any committee, board, commission, council, delegation, conference, panel, task force, or other similar group (or subgroup) created by the President, the Congress, or an Executive Branch department or agency to serve a specific function to which formal appointment is required, regardless of whether it is subject to the Federal Advisory Committee Act, as amended (5 U.S.C. App.). Boards and commissions include Federal advisory committees.

Q4: Does the policy apply to non-Federal members of delegations to international bodies?

A4: Delegations organized to present the Unites States' position to international bodies are considered to be boards or commissions for the purposes of this policy. Therefore, agencies should not appoint Federally registered lobbyists to these delegations.

Q5: Which "members" of those boards and commissions are covered by the policy?

A5: The policy applies to all members of boards and commissions who are not full-time Federal employees, including both those who have been designated to serve in a representative capacity on behalf of an interested group or constituency and those who have been designated to serve as Special Government Employees, and who are appointed by the President or an Executive Branch agency or official. Members of boards and commissions do not include individuals who are invited to attend meetings of boards or commissions on an ad hoc basis.

Q6: How does the policy apply if a statute or presidential directive provides for appointments to be made by State Governors or by members of Congress?

A6: While the discretion of appointing authorities outside of the Executive Branch will be respected, those appointing authorities should be encouraged to appoint individuals who are not Federally registered lobbyists whenever possible.

Q7: How does the policy apply when a statute or presidential directive requires the appointment of a specific representative from an organization and that representative is a Federally registered lobbyist?

A7: The policy does not supersede board or commission membership requirements established by statute or presidential directive. Committee charters in effect at the time of the new policy that require a lobbyist to be appointed as a member of the committee should, wherever possible and at the earliest possible time, be amended to remove that requirement, consistent with statutes and presidential directives.

Q8: How will the guidance affect lobbyists who were serving on boards and commissions at the time the policy was established?

A8: The prohibition on the appointment of Federally registered lobbyists to boards and commissions established by the Memorandum applies to appointments and re-appointments made after June 18, 2010. In order to ensure that there is no disruption of ongoing work of boards and commissions, Federally registered lobbyists who already were serving on boards and commissions on that date may serve out the remainder of their terms, but may not be reappointed so long as they remain registered lobbyists.

Q9: Does this policy also restrict the participation of lobbyists as members of a subcommittee or other work group that performs preparatory work for its parent board or commission?

A9: Yes, the policy does not permit the appointment of Federally registered lobbyists to a subcommittee or any other subgroup that performs preparatory work for a parent board or commission, whether or not its members are appointed in the same manner as are members to the parent committee. The goal of the Memorandum is to restrict the undue influence of lobbyists on Federal government through their membership on boards and commissions, which would include subcommittees and other bodies that require formal appointment.

Q10: Does this policy also restrict the participation of lobbyists as witnesses or experts who appear before boards and commissions or submit advice or materials to them?

A10: Lobbyists may still appear before or otherwise communicate with a board or commission to provide testimony, information, or input in the same manner as non-lobbyists who are not members of or appointees to the board, commission, or any of its subgroups, to the extent permitted by law and regulation. The purpose of the policy is to prevent lobbyists from being in privileged positions in government. It is not designed to prevent lobbyists or others from petitioning their government. When lobbyists do testify, boards and commissions should make reasonable efforts to ensure that they hear a balance of perspectives and are not gathering information or advice exclusively from registered lobbyists.

Q11: What should an agency do if it appoints to a board or commission an individual who is not a Federally registered lobbyist at the time of appointment, but who, after appointment, becomes a Federally registered lobbyist?

A11: Agencies should make clear to all board and commission members, whether appointed as representatives or Special Government Employees, that their conduct of activities that would require them to be Federally registered lobbyists after appointment would necessitate their resignation or removal from membership on boards or commissions. The appointing officers or their delegates shall ensure, at least annually, that board or commission members are not Federally registered lobbyists and, upon reappointment of the members, either shall require each member to certify that he or she is not a Federally registered lobbyist or shall check the Federal lobbyist databases to confirm that each member has not registered as a lobbyist since appointment. If an agency finds that, following appointment to a board or commission, a member subsequently has become a Federally registered lobbyist or has engaged in activities that would require registration, the agency shall request the resignation of the member.

Q12: Will there be any waivers available for circumstances in which a

[1] Lobbying Disclosure, Office of the Clerk, U.S. House of Representatives: *http://lobbyingdisclosure.house.gov;* LDA Reports, U.S. Senate: *http://www.senate.gov/legislative/Public_Disclosure/LDA_reports.htm.*

Federally registered lobbyist possesses unique or exceptional value to a board or commission?

A12: The policy makes no provisions for waivers, and waivers will not be permitted under this policy.

Preeta D. Bansal,

OMB General Counsel and Senior Policy Advisor, Office of Management and Budget.

[FR Doc. 2010–27621 Filed 11–1–10; 8:45 am]

BILLING CODE P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (10–144)]

Performance Review Board, Senior Executive Service (SES)

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Membership of SES Performance Review Board.

SUMMARY: The Civil Service Reform Act of 1978, Public Law 95–454 (Section 405) requires that appointments of individual members to the Performance Review Board (PRB) be published in the **Federal Register**.

The National Aeronautics and Space Administration published a document in the **Federal Register** on October 12, 2010, announcing membership of the Performance Review Board (PRB) and the Senior Executive Committee. In addition to the members previously announced, another member was added to the PRB, Associate Administrator for Independent Program and Cost Evaluation.

Performance Review Board

Chairperson, Chief of Staff, NASA Headquarters
Executive Secretary, Director, Workforce Management and Development Division, NASA Headquarters
Associate Administrator, NASA Headquarters
Associate Deputy Administrator, NASA Headquarters
Associate Administrator for Exploration Systems Mission Directorate, NASA Headquarters
Associate Administrator for Space Operations Mission Directorate, NASA Headquarters
Associate Administrator for Science Mission Directorate, NASA Headquarters
Associate Administrator for Aeronautics Research Mission Directorate, NASA Headquarters
Associate Administrator for Mission Support Directorate, NASA Headquarters
Associate Administrator for Diversity and Equal Opportunity, NASA Headquarters
Assistant Administrator for Human Capital Management, NASA Headquarters
Associate Administrator for Independent Program and Cost Evaluation, NASA Headquarters
Chief Engineer, NASA Headquarters
General Counsel, NASA Headquarters
Chief Technologist, NASA Headquarters
Chief Scientist, NASA Headquarters
Chief Information Officer, NASA Headquarters
Chief, Safety and Mission Assurance, NASA Headquarters
Director, Ames Research Center
Director, Dryden Flight Research Center
Director, Glenn Research Center
Director, Goddard Space Flight Center
Director, Johnson Space Center
Director, Kennedy Space Center
Director, Langley Research Center
Director, Marshall Space Flight Center
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Associate Administrator, NASA Headquarters
Associate Deputy Administrator, NASA Headquarters
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Charles F. Bolden, Jr.,

Administrator.

[FR Doc. 2010–27551 Filed 11–1–10; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[NRC–2010–0336]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. 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) is publishing this regular biweekly 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 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 biweekly notice includes all notices of amendments issued, or proposed to be issued from October 7, 2010 to October 20, 2010. The last biweekly notice was published on October 19, 2010 (75 FR 64359).

Notice of Consideration of Issuance of Amendments to Facility Operating 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 Title 10 of the Code of Federal Regulations (10 CFR), § 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after

issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules, Announcements and Directives Branch (RADB), TWB–05–B01M, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be faxed to the RADB at 301–492–3446. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

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. 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 Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed by the above date, 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 identify 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, 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, any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov*, or by telephone at (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve

documents through EIE, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html*, by e-mail at *MSHD.Resource@nrc.gov*, or by a toll-free call at (866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp,* 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. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

For further details with respect to this license amendment application, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *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 at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov*.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1 (ANO–1), Pope County, Arkansas

Date of amendment request: August 24, 2010.

Description of amendment request: The proposed amendment would revise Technical Specifications (TSs) 3.4.6, "RCS Loops—Mode 4," TS 3.4.7, "RCS Loops—Mode 5, Loops Filled," TS 3.4.8, "RCS Loops—Mode 5, Loops Not Filled," and TS 3.9.5, "Decay Heat Removal (DHR) and Coolant Circulation—Low Water Level," to permit a greater time period for one of two required Reactor Coolant System (RCS) cooling loops (commonly known as Decay Heat Removal loop) cooling loops to be inoperable. The affected TSs are applicable in lower Modes of Operation (Modes 4, 5, and 6).

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 does not involve any physical change to the plant and is unrelated to accident initiators. In Mode 4, the energy contained in the RCS is significantly reduced from that of power operations. In addition, RCS pressure can be raised or lowered to accommodate forced circulation using Reactor Coolant Pumps (RCPs) or operation of the Decay Heat Removal (DHR) system. Natural circulation also provides a core heat removal method via any available Steam Generator (SG). Several sources of secondary feedwater are, or could be made available to a required SG in support of forced circulation or natural circulation. Based on this information, any mitigation strategy which assumes use of these core cooling methods is not significantly affected by the proposed increase in the time in which one required train may be inoperable.

No accidents associated with the reactor core or core cooling are postulated for Mode 5. In Mode 6, the fuel handling accident (FHA) is the only postulated accident scenario. The proposed change has no bearing on the FHA from either an initiation aspect or with regard to accident consequences.

Based on the above, 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 only extends the period in which one of two required core heat removal methods may be unavailable. The proposed change involves no changes to the physical plant and is not associated with any accident initiator.

Based on the above, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

As discussed above, the proposed change is unrelated to accident initiators and does not have a significant impact on the consequences of any accident previously evaluated in the ANO–1 Safety Analysis Report (SAR). The proposed change extends the time in which one of two required core heat removal methods may be unavailable. In most cases, more than one additional cooling method remains available. In addition, proceduralized administrative controls act to protect remaining required equipment (including inventory makeup sources) and to prevent removal of important equipment from service during higher risk plant configurations (such as reduced inventory conditions).

In Mode 5 and 6, the idle cooling loop may only be made unavailable in support of surveillance testing and only if the remaining loop is operable and in operation. Additionally, the idle cooling loop can be made unavailable only if it can be recovered within the calculated time-to-boil for the most restrictive plant configuration that may exist during the test window. These restrictions, along with the information in the preceding paragraph, maintain a sufficient margin to safety to preclude a challenge to the integrity of the fuel clad.

Therefore, the proposed change does not involve a significant reduction in the margin to 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.

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station (LGS), Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: August 31, 2010.

Description of amendment request: The proposed amendment involves administrative changes to the Technical Specifications (TSs). The proposed changes involve: (1) Making an editorial change to LGS Unit 1 TS Limiting Condition for Operation (LCO) 3.3.1, Action b; (2) making an editorial change to LGS Units 1 and 2 TS Table 3.3.1–1, Actions 2 and 9; (3) making the layout and format of LGS Unit 1 TS LCO 3.6.5.3 Action requirements consistent with the LGS Unit 2 LCO Action requirements for the same TS; and (4) adding a reference to the minimum required number of operable main turbine bypass valves and the turbine bypass system response time to the core operating limits documented in the Core Operating Limits Report as specified in LGS, Units 1 and 2, TS 6.9.1.9.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee (Exelon) 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 are administrative in nature and do not impact the physical configuration or function of plant structures, systems, or components (SSCs) or the manner in which SSCs are operated, maintained, modified, tested, or inspected. The proposed changes do not impact the initiators or assumptions of analyzed events, nor do they impact mitigation of accidents or transient events.

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 are administrative in nature and do not alter plant configuration, require that new plant equipment be installed, alter assumptions made about accidents previously evaluated, or impact the function of plant SSCs or the manner in which SSCs are operated, maintained, modified, tested, or inspected.

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. The proposed changes are administrative in nature and do not involve any physical changes to plant SSCs or the manner in which SSCs are operated, maintained, modified, tested, or inspected. The proposed changes do not involve a change to any safety limits, limiting safety system settings, limiting conditions for operation, or design parameters for any SSC. The proposed changes do not impact any safety analysis assumptions and do not involve a change in initial conditions, system response times, or other parameters affecting an accident analysis.

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: J. Bradley Fewell, Esquire, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Harold K. Chernoff.

Exelon Generation Company, LLC, Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: June 11, 2010.

Description of amendment request: The amendment would revise the Oyster Creek Nuclear Generating Station Technical Specifications (TSs), Appendix B. Specifically, the proposed amendment would change some wording to align with the Exelon Generation Company (EGC) terminology. Additionally, the proposed amendment would revise the description of the review and audit function to align with the EGC fleet model and relocate scope of the audit to the EGC fleet-wide Quality Assurance Topical Report.

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. [The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.]

Response: No.

The Environmental Technical Specifications (ETS) are concerned with monitoring the effect that plant operations have on the environment for the purpose of protecting the environment and have no [effect] on any accident postulated in the Updated Final Safety Analysis Report (UFSAR). Accident probabilities or consequences are not affected in any way by the environmental monitoring and reporting required by the ETS. The revision of portions of Appendix B of the Renewed Facility Operating License (FOL) will not impact the design or operation of any plant system or

component. No environmental protection requirements established by other Federal, State, or local agencies are being reduced by this license amendment request.

No physical changes to Oyster Creek Nuclear Generating Station (OCNGS) will occur as a result of this proposed amendment. The proposed changes will not alter the physical design or operational procedures associated with any plant structure, system, or component.

The proposed changes involve the revision/relocation of administrative requirements from the Environmental Technical Specifications (ETS) that are now controlled under the EGC Quality Assurance Topical Report (QATR). The Technical Specification (TS) requirements involve Organization and Audit and Review.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. [The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.]

Response: No.

Environmental monitoring and reporting have no effect on accident initiation. The revision of portions of Appendix B of the OCNGS TS[s] will not impact the design or operation of any plant system or component. There will be no effect on the types or amount of any effluents released from the plant.

The proposed changes do not alter the physical design, safety limits, or safety analysis assumptions associated with the operation of the plant. Accordingly, the changes do not introduce any new accident initiators, nor do they reduce or adversely [effect] the capabilities of any plant structure, system, or component to perform their safety function.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. [The proposed changes do not involve a significant reduction in the margin of safety.]

Response: No.

Revision of the ETS Organization and Audit and Review criteria in accordance with this submittal has no impact on margin of safety. Environmental evaluations will still be performed, when necessary, on changes to plant design or operations to assess the effect on environmental protection. Review, analysis and investigation of Unusual and Important Environmental Events will still be performed in accordance with the EGC Corrective Action Program.

The proposed changes conform to NRC regulatory guidance regarding the content of plant [TSs]. The guidance is presented in 10 CFR 50.36 and NUREG–1433. The revision of these administrative requirements will not reduce the quality assurance commitments as accepted by the NRC, nor reduce administrative controls essential to the safe operation of the plant. Future changes to these administrative requirements will be performed in accordance with NRC regulation 10 CFR 50.54(a), consistent with the guidance identified above.

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, and with the changes noted above in square brackets, 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. J. Bradley Fewell, Associate General Counsel, Exelon Generation Company LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Harold Chernoff.

NextEra Energy Seabrook, LLC Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: June 28, 2010.

Description of amendment request: The proposed change would delete the Seabrook Technical Specification 3.8.4.2, "Containment Penetration Conductor Overcurrent Protective Devices and Protective Devices for Class 1E Power Sources Connected to Non-Class 1E Circuits." The requirements would be relocated to a licensee-controlled document, the Technical Requirements Manual (TRM).

Basis for proposed NSHC determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of NSHC, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not impact the physical function of plant structures, systems, or components (SSCs) or the manner in which SSCs perform their design function. The proposed change neither adversely affects accident initiators or precursors, nor alters design assumptions. The proposed change does not alter or prevent the ability of operable SSCs to perform their intended function to mitigate the consequences of an initiating event within assumed acceptance limits.

This proposed change relocates the requirements for the containment penetration conductor overcurrent protective devices and the protective devices for Class 1E power sources connected to non-Class 1E circuits to the TRM. Relocating these requirements will have no adverse effect on plant operation, the availability or operation of any accident mitigation equipment, or plant response to a design basis accident. The electrical protective devices are not accident initiators. Whether the requirements for penetration protective devices for 1E power sources are contained in the TS or the TRM has no effect on the probability or consequences of any accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change will not impact the accident analysis. The change does not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed), a significant change in the method of plant operation, or new operator actions. The proposed change will not introduce failure modes that could result in a new accident. The change does not alter assumptions made in the safety analysis.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

Margin of safety is associated with confidence in the ability of the fission product barriers (i.e., fuel cladding, reactor coolant system pressure boundary, and containment structure) to limit the level of radiation dose to the public. The proposed change does not involve a significant change in the method of plant operation, and no accident analyses will be affected by the proposed changes. Additionally, the proposed changes will not relax any criteria used to establish safety limits and will not relax any safety system settings. The safety analysis acceptance criteria are not affected by this change. The proposed change will not result in plant operation in a configuration outside the design basis. The proposed change does not adversely affect systems that respond to safely shutdown the plant and to maintain the plant in a safe shutdown condition.

Therefore, these 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 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves NSHC.

Attorney for licensee: M.S. Ross, Florida Power & Light Company, P.O. Box 14000, Juno Beach, FL 33408–0420.

NRC Branch Chief: Harold K. Chernoff.

Northern States Power Company—Minnesota, Docket No. 50–263, Monticello Nuclear Generating Plant (MNGP), Wright County, Minnesota

Date of amendment request: September 17, 2010.

Description of amendment request: The licensee proposed to amend the MNGP Technical Specifications, revising the values for the Minimum Critical Power Ratio (MCPR) safety limits of Reactor Core Safety Limit

2.1.1.2. Currently this specification says "MCPR shall be ≥1.10 for two recirculation loop operation or ≥1.12 for single recirculation loop operation." The proposed amendment will change this specification to read "MCPR shall be ≥1.15 for two recirculation loop operation or ≥1.15 for single recirculation loop operation." The basis of the MCPR safety limit is to ensure that during normal operation and during abnormal operational transients, at least 99.9 percent of all fuel rods in the core do not experience transition boiling if the limit is not violated. The licensee's proposed MCPR safety limit values, when approved by the NRC staff, will preserve the existing margin to transition boiling, thus ensuring that the probability of fuel damage will not be increased.

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 (NSHC) analysis. The NRC staff reviewed the licensee's NSHC analysis and has prepared its own as follows:

(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 MCPR safety limits is to ensure that at least 99.9 percent of all fuel rods in the core do not experience transition boiling if the limit is not violated. Of the postulated accidents and transients previously analyzed in the MNGP Updated Safety Analysis Report, none of them were postulated to be initiated by operation within the approved MCPR safety limits. Furthermore, the consequences of the analyzed accidents were not postulated to be exacerbated by operation within approved MCPR safety limits. Accordingly, the probability of occurrence and the consequences of the previously analyzed accidents would not be affected in any way by the proposed amendment to the TS.

(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 amendment does not involve any physical alteration of the plant (no new or different type of equipment will be installed) nor does it change methods and procedures governing plant operation. The proposed amendment will not impose any new or eliminate any old requirements. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment will not have any effect on previously used safety analysis methods, scenarios, acceptance criteria, or assumptions. Therefore, 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 proposed amendment involves no significant hazards consideration.

Attorney for the licensee: Peter M. Glass, Assistant General Counsel, Xcel Energy Services, Inc., 414 Nicollet Mall, Minneapolis, MN 55401

NRC Branch Chief: Robert J. Pascarelli.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *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 Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr.resource@nrc.gov*.

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc., Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: December 3, 2009.

Description of amendment request: This amendment request revises Technical Specifications to incorporate Standard Technical Specification 3.1.8 "Scram Discharge Volume (SDV) Vent and Drain Valves" and associated Bases of NUREG–1433, Revision 3, "Standard Technical Specifications General Electric Plants, BWR/4," modified to account for plant specific design details.

Date of Issuance: October 6, 2010.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment No.: 244.

Facility Operating License No. DPR–28: Amendment revised the License and Technical Specifications.

Date of initial notice in ***Federal Register:*** April 6, 2010 (75 FR 17444).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated October 6, 2010.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: February 24, 2010.

Brief description of amendment: The amendment deleted Operating License Condition 2.C.14, Fuel Movement in the Fuel Handling Building, due to the licensee's election to comply with 10 CFR 50.68, "Criticality accident requirements," of Title 10 of the Code of Federal Regulations (10 CFR). License Condition 2.C.14, which essentially requires that no more than one fuel assembly shall be out of its shipping container or storage location at a given time, was one basis for the licensee's previous exemption from the criticality alarm system requirements of 10 CFR 70.24. The criticality accident requirements can be met either by

complying with 10 CFR 70.24 or 10 CFR 50.68 requirements. The 10 CFR 50.68 criteria are now being used; therefore, License Condition 2.C.14 is no longer required.

Date of issuance: October 14, 2010.

Effective date: As of the date of issuance and shall be implemented 60 days from the date of issuance.

Amendment No.: 229.

Facility Operating License No. NPF–38: The amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register:*** May 4, 2010 (75 FR 23813).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 14, 2010.

No significant hazards consideration comments received: No.

Exelon Generating Company, LLC, Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: February 25, 2010, as supplemented by letters dated July 9, October 14, and October 15, 2010.

Brief description of amendment: The amendment revises the Technical Specifications to allow temporary changes to the Secondary Containment boundary during shutdown conditions. Specifically, the change allows the Reactor Building Secondary Containment boundary associated with the Trunnion Room to be relocated from the Trunnion Room outer wall and door to the Reactor Building inner walls and penetrations located inside the Trunnion Room.

Date of issuance: October 18, 2010.

Effective date: As of its date of issuance, and shall be implemented within 60 days.

Amendment No.: 277.

Renewed Facility Operating License No. DPR–16: The amendment revised the License and Technical Specifications

Date of initial notice in ***Federal Register:*** June 8, 2010 (75 FR 32513). The supplements dated July 9, October 14, and October 15, 2010, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 18, 2010.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: December 21, 2009, as supplemented by letters dated May 11, June 10, June 24, June 29, July 28, August 3, August 12, September 10, and September 17, 2010.

Brief description of amendment: The amendment allows the production of Cobalt-60 by irradiating Cobalt-59 targets located in modified fuel assemblies called Isotope Test Assemblies (ITAs). The amendment allows up to 12 ITAs to be loaded into the reactor core beginning with the fall 2010 refueling outage. The modified fuel assemblies are planned to be in operation as part of a pilot program. The purpose of the pilot program is to obtain data to verify that the modified fuel assemblies perform satisfactorily in service prior to use on a production basis. The Cobalt-60 is ultimately intended for use in the medical industry for use in cancer treatments, and blood and instrument sterilization; in the radiography and security industries for imaging; and in the food industry for cold pasteurization and irradiation sterilization.

Date of issuance: October 7, 2010.

Effective date: As of the date of issuance, to be implemented within 45 days.

Amendment No.: 184.

Facility Operating License No. NPF–57: The amendment revised the Technical Specifications and the License.

Date of initial notice in ***Federal Register:*** March 2, 2010 (75 FR 9445). The letters dated May 11, June 10, June 24, June 29, July 28, August 3, August 12, September 10, and September 17, 2010, provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the application beyond the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 7, 2010.

No significant hazards consideration comments received: Yes.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: November 4, 2009.

Brief description of amendment: The amendment revises the Technical Specifications (TSs) to: (1) Delete TS 4.0.5, which pertains to surveillance requirements for inservice inspection (ISI) and inservice testing (IST) of American Society of Mechanical Engineers Boiler and Pressure Vessel Code Class 1, 2 and 3 components; (2) add a new TS for the IST Program to Section 6.0, "Administrative Controls," of the TSs; (3) change TSs that currently reference TS 4.0.5 to reference the IST Program or ISI Program, as applicable; and (4) revise TS 6.10.3.h to reflect the deletion of the ISI Program from the TSs.

Date of issuance: October 19, 2010.

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 185.

Facility Operating License No. NPF–57: The amendment revised the TSs and the License.

Date of initial notice in ***Federal Register:*** January 26, 2010 (75 FR 4118).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 19, 2010.

No significant hazards consideration comments received: No.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of application for amendment: August 16, 2010.

Brief description of amendment: The amendments revised Technical Specification 3.8.1, "AC [Alternating Current] Sources—Operating," Condition A, to allow a one-time extension of the Completion Time (per train) to 10 days to restore an inoperable required offsite circuit.

Date of issuance: October 15, 2010.

Effective date: Upon issuance; to be implemented within 60 days of issuance.

Amendment No.: Unit 2–224; Unit 3–217.

Facility Operating License Nos. NPF–10 and NPF–15: The amendment revised the Operating Licenses and Technical Specifications.

Date of initial notice in ***Federal Register:*** September 7, 2010 (75 FR 54395).

No significant hazards consideration (NSHC) comments received: No.

The Commission's related evaluation of the amendments, state consultation, and final NSHC determination is contained in a Safety Evaluation dated October 15, 2010.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

NRC Branch Chief: Michael T. Markley.

Virginia Electric and Power Company, et al., Docket Nos. 50–280 and 50–281, Surry Power Station, Units 1 and 2, Surry County, Virginia

Date of application for amendments: October 16, 2009, as supplemented by letter dated May 7, 2010.

Brief Description of amendments: These amendments revised the Technical Specifications (TSs) to:

(1) Implementation of WCAP–8745–P–A, "Design Bases for Thermal Overpower Delta-T and Thermal Overtemperature Delta-T Trip Function,"

(2) Implementation of NRC-approved Dominion Fleet Report DOM–NAF–2–A, "Reactor Core Thermal-Hydraulics Using the VIPRE–D Computer Code,"

(3) Implementation of a Statistical Design Limit for the analytic code and critical heat flux correlations that are being used in DOM–NAF–2–A, and

(4) Implementation of Dominion TR VEP–NE–2–A, "Statistical DNBR Evaluation Methodology."

The requested change also affects the facility TSs. Items 1 and 2 in the above list are methodologies that are used in the determination of core operating limits; hence, items were put into the reference list contained in TS 6.2.C, "CORE OPERATING LIMITS REPORT." Additional TS changes are being implemented to provide consistency with the Improved TS format in NURG–1431, Revision 3, "Standard Technical Specifications, Westinghouse Plants," where practical, and to delete obsolete TS requirements.

Date of issuance: October 19, 2010.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 270 and 269.

Renewed Facility Operating License Nos. DPR–32 and DPR–37: Amendments changed the licenses and the technical specifications.

Date of initial notice in ***Federal Register:*** December 1, 2009 (74 FR 62838). The supplement provided clarifying information that did not change the scope of the original application and the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 19, 2010.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 21st day of October 2010.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–27416 Filed 11–1–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–042; NRC–2010–0165]

Exelon Nuclear Texas Holdings, LLC; Victoria County Station Early Site Permit Application; Notice of Intent To Prepare an Environmental Impact Statement and Conduct Scoping Process

Exelon Nuclear Texas Holdings, LLC (Exelon) has submitted an application for an early site permit (ESP) for Victoria County Station (VCS) site, located approximately 13.3 miles south of the city of Victoria, Texas. The application for the ESP was submitted by Exelon by letter dated March 25, 2010, pursuant to title 10 of the *Code of Federal Regulations* (10 CFR), parts 51 and 52.

A notice of receipt and availability of the application, including the environmental report (ER), was published in the **Federal Register** on Wednesday, April 28, 2010 (75 FR 22434). A notice of acceptance for docketing of the application for the ESP was published in the **Federal Register** on June 14, 2010 (75 FR 33653). A notice of hearing and opportunity to petition for leave to intervene in the proceeding of the application will be published at a later date.

The purposes of this notice are: (1) To inform the public that the U.S. Nuclear Regulatory Commission (NRC) staff will be preparing an environmental impact statement (EIS) as part of the review of the application for the ESP and (2) to provide the public with an opportunity to participate in the environmental scoping process as defined in 10 CFR 51.29. The NRC has invited the U.S. Army Corps of Engineers, Galveston District, to participate in the preparation of the EIS as a cooperating agency.

In addition, as outlined in 36 CFR 800.8(c), "Coordination with the National Environmental Policy Act," the NRC staff plans to coordinate compliance with Section 106 of the National Historic Preservation Act (NHPA) with steps taken to meet the requirements of the National Environmental Policy Act of 1969, as amended (NEPA). Pursuant to 36 CFR 800.8(c), the NRC staff intends to use the process and documentation for the preparation of the EIS on the proposed action to comply with Section 106 of the NHPA in lieu of the procedures set forth in 36 CFR 800.3 through 800.6.

In accordance with 10 CFR 51.45 and 51.50, Exelon submitted the ER as part of the ESP application. The ER was prepared pursuant to 10 CFR parts 51 and 52 and is available for public inspection at the NRC Public Document Room (PDR) located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852 or from the Publicly Available Records (PAR) component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible at *http://www.nrc.gov/reading-rm/adams.html,* which provides access through the NRC's Electronic Reading Room (ERR) link. The accession number in ADAMS for the environmental report is ML101120186. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC's PDR Reference staff at 1–800–397–4209/301–415–4737 or via e-mail to *pdr.resource@nrc.gov.* The application may also be viewed on the Internet at *http://www.nrc.gov/reactors/new-reactors/esp/victoria.html.* In addition, the Victoria Public Library located at 302 North Main Street in Victoria, Texas, has agreed to maintain a copy of the ER and make it available for public inspection.

The following key reference documents related to the application and the NRC staff's review processes are available through the NRC's Web site at *http://www.nrc.gov:*

a. 10 CFR Part 51, Environmental Protection Regulations for Domestic Licensing and Related Regulatory Function;

b. 10 CFR Part 52, Licenses, Certifications, and Approvals for Nuclear Power Plants;

c. 10 CFR Part 100, Reactor Site Criteria;

d. NUREG–1555, Standard Review Plans for Environmental Reviews for Nuclear Power Plants;

e. NUREG/BR–0298, Brochure on Nuclear Power Plant Licensing Process;

f. Regulatory Guide 4.2, Preparation of Environmental Reports for Nuclear Power Stations;

g. Regulatory Guide 4.7, General Site Suitability Criteria for Nuclear Power Stations;

h. Fact Sheet on Nuclear Power Plant Licensing Process;

i. Regulatory Guide 1.206, Combined License Applications for Nuclear Power Plants; and

j. Nuclear Regulatory Commission Policy Statement on the Treatment of

Environmental Justice Matters in NRC Regulatory and Licensing Actions.

The regulations, NUREG-series documents, regulatory guides, and the fact sheet can be found under Document Collections in the Electronic Reading Room on the NRC webpage. The environmental justice policy statement can be found in the **Federal Register**, 69 FR 52040, August 24, 2004.

This notice advises the public that the NRC intends to gather the information necessary to prepare an EIS as part of the review of the application for the ESP at the VCS site. Possible alternatives to the proposed action (issuance of the ESP) include no action and alternate sites. As set forth in 10 CFR 51.20(b)(1), issuance of an ESP under 10 CFR part 52 is an action that requires an EIS. This notice is being published in accordance with NEPA and the NRC's regulations in 10 CFR part 51.

The NRC will first conduct a scoping process for the EIS and, as soon as practicable thereafter, will prepare a draft EIS for public comment. Participation in this scoping process by members of the public and local, State, Tribal, and Federal Government agencies is encouraged. The scoping process for the draft EIS will be used to accomplish the following:

a. Define the proposed action that is to be the subject of the EIS;

b. Determine the scope of the EIS and identify the significant issues to be analyzed in depth;

c. Identify and eliminate from detailed study those issues that are peripheral or that are not significant;

d. Identify any environmental assessments and other EISs that are being or will be prepared that are related to but are not part of the scope of the EIS being considered;

e. Identify other environmental review and consultation requirements related to the proposed action;

f. Identify parties consulting with the NRC under the NHPA, as set forth in 36 CFR 800.8(c)(1)(i);

g. Indicate the relationship between the timing of the preparation of the environmental analyses and the Commission's tentative planning and decision-making schedule;

h. Identify any cooperating agencies and, as appropriate, allocate assignments for preparation and schedules for completing the EIS to the NRC and any cooperating agencies; and

i. Describe how the EIS will be prepared, including any contractor assistance to be used. The NRC invites the following persons or entities to participate in the scoping process:

a. The applicant, Exelon;

b. Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved or that is authorized to develop and enforce relevant environmental standards;

c. Affected State and local government agencies, including those authorized to develop and enforce relevant environmental standards;

d. Any affected Native American;

e. Any person who requests or has requested an opportunity to participate in the scoping process; and

f. Any person who intends to petition for leave to intervene in the proceeding, or who has submitted such a petition, or who is admitted as a party.

In accordance with 10 CFR 51.26, the scoping process for an EIS may include a public scoping meeting to help identify significant issues related to a proposed activity and to determine the scope of issues to be addressed in an EIS. The NRC staff will hold two public scoping meetings for the EIS regarding the ESP application. Both scoping meetings will be held at the Victoria Community Center Dome located at 2905 E. North Street, Victoria, Texas 77901, on Thursday, December 2, 2010. The first meeting will convene at 1 p.m. and will continue until approximately 4 p.m., and the second meeting will convene at 7 p.m. and will continue until approximately 10 p.m. Both meetings will be transcribed and will include the following: (1) An overview by the NRC staff of the NEPA environmental review process, the proposed scope of the EIS, and the proposed review schedule; and (2) the opportunity for interested government agencies, organizations, and individuals to submit comments or suggestions on the environmental issues or the proposed scope of the EIS. Additionally, the NRC staff will host informal discussions for one hour prior to the start of each public meeting. No formal comments on the proposed scope of the EIS will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meeting or in writing, as discussed below. Persons may register to attend or present oral comments on the scope of the EIS by contacting Ms. Tomeka L. Terry or Ms. Alicia Williamson by telephone at 1–800–368–5642, extension 1488 or 1878, respectively. In addition, persons can register via e-mail to the NRC at *Victoria.ESPEIS@nrc.gov* no later than November 29, 2010.

Members of the public may also register to speak at the meetings prior to the start of each session. Individual oral comments may be limited by the time available, depending on the number of persons who register. Members of the public who have not registered may also have an opportunity to speak, if time permits. Public comments will be considered in the scoping process for the EIS. If special equipment or accommodations are needed to attend or present information at either public meeting, such requests should be brought to Ms. Terry's or Ms. Williamson's attention no later than November 29, 2010, so that the NRC staff can make arrangements to accommodate the request.

Members of the public may send written comments on the scope of the VCS ESP environmental review to the Chief, Rules, Announcements, and Directives Branch, Division of Administrative Services, Office of Administration, Mailstop TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. To ensure that comments will be considered in the scoping process, written comments must be postmarked by January 3, 2011. Electronic comments may be sent by e-mail to the NRC at *Victoria.ESPEIS@nrc.gov.* Electronic submissions must be sent no later than January 3, 2011. Comments will be made available electronically and will be accessible through the NRC's Electronic Reading Room link at *http://www.nrc.gov/reading-rm/adams.html.* The NRC staff may, at its discretion, consider comments received after the end of the comment period.

Participation in the scoping process for the EIS does not entitle participants to become parties to the proceeding to which the EIS relates. A notice of hearing and opportunity to petition for leave to intervene in the proceeding on the application for the ESP will be published in a future **Federal Register** notice.

At the conclusion of the scoping process, the NRC staff will prepare a concise summary of the determinations and conclusions reached on the scope of the environmental review including the significant issues identified, and will send this summary to each participant in the scoping process for whom the staff has an address. The staff will then prepare and issue for comment the draft EIS, which will be the subject of a separate **Federal Register** notice and a separate public meeting. Copies of the draft EIS will be available for public inspection at the PDR through the above-mentioned address and one copy per request will be provided free of charge. After receipt and consideration

of comments on the draft EIS, the NRC will prepare a final EIS, which will also be available to the public.

Information about the proposed action, the EIS, and the scoping process may be obtained from Ms. Tomeka L. Terry or Ms. Alicia Williamson at U.S. Nuclear Regulatory Commission, Mailstop T–7E30, Washington, DC 20555–0001, by phone at 1–800–368–5642, extension 1488 or 1878, respectively, or via e-mail at *Tomeka.Terry@nrc.gov* or *Alicia.Williamson@nrc.gov.*

Dated at Rockville, Maryland, this 26th day of October 2010.

For The Nuclear Regulatory Commission.

Scott C. Flanders,

Director, Division of Site and Environmental Reviews, Office of New Reactors.

[FR Doc. 2010–27631 Filed 11–1–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0002]

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Weeks of November 1, 8, 15, 22, 29, December 6, 2010.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of November 1, 2010

Tuesday, November 2, 2010

9:30 a.m. Briefing on Equal Employment Opportunity (EEO) and Small Business Programs (Public Meeting). (Contact: Barbara Williams, 301–415–7388)

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

Friday, November 5, 2010

9:30 a.m. Meeting with the Advisory Committee on Reactor Safeguards and Briefing on Design Acceptance Criteria (Public Meeting). (Contact: Cayetano Santos, 301–415–7270)

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

Week of November 8, 2010—Tentative

There are no meetings scheduled for the week of November 8, 2010.

Week of November 15, 2010—Tentative

There are no meetings scheduled for the week of November 15, 2010.

Week of November 22, 2010—Tentative

There are no meetings scheduled for the week of November 22, 2010.

Week of November 29, 2010—Tentative

Tuesday, November 30, 2010

1 p.m. Briefing on Security Issues (Closed—Ex. 1).

Week of December 6, 2010—Tentative

There are no meetings scheduled for the week of December 6, 2010.

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* 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/about-nrc/policy-making/schedule.html.

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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 Angela Bolduc, Chief, Employee/Labor Relations and Work Life Branch, at 301–492–2230, TDD: 301–415–2100, or by e-mail at *angela.bolduc@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 e-mail to *darlene.wright@nrc.gov.*

Dated: October 28, 2010.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2010–27746 Filed 10–29–10; 4:15 pm]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: U.S. Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: This gives notice of OPM decisions granting authority to make appointments under Schedules A, B, and C in the excepted service as required by 5 CFR 213.103.

FOR FURTHER INFORMATION CONTACT: Roland Edwards, Senior Executive Resource Services, Employee Services, 202–606–2246.

SUPPLEMENTARY INFORMATION: Appearing in the listing below are the individual authorities established under Schedules A, B, and C between September 1, 2010, and September 30, 2010.

These notices are published monthly in the **Federal Register** at *http://www.gpoaccess.gov/fr/.* A consolidated listing of all authorities as of June 30 is also published each year. The following Schedules are not codified in the Code of Federal Regulations. These are agency-specific exceptions.

Schedule A

No Schedule A authorities to report during September 2010.

Schedule B

No Schedule B authorities to report during September 2010.

Schedule C

The following Schedule C appointments were approved during August 2010.

Office of Management and Budget

BOGS10023 Confidential Assistant for Strategic Planning and Communications. Effective September 8, 2010.

Office of National Drug Control Policy

QQGS10012 Associate Director for Public Affairs. Effective September 7, 2010.

Office of the United States Trade Representative

TNGS00040 Director of Congressional Affairs. Effective September 10, 2010.

Department of the Treasury

DYGS00486 Policy Advisor to the Secretary. Effective September 13, 2010.

Department of Defense

DDGS17298 Defense Fellow for White House Liaison. Effective September 10, 2010.

DDGS17299 Defense Fellow for White House Liaison. Effective September 10, 2010.

DDGS17302 Speechwriter. Effective September 17, 2010.

DDGS17301 Special Assistant of Defense (Nuclear, Chemical and Biological Defense Programs). Effective September 22, 2010.

Department of Justice

DJGS00202 Counsel for the Criminal Division. Effective September 8, 2010.

DJGS00228 Counsel to the Chief of Staff. Effective September 10, 2010.

DJGS00622 Research Assistant to the Assistant Attorney General. Effective September 13, 2010.

DJGS00549 Counsel to the Assistant Attorney General. Effective September 24, 2010.

Department of Homeland Security

DMGS00768 New Media Specialist for Public Affairs. Effective September 22, 2010.

DMGS00836 Special Assistant for National Protection and Programs. Effective September 23, 2010.

DMGS00437 Counselor to United States Citizenship and Immigration Services. Effective September 28, 2010.

DMGS00432 Confidential Assistant to the Chief of Staff. Effective September 29, 2010.

DMGS00775 Counselor to United States Citizenship and Immigration Services. Effective September 29, 2010.

Department of the Interior

DIGS01201 Special Assistant of Ocean Energy Management, Regulation and Enforcement. Effective September 10, 2010.

Department of Agriculture

DAGS20019 Senior Program Manager for Global Food Security. Effective September 2, 2010.

DAGS00242 Chief of Staff for Marketing and Regulatory Programs. Effective September 9, 2010.

DAGS20040 Confidential Assistant for the Farm Service Agency. Effective September 9, 2010.

Department of Commerce

DCGS00590 Confidential Assistant to the Executive Secretariat. Effective September 3, 2010.

DCGS00639 New Media Director of Public Affairs. Effective September 10, 2010.

DCGS60372 Deputy Director of Policy/Senior Policy Advisor. Effective September 21, 2010.

DCGS00591 Special Assistant of Communications. Effective September 22, 2010.

DCGS00325 Deputy Director of the Advisory Committees. Effective September 24, 2010.

DCGS00576 Director of Scheduling and Advance. Effective September 24, 2010.

Department of Labor

DLGS60279 Regional Representative, Denver, for Congressional and Intergovernmental Affairs. Effective September 13, 2010.

DLGS60141 Special Assistant of Public Engagement. Effective September 28, 2010.

Department of Heath and Human Services

DHGS60243 Regional Director, Atlanta, Georgia, Region IV of Intergovernmental Affairs. Effective September 2, 2010.

Department of Education

DBGS00377 Confidential Assistant of Education. Effective September 24, 2010.

Environmental Protection Agency

EPGS10010 Senior Advisor for External Affairs and Environmental Education. Effective September 17, 2010.

EPGS10011 Deputy Press Secretary for Public Affairs. Effective September 17, 2010.

EPGS10012 Senior Advisor on External Communication for Public Affairs. Effective September 23, 2010.

EPGS10013 Press Secretary for Public Affairs. Effective September 23, 2010.

Department of Veterans Affairs

DVGS60005 Special Assistant of Veterans Affairs. Effective September 28, 2010.

Department of Energy

DEGS00829 Trip Coordinator for the Office of Scheduling and Advance. Effective September 8, 2010.

Small Business Administration

SBGS00610 Senior Advisor for Capital Access. Effective September 9, 2010.

General Services Administration

GSGS01446 White House Liaison to the Chief of Staff. Effective September 3, 2010.

GSGS01420 Regional Administrator to the Administrator. Effective September 9, 2010.

GSGS01437 Special Assistant for Small Business Utilization. Effective September 24, 2010.

GSGS01447 Special Assistant to the Regional Administrator. Effective September 24, 2010.

Export-Import Bank

EBSL94047 Senior Vice President, Communications to the President and Chairman. Effective September 3, 2010.

Commodity Futures Trading Commission

CTOT00015 Administrative Assistant to a Commissioner. Effective September 1, 2010.

National Endowment for the Humanities

NHGS60069 Confidential Assistant to the Chairman. Effective September 23, 2010.

Department of Housing and Urban Development

DUGS00025 Press Assistant for Public Affairs. Effective September 7, 2010.

DUGS00031 Division Director, Performance Management, for the Office of Strategic Planning and Management. Effective September 29, 2010.

DUGS00588 Media Outreach Specialist. Effective September 29, 2010.

National Transportation Safety Board

TBGS11536 Special Assistant to a Member. Effective September 8, 2010.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2010–27550 Filed 11–1–10; 8:45 am]

BILLING CODE 6325–39–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Assistance, Washington, DC 20549–0213.

Extension:

Rule 13e–3 (Schedule 13E–3); OMB Control No. 3235–0007; SEC File No. 270–1.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 13e–3 and Schedule 13E–3 (17 CFR 240.13e–3 and 240.13e–100)—Rule 13e–3 prescribes the filing, disclosure and dissemination requirements in connection with a going private transaction by an issuer or an affiliate.

Schedule 13E–3 provides shareholders and the marketplace with information concerning going private transactions that is important in determining how to respond to such transactions. The information collected permits verification of compliance with securities laws requirements and ensures the public availability and dissemination of the collected information. We estimate that Schedule 13E–3 is filed by approximately 600 issuers annually and it takes approximately 137.25 hours per response. We estimate that 25% of the 137.25 hours per response is prepared by the filer for a total annual reporting burden of 20,588 hours.

Written comments are invited on: (a) Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Director/CIO, Securities and Exchange Commission, C/O Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: October 27, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–27591 Filed 11–1–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63193; File No. SR–CTA/CQ–2010–04]

Consolidated Tape Association; Notice of Filing and Immediate Effectiveness of the Seventeenth Substantive Amendment to the Second Restatement of the Consolidated Tape Association Plan and Thirteenth Substantive Amendment to the Restated Consolidated Quotation Plan

October 27, 2010.

Pursuant to Section 11A of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 608 thereunder,[2] notice is hereby given that on October 19, 2010, the Consolidated Tape Association ("CTA") Plan and Consolidated Quotation ("CQ") Plan participants ("Participants") [3] filed with the Securities and Exchange Commission ("Commission") a proposal to amend the Second Restatement of the CTA Plan and Restated CQ Plan (collectively, the "Plans").[4] The proposal represents the Seventeenth substantive amendment to the CTA Plan ("Seventeenth Amendment to the CTA Plan") and the Thirteenth substantive amendment to the CQ Plan ("Thirteenth Amendment to the CQ Plan"), and reflects changes unanimously adopted by the Participants. The Seventeenth Amendment to the CTA Plan and the Thirteenth Amendment to the CQ Plan ("Amendments") propose to add BATS Y–Exchange, Inc. to the Plans. The Commission is publishing this notice to solicit comments from interested persons on the proposed Amendments.

I. Rule 608(a)

A. Purpose of the Amendments

The amendment proposes to add BATS Y–Exchange, Inc. as a new Participant to each Plan.

B. Governing or Constituent Documents

Not applicable.

C. Implementation of the Amendments

Because the Amendments constitute "Ministerial Amendments" under both clause (1) of Section IV(b) of the CTA Plan and clause (1) of Section IV(c) of the CQ Plan, the Chairman of the CTA Plan and the CQ Plan's Operating Committee may submit these amendments to the Commission on behalf of the Participants in the CTA Plan and the CQ Plan. Because the Participants designate the amendments as concerned solely with the administration of the Plans, the amendments become effective upon filing with the Commission.

D. Development and Implementation Phases

Not applicable.

E. Analysis of Impact on Competition

The proposed amendment does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The Participants do not believe that the proposed plan amendment introduces terms that are unreasonably discriminatory for the purposes of Section 11A(c)(1)(D) of the Exchange Act.

F. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plan

Not applicable.

G. Approval by Sponsors in Accordance with Plan

See Item I(C) above.

H. Description of Operation of Facility Contemplated by the Proposed Amendment

Not applicable.

I. Terms and Conditions of Access

See Item I(A) above.

J. Method of Determination and Imposition, and Amount of, Fees and Charges

See Item I(A) above.

K. Method and Frequency of Processor Evaluation

Not applicable.

L. Dispute Resolution

Not applicable.

II. Rule 601(a) (Solely in Its Application to the Amendments to the CTA Plan)

A. Reporting Requirements

Not applicable.

B. Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information

Not applicable.

C. Manner of Consolidation

Not applicable.

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[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

[3] Each participant executed the proposed amendment. The Participants are: BATS Exchange, Inc.; Chicago Board Options Exchange, Incorporated; Chicago Stock Exchange, Inc.; EDGA Exchange, Inc.; EDGX Exchange, Inc.; Financial Industry Regulatory Authority, Inc.; International Securities Exchange LLC; NASDAQ OMX BX, Inc.; NASDAQ OMX PHLX, Inc.; The NASDAQ Stock Market LLC; National Stock Exchange, Inc.; New York Stock Exchange LLC; NYSE Amex, Inc.; and NYSE Arca, Inc.

[4] *See* Securities Exchange Act Release Nos. 10787 (May 10, 1974), 39 FR 17799 (May 20, 1974) (declaring the CTA Plan effective); 15009 (July 28, 1978), 43 FR 34851 (August 7, 1978) (temporarily authorizing the CQ Plan); and 16518 (January 22, 1980), 45 FR 6521 (January 28, 1980) (permanently authorizing the CQ Plan). The most recent restatement of both Plans was in 1995. The CTA Plan, pursuant to which markets collect and disseminate last sale price information for non-NASDAQ listed securities, is a "transaction reporting plan" under Rule 601 under the Act, 17 CFR 242.601, and a "national market system plan" under Rule 608 under the Act, 17 CFR 242.608. The CQ Plan, pursuant to which markets collect and disseminate bid/ask quotation information for listed securities, is also a "national market system plan" under Rule 608 under the Act, 17 CFR 242.608.

D. Standards and Methods Ensuring Promptness, Accuracy and Completeness of Transaction Reports

Not applicable.

E. Rules and Procedures Addressed to Fraudulent or Manipulative Dissemination

Not applicable.

F. Terms of Access to Transaction Reports

Not applicable.

G. Identification of Marketplace of Execution

Not Applicable.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed Amendments are 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 e-mail to *rule-comments@sec.gov*. Please include File Number SR–CTA/CQ–2010–04 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–CTA/CQ–2010–04. This file number should be included on the subject line if e-mail 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 Amendments that are filed with the Commission, and all written communications relating to the Amendments 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 the Amendments also will be available for inspection and copying at the principal office of the CTA. 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–CTA/CQ–2010–04 and should be submitted on or before November 23, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[5]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–27666 Filed 11–1–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63191; File No. SR–CBOE–2010–094]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to the Hybrid Automatic Execution Feature

October 27, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19b–4 thereunder,[2]notice is hereby given that on October 19, 2010, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend CBOE Rule 6.13, *CBOE Hybrid System's Automatic Execution Feature,* to provide additional clarity on the operation of the automatic execution feature. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend Rule 6.13 to provide additional clarity on the operation of CBOE's Hybrid System automatic execution feature. In particular, the Exchange is proposing to amend the rule as follows:

First, the Exchange is proposing to include additional cross references in Rule 6.13 to Rules 6.13A, *Simple Auction Liaison (SAL),* 6.14, *Hybrid Agency Liaison (HAL),* 6.14A, *Hybrid Agency Liaison 2 (HAL2)* and 6.45B, *Priority and Allocation of Trades in Index Options and Options on ETFs on the CBOE Hybrid System.* While Rule 6.13 already contains cross references to these four rules, the Exchange believes the inclusion of the added cross references will provide additional clarity on the existing operation and interaction of the various processes within in [sic] the Hybrid System.

Second, Rule 6.13 provides that the Exchange will designate the order size and order origin codes that are eligible for automatic execution. The Exchange is proposing to amend the rule to clarify that the Exchange will also designate the order types (*e.g.,* market, limit, contingency, etc.) that are eligible for automatic execution. The inclusion of this order type provision is consistent with various other CBOE Rules under which the Exchange designates order size, origin code and order type, *e.g.,* Rules 6.14, 6.14A and 6.53, *Certain Types of Orders Defined.*

Third, the Exchange is proposing to replace specific references in Rule 6.13 to routing order to BART (the booth

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[5] 17 CFR 200.30–3(a)(27).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

automated routing terminal) and an order entry firm's booth printer with a general reference to an order entry firm's booth. The Exchange no longer utilizes the particular system that it had referred [sic] as BART and believes that the general reference to routing an order to an order entry firm's booth is more appropriate for its rules.

Fourth, Rule 6.13 provides for certain price check parameters for HAL and HAL2 classes under which the Hybrid System will not automatically execute orders if the width between the Exchange's best bid and best offer are not within an acceptable price range. The acceptable price range is no less than 1.5 times the corresponding bid/ask differential requirements determined by the Exchange on a class-by-class basis. The Exchange is proposing to clarify that the Exchange may determine to apply these price check parameters to market orders and/or marketable limit orders. In addition, rather than cross reference corresponding bid/ask differential requirements, the Exchange is proposing to specify the minimum acceptable price range within Rule 6.13. Specifically, the acceptable price range will be no less than: $0.375 between the bid and offer for each option contract for which the bid is less than $2, $0.60 where the bid is at least $2 but does not exceed $5, $0.75 where the bid is more than $5 but does not exceed $10, $1.20 where the bid is more than $10 but does not exceed $20, and $1.50 where the bid is more than $20. These amounts are equal to 1.5 times the bid/ask differential requirements that the Exchange had in its rules at the time the price check parameters were adopted.

Finally, the Exchange is making some non-substantive changes to simplify the language in the text and to make miscellaneous typographical changes, such as uncapitalizing the word "class," deleting an extra word ("Eligibility:") which appeared in the text twice, and renumbering certain paragraphs and revising certain headers so that the format is consistent with the remainder of the Rule.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[6] in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest, by providing additional clarity on the operation of CBOE Hybrid System automatic execution feature.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6)(iii) thereunder.[8]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2010–094 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–CBOE–2010–094. This file number should be included on the subject line if e-mail 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 the filing also will be available for inspection and copying at the principal office of the self-regulatory organization. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2010–094 and should be submitted on or before November 23, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–27589 Filed 11–1–10; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to give the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. CBOE has satisfied this requirement.

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63188; File No. SR–Phlx–2010–146]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Prices for Co-Location Services

October 27, 2010.

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 October 25, 2010, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. Pursuant to Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] Phlx has designated this proposal as establishing or changing a due, fee, or other charge, which renders the proposed rule change effective upon filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is filing with the Securities and Exchange Commission ("Commission") a proposed rule change to modify pricing for co-location services. The text of the proposed rule change is available at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings,* at the Exchange's principal office, on the Commission's Web site at *http://www.sec.gov,* and at the Commission's Public Reference Room. The Exchange will implement the proposed rule change immediately.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to modify its fee schedule[5] for co-location services.[6] These modifications are summarized below:

First, as a result of the entry of the Direct Edge and BATS Y exchanges into the public market and the availability of other data feeds, the Exchange is implementing and modifying its telecommunications installation and connectivity fees to accommodate these data linkages for co-located customers. The new fees are: (1) $125 per-month fee for connectivity to the Arca Best Bid and Offer feed; (2) a $1,500 per-month fee for connectivity to the new BATS Y exchange; and (3) a one-time fee of $1000 for the installation of telecommunications connectivity for the Direct Edge exchange, along with a per-month fee of $2500 for each of its two markets, EDGA and EDGX. In connection with foregoing, the Exchange notes that its installation fee for Direct Edge is equal to that currently charged for installation of SIAC, CME,[7] and BATS connectivity, and that the monthly rates proposed are based on the anticipated bandwidth needed to accommodate a particular fee and are similar to connectivity fees imposed by other vendors.[8]

Next, to provide additional flexibility for customers to select only the equipment they need, the Exchange proposes to separate its current combined $1750 installation fee for cooling fans and perforated tiles into separate fees of $1,500 for the fans and $250 for the tiles.

Further, in the area of providing internet bandwidth to users, the Exchange, responding to decreased demand for lower-level bandwidth options, is eliminating its current 256kb, 500kb, and1.5Mb options and replacing them with new 3Mb, 4Mb, and 5Mb options priced at $700, $900, and $1,100 per-month respectively.

Finally, the Exchange is offering various services related to hardware installation, security and storage including: A custom installation fee, which will vary depending upon cost, for installing customized equipment to meet individual customer needs; cabinet caging, a metal security fencing option to protect customer equipment at a monthly rate of $3,000, with installation fees individually determined by the size and complexity of the equipment to be caged; and, lastly, a monthly cabinet equipment storage fee in the amount of $500. This storage fee differs from the equipment storage fee of $100 in the current fee schedule, which relates to temporary storage of equipment by the Exchange itself rather than in a customer controlled cabinet.

As with all the Exchange' [sic] co-location offerings, use of the above products and services is completely voluntary, and all products and services are available on a non-discriminatory basis.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[9] in general, and with Section 6(b)(5) of the Act,[10] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the filing codifies and makes transparent uniform fees imposed for co-location services.

In addition, the Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[11] in general, and with Section 6(b)(4) of the Act,[12] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls. In particular, the Exchange notes that the use of co-location services is entirely voluntary

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] This schedule includes modifications made by SR–Phlx–2010–144, filed with the Commission on October 14, 2010.

[6] Co-location services are a suite of hardware, power, telecommunication and other ancillary products and services that allow users to place their trading and communications equipment in close physical proximity to the quoting and execution facilities of the Exchange.

[7] The Exchange is also removing from the fee schedule an incorrect duplicate $1000 installation fee for CME market data connectivity.

[8] Separate fees for market data are charged independently by individual markets.

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(4).

and made available on a non-discriminatory basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[13] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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 e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2010–146 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2010–146. This file number should be included on the subject line if e-mail 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 the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2010–146 and should be submitted on or before November 23, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–27662 Filed 11–1–10; 8:45 am]

BILLING CODE 8011–01–P

[13] 15 U.S.C. 78s(b)(3)(a)(ii).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63189; File No. SR–NASDAQ–2010–135]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Prices for Co-Location Services

October 27, 2010.

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 October 15, 2010, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASDAQ. Pursuant to Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] NASDAQ has designated this proposal as establishing or changing a due, fee, or other charge, which renders the proposed rule change effective upon filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

NASDAQ proposes to change to modify [sic] pricing for co-location services NASDAQ will implement the proposed change immediately [sic]. The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com/,* at NASDAQ's principal office, on the Commission's Web site at *http://www.sec.gov,* and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of and basis for the proposed rule change 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. NASDAQ has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to modify its fee schedule[5] for co-location services.[6] These modifications are summarized below:

First, as a result of the entry of the Direct Edge and BATS Y exchanges into the public market and the availability of other data feeds, the Exchange is implementing and modifying its

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] This schedule includes modifications made by SR–NASDAQ–2010–133, filed with the Commission on October 14, 2010.

[6] Co-location services are a suite of hardware, power, telecommunication and other ancillary products and services that allow users to place their trading and communications equipment in close physical proximity to the quoting and execution facilities of the Exchange.

telecommunications installation and connectivity fees to accommodate these data linkages for co-located customers. The new fees are: (1) $125 per-month fee for connectivity to the Arca Best Bid and Offer feed; (2) a $1,500 per-month fee for connectivity to the new BATS Y exchange; and (3) a one-time fee of $1000 for the installation of telecommunications connectivity for the Direct Edge exchange, along with a per-month fee of $2500 for each of its two markets, EDGA and EDGX. In connection with the foregoing, the Exchange notes that its installation fee for Direct Edge is equal to that currently charged for installation of SIAC, CME,[7] and BATS connectivity, and that the monthly rates proposed are based on the anticipated bandwidth needed to accommodate a particular fee and are similar to connectivity fees imposed by other vendors.[8]

Next, to provide additional flexibility for customers to select only the equipment they need, the Exchange proposes to separate its current combined $1750 installation fee for cooling fans and perforated tiles into separate fees of $1,500 for the fans and $250 for the tiles.

Further, in the area of providing internet bandwidth to users, the Exchange, responding to decreased demand for lower-level bandwidth options, is eliminating its current 256kb, 500kb, and1.5Mb options and replacing them with new 3Mb, 4Mb, and 5Mb options priced at $700, $900, and $1,100 per month respectively.

Finally, the Exchange is offering various services related to hardware installation, security and storage including: a custom installation fee, which will vary depending upon cost, for installing customized equipment to meet individual customer needs; cabinet caging, a metal security fencing option to protect customer equipment at a monthly rate of $3,000, with installation fees individually determined by the size and complexity of the equipment to be caged; and, lastly, a monthly cabinet equipment storage fee in the amount of $500. This storage fee differs from the equipment storage fee of $100 in the current fee schedule, which relates to temporary storage of equipment by the Exchange itself rather than in a customer controlled cabinet.

As with all the Exchange' [sic] co-location offerings, use of the above products and services is completely voluntary, and all products and services are available on a non-discriminatory basis.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[9] in general, and with Section 6(b)(5) of the Act,[10] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the filing makes transparent uniform fees imposed for co-location services.

In addition, the Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[11] in general, and with Section 6(b)(4) of the Act,[12] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls. In particular, the Exchange notes that the use of co-location services is entirely voluntary and made available on a non-discriminatory basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[13] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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 e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2010–135 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–NASDAQ–2010–135. This file number should be included on the subject line if e-mail 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 the Exchange. All comments received will be posted without change; the Commission does not edit personal

[7] The Exchange is also removing from the fee schedule an incorrect duplicate $1000 installation fee for CME market data connectivity.

[8] Separate fees for market data are charged independently by individual markets.

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(4).

[13] 15 U.S.C. 78s(b)(3)(a)(ii).

identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2010–135 and should be submitted on or before November 23, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–27664 Filed 11–1–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63195; File No. SR–BX–2010–070]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Making Clerical and Grammatical Corrections to Chapter VII, Section 1 (Exercise of Options Contracts) of the Boston Options Exchange Group, LLC Rules

October 27, 2010.

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 October 20, 2010, NASDAQ OMX BX, Inc. (the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(i) of the Act[3] and Rule 19b–4(f)(3) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

NASDAQ OMX BX, Inc. proposes to amend the Rules of the Boston Options Exchange Group, LLC ("BOX") to make a clerical correction to Chapter VII, Section 1 (Exercise of Options Contracts) of the BOX Rules. The Exchange shall implement this rule proposal immediately. The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXBX/Filings/*, at the principal office of the Exchange, on the Commission's Web site at *http://www.sec.gov*, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to make a clerical correction to the rule text of Chapter VII, Section 1 (Exercise of Options Contracts) of the BOX Rules. The Exchange proposes to correct inadvertent typographical and grammatical errors.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[5] in general, and Section 6(b)(5) of the Act,[6] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to prevent fraudulent and manipulative acts, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change will allow the Exchange to correct inadvertent typographical and grammatical errors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(3) thereunder,[8] the Exchange has designated this proposal as one that is concerned solely with the administration of the self-regulatory organization. Accordingly, the Exchange believes that its proposal should become immediately effective. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BX–2010–070 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–BX–2010–070. This file number should be included on the subject line if e-mail 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 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

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 210.19b–4(f)(3).

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 the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–BX–2010–070 and should be submitted on or before November 23, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–27670 Filed 11–1–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63186; File No. SR–CBOE–2010–095]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Hybrid 3.0 Classes

October 27, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 25, 2010, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend its rules that relate to the designation of index options and options on exchange-traded funds ("ETFs") for trading on CBOE's Hybrid Trading System and Hybrid 3.0 Platform and eligible categories of Market-Maker participants. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal,*) at the Exchange's Office of the Secretary and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend its rules that relate to the designation of index options and options on ETFs for trading on the Hybrid Trading System and Hybrid 3.0 Platform. The "Hybrid Trading System" refers to the Exchange's trading platform that allows Market-Makers to submit electronic quotes in their appointed classes. The "Hybrid 3.0 Platform" is an electronic trading platform on the Hybrid Trading System that allows one or more quoters to submit electronic quotes which represent the aggregate Market-Maker quoting interest in the series for the trading crowd.

Currently, the particular trading platform on which such an option contract is traded and the eligible categories of Market-Maker participants for those options are designated by the Exchange on a class-by-class basis pursuant to Rule 8.14, *Index Hybrid Trading System Classes: Market-Maker Participants.* The Exchange is now proposing to amend this rule as it relates to classes designated for trading on the Hybrid 3.0 Platform. Specifically, the Exchange is proposing to provide that, for each Hybrid 3.0 class, the Exchange may determine to authorize a group of series of the class for trading on the Hybrid Trading System and, if that authorization is granted, the Exchange would determine the eligible categories of Market-Maker participants for that group of series.[5] The Exchange would assign a Designated Primary Market-Maker ("DPM") or Lead Market-Maker ("LMM") to the group of series. Alternatively, the Exchange could determine to designate the group of series for trading without a DPM or LMM provided certain conditions set forth in Rule 8.14(b) are satisfied with respect to the group of series.[6]

EXAMPLE (for illustrative purposes only): Currently options on the Standard & Poor's 500 Index (symbol SPX) are the only class of options traded on the Hybrid 3.0 Platform. Pursuant to the proposed rule change, the Exchange could determine to designate all end-of-week option series in the SPX option class for trading on the Hybrid Trading System without a DPM or LMM.[7] All other series of the SPX option class could continue to be designated for trading on the Hybrid 3.0 Platform with two rotating LMMs.

When selecting series to trade on the Hybrid Trading Platform, the Exchange intends to generally select series with common expirations or classifications, *e.g.,* end-of-week series or end-of-month series, short term option series, or series that expire on a particular expiration date. The Exchange notes that an individual series would only trade on one trading platform at a given time, not both. What trading platform an individual series trades on is controlled by CBOE in how the series is set up in

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Exchange would also have the authority to determine whether to change the trading platform on which the group of series trades and change the eligible categories of Market-Maker participants for the group.

[6] Specifically, the group of series could be designated to trade on the Hybrid Trading System without a DPM or LMM provided the following conditions, as applicable, are satisfied: (1) There are at least four (4) Market-Makers quoting in the group of series; (2) Each Market-Maker with an appointment in the group of series is subject to the continuous quoting obligations imposed by CBOE Rule 8.7(d); and (3) In the event the Exchange activates request-for-quote ("RFQ") functionality (which has not been activated for any class traded on the Exchange), each Market-Maker would have an obligation to respond to that percentage of RFQs as determined by the Exchange for the group of series subject to certain requirements specified in Rule 8.14(b)3.

[7] To the extent that the Exchange would determine to designate SPX end-of-week series for trading on the Hybrid Trading System without a DPM or LMM, certain conditions set forth in Rule 8.14(b) would have to be satisfied, as applicable. *Id.*

CBOE*direct* (the trading engine for the Hybrid Trading System and Hybrid 3.0 Platform). Using the example above, CBOE would change the platform designation for SPX end-of-week series in CBOE*direct* to the Hybrid Trading System and keep the platform designation for all other SPX series on the Hybrid 3.0 Platform. In addition, the Exchange plans to introduce a new option symbol to denote the series that are trading on a different platform. Using the example above, SPX end-of-week series might trade under symbol SPXW while all other SPX series would continue to trade under symbol SPX.

The Exchange notes that CBOE has had several trading platform changes over the years for entire option classes (*e.g.,* CBOE has moved certain other option classes from the Hybrid 3.0 Platform to the Hybrid Trading System). The move of a group of series within a class would operate similar to the way other option class moves have operated in the past. In this regard, the Exchange generally provides CBOE Trading Permit Holders at least one trading day's advance notice of trading platform changes via regulatory circular. For the initial changeover of any SPX series that may be traded on the Hybrid Trading System, however, the Exchange plans to give at least one week advance notice so that Trading Permit Holders can be made aware that the platform change would only be for a select group of series and not the whole class, and so that the Exchange can schedule education sessions to explain the change to Trading Permit Holders. Once the Exchange has made an initial changeover, if we would determine to add (or remove) series from the Hybrid Trading Platform we plan to revert back to the general approach of providing at least one trading day's advance notice for those subsequent changes.

The following would also apply: Market-Maker appointments would continue to apply on a class basis, except DPM, LMM and Electronic DPM ("e-DPM") appointments would apply only to the group of series to which the respective DPM, LMM or e-DPM is assigned, if applicable. In addition, the Hybrid Trading System trading parameters (*e.g.,* applicable matching algorithm parameters under Rule 6.45B, *Priority and Allocation of Trading in Index Options and Options on ETFs on the CBOE Hybrid System;* opening rotation parameters under Rule 6.2B, *Hybrid Opening System ("HOSS");* automatic execution parameters under Rule 6.13, *CBOE Hybrid System's Automatic Execution Feature;* Simple Auction Liaison parameters under Rule 6.13A, *Simple Auction Liaison (SAL),*[8] Hybrid Agency Liaison parameters under Rule 6.14A, *Hybrid Agency Liaison 2 (HAL2),*[9] complex order book ("COB") and complex order request-for-response auction ("COA") parameters under Rule 6.53C, *Complex Orders on the Hybrid System,* Automated Improvement Mechanism parameters under Rule 6.74A, *Automated Improvement Mechanism ("AIM"),*[10] etc.) would be established by the Exchange on a group basis, instead of on a class basis, to the extent the Exchange Rules otherwise provide for such parameters to be established on a class basis. Thus, using the example above, CBOE would set the trading parameters (*e.g.,* parameters for the matching algorithm, HOSS, automatic execution, SAL, HAL2, COB, COA, AIM, etc.) for the SPX end-of-week series group that would trade on the Hybrid Trading System platform, and separately set the trading parameter for all other SPX series that would remain on the Hybrid 3.0 platform.

Finally, the Exchange is proposing to amend the text of Rule 8.14 to delete paragraph (b)(4), which is outdated and no longer applicable. Paragraph (b)(4) contains an outdated provision related to the Intermarket Options Linkage Plan, which has been replaced by the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage.[11]

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[12] that an exchange have rules that are designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the Exchange believes the proposed change would provide more flexibility to designate trading platform and Market-Maker categories based on a group of series in a manner that is consistent with existing CBOE rules that permit such designations on a class basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6) thereunder.[14] At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File

[8] SAL is a feature within the Hybrid System that auctions marketable orders for price improvement over the National Best Bid or Offer ("NBBO").

[9] HAL2 is a feature in the Hybrid System that provides automated order handling in designated classes for qualifying electronic orders that are not automated executed by the Hybrid System.

[10] AIM is a feature within the Hybrid System that provides Trading Permit Holders with the ability to electronically execute agency orders against principal interest or against a solicited order provided the agency order is submitted for electronic execution into an auction.

[11] *See, e.g.,* Securities Exchange Act Release No. 56761 (November 7, 2007), 72 FR 64094 (November 14, 2007).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

Number SR–CBOE–2010–095 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–CBOE–2010–095. This file number should be included on the subject line if e-mail 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 the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE- 2010–095 and should be submitted on or before November 23, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–27588 Filed 11–1–10; 8:45 am]

BILLING CODE 8011–01–P

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63185; File No. SR–CBOE–2010–097]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish a Pilot Program To List Series With Additional Expiration Months for Each Class of Options Opened for Trading on the Exchange

October 27, 2010.

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 October 26, 2010, the Chicago Board Options Exchange, Incorporated ("CBOE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] 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

CBOE proposes to amend its rules to adopt a pilot program to list additional expiration months for each class of options opened for trading on the Exchange. The text of the rule proposal is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its rules to adopt a pilot program to list additional expiration months for each class of options opened for trading on the Exchange. Pursuant to Interpretation and Policy .03 to Rule 5.5, the Exchange currently opens four expiration months for each class of options open for trading on the Exchange: the first two being the two nearest months, regardless of the quarterly cycle on which that class trades; the third and fourth being the next two months of the quarterly cycle previously designated by the Exchange for that specific class. For example, if the Exchange listed, in late April, a new stock option on a January–April—July–October quarterly cycle, the Exchange would list the two nearest term months (May and June) and the next two expiration months of the cycle (July and October). When the May series expires, the Exchange would add January series. When the June series expires, the Exchange would add August series as the next month, and would not add April.

The Exchange believes that there is market demand for a greater number of expiration months. The Exchange therefore proposes to adopt a pilot program pursuant to which it will list up to an additional two expiration months, for a total of six expiration months for each class of options open for trading on the Exchange.[5] The proposal will become effective on a pilot basis for a period of twelve months to commence on the next full month after approval is received to establish the pilot program. Under the proposal, the additional months listed pursuant to the pilot program will result in four consecutive expiration months plus two months from the quarterly cycle. For example, for option classes in the January cycle that have expiration months of June, July, October, and January, the Exchange would additionally list the August and September series. For option classes in the February quarterly cycle that have expiration months of October, November, February and May, the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] CBOE does not believe that Rule 5.5.03 limits the maximum number of expiration months that may be listed. Rule 5.5(a) and 5.5(c) provide CBOE with the flexibility to add additional expiration months, which the Exchange has previously done. By establishing the pilot program proposed in this filing, CBOE is not limited to its existing ability.

Exchange would additionally list the December and January series. Under the proposal, no additional LEAP series will be created.

The Exchange seeks to limit the proposed rule change to 20 actively traded options classes. By limiting the pilot to a small number of classes, the Exchange will be able to gauge interest in the pilot while limiting any additional demands on system resources. CBOE estimates that this pilot could add up to six or seven percent to current quote traffic, although changes in market maker quoting behavior will likely reduce that increase by up to half. The Exchange believes that a limited pilot is a prudent step to determine actual market demand for additional expiration months.

If the Exchange were to propose an extension or an expansion of the pilot program, or should the Exchange propose to make the pilot program permanent, CBOE will submit, along with any filing proposing such amendments to the pilot program, a pilot program report ("Report") that will provide an analysis of the pilot program covering the first nine months of the pilot program and shall submit the Report to the Commission at least sixty (60) days prior to the expiration date of the pilot program. The Report will include, at a minimum: (1) Data and written analysis on the open interest and trading volume in the classes for which additional expiration months were opened; (2) an assessment of the appropriateness of the option classes selected for the pilot program; (3) an assessment of the impact of the pilot program on the capacity on CBOE, OPRA and on market data vendors (to the extent data from market data vendors is available); (4) any capacity problems or other problems that arose during the operation of the pilot program and how CBOE addressed such problems; (5) any complaints that CBOE received during the operation of the pilot program and how CBOE addressed them; and (6) any additional information that would assist the Commission in assessing the operation of the pilot program.

Finally, the Exchange represents that it has the necessary systems capacity to support new options series that will result from the introduction of additional expiration months listed pursuant to this proposed rule change.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act[6] and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.[7] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[8] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the Exchange believes listing additional near-term expiration months will offer investors more variety in trading options series that were previously not available. The Exchange believes this proposed rule change will also generate additional volume in these option classes without significantly taxing system resources.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal is substantially similar to that of another exchange that has been approved by the Commission.[11] Therefore, the Commission designates the proposal operative upon filing.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2010–097 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–CBOE–2010–097. This file number should be included on the subject line if e-mail 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

[6] 15 U.S.C. 78s(b)(1).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[11] *See* Securities Exchange Act Release No. 63104 (October 14, 2010), 75 FR 64773 (October 20, 2010) (SR–ISE–2010–91) (order approving Additional Expiration Months Pilot Program).

[12] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2010–097 and should be submitted on or before November 23, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–27586 Filed 11–1–10; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63196; File No. SR–FINRA–2010–046]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Remove the Exemption From the Trading Activity Fee for Transactions in Exchange Listed Options Effected by a Member When FINRA Is Not the Designated Options Examining Authority for That Member

October 27, 2010.

I. Introduction

On September 7, 2010, Financial Industry Regulatory Authority, Inc. ("FINRA") 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 its By-Laws to remove the exemption from the trading activity fee ("TAF") for transactions in exchange listed options effected by a member when FINRA is not the designated options examining authority ("DOEA") for that member. The proposed rule change was published for comment in the **Federal Register** on September 23, 2010.[3] The Commission received no comment letters on the proposal. This order approves the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Description of the Proposed Rule Change

In its proposal, FINRA sought to amend Section 1(b) of Schedule A to the FINRA By-Laws to remove the exemption from the TAF for transactions in exchange listed options effected by a member for whom FINRA is not the DOEA. The TAF is one of three member regulatory fees FINRA uses to fund its member regulation activities.[4] Because the TAF funds FINRA's member regulation functions, it is intended to apply to transactions in a way that corresponds to FINRA's regulatory responsibilities.[5] In general, the TAF is assessed for the sale of all exchange registered securities wherever executed (except debt securities that are not TRACE-eligible), over-the-counter equity securities, security futures, TRACE–Eligible Securities (provided that the transaction is a Reportable TRACE Transaction), and all municipal securities subject to the reporting requirements of the Municipal Securities Rulemaking Board.[6] The TAF rules also include numerous exemptions for certain types of transactions.[7]

In 2003, FINRA exempted from the TAF "[t]ransactions in exchange listed options effected by a member when FINRA is not the designated options examining authority for that member."[8] FINRA represented that the exemption was added to reflect the fact that FINRA's regulatory responsibilities with respect to such activities were somewhat alleviated by its participation in a plan filed with the Commission under Rule 17d–2 of the Act[9] ("17d–2 Agreement") in which regulatory responsibilities for certain FINRA members that conducted a public options business were assumed by other self regulatory organizations ("SROs") that would act as the members' DOEA.[10] In view of the fact that another SRO performed certain regulatory responsibilities with respect to the options activities of some of its members, FINRA decided to exempt transactions in exchange listed options by such members from the TAF.[11] The exemption was also based on the fact that certain other SROs were assessing or preparing to assess specific regulatory fees for acting as DOEA,[12] which FINRA believed made its TAF on options transactions appear redundant. However, subsequent amendments to the 17d–2 Agreement have consolidated within FINRA sole regulatory responsibility for the public options activities of all of its members[13] and FINRA assumed all regulatory responsibility for FINRA members under the 17d–2 Agreement.[14] As a result of this increase in regulatory responsibility, FINRA filed the instant proposed rule change to delete the exemption from the TAF.[15]

FINRA represented that deleting this exemption would also remove any ambiguities over whether FINRA should collect the TAF from sole-FINRA members or from FINRA members that conduct only a proprietary options business. FINRA stated its belief that the existing language exempting a member's transactions in exchange listed options from the TAF when FINRA is not the DOEA for the member does not properly align with those situations where FINRA has regulatory responsibility over the member firm. First, the DOEA designation is established only under the 17d–2 Agreement, which by its own terms applies only with respect to firms that are members of more than one SRO. Thus, according to FINRA, while it has regulatory responsibilities for the

[3] *See* Securities Exchange Act Release No. 62927 (September 17, 2010), 75 FR 58004.

[4] *See* FINRA By-Laws, Schedule A, § 1(b). In addition to the TAF, the other member regulatory fees are the Gross Income Assessment and the Personnel Assessment. *See id.* §§ 1(c), (d).

[5] *See* Securities Exchange Act Release No. 50485 (October 1, 2004), 69 FR 60445 (October 8, 2004) (SR–NASD–2003–201).

[6] *See* FINRA By-Laws, Schedule A, § 1(b)(1).

[7] *See* FINRA By-Laws, Schedule A, § 1(b)(2).

[8] FINRA By-Laws, Schedule A, § 1(b)(2)(K). *See* Securities Exchange Act Release No. 47946 (May 30, 2003), 68 FR 34021 (June 6, 2003) (SR–NASD–2002–148).

[9] 17 CFR 240.17d–2.

[10] *See* Securities Exchange Act Release No. 46800 (November 8, 2002), 67 FR 69774 (November 19, 2002).

[11] Transactions in over-the-counter ("conventional") options are exempted from the TAF with respect to all FINRA members. *See* FINRA By-Laws, Schedule A, § 1(b)(2)(H).

[12] *See, e.g.,* Securities Exchange Act Release No. 47577 (March 26, 2003), 68 FR 16109 (April 2, 2003) (SR–PCX–2003–03) (PCX rule filing establishing a DOEA fee).

[13] *See* Securities Exchange Act Release No. 57987 (June 18, 2008), 73 FR 36156 (June 25, 2008).

[14] Following the consolidation of National Association of Securities Dealers ("NASD") and NYSE member regulation operations in 2007, FINRA announced that it serves as the DOEA for all FINRA member firms. *See Regulatory Notice* 08–37 (July 2008).

[15] At the time FINRA (then NASD) proposed the exemption in Amendment No. 4 to SR–NASD–2002–148, it noted that "NASD does not believe it is precluded from seeking further amendments to the TAF with respect to the reduction or elimination of the proposed exemption * * * in the event of a change of factors surrounding its sales practice and other regulatory responsibilities." Letter from Barbara Z. Sweeney, SVP and Corporate Secretary, NASD, to Katherine A. England, Assistant Director, Division of Trading and Markets, Commission, dated May 19, 2003.

options business of its sole members, it is not technically the DOEA for such firms. Second, the 17d–2 Agreement addresses only a firm's public options business. As such, a firm that conducts only a proprietary options business, irrespective of whether such firm is a member of FINRA and another SRO, would not be covered by the 17d–2 Agreement, and FINRA would not technically be the DOEA. FINRA stated that although its regulatory responsibilities are more limited for a firm that does not conduct a public options business, it still retains regulatory responsibilities over the firm's options activities.

III. Discussion and Commission Findings

After carefully reviewing the proposed rule change, the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[16] In particular, the Commission finds that the proposal is consistent with Section 15A(b)(5) of the Act,[17] which requires that a national securities association have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. Further, the Commission finds that the proposal is consistent with Section 15A(b)(6) of the Act,[18] which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The Commission believes that removal of the TAF exemption for transactions in exchange listed options effected by members for whom FINRA is not the DOEA is consistent with the Act because it more properly aligns the imposition of the TAF with those situations where FINRA has regulatory responsibility over the member firm.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (SR–FINRA–2010–046) be, and hereby is, approved.[20]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–27671 Filed 11–1–10; 8:45 am]

BILLING CODE 8011–01–P

[16] 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).

[17] 15 U.S.C. 78*o*–3(b)(5).

[18] 15 U.S.C. 78*o*–3(b)(6).

[19] 15 U.S.C. 78s(b)(2).

[20] FINRA states it will implement the proposed rule change on the first day of the month following Commission approval. FINRA will announce the implementation of the proposed rule change in a Regulatory Notice to be published no later than 30 days following Commission approval.

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63190; File No. SR–BX–2010–069]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Pricing for Co-Location Services

October 27, 2010.

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 October 25, 2010, NASDAQ OMX BX, Inc. ("BX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by BX. Pursuant to Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] BX has designated this proposal as establishing or changing a due, fee, or other charge, which renders the proposed rule change effective upon filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

BX proposes to codify [sic] pricing for co-location services. BX will implement the proposed change immediately. The text of the proposed rule change is available at *http://nasdaqomxbx.cchwallstreet.com,* at BX's principal office, on the Commission's Web site at *http://www.sec.gov,* 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, BX 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. BX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. *Purpose*

The Exchange is proposing to modify its fee schedule[5] for co-location services.[6] These modifications are summarized below:

First, as a result of the entry of the Direct Edge and BATS Y exchanges into the public market and the availability of other data feeds, the Exchange is implementing and modifying its telecommunications installation and connectivity fees to accommodate these data linkages for co-located customers. The new fees are: (1) $125 per-month fee for connectivity to the Arca Best Bid and Offer feed; (2) a $1,500 per-month fee for connectivity to the new BATS Y exchange; and (3) a one-time fee of $1000 for the installation of telecommunications connectivity for the Direct Edge exchange, along with a per-month fee of $2500 for each of its two markets, EDGA and EDGX. In connection with foregoing, the Exchange notes that its installation fee for Direct Edge is equal to that currently charged for installation of SIAC, CME,[7] and BATS connectivity, and that the monthly rates proposed are based on the anticipated bandwidth needed to accommodate a particular fee and are similar to connectivity fees imposed by other vendors.[8]

Next, to provide additional flexibility for customers to select only the equipment they need, the Exchange proposes to separate its current combined $1750 installation fee for cooling fans and perforated tiles into separate fees of $1,500 for the fans and $250 for the tiles.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] This schedule includes modifications made by SR–BX–2010–068, filed with the Commission on October 14, 2010.

[6] Co-location services are a suite of hardware, power, telecommunication and other ancillary products and services that allow users to place their trading and communications equipment in close physical proximity to the quoting and execution facilities of the Exchange.

[7] The Exchange is also removing from the fee schedule an incorrect duplicate $1000 installation fee for CME market data connectivity.

[8] Separate fees for market data are charged independently by individual markets.

Further, in the area of providing internet bandwidth to users, the Exchange, responding to decreased demand for lower-level bandwidth options, is eliminating its current 256kb, 500kb, and1.5Mb options and replacing them with new 3Mb, 4Mb, and 5Mb options priced at $700, $900, and $1,100 per-month respectively.

Finally, the Exchange is offering various services related to hardware installation, security and storage including: a custom installation fee, which will vary depending upon cost, for installing customized equipment to meet individual customer needs; cabinet caging, a metal security fencing option to protect customer equipment at a monthly rate of $3,000, with installation fees individually determined by the size and complexity of the equipment to be caged; and, lastly, a monthly cabinet equipment storage fee in the amount of $500. This storage fee differs from the equipment storage fee of $100 in the current fee schedule, which relates to temporary storage of equipment by the Exchange itself rather than in a customer controlled cabinet.

As with all the Exchange' [sic] co-location offerings, use of the above products and services is completely voluntary, and all products and services are available on a non-discriminatory basis.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[9] in general, and with Section 6(b)(5) of the Act,[10] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the filing codifies and makes transparent uniform fees imposed for co-location services.

In addition, the Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[11] in general, and with Section 6(b)(4) of the Act,[12] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls. In particular, the Exchange notes that the use of co-location services is entirely voluntary and made available on a non-discriminatory basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

BX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[13] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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 e-mail to *rule-comments@sec.gov.* Please include File Number SR–BX–2010–069 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–BX–2010–069. This file number should be included on the subject line if e-mail 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 the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2010–069 and should be submitted on or before November 23, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–27663 Filed 11–1–10; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(4).

[13] 15 U.S.C. 78s(b)(3)(A)(ii).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63187; File No. SR–NYSEAmex–2010–100]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NYSE Amex LLC Amending Rule 900.3NY(h) To Define Stock/Complex Orders, Rule 963NY(d) To Update and Clarify the Priority of Complex Orders, Eliminate Rule 963.1NY, and Amend Rule 980NY To Establish a Complex Order Auction

October 27, 2010.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the "Act") [2] and Rule 19b-4 thereunder,[3] notice is hereby given that, on October 20, 2010, NYSE Amex LLC (the "Exchange" or "NYSE Amex") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 900.3NY(h) to define Stock/Complex Orders, amend Rule 963NY(d) to update and clarify the priority of Complex Orders, eliminate Rule 963.1NY, and amend Rule 980NY to establish a Complex Order Auction. The text of the proposed rule change is available on the Exchange's Web site at *http://www.nyse.com*, on the Commission's Web site at *http://www.sec.gov*, at the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to update and streamline the rules governing open outcry trading of Complex Orders, including the definition of a Stock/Complex Order, and to adopt new rules to provide for a Complex Order Auction ("COA") in the Electronic Complex Order rules. The filing also clarifies the minimum trading and quoting increment permissible for Complex Orders.

Stock/Complex Orders

NYSE Amex proposes to amend Rule 900.3NY(h) to define Stock/Complex Orders as orders for the purchase or sale of a Complex Order coupled with an order to buy or sell a stated number of units of an underlying stock or a security convertible into the underlying stock ("convertible security") representing either the same number of units of the underlying stock or convertible security as are represented by the options leg of the Complex Order with the least number of contracts, or (B) the number of units of the underlying stock necessary to create a delta neutral position, but in no case in a ratio greater than 8 options contracts per unit of trading of the underlying stock or convertible security established for that series by the Clearing Corporation, as represented by the options leg of the Complex Order with the least number of options contracts.

Revision to Complex Order Open Outcry Rules

NYSE Amex proposes to amend Rule 963NY(d) and to delete Rule 963.1NY. The Exchange proposes to adopt a provision based on Chicago Board Options Exchange ("CBOE") Rule 6.45(e) to describe the priority of Complex Orders in open outcry. The new language does not change the process of executing a Complex Order or alter the priority of quotes and orders; rather, it streamlines and updates the rule text.

Currently, when executing a Complex Order, contra sided complex trading interest in the Trading Crowd has priority over individual orders and quotes in the leg markets at the same net debit or credit price, except when individual Customer orders in the Consolidated Book are present in all of the leg markets. When there are Customer orders present in all legs at the same net debit or credit price, the Complex Order must first trade with the individual Customer orders, and may then trade against complex trading interest in the crowd. Complex Orders trading against contra side complex trading interest in the Trading Crowd must otherwise trade at least one leg at a price that is at least one minimum price variation better than individual Customer orders in the Consolidated Book.[4]

The proposed rule change will not alter these procedures or priorities.

In addition, the Exchange is clarifying that Stock/Complex Orders (involving two or more options legs and a stock leg) may be executed at a net debit or credit price with another ATP Holder without giving priority to equivalent bids (offers) in the individual series legs that are represented in the Trading Crowd or Customer limit orders in the Consolidated Book, provided at least one options leg of the order betters the corresponding Customer bid (offer) in the Consolidated Book by at least one minimum trading increment.

NYSE Amex also proposes to eliminate Rule 963.1NY. The proposed Rule 963NY(d) describes priority for all Complex Orders and Stock/option orders, while Rule 963.1NY only describes the procedures for executing complex transactions; it does not define or describe any execution priority, obligation, or privilege that was not already described in other rules. Additionally, those procedures did not lay out procedures for all complex transactions; it narrowly described only simple Complex Orders with two option legs. The proposed rule change specifically eliminates the description of a "locked book market" in Rule 963.1NY(f). This provision, which was based on NYSE Arca Rule 6.75, Commentary .01(f), was a description of a narrow circumstance, and was more appropriate when the Public Customer Book was maintained by an Order Book Official. At that time, the Order Book had priority to trade at a given price if it held an order. Paragraph (f) described a situation where the Order Book had orders at all of the prices where a Complex Order might trade, but the orders in the leg markets could not satisfy the terms of the Complex Order. The proposed new language addresses this and similar circumstances in a more clear manner.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] Stock/options orders may not trade at the same price as a Customer order in the option leg, unless satisfying the Customer order first, even though the Customer order cannot satisfy all the terms of the Stock/option order.

Complex Order Auction

Additionally, the Exchange proposes to adopt rules establishing a Complex Order Auction, based on rules approved for use by the CBOE. CBOE Rule 6.53(d) describes the process for a Complex Order RFR Auction. NYSE Amex proposes a similar auction under Rule 980NY, with one priority change based on NASDAQ OMX PHLX ("Phlx") Rule 1080 Commentary .08(e)(vi)(A)(2).

Proposed paragraph (d) of Rule 980NY will describe the COA process. The proposed rule change will give the Exchange the authority to determine, on a class by class basis, which incoming orders are eligible for a COA based on marketability (defined as a number of ticks from the current market), size, and Complex Order type ("COA-eligible orders").[5]

Upon receiving a COA-eligible order and a request by the ATP Holder representing the order that it be COA'd, the Exchange will send an RFR message to ATP Holders with an interface connection to NYSE Amex that have elected to receive such RFR messages. This RFR message will identify the component series, the size of the COA eligible order and any contingencies, if applicable. However, the RFR will not identify the side of the market (i.e., whether the COA-eligible order is to buy or sell).

Market Makers with an appointment in the relevant options class, and ATP Holders acting as agent for orders resting at the top of the Consolidated Book in the relevant options series, may electronically submit responses ("RFR Responses"), and modify, but not withdraw the RFR response at any time during the request response time interval (the "Response Time Interval"). RFR responses must be in a permissible ratio, and may be expressed on a net price basis in a one cent increment. In addition, RFR Responses will be visible to those who have subscribed to RFRs. The applicable Response Time Interval will be determined by the Exchange on a class by class basis, and, in any event, will not exceed one second. Proposed Rule 980NY(e)(3) also clarifies that the obligations of Rule 935NY, Order Exposure Requirements, are separate from the duration of the Response Time Interval.

When the Response Time Interval expires, the COA-eligible order will be executed and allocated to the extent it is marketable, or route to the Consolidated Book to the extent it is not marketable. If executed, the rules of trading priority will provide that the COA-eligible order be executed based first on net price, and, at the same price:

(i) *Pre-existing interest in the leg markets:* Individual orders and quotes in the leg markets resting in the Consolidated Book prior to the initiation of a COA will have first priority to trade against a COA-eligible order;

(ii) *Customer Complex interest received during the Auction:* Customer Electronic Complex Orders resting in the Consolidated Book before, or that are received during, the Response Time Interval and Customer RFR Responses shall collectively have second priority to trade against a COA-eligible order. The allocation of a COA-eligible order against the Customer Electronic Complex Orders resting in the Consolidated Book shall be on a Size Pro Rata basis;

(iii) *Non-Customer Complex trading interest:* Non-Customer interest, comprised of Electronic Complex Orders resting in the Consolidated Book, Electronic Complex Orders placed in the Consolidated Book during the Response Time Interval, and RFR Responses, will collectively have third priority. The allocation of COA-eligible orders against these contra sided orders will be on a Size Pro Rata basis;

(iv) *Trading Interest that improves the derived Complex Best Bid/Offer.* Individual orders and quotes in the leg markets that cause the derived Complex Best Bid/Offer to be improved during the COA, and which match the best RFR Response and/or Complex Orders received during the Response Time Interval, will be filled after Complex Orders and RFR Responses at the same net price.[6] Allocations within the first category above (individual orders and quotes in the leg markets in the Consolidated Book) shall be in time, with Customer orders having priority ahead of non-customer orders and quotes at the same price. Allocations within the second category above (Customer Electronic Complex Orders resting in the Consolidated Book and Customer RFR responses) shall be based on a Size Pro Rata basis when multiple Customer Complex Orders or RFR responses exist at the same price. Allocations within the third category (non-Customer Electronic Complex Orders in the Consolidated Book and non-Customer RFR responses) shall be based on a Size Pro Rata basis when multiple non-Customer interests exist at the same price. Allocations among the fourth category (individual orders or quotes in the leg markets that cause the derived BBO to be improved) shall be filled on a Customer order/size pro rata basis.

The following is an example of a COA: assume the Exchange's derived complex market, based on individual series orders and quotes in the Consolidated Book, is offered at $1.15 for 20 contracts. In addition, assume a Customer Electronic Complex Order resting in the Consolidated Book is offered at $1.15 for five contracts and two non-Customer orders resting in the Consolidated Book are offered at $1.15 for five contracts each (for a total of 10 contracts). A COA eligible order is then received to buy the complex strategy 100 times paying $1.15. COA will auction the order. An RFR message is sent to subscribers indicating the Complex Order series and the size of 100 contracts (but not the side of the market). The Response Time Interval for submitting RFR Responses will be for no more than one second. Before the conclusion of the Response Time Interval, the following RFR Responses on the other side are received: Customer RFR Responses to sell five at $1.14 and five at $1.15; and non-Customer RFR Responses to sell 15 at a price of $1.13, 35 at a price of $1.14, and 100 at a price of $1.15. The execution of the COA eligible order will proceed as follows:

- 15 contracts get filled at $1.13 (against non-Customer RFR Responses).
- 40 contracts get filled at $1.14 (five contracts against Customer RFR Responses, then 35 contracts against non-Customer RFR Responses); and
- 45 contracts get filled at $1.15 (20 contracts against the individual series legs in the Consolidated Book, then 10 contracts against Customer Electronic Complex Orders in the Consolidated Book and Customer RFR Responses allocated on a Size Pro Rata basis. The non-Customer interest is allocated on a Size Pro Rata basis as follows: 1 contract $((5/110) \times 15)$ for each of the non-Customer Electronic Complex Orders resting in the Consolidated Book before the COA began, and 13 contracts $((100/110) \times 15)$ against the non-Customer RFR Response.

The proposed rule change also describes the handing of unrelated incoming Electronic Complex Orders that may be received prior to the expiration of the COA. Specifically, the proposed rule change provides the following:

[5] For example, the Exchange could determine that a complex order with two option legs is eligible for a COA to the extent they are less than two ticks away from the "top of the book", which would be the best price considering the net prices available among Complex Orders in the Consolidated Book and the individual component legs in the Consolidated Book. All pronouncements, including changes hereto, regarding COA eligibility and Response Time Intervals will be announced to ATP Holders via Regulatory Circular.

[6] *See* Securities Exchange Act Release No. 58361 (August 14, 2008) 73 FR 49529 (August 21, 2008) (approving SR–Phlx–2008–50).

• An incoming Electronic Complex Order received prior to the expiration of the Response Time Interval for a pending COA (the "original COA") that is on the opposite side of the original COA eligible order and is marketable against the starting price of the original COA eligible order will be ranked in price time with RFR Responses by account type. The original COA-eligible order will be executed and allocated as described in proposed subparagraph (e)(6) of Rule 980NY. Any remaining balance of either the initiating COA eligible order or the incoming Electronic Complex order will be placed in the Consolidated Book and ranked as described in subparagraph (b) of Rule 980NY.

• Incoming COA-eligible orders that are received prior to the expiration of the Response Time Interval for the original COA that are on the same side of the market, that are price [sic] equal to the original COA-eligible order will join the COA. A message with the updated size will be published. The new order will be ranked and executed with the initiating COA-eligible order in price time order. Any remaining balance of either the initiating COA eligible order and/or the incoming Electronic Complex order will be placed in the Consolidated Book and ranked as described in subparagraph (b) of Rule 980NY.

• Incoming COA-eligible orders received during the Response Time Interval for the original COA-eligible order that are on the same side of the market, and that are priced worse than the initiating order, will join the COA. The new order(s) will be ranked and executed with the initiating COA-eligible order in price time order. Any remaining balance of either the initiating COA eligible order and/or the incoming Electronic Complex order(s) will be placed in the Consolidated Book and ranked as described in subparagraph (b) of Rule 980NY.

• An incoming COA eligible order that is received prior to the expiration of the Response Time Interval for the original COA that is on the same side of the market and at a better price than the original COA eligible order, will cause the auction to end. The initiating COA-eligible order will be executed in accordance with subparagraph (e)(6). The COA-eligible order that caused the auction to end will then be executed in accordance with subparagraph (e)(6), and any unexecuted portion will either be (i) placed in the Consolidated Book, or (ii) if marketable, initiate another COA.

Proposed Commentary .04 states that a pattern or practice of submitting unrelated orders that cause a COA to conclude early will be deemed conduct inconsistent with just and equitable principles of trade. Dissemination of information related to COA-eligible orders to third parties will also be deemed as conduct inconsistent with just and equitable principles of trade.

Finally, NYSE Amex is proposing the RFR Responses can be modified but not withdrawn at any time before the end of the Response Time Interval. RFR Responses are firm only with respect to COA-eligible orders and RFR Responses received during the Response Time Interval. Any RFR response not accepted to trade, either in whole or in a permissible ratio, would expire at the end of the Response Time Interval and would not be eligible to trade with the Consolidated Book.

Complex Order Minimum Increments

NYSE Amex is proposing to revise and clarify the minimum increments that are permissible for bids and offers on Complex Orders. The Exchange believes these changes will facilitate the orderly execution of Complex Orders in open outcry and via the Consolidated Book and the COA mechanism. With respect to minimum increments, currently Rules 963.1NY and 980NY provide that the Complex Orders may generally be expressed in any increments regardless of the minimum increment otherwise appropriate to the individual legs of the order. Thus, for example, a Complex Order could be entered at a net debit or credit price of $1.03 even though the standard minimum increment for the individual series is generally $0.05 or $0.10. The Exchange is proposing to clarify in Rule 963NY and 980NY that Complex Orders entered onto the Exchange, and/or resting in the Consolidated Book may be expressed on a net price basis in a multiple of the minimum increment (*i.e.,* $0.01, $0.05, or $0.10, as applicable) or in a one-cent increment as determined by the Exchange on a class-by-class basis.

NYSE Amex represents that any Customer Electronic Complex Orders entered to the NYSE Amex System must comply with the order exposure requirements of Rule 935NY, which prohibits an order entry firm from executing as principal against an order it represents as agent, unless the agency order is first exposed on the Exchange for at least one (1) second, or the order entry firm has been bidding or offering on the Exchange for at least one (1) second prior to receiving an agency order that is executable against such bid or offer.

NYSE Amex notes that all components of a Complex Order, a Stock/option order, or a Stock/Complex Order must be entered into the NYSE Amex System and displayed at a total or net debit or credit, and that all components of a Complex Order, a Stock/option order, or a Stock/Complex Order, including the stock component of a Stock/option order or Stock/Complex Order, must be traded as a complete package.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, investors will have greater opportunities to manage risk with the Exchange defining Stock/Complex Orders, by the Exchange revising the coverage of Rule 963(d) to clarify its applicability, and with the removal of ambiguity by deleting Rule 963.1NY. The proposed adoption of rules governing a Complex Order Auction will facilitate the execution of Complex Orders while providing opportunities for price improvement.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. 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 e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEAmex–2010–100 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–NYSEAmex–2010–100. This file number should be included on the subject line if e-mail 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 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 the filing will also be available for inspection and copying at the Exchange's principal office. 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 publicly available. All submissions should refer to File Number SR–NYSEAmex–2010–100 and should be submitted on or before November 23, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–27659 Filed 11–1–10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63192; File No. SR–Phlx–2010–145]

Self-Regulatory Organizations; The NASDAQ OMX PHLX LLC; Notice of Filing of Proposed Rule Change To Establish Remote Specialists

October 27, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on October 14, 2010, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposal to amend Exchange Rule 501 (Specialist Appointment), Rule 506 (Allocation Application), Rule 507 (Application for Approval as an SQT or RSQT and Assignment in Options), Rule 1014 (Obligations and Restrictions Applicable to Specialists and Registered Options Traders), and Rule 1020 (Registration and Functions of Options Specialists) to allow certain Exchange members to act as option specialists that are not physically present on the option trading floor. The Exchange also proposes to amend Options Floor Procedure Advices A–7 (Responsibility To Cancel), A–10 (Specialist Trading With Book), B–3 (Trading Requirements), and E–1 (Required Staffing of Options Floor) [3] to conform them with the proposed rule changes.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/*, at the principal office of the Exchange, on the Commission's Web site at *http://www.sec.gov*; and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposal is to amend Exchange Rules 501, 506, 507, 1014, and 1020 and Option Floor Procedure Advices A–7, A–10, B–3, and E–1 to allow certain Exchange members to act as option specialists that are not physically present on the option trading floor.

Background

There are several types of market makers on the Exchange, including Registered Options Traders ("ROTs"),[4] Streaming Quote Traders ("SQTs"),[5] Remote Streaming Quote Traders

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[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Options Floor Procedure Advices ("OFPAs" or "Advices") generally correspond to Exchange rules. For example, OFPA B–3 is a corresponding Advice to Rule 1014 Commentary .01 and OFPA A–10 is a corresponding Advice to Rule 1063. OFPAs are part of the Exchange's minor rule plan ("MRP" or "Minor Rule Plan"), which consists of Advices with preset fines, pursuant to Rule 19d–1(c) under the Act. 17 CFR 240.19d–1(c). *See* Securities Exchange Act Release No. 50997 (January 7, 2005), 70 FR 2444 (January 13, 2005) (SR–Phlx–2003–40) (approval order establishing Floor Broker Management System in OFPA C–2 and Rule 1063). The Exchange is not proposing to change the fines in any Advices.

[4] An ROT is a regular member or a foreign currency options participant of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. *See* Rule 1014(b)(i).

[5] An SQT is an ROT who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned. An SQT may only submit such quotations while such SQT is physically present on the floor of the Exchange. *See* Rule 1014(b)(ii)(A).

("RSQTs"),[6] and specialists.[7] Specialists are Exchange members who are registered as options specialists pursuant to Rule 1020(a). Paragraph (b) of Rule 1020 states that as a condition of a member being registered as a specialist in one or more options, it is understood that, in addition to the execution of commission orders [8] entrusted to him in such options, a specialist is to engage in a course of dealings for his own account to assist in the maintenance, insofar as reasonably practicable, of a fair and orderly market on the Exchange in such options. Paragraph (c) states that a specialist or his member organization shall not effect on the Exchange purchases or sales of any option in which such specialist is registered, for any account in which he or his member organization is directly or indirectly interested, unless such dealings are reasonably necessary to permit such specialist to maintain a fair and orderly market. Paragraph (d) sets forth criteria for a specialist dealing in his own account in relation to assisting in the maintenance, insofar as reasonably practicable, of a fair and orderly market in the options in which he is registered.

Specialists apply for allocation of options issues pursuant to Rule 501 and RSQTs apply for assignment in options pursuant to Rule 507. The Exchange administers Rules 500 through 599 (the "Allocation and Assignment Rules"), including Rules 501, 506, and 507 as proposed herein.[9]

The Allocation and Assignment Rules generally describe the process for: Application for becoming and appointment of specialists; allocation of classes of options to specialist units and individual specialists; application for becoming and approval of SQTs and RSQTs and assignment of options to them; and specialist, SQT, and RSQT performance evaluations. The Allocation and Assignment Rules also indicate under what circumstances new allocations may not be made.[10]

Each options class and series listed on the Exchange must currently have a specialist that has a physical presence on the options floor ("floor-based specialist").[11] The floor-based specialist system is historically based in the traditional open outcry auction market system that has trading crowds at physical trading posts on the floor and Floor Brokers [12] that represent orders on the floor on behalf of others ("auction market system" or "open outcry system"). The auction market system is necessary, and indeed invaluable, to certain types of market participants (*e.g.,* institutional traders and certain large-volume traders). The Exchange has developed, in parallel to the auction market system, an extensive electronic means to execute option orders.[13] As a result, the Exchange operates an options market that combines a traditional open outcry auction market trading floor with electronic trading (the "current Phlx market").[14]

The Exchange has found that it can be difficult, if not impossible, to allocate certain option products; and has found that specialists may at times relinquish their options privileges. This could occur when, as an example, underlying securities are involved in a takeover, a merger/acquisition situation, or some type of rights offering. Without a specialist that is willing to accept, or retain, allocation of an option, however, the Exchange may not list such options, to the detriment of market participants and public investors. This filing seeks to remedy the inability to allocate options where no floor-based specialists are available for allocation.[15]

Specialist Rights and Obligations

The Exchange initially proposes to define remote specialist in Rule 1020. In particular, the Exchange proposes to add sub-paragraph (a)(ii) stating that a Remote Specialist is a qualified RSQT approved by the Exchange to function as a specialist in one or more options if the Exchange determines that it cannot allocate such options to a non-remote specialist (that is, a floor based specialist) ("Remote Specialist").

A Remote Specialist has all the rights and obligations of a specialist, unless Exchange rules provide otherwise. The Exchange believes that the concept of specialist rights and obligations applying to all specialists, including Remote Specialists, is paramount to the proposal and therefore uniformly applicable. The Exchange proposes to underscore this principle by indicating in Rule 1020(a) that the term specialist includes a Remote Specialist as defined in Rule 1020(a)(ii) and registered pursuant to Rule 501; and indicating that a Remote Specialist has all the rights and obligations of an options specialist unless Exchange rules provide otherwise.

Becoming a Remote Specialist

The Exchange proposes to amend Rule 501, which generally deals with the process of applying for approval as a specialist, and to amend the rule to indicate that in certain circumstances RSQTs may act as specialists.

In particular, the Exchange proposes new paragraph (f)(i) to state that RSQTs,

[6] An RSQT is an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. *See* Rule 1014(b)(ii)(B).

[7] Rule 1014 also discusses other market makers including Directed SQTs and Directed RSQTs, which receive Directed Orders as defined in Rule 1080(l)(i)(A). Specialists may likewise receive Directed Orders.

[8] The Exchange proposes to delete the word "commission" from Rule 1020(b) to clarify that orders entrusted to specialists and [sic] are not limited to only commission orders.

[9] *See* Securities Exchange Act Release No. 59924 (May 14, 2009), 74 FR 23759 (May 20, 2009) (SR–Phlx–2009–23) (approval order that, among other things, established that Exchange staff administers Rules 500 through 599). *See also* Rule 500.

[10] *See, e.g.,* Supplementary Material .01 to Rule 506 (specialist may not apply for a new allocation for a period of six months after an option allocation was taken away from the specialist in a disciplinary proceeding or an involuntary reallocation proceeding).

[11] At least one exchange that uses a specialist system has allowed certain option series to trade without a designated lead market maker (specialist). *See* Securities Exchange Act Release No. 56001 (July 2, 2007), 72 FR 37557 (July 10, 2007) (SR–NYSEArca–2007–34) (order approving). And at least one exchange that does not have a specialist system has allowed options to be traded without any market maker. *See* Securities Exchange Act Release No. 61735 (March 18, 2010), 75 FR 14227 (March 24, 2010) (SR–NASDAQ–2010–007) (order approving).

[12] An Options Floor Broker is an individual who is registered with the Exchange for the purpose, while on the Options Floor, of accepting and executing options orders received from members and member organizations. An Options Floor Broker shall not accept an order from any other source unless he is the nominee of a member organization qualified to transact business with the public in which event he may accept orders from public customers of the organization. *See* Rule 1060.

[13] *See* Rule 1080 regarding the Exchange's electronic order, trading, and execution system. *See also* Securities Exchange Act Release Nos. 46763 (November 1, 2002), 67 FR 68898 (November 13, 2002) (SR–Phlx–2002–04) (order approving the Exchange's electronic interface for specialists and ROTs, AUTOM); 50100 (July 27, 2004), 69 FR 46612 (August 3, 2004) (SR–Phlx–2003–59) (order approving the Exchange's electronic platform for options, XL); and 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32) (order approving the Exchange's enhanced electronic platform, XL II).

[14] The current Phlx market model combining open outcry and electronic trading is also used by other options exchanges, such as Chicago Board Options Exchange, Inc. ("CBOE"), NYSE Amex LLC ("NYSE Amex") and NYSE Arca, Inc. ("NYSE Arca"). Only electronic options trading is done on other exchanges, such as the International Securities Exchange, LLC ("ISE") and The NASDAQ Stock Market LLC ("NASDAQ").

[15] The Exchange has a process whereby certain options (*e.g.* securities of a subsidiary, or convertible into the securities of the issuer, issued in connection with a name change or a reverse stock split, or created in connection of a merger or acquisition or a "spin-off" transaction), are automatically allocated to the specialist that is already allocated the related options. *See* Supplementary Material .02 to Rule 506 and Exchange Act Release No. 60455 (August 6, 2009), 74 FR 40857 (August 13, 2009) (SR–Phlx–2009–62) (notice of filing and immediate effectiveness).

as defined in Rule 1014, may submit an application to be an approved specialist unit.[16] Upon application by a qualified RSQT (which has to become an RSQT pursuant to Rule 507), the Exchange will approve such organization as an approved off-floor Remote Specialist unit which may function as a specialist unit in one or more options. The Exchange could approve a Remote Specialist if the Exchange determines that it cannot allocate such options to a floor specialist. A Remote Specialist would not, in contrast to an on-floor specialist, have any physical presence on the options floor. Therefore, a Remote Specialist would not, in contrast to an on-floor specialist, have any duties emanating from having a floor presence. The Exchange clarifies in proposed Rule 501(f)(iii) that, as stated in Rule 1020(a)(ii), all specialist rights and obligations apply to Remote Specialists unless otherwise noted in the rules.

The Exchange believes that it is important that each Remote Specialist is available and reachable at all times during trading hours. The Exchange therefore proposes language in Rule 501(f)(ii) stating that every Remote Specialist must be accessible to exchange staff and members throughout all trading hours for the products allocated to the specialist.[17] To ensure that each Remote Specialist is reachable, the Exchange proposes language in sub-paragraph (f)(ii) stating that a Remote Specialist shall provide Exchange staff and members with telephone access to such specialist and/or associated staff at all times during trading hours.[18]

Rule 501(b) currently indicates that each specialist unit will include in the initial application the unit's back up specialist arrangements; and Rule 501(d) indicates that each specialist unit will indicate its assistant specialist.[19] Remote Specialists will not need to meet the assistant specialist staffing or the back-up specialist unit requirement. The Exchange believes that this is rational and appropriate for Remote Specialists, who have constrained open outcry capabilities.[20] As such, the Exchange proposes to amend Rule 501 to indicate that back up specialist arrangements and assistant specialist requirements are not applicable to Remote Specialists.[21] All other Rule 501 application requirements will be applicable to Remote Specialists.

The requirement that each specialist designates an assistant specialist and a back-up specialist was initially established to help ensure that there would be adequate liquidity in a given issue in the event the appointed specialist was unavailable. At the time, the Exchange options market was strictly a floor-based auction market and there may have only been a few market makers (or market participants) in any given issue. It was therefore necessary to have an assistant or back-up specialist ready to take over as specialist if the appointed specialist was unable to fulfill its obligations. The rationale underlying the assistant/back-up requirement has become antiquated with the development of the classic auction system into the current Phlx market with extensive electronic-based trading. As such, RSQTs are assigned in the same options that are allocated to specialists and, in conjunction with other market makers on the Exchange, are able to provide liquidity in the event of a specialist's temporary absence. Moreover, since nearly all option issues traded on the Exchange are traded on multiple exchanges, the historical risk to be managed by the current assistant/backup requirement (namely, the ability of the Exchange to foster the provision of liquidity for investors) is no longer present.

The Exchange proposes clarifying changes to Rule 506, which deals with the process of qualified specialist units (that is, specialist units approved pursuant to Rule 501) applying for, and receiving, allocation of a class of options; and indicates under what circumstances new allocations cannot be made. Paragraph (b) currently states that an allocation application shall, at a minimum, include the name and background of the head specialist and assistant specialist(s), the unit's experience and capitalization demonstrating an ability to trade the particular options class sought, and any other reasons why the unit believes it should be assigned or allocated the security. In addition, the Exchange may require that the application include other information such as system acceptance/execution levels and guarantees. The Exchange proposes to indicate in paragraph (b) that the assistant specialist requirement is not applicable to Remote Specialists. Paragraph (c) currently states that the Exchange's decisions regarding allocation of specialist privileges are communicated in writing to floor members. In light of the off-floor Remote Specialist proposal, the Exchange would modify paragraph (c) to indicate that communications would not be confined only to floor members, but would be made to all Exchange members (e.g. specialists, RSQTs, SQTs and ROTs).

Finally in terms of the application process, the Exchange proposes to clarify the parameters of Rule 507. This rule currently describes the process and criteria for successfully becoming an RSQT or SQT, which includes: Significant market-making and/or specialist experience; superior resources, including capital, technology and personnel; demonstrated history of stability, superior electronic capacity, and superior operational capacity; and proven ability to interact with order flow in all types of markets.[22]

After a market maker on the Exchange applies and is approved pursuant to Rule 507 to be an RSQT, the RSQT may then apply to become a Remote Specialist pursuant to the separate process set forth in Rule 501. The Exchange clarifies this two-step process in proposed new paragraph (f) of Rule 507, which states that nothing in Rule 507 shall be construed to automatically qualify an RSQT to be a Remote Specialist on the Exchange.

Quoting Obligations and Priority

Rule 1014 sets forth the quoting (market making) obligations for all market makers on the Exchange, with quoting requirements for RSQTs specified in Rule 1014(b)(ii)(D)(1)[23] and

[16] A ''specialist unit'' including a Remote Specialist unit, may have one or more individual ''specialists.''

[17] For Exchange trading hours, *see* Rule 101.

[18] To the extent necessary, the Exchange will announce such communication arrangements to its members via an Options Trading Alert ("OTA") or Options Regulatory Alert ("ORA").

[19] Paragraph (b) of Rule 501 states, in relevant part, that initial application(s) to become a specialist unit shall be in a form and/or format prescribed by the Exchange and shall include the following: the identity of the unit's staff positions and who will occupy those positions; the unit's clearing arrangements; the unit's capital structure, including any lines of credit; and the unit's back up arrangements endorsed by the parties.

Paragraph (d) of Rule 501 states, in relevant part, that each unit must consist of at least the following staff for each trading floor specialist post: one head specialist; and one assistant specialist that must be associated with the specialist unit.

[20] Moreover, recognizing that the market making functions of Remote Specialists and RSQTs may be similar in many respects but are not identical, the Exchange notes that current RSQTs, who also have constrained open outcry capabilities, have been fulfilling market making requirements on the Exchange (e.g. making two-sided market quotations) for years without specific back-up personnel requirements. *See* Securities Exchange Act Release No. 50100 (July 27, 2004), 69 FR 46612 (SR–Phlx–2003–59) (approval order relating to the Exchange's electronic trading platform XL and, among other things, Rule 507). *See also* Rules 507 and 1014.

[21] This concept follows through to the OFPAs. The Exchange proposes to clarify Advice E–1 to exempt a Remote Specialist from the specialist obligation to have personnel on the trading floor, while retaining the Remote Specialist obligation to have a representative available telephonically.

[22] For all RSQT application and approval criteria, *see* Rule 507(a)(i)(A) through (a)(i)(G).

[23] Regarding RSQT market making obligations, Rule 1014(b)(ii)(D)(1) states, in relevant part, that in

Continued

quoting requirements for specialists specified in Rule 1014(b)(ii)(D)(2).[24] The Exchange proposes to clarify that the two-sided market quoting requirements for specialists are applicable to Remote Specialists. The Exchange proposes also to clarify that RSQTs will have different quoting requirements when they are acting as Remote Specialists as opposed to when they are acting as RSQTs.

Specifically, the Exchange proposes to state in Rule 1014(b)(ii)(D)(2) that RSQTs functioning as Remote Specialists in particular options shall be responsible to quote two-sided markets just as on-floor specialists are now required to do. The Exchange also proposes to state in Rule 1014(b)(ii)(D)(1) that the RSQT quoting requirements found therein are not applicable to RSQTs when they are acting as Remote Specialists (in which case the specialist quoting requirements found in sub-paragraph (D)(2) are applicable). The Exchange believes that this appropriately establishes quoting equivalency among on-floor specialists and Remote Specialists.

Rule 1014 establishes that the market making (quoting) obligations do not apply to RSQTs (as well as to SQTs, DSQTs, and DRSQTs) in terms of certain types of options products. In particular, Rule 1014(b)(ii)(D)(4) states that RSQTs and the other market makers shall be deemed not to be assigned in any Quarterly Option Series ("QOS"),[25] any adjusted option series,[26] and any option series until the time to expiration for such series is less than nine months; and thereby establishes an exemption for RSQTs and the other market makers from the obligations set forth in Rule 1014 in the noted categories of products. The Exchange proposes to add new language to sub-paragraph (D)(4) to indicate that these exemptions apply to RSQTs only when they are acting as RSQTs, and do not apply to RSQTs when they are functioning as Remote Specialists in particular options.

Rule 1014(b)(ii)(B) currently indicates that no person who is either directly or indirectly affiliated with an RSQT ("affiliated RSQT") is allowed to submit quotations as a specialist, SQT, RSQT or non-SQT ROT in options in which such affiliated RSQT is assigned. These restrictions remain. The Exchange proposes to amend sub-paragraph (b)(ii)(B) only to indicate that an RSQT cannot quote both as RSQT and as Remote Specialist in a particular security. That is, if an RSQT is a Remote Specialist in a particular security, the Remote specialist must make a market (submit quotations) as a specialist and may not make a market as an RSQT in that particular security.

On-floor specialists currently participate in trades that are affected in open outcry, as well as electronically. In general, a trading crowd (including an on-floor specialist) has priority over out-of-crowd SQTs and RSQTs at the execution price for orders with the size of at least 500 contracts, while out-of crowd SQTs and RSQTs have priority for orders of less than 500 contracts. In light of the central concept that to the extent practicable (and unless otherwise noted in Exchange rules), specialists and Remote Specialists are treated the same, that is, have similar rights and obligations, both specialists and Remote Specialists would have similar priority rights to the extent practicable. As such, Remote Specialist priority rights would be coextensive with their ability to submit electronic quotations via the Exchange's electronic order, execution, and trading system, Phlx XL, while not being on the floor. For example, Commentary .05(c)(ii) states that respecting crossing, facilitation and solicited orders (as defined in Rule 1064) with a size of at least 500 contracts on each side that are represented and executed in open outcry, priority shall be afforded to in-crowd participants over RSQTs and out-of crowd SQTs, and that such orders shall be allocated in accordance with Exchange rules. The Exchange proposes to add Remote Specialists to Commentary .05(c)(ii) so that they are treated similarly for priority purposes because they do not engage in open outcry floor trading.

Commentary .05(b) to Rule 1014 states that SQTs and RSQTs can submit orders electronically via XL, the Exchange's electronic order, execution and trading system. The Exchange proposes to add Remote Specialists to Commentary .05(b) so that they can likewise submit quotes electronically; and to confirm that, similarly to RSQTs, the Exchange has the ability to allocate one or more options to Remote Specialists. Commentary .05(C)(i) indicates that if a Floor Broker presents a non-electronic order in an option assigned to an RSQT, such RSQT or SQT may not participate in trades stemming from the non-electronic order unless the order is executed at the price quoted by the non-crowd RSQT or SQT at the time of execution. The Exchange proposes to include Remote Specialists in Commentary .05(C)(i) to establish priority that is coextensive with Remote Specialist electronic quoting and trading capabilities.[27]

The Exchange proposes to clarify several OFPAs commensurate with a Remote Specialist's off-floor electronic quoting and trading capabilities. In particular, the Exchange proposes to state in Advice A–10 that a Remote Specialist is exempted from the specialist duty of ensuring that at least one ROT is present in a floor trading crowd before such specialist can participate as principal in a trade. The Exchange proposes to state in Advice

addition to the other requirements for ROTs set forth in this Rule 1014, except as provided in sub-paragraph (4) below, an SQT and an RSQT shall be responsible to quote two-sided markets in not less than 60% of the series in which such SQT or RSQT is assigned, provided that, on any given day, a Directed SQT ("DSQT") or a Directed RSQT ("DRSQT") (as defined in Rule 1080(l)(i)(C)) shall be responsible to quote two-sided markets in the lesser of 99% of the series listed on the Exchange or 100% of the series listed on the Exchange minus one call-put pair, in each case in at least 60% of the options in which such DSQT or DRSQT is assigned. Whenever a DSQT or DRSQT enters a quotation in an option in which such DSQT or DRSQT is assigned, such DSQT or DRSQT must maintain until the close of that trading day quotations for the lesser of 99% of the series of the option listed on the Exchange or 100% of the series of the option listed on the Exchange minus one call-put pair. To satisfy the applicable requirements of this sub-paragraph (D)(1) with respect to quoting a series, an SQT, RSQT, DSQT, or DRSQT must quote such series 90% of the trading day (as a percentage of the total number of minutes in such trading day) or such higher percentage as the Exchange may announce in advance. The Exchange may consider exceptions to the requirement to quote 90% (or higher) of the trading day based on demonstrated legal or regulatory requirements or other mitigating circumstances.

[24] Regarding specialist market making obligations, Rule 1014(b)(ii)(D)(2) states, in relevant part, that the specialist shall be responsible to quote two-sided markets in the lesser of 99% of the series or 100% of the series minus one call-put pair in each option in which such specialist is assigned. To satisfy the requirement of this sub-paragraph (D)(2) with respect to quoting a series, the specialist must quote such series 90% of the trading day (as a percentage of the total number of minutes in such trading day) or such higher percentage as the Exchange may announce in advance. The Exchange may consider exceptions to the requirement to quote 90% (or higher) of the trading day based on demonstrated legal or regulatory requirements or other mitigating circumstances.

[25] QOS are options series that expire at the close of business on the last business day of a calendar quarter. *See* Commentary .08 to Rule 1012. For index QOS, *see* Rule 1101A.

[26] Adjusted option series are defined in Rule 1014(b)(ii)(D)(4) as an option series wherein one option contract in the series represents the delivery of other than 100 shares of underlying stock or Exchange-Traded Fund Shares.

[27] The Exchange has submitted an immediately effective filing proposing to delete obsolete terminology from certain Exchange rules including Rule 1014, which filing is subject to a 30 day operative delay. *See* Securities Exchange Act Release No. 63036 (October 4, 2010), 75 FR 62621 (October 12, 2010) (SR–Phlx–2010–131) (notice of filing and immediate effectiveness). SR–Phlx–2010–131 has proposed changes to the rule text of certain rules that are discussed in this filing, specifically sub-paragraph (b)(i)(B) and Commentary .05 of Rule 1014, and the text of these rules in Exhibit 5 reflects the changes made in SR–Phlx–2010–131 that are operative as of October 27, 2010.

A–7 that a Remote Specialist is exempted from the specialist obligation to advise a Floor Broker about cancellations. Additionally, the Exchange proposes to state in Advice B–3 that a Remote Specialist is exempted from the requirement that an ROT, including a specialist, trade a certain percentage of volume on the Exchange in person.

Surveillance

The Exchange has developed surveillance procedures for its auction and electronic markets. The Exchange will use the surveillance procedures now in place regarding specialists to perform surveillance of Remote Specialists.

Conclusion

The Exchange believes that its proposal to enable Remote Streaming Quote Traders to act as Remote Specialists where no on-floor specialists are willing to accept, or retain, an option allocation would enable Remote Specialists to provide a market that does not otherwise exist on the Exchange to the benefit of traders, investors, and public customers making hedging and trading decisions. The Exchange believes that allowing specialists to function off-floor also removes an operational issue by allowing off-floor specialists that are not required to be present on the trading floor in respect of certain option issues. Accordingly, the Exchange believes that the proposed rule change is designed to promote just and equitable principles of trade and to be in the public interest.

Finally, the Exchange notes that the Commission has approved, or options exchanges have filed for immediate effectiveness, proposals that allow these exchanges to have off-floor (remote) market makers that are similar in concept to the proposed Remote Specialists.[28] The Exchange does not believe that this filing raises any novel issues.

[28] *See* Securities Exchange Act Release Nos. 55531 (March 26, 2007), 72 FR 15736 (April 2, 2007) (SR–CBOE–2006–94) (order approving proposal to establish off-floor Delegated Primary Market-Makers); 57747 (April 30, 2008), 73 FR 25811 (May 7, 2008) (SR–CBOE–2008–49) (notice of filing and immediate effectiveness to establish off-floor Lead Market-Makers); 57568 (March 26, 2008), 73 FR 18016 (April 2, 2008) (SR–CBOE–2008–32 (notice of filing and immediate effectiveness to establish ability of off-floor Delegated Primary Market-Makers to operate in any options class traded on Hybrid); and 52827 (November 23, 2005), 70 FR 72139 (December 1, 2005) (SR–PCX–2005–56) (approval order establishing Lead Market Makers).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[29] in general, and furthers the objectives of Section 6(b)(5) of the Act[30] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system by allowing Exchange option specialists that are not on an Exchange floor where the Exchange determines that it cannot allocate options to a floor based specialist.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

[29] 15 U.S.C. 78f(b).

[30] 15 U.S.C. 78f(b)(5).

- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2010–145 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2010–145. This file number should be included on the subject line if e-mail 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 the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Phlx–2010–145 and should be submitted on or before November 23, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–27645 Filed 11–1–10; 8:45 am]

BILLING CODE 8011–01–P

[31] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 7221]

State-40, Employee Contact Records

SUMMARY: Notice is hereby given that the Department of State proposes to

amend an existing system of records, Electronic Telephone Directory (e*Phone), State-40, pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a) and Office of Management and Budget Circular No. A–130, Appendix I. The Department's report was filed with the Office of Management and Budget on September XX, 2010.

It is proposed that the name of the current system, "Electronic Phone Directory (e*Phone)" be changed to "Employee Contact Records." It is also proposed that the amended system description will include substantive and/or administrative changes to the following sections: System name; Categories of individuals; Categories of records; Authority; Purpose; Routine uses; Safeguards; and Record source. Any persons interested in commenting on the amended system of records may do so by submitting comments in writing to Director, Office of Information Programs and Services, A/GIS/IPS, Department of State, SA–2, 515 22nd Street, Washington, DC 20522–8001. This system of records will be effective 40 days from the date of publication, unless we receive comments that will result in a contrary determination.

The amended system description, "Employee Contact Records, State-40," will read as set forth below.

Dated: September 20, 2010.

Steven J. Rodriguez,

Deputy Assistant Secretary of Operations, Bureau of Administration, U.S. Department of State.

STATE–40

SYSTEM NAME:

Employee Contact Records.

SECURITY CLASSIFICATION:

Sensitive but Unclassified (SBU).

SYSTEM LOCATION:

Department of State; 2201 C Street, NW.; Washington, DC 20520.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Foreign Service, Civil Service, Locally Employed Staff and contract employees of the Department of State.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains the following employee contact information: name, office contact information, personal contact information, employee-designated emergency contact information and employment type (government or contractor).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 (Management of the Department of State); 22 U.S.C. 2581 (General Authority of Secretary of State); 22 U.S.C 2651a (Organization of the Department of State); 5 U.S.C. 301, 22 U.S.C. 2581; National Security Presidential Directive (NSPD)–51/Homeland Security Presidential Directive (HSPD)–20 (May 4, 2007); National Continuity Policy Implementation Plan (August 2007); and Federal Continuity Directive 1 (February 2008).

PURPOSE(S):

The public and non-public information contained in the system is collected and maintained by the Department and is (1) used to develop the official locator directories for all personnel; and/or (2) used to communicate with employees in the event of an emergency in which designated contact information will be used; and/or (3) communicate with employee-designated emergency contact.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The Department of State periodically publishes in the Federal Register its standard routine uses that apply to all of its Privacy Act systems of records. The notices appear in the form of a Prefatory Statement. All standard routine uses apply to the Employee Contact Records, State-40.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic media.

RETRIEVABILITY:

Individual's name.

SAFEGUARDS:

All users are given cyber security awareness training which covers the procedures for handling Sensitive but Unclassified information, including personally identifiable information. Annual refresher training is mandatory. Before being granted access to Employee Contact Records, a user must first be granted access to the Department of State computer network.

Remote access to the Department of State network from non-Department owned systems is authorized only through a Department approved access program. Remote access to the network is configured in accordance with the Office of Management and Budget Memorandum M–07–16 security requirements, which includes but is not limited to two-factor authentication and time out function.

All users with authorized access have undergone a thorough security background investigation. Access to the Department of State, its annexes and posts abroad is controlled by security guards and admission is limited to those individuals possessing a valid Department of State identification card or individuals under proper escort. All records containing personal information are maintained in secured file cabinets in restricted areas, access to which is limited to authorized personnel only. Access to computerized files is password-protected and under the direct supervision of the system manager. The system manager has the capability of printing audit trails of access from the computer media, thereby permitting regular and ad hoc monitoring of computer usage.

When it is determined that a user no longer needs access, the user account is disabled.

RETENTION AND DISPOSAL:

These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with published record schedules of the Department of State and as approved by the National Archives and Records Administration (NARA). More specific information may be obtained by writing to the Director; Office of Information Programs and Services (A/GIS/IPS); SA–2; Department of State; 515 22nd Street, NW.; Washington, DC 20522–8001 or by fax at 202–261–8571.

SYSTEM MANAGER AND ADDRESS:

Bureau of Administration, Office of Emergency Management, Planning and Preparedness Division, 2430 E Street NW., Washington, DC 20520. Bureau of Information Resource Management, Enterprise Resource Management, 2201 C Street, NW., Washington, DC 20520.

NOTIFICATION PROCEDURE:

Individuals who have cause to believe that the Employee Contact Records might have records pertaining to them should write to the Director; Office of Information Programs and Services (A/GIS/IPS); Department of State; SA–2; 515 22nd Street, NW.; Washington, DC 20522–8001. The individual must specify that he/she requests that the records of the Employee Contact Records be checked.

RECORD ACCESS AND AMENDMENT PROCEDURES:

Individuals who wish to gain access to or amend records pertaining to them should write to the Director, Office of

Information Programs and Services (address above).

CONTESTING RECORD PROCEDURES:

(*See* above).

RECORD SOURCE CATEGORIES:

The information is compiled directly from the individual and from Department automated sources.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 2010–27667 Filed 11–1–10; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF STATE

[Public Notice: 7220]

Waiver of Restriction on Assistance to the Government of Saudi Arabia

Pursuant to Section 7041 of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2010 (Division F, Pub. L. 111–117) ("the Act"), I hereby determine that it is in the national interest of the United States to waive Section 7041 of the Act, and hereby waive this restriction.

This determination shall be reported to the Congress, and published in the **Federal Register**.

Dated: February 22, 2010.

Hillary Rodham Clinton,

Secretary of State.

[FR Doc. 2010–27665 Filed 11–1–10; 8:45 am]

BILLING CODE 4710–31–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Federal Fiscal Year 2011 Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice.

SUMMARY: Pursuant to 49 U.S.C. 5323(n), FTA is authorized to consolidate the certifications and assurances required by Federal law or regulations for its programs into a single document. FTA is also required by 49 U.S.C. 5323(n) to publish a list of those certifications and assurances annually.

Appendix A of this Notice contains the comprehensive compilation of FTA's Certifications and Assurances applicable to the various Federal assistance programs that FTA will administer during Federal FY 2011. FTA's Certifications and Assurances for Federal FY 2011 reflect Federal statutory, regulatory, and programmatic changes that have now become effective.

DATES: *Effective Date:* These FTA Certifications and Assurances are effective on October 1, 2010, the first day of Federal FY 2011.

FOR FURTHER INFORMATION CONTACT: FTA staff in the appropriate FTA Regional Office or FTA Metropolitan Office listed herein. For copies of other related documents and information, *see* the FTA Web site at *http://www.fta.dot.gov* or contact FTA's Office of Administration at 202–366–4022.

Region 1: Boston

States served: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont. Telephone # 617–494–2055.

Region 2: New York

States served: New York and New Jersey. Telephone # 212–668–2170.

Region 3: Philadelphia

States served: Delaware, Maryland, Pennsylvania, Virginia, and West Virginia. Telephone # 215–656–7100.

Region 4: Atlanta

States served: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Territories served: Puerto Rico and the U.S. Virgin Islands. Telephone # 404–865–5600.

Region 5: Chicago

States served: Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin. Telephone # 312–353–2789.

Region 6: Dallas/Ft. Worth

States served: Arkansas, Louisiana, New Mexico, Oklahoma, and Texas. Telephone # 817–978–0550.

Region 7: Kansas City

States served: Iowa, Kansas, Missouri, and Nebraska. Telephone # 816–329–3920.

Region 8: Denver

States served: Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming. Telephone # 720–963–3300.

Region 9: San Francisco

States served: Arizona, California, Hawaii, Nevada, Territories served: Guam, American Samoa, and the Northern Mariana Islands. Telephone #415–744–3133.

Region 10: Seattle

States served: Alaska, Idaho, Oregon, and Washington. Telephone # 206–220–7954.

Chicago Metropolitan Office

Area served: Chicago Metropolitan Area. Telephone # 312–886–1616.

Los Angeles Metropolitan Office

Area served: Los Angeles Metropolitan Area. Telephone # 213–202–3950.

Lower Manhattan Recovery Office

Area served: Lower Manhattan. Telephone # 212–668–1770.

New York Metropolitan Office

Area served: New York Metropolitan Area. Telephone # 212–668–2201.

Philadelphia Metropolitan Office

Area served: Philadelphia Metropolitan Area. Telephone # 215–656–7070.

Washington DC Metropolitan Office

Area served: Washington DC Metropolitan Area. Telephone # 202–219–3562/219–3565.

SUPPLEMENTARY INFORMATION:

1. Purposes

The purposes of this Notice are to:

- Publish FTA's Federal FY 2011 Certifications and Assurances for Applicants for Federal assistance administered by FTA and the Projects for which they seek Federal assistance awarded by FTA.
- Highlight the changes within the new FTA Certifications and Assurances for Federal FY 2011 now in effect.
- Identify locations where these FTA Certifications and Assurances may be viewed, and
- Provide directions for submitting these FTA Certifications and Assurances for Federal FY 2011 to FTA.

2. Background

a. *FTA's Responsibilities.* Since Federal FY 1995, FTA has been consolidating the various certifications and assurances that may be required of its Applicants and their projects into a single document for publication in the **Federal Register.** FTA intends to continue publishing this document annually, when feasible in conjunction with its publication of the FTA annual apportionment notice, which sets forth the allocations of funds made available by the latest U.S. Department of Transportation (U.S. DOT) annual appropriations act. Because U.S. DOT's full-year appropriations for Federal FY 2011 were not signed into law on

October 1, 2010 (the first day of Federal FY 2011), and have not yet been signed into law, FTA is proceeding with publication of its Certifications and Assurances for Federal FY 2011.

b. *Applicant's Responsibilities.* Irrespective of whether a project will be financed under the authority of 49 U.S.C. chapter 53, Title 23, United States Code, or another Federal statute, the Applicant must submit Federal FY 2011 Certifications and Assurances to FTA applicable to all projects for which the Applicant seeks funding from FTA during Federal FY 2011.

FTA requests that an Applicant submit all of the twenty-four (24) categories of the Certifications and Assurances that may be needed for all projects for which the Applicant intends to or might seek Federal assistance in the Federal FY 2011. Selecting and submitting these Certifications and Assurances to FTA signifies the Applicant's intent and ability to comply with all applicable provisions thereof.

In order to assure FTA that the Applicant is authorized under State and local law to certify compliance with the FTA Certifications and Assurances it has selected, FTA requires the Applicant to obtain a current (Federal FY 2011) affirmation signed by the Applicant's attorney affirming the legal authority of the Applicant to certify its compliance with the FTA Certifications and Assurances that the Applicant has selected. The Applicant's attorney must sign this affirmation during Federal FY 2011. Irrespective of whether the Applicant makes a single selection of all twenty-four (24) categories of FTA Certifications and Assurances or selects individual categories from the FTA Certifications and Assurances, the Affirmation of Applicant's Attorney from a previous Federal FY is not acceptable, unless FTA expressly determines otherwise in writing.

c. *Effect of Subrecipient Participation.* Absent a written determination by FTA to the contrary, the Applicant itself is ultimately responsible for compliance with the FTA Certifications and Assurances it has selected even though the Project may be carried out in whole or in part by one or more subrecipients. Thus, if subrecipients will be participating in the Project, when the Applicant submits its FTA Certifications and Assurances, the Applicant is also signifying that it will be responsible for compliance, both by itself and by each of its subrecipients, with the provisions of the FTA Certifications and Assurances it has selected. Therefore, in providing Certifications and Assurances that necessarily involve the compliance of any prospective subrecipient, FTA strongly recommends that the Applicant take appropriate measures, including but not limited to obtaining sufficient documentation from each subrecipient participating in the project, to assure the validity of the Applicant's Certifications and Assurances to FTA.

3. Significant Information about FTA's Certifications and Assurances for Federal FY 2011

a. Legal Implications.

(1) *Binding Commitments.* Because the Applicant is required by Federal law and Federal regulations to comply with the applicable provisions of all FTA Certifications and Assurances it submits, it is important that the Applicant be familiar with the provisions of all twenty-four (24) categories of FTA Certifications and Assurances for Federal FY 2011. The text of those Certifications and Assurances is contained in Appendix A of this Notice, and also appears at *http://www.fta.dot.gov/documents/2011-Certs-Appendix.A.pdf,* and in FTA's electronic award and management system, TEAM–Web, *http://ftateamweb.fta.dot.gov,* at the "Cert's & Assurances" tab of the "View/Modify Recipients" page in the "Recipients" option. Provisions of this Notice supersede conflicting statements in any FTA circular containing a previous version of FTA's annual Certifications and Assurances. The Certifications and Assurances contained in those FTA circulars are merely examples, and are not acceptable or valid for Federal FY 2011.

An Applicant's annual Certifications and Assurances to FTA generally remain in effect for either the duration of the Grant or Cooperative Agreement supporting the Project until the Project is closed out or for the duration of the Project or Project property when a useful life or industry standard is in effect, whichever occurs later. If, however, the Applicant provides Certifications and Assurances to FTA in a later year that differ from the Certifications and Assurances previously provided, the later Certifications and Assurances will apply to the Grant, Cooperative Agreement, Project, or Project property, except to the extent FTA permits otherwise in writing.

(2) *Penalties for Noncompliance.* If the Applicant makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal government or includes a false, fictitious, or fraudulent statement or representation in any agreement with the Federal government in connection with a Project authorized under 49 U.S.C. chapter 53 or any other Federal law, the Federal government reserves the right to impose on the Applicant the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. 3801 *et seq.,* and implementing U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR part 31, or the penalties of 49 U.S.C. 5323(l) invoking the criminal provisions of 18 U.S.C. 1001, or other applicable Federal law to the extent the Federal government deems appropriate.

(3) *FTA's Certifications and Assurances Constitute Only a Partial List of Federal Requirements.* FTA cautions that the FTA Certifications and Assurances required by Federal law and regulations do not address all the Federal requirements that will apply to the Applicant and its Project. FTA's Certifications and Assurances are generally pre-award requirements, *i.e.,* those requirements of Federal law and regulations that the Applicant must fulfill before FTA is legally authorized to award Federal financial assistance to an Applicant.

(4) *Other Federal Requirements.* Because FTA's Certifications and Assurances do not encompass all Federal requirements that will apply to the Applicant and its Project, FTA strongly encourages the Applicant to review the Federal authorizing legislation, regulations, and directives pertaining to the program or programs for which the Applicant seeks Federal assistance. The FTA Master Agreement for Federal FY 2011 at *http://www.fta.dot.gov/documents/17-Master.pdf* identifies a substantial number of those Federal laws, regulations, and directives that apply to Applicants and their various projects.

b. *Importance of FTA's Certifications and Assurances for Federal FY 2011.* Following publication of these Certifications and Assurances, FTA may not award Federal financial assistance through a Federal Grant or Cooperative Agreement until the Applicant submits all of the FTA Certifications and Assurances for Federal FY 2011 pertaining to itself and its project as required by Federal laws and regulations. The Applicant's Certifications and Assurances for Federal FY 2011 will be applicable to all projects for which it seeks Federal assistance during Federal FY 2011 and through the next Federal FY until FTA issues its annual Certifications and Assurances for Federal FY 2012.

c. *Federal FY 2011 Changes.* Apart from minor editorial revisions, significant matters concerning FTA's

Certifications and Assurances include the following:

(1) In the Introductory paragraphs preceding the text of FTA's Certifications and Assurances, the FTA Web site for the FTA Master Agreement for Federal FY 2011 is identified as *http://www.fta.dot.gov/documents/17-Master.pdf.*

(2) Certification (01), Subsection "B" has been revised to add a statement emphasizing that the FTA Master Agreement has always been incorporated by reference and made part of the FTA grant agreement and cooperative agreement and that the Applicant is certifying that it will comply with the edition of the FTA Master Agreement incorporated by reference and made part of the latest amendment to its grant agreement or cooperative agreement, as specified within that agreement.

(3) A new Subsection "F" has been added to Certification (01), reinstating the Government-wide "Suspension and Debarment" certification. Due to serious concerns expressed by the Government Accountability Office, the U.S. DOT Inspector General, and U.S. DOT officials, FTA considers it prudent to re-emphasize the importance of each Applicant identifying its status to FTA with respect to its eligibility for award of any FTA grant, loan (including a line of credit), cooperative agreement, loan guarantee, or loan insurance, or the extension, continuation, renewal, amendment, or modification of any Federal grant, loan (including a line of credit), cooperative agreement, loan guarantee, or loan insurance. Former Subsection "F" of Certification (01) has been re-numbered Subsection "G."

(4) The text of Certification (02), "Lobbying Certification," has been revised to substitute the current title of OMB's Standard Form–LLL, "Disclosure Form to Report Lobbying," currently in use.

d. *When to Submit.* All Applicants for FTA formula program or capital program assistance, and current FTA Grantees with an active project financed with FTA formula program or capital program assistance, are expected to provide their FTA Certifications and Assurances for Federal FY 2011 within 90 days from the date of this publication or as soon as feasible after their first application for Federal assistance authorized or made available for Federal FY 2011, whichever is earlier. In addition, FTA encourages Applicants seeking Federal assistance for other projects to submit their FTA Certifications and Assurances to FTA as soon as possible to expedite awards of FTA assistance.

4. Ways to Submit FTA'S Certifications and Assurances

As further explained, FTA will accept an Applicant's Certifications and Assurances submitted either in TEAM–Web at *http://ftateamweb.fta.dot.gov,* or on paper containing the text set forth on the Signature Page(s) of Appendix A of this Notice. In order of preference, FTA permits:

a. *Electronic Submission in Team-Web.* An Applicant registered in TEAM–Web must submit its FTA Certifications and Assurances, as well as its applications for Federal assistance in TEAM–Web. FTA prefers that other Applicants for Federal assistance submit their FTA Certifications and Assurances through TEAM–Web.

The TEAM–Web "Recipients" option at the "Cert's & Assurances" tab of the "View/Modify Recipients" page contains fields for selecting among the twenty-four (24) categories of FTA Certifications and Assurances to be submitted. There is also a field for entering a single selection covering all twenty-four (24) categories of FTA Certifications and Assurances.

Within the "Cert's & Assurances" tab is a field for the Applicant's authorized representative to enter his or her personal identification number (PIN), which constitutes the Applicant's electronic signature for the FTA Certifications and Assurances selected. In addition, there is a field for the Applicant's attorney to enter his or her PIN, affirming the Applicant's legal authority to make and comply with the FTA Certifications and Assurances the Applicant has selected. The Applicant's authorized representative may enter his or her PIN in lieu of the Attorney's PIN, provided that the Applicant has a current Affirmation of Applicant's Attorney as set forth in Appendix A of this Notice, written and signed by the attorney in Federal FY 2011.

For more information, the Applicant may contact the appropriate FTA Regional Office or Metropolitan Office listed in this Notice or the TEAM–Web Helpdesk.

b. *Paper Submission.* Only if the Applicant is unable to submit its FTA Certifications and Assurances in TEAM–Web may the Applicant submit its FTA Certifications and Assurances on paper.

If an Applicant is unable to submit its FTA Certifications and Assurances electronically, it must mark the categories of FTA Certifications and Assurances it is making on the Signature Page(s) in Appendix A of this Notice and submit them to FTA. The Applicant may signify compliance with all categories by placing a single mark in the appropriate space or select the categories applicable to itself and its projects.

The Applicant must enter its signature on the Signature Page(s) and must provide an Affirmation of Applicant's Attorney pertaining to the Applicant's legal capacity to make and comply with the Certifications and Assurances the Applicant has selected. The Applicant may enter its signature in lieu of its Attorney's signature in the Affirmation of Applicant's Attorney section of the Signature Page(s), provided that the Applicant has on file the Affirmation of Applicant's Attorney as set forth in Appendix A of this Notice, written and signed by the attorney and dated in Federal FY 2011.

For more information, the Applicant may contact the appropriate FTA Regional Office or Metropolitan Office listed in this Notice.

Authority: 49 U.S.C. chapter 53; the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), as amended by the SAFETEA–LU Technical Corrections Act, 2008, Pub. L. 110–244, June 6, 2008; Title 23, United States Code (Highways); other Federal laws administered by FTA; U.S. DOT and FTA regulations at Title 49, Code of Federal Regulations; and FTA Circulars.

Issued in Washington, DC this 26th day of October 2010.

Peter M. Rogoff,

Administrator.

FEDERAL FISCAL YEAR 2011 CERTIFICATIONS AND ASSURANCES FOR FEDERAL TRANSIT ADMINISTRATION ASSISTANCE PROGRAMS

PREFACE

In accordance with 49 U.S.C. 5323(n), the following certifications and assurances have been compiled for Federal Transit Administration (FTA) assistance programs. FTA requests each Applicant to provide as many certifications and assurances as needed for all programs for which the Applicant intends to seek FTA assistance during Federal Fiscal Year 2011. Category 01 applies to all Applicants. Category 02 applies to all applications for Federal assistance in excess of $100,000. Categories 03 through 24 will apply to and be required for some, but not all, Applicants and projects. An Applicant may select a single certification that will cover all the programs for which it anticipates submitting an application. FTA requests each Applicant to read each certification and assurance carefully and select all certifications and assurances that may apply to the programs for which it expects to seek Federal assistance.

FTA and the Applicant understand and agree that not every provision of these certifications and assurances will apply to every Applicant or every project for which FTA provides Federal financial assistance through a Grant Agreement or Cooperative

Agreement. The type of project and the section of the statute authorizing Federal financial assistance for the project will determine which provisions apply. The terms of these certifications and assurances reflect applicable requirements of FTA's enabling legislation currently in effect.

The Applicant also understands and agrees that these certifications and assurances are special pre-award requirements specifically prescribed by Federal law or regulation and do not encompass all Federal laws, regulations, and directives that may apply to the Applicant or its project. A comprehensive list of those Federal laws, regulations, and directives is contained in the FTA Master Agreement MA(17) for Federal Fiscal Year 2011 at the FTA Web site http://www.fta.dot.gov/documents/17–Master.pdf. The certifications and assurances in this document have been streamlined to remove most provisions not covered by statutory or regulatory certification or assurance requirements.

Because many requirements of these certifications and assurances will require the compliance of the subrecipient of an Applicant, we strongly recommend that each Applicant, including a State, that will be implementing projects through one or more subrecipients, secure sufficient documentation from each subrecipient to assure compliance, not only with these certifications and assurances, but also with the terms of the Grant Agreement or Cooperative Agreement for the project, and the applicable Master Agreement for its project, if applicable, incorporated therein by reference. Each Applicant is ultimately responsible for compliance with the provisions of the certifications and assurances applicable to itself or its project irrespective of participation in the project by any subrecipient. The Applicant understands and agrees that when it applies for FTA assistance on behalf of a consortium, joint venture, partnership, or team, each member of that consortium, joint venture, partnership, or team is responsible for compliance with the certifications and assurances the Applicant selects.

FTA strongly encourages each Applicant to submit its certifications and assurances through TEAM–Web, FTA's electronic award and management system, at http://ftateamweb.fta.dot.gov. Twenty-four (24) Categories of certifications and assurances are listed by numbers 01 through 24 in the TEAM–Web "Recipients" option at the "Cert's & Assurances" tab of "View/Modify Recipients." Should the Applicant choose not to submit its certifications and assurances through TEAM–Web, the Applicant may submit its certifications and assurances on paper by submitting the Signature Page(s) at the end of this document, indicating the certifications and assurances it is making on one side of the document or on one page, and signing its affirmation and that of its attorney on the other side or other page.

01. ASSURANCES REQUIRED FOR EACH APPLICANT

Each Applicant for FTA assistance must provide all assurances in this Category "01." Except to the extent that FTA expressly determines otherwise in writing, FTA may not award any Federal assistance until the Applicant provides the following assurances by selecting Category "01."

A. Assurance of Authority of the Applicant and Its Representative

The authorized representative of the Applicant and the attorney who sign these certifications, assurances, and agreements affirm that both the Applicant and its authorized representative have adequate authority under applicable State, local, or Indian Tribal law and regulations, and the Applicant's by-laws or internal rules to:

(1) Execute and file the application for Federal assistance on behalf of the Applicant;

(2) Execute and file the required certifications, assurances, and agreements on behalf of the Applicant binding the Applicant; and

(3) Execute grant agreements and cooperative agreements with FTA on behalf of the Applicant.

B. Standard Assurances

The Applicant assures that it will comply with all applicable Federal statutes and regulations in carrying out any project supported by an FTA grant or cooperative agreement. The Applicant agrees that it is under a continuing obligation to comply with the terms and conditions of the FTA grant agreement or cooperative agreement, including the FTA Master Agreement that is incorporated by reference and made part of the latest amendment to its grant agreement or cooperative agreement with FTA issued for its project. The Applicant recognizes that Federal laws and regulations may be modified from time to time and those modifications may affect project implementation. The Applicant understands that Presidential executive orders and Federal directives, including Federal policies and program guidance may be issued concerning matters affecting the Applicant or its project. The Applicant agrees that the most recent Federal laws, regulations, and directives will apply to the project, unless FTA issues a written determination otherwise.

C. Intergovernmental Review Assurance

Except if the Applicant is an Indian Tribal government seeking assistance authorized by 49 U.S.C. 5311(c)(1), the Applicant assures that each application for Federal assistance it submits to FTA has been submitted or will be submitted for intergovernmental review to the appropriate State and local agencies as determined by the State. Specifically, the Applicant assures that it has fulfilled or will fulfill the obligations imposed on FTA by U.S. Department of Transportation (U.S. DOT) regulations, "Intergovernmental Review of Department of Transportation Programs and Activities," 49 CFR part 17. This assurance does not apply to Applicants for Federal assistance under FTA's Tribal Transit Program, 49 U.S.C. 5311(c)(1).

D. Nondiscrimination Assurance

As required by 49 U.S.C. 5332 (which prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity), by Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, and by U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act," 49 CFR part 21 at 21.7, the Applicant assures that it will comply with all requirements imposed by or issued pursuant to 49 U.S.C. 5332, 42 U.S.C. 2000d, and 49 CFR part 21, so that no person in the United States, on the basis of race, color, national origin, creed, sex, or age will be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any program or activity (particularly in the level and quality of transportation services and transportation-related benefits) for which the Applicant receives Federal assistance awarded by the U.S. DOT or FTA.

Specifically, during the period in which Federal assistance is extended to the project, or project property is used for a purpose for which the Federal assistance is extended or for another purpose involving the provision of similar services or benefits, or as long as the Applicant retains ownership or possession of the project property, whichever is longer, the Applicant assures that:

(1) Each project will be conducted, property acquisitions will be undertaken, and project facilities will be operated in accordance with all applicable requirements of 49 U.S.C. 5332, 42 U.S.C. 2000d, and 49 CFR part 21, and understands that this assurance extends to its entire facility and to facilities operated in connection with the project;

(2) It will promptly take the necessary actions to effectuate this assurance, including notifying the public that complaints of discrimination in the provision of transportation-related services or benefits may be filed with U.S. DOT or FTA. Upon request by U.S. DOT or FTA, the Applicant assures that it will submit the required information pertaining to its compliance with these provisions;

(3) It will include in each subagreement, property transfer agreement, third party contract, third party subcontract, or participation agreement adequate provisions to extend the requirements imposed by or issued pursuant to 49 U.S.C. 5332, 42 U.S.C. 2000d and 49 CFR part 21 to other parties involved therein including any subrecipient, transferee, third party contractor, third party subcontractor at any level, successor in interest, or any other participant in the project;

(4) Should it transfer real property, structures, or improvements financed with Federal assistance provided by FTA to another party, any deeds and instruments recording the transfer of that property shall contain a covenant running with the land assuring nondiscrimination for the period during which the property is used for a purpose for which the Federal assistance is extended or for another purpose involving the provision of similar services or benefits;

(5) The United States has a right to seek judicial enforcement with regard to any matter arising under Title VI of the Civil Rights Act, U.S. DOT implementing regulations, and this assurance; and

(6) It will make any changes in its Title VI implementing procedures as U.S. DOT or FTA may request to achieve compliance with the requirements imposed by or issued pursuant to 49 U.S.C. 5332, 42 U.S.C. 2000d, and 49 CFR part 21.

E. Assurance of Nondiscrimination on the Basis of Disability

As required by U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," at 49 CFR 27.9, the Applicant assures that, as a condition to the approval or extension of any Federal assistance awarded by FTA to construct any facility, obtain any rolling stock or other equipment, undertake studies, conduct research, or to participate in or obtain any benefit from any program administered by FTA, no otherwise qualified person with a disability shall be, solely by reason of that disability, excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in any program or activity receiving or benefiting from Federal assistance administered by the FTA or any entity within U.S. DOT. The Applicant assures that project implementation and operations so assisted will comply with all applicable requirements of U.S. DOT regulations implementing the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, et seq., and the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. 12101 et seq., and implementing U.S. DOT regulations at 49 CFR parts 27, 37, and 38, and any other applicable Federal laws that may be enacted or Federal regulations that may be promulgated.

F. Suspension and Debarment

In accordance with the terms of U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 CFR Part 1200, which adopts and supplements the provisions of U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR Part 180:

(1) The Applicant (Primary Participant) certifies to the best of its knowledge and belief, that it and its principals, including its first tier subrecipients:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded or disqualified from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding its latest application or proposal been convicted of or had a civil judgment rendered against any of them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction, or contract under a public transaction; violation of any Federal or State antitrust statute; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making any false statement, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses listed in subparagraph (1)(b) of this certification;

(d) Have not within a three-year period preceding this certification had one or more public transactions (Federal, State, or local) terminated for cause or default.

(2) The Applicant (Primary Participant) certifies that it and its principals, including its first tier subrecipients, will treat each lower tier contract or lower tier subcontract under the Project that (a) equals or exceeds $25,000, (b) is for audit services, or (3) requires the consent of a Federal official, as a covered contract for purposes of 2 CFR Part 1200 and 2 CFR Part 180, and will otherwise comply with the Federal requirements of 2 CFR Part 1200 and 2 CFR Part 180, and will assure that each lower tier participant involved in the Project is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded or disqualified from participation in this transaction by any Federal department or agency;

(3) The Applicant (Primary Participant) certifies that if, later, it or its principals, including any of its first tier subrecipients, become aware of any information contradicting the statements of subparagraphs (1)(a) through (d) above, it will promptly provide any necessary information to FTA;

(4) If the Applicant (Primary Participant) or any of its principals, including any of its first tier subrecipients or lower tier participants, is unable to certify to the statements within paragraphs (1), (2), and (3) above, the Applicant shall indicate so on its Signature Page or a Page attached in FTA's TEAM system providing a written explanation to FTA.

G. U.S. OMB Assurances

Consistent with U.S. OMB assurances set forth in SF–424B and SF–424D, the Applicant assures that, with respect to itself or its project, the Applicant:

(1) Has the legal authority to apply for Federal assistance and the institutional, managerial, and financial capability (including funds sufficient to pay the non-Federal share of project cost) to assure proper planning, management, and completion of the project described in its application;

(2) Will give FTA, the Comptroller General of the United States, and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives;

(3) Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain;

(4) Will initiate and complete the work within the applicable project time periods following receipt of FTA approval;

(5) Will comply with all applicable Federal statutes relating to nondiscrimination including, but not limited to:

(a) Title VI of the Civil Rights Act, 42 U.S.C. 2000d, which prohibits discrimination on the basis of race, color, or national origin;

(b) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 through 1683, and 1685 through 1687, and U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 CFR part 25, which prohibit discrimination on the basis of sex;

(c) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of disability;

(d) The Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 through 6107, which prohibits discrimination on the basis of age;

(e) The Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. 1101 *et seq.,* relating to nondiscrimination on the basis of drug abuse;

(f) The Comprehensive Alcohol Abuse and Alcoholism Prevention Act of 1970, as amended, 42 U.S.C. 4541 *et seq.* relating to nondiscrimination on the basis of alcohol abuse or alcoholism;

(g) The Public Health Service Act of 1912, as amended, 42 U.S.C. 290dd through 290dd–2., relating to confidentiality of alcohol and drug abuse patient records;

(h) Title VIII of the Civil Rights Act, 42 U.S.C. 3601 *et seq.*, relating to nondiscrimination in the sale, rental, or financing of housing; and

(i) Any other nondiscrimination statute(s) that may apply to the project;

(6) To the extent applicable, will comply with, or has complied with, the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (Uniform Relocation Act) 42 U.S.C. 4601 *et seq.*, which, among other things, provide for fair and equitable treatment of persons displaced or persons whose property is acquired as a result of Federally assisted programs. These requirements apply to all interests in real property acquired for project purposes and displacement caused by the project regardless of Federal participation in any purchase. As required by sections 210 and 305 of the Uniform Relocation Act, 42 U.S.C. 4630 and 4655, and by U.S. DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs," 49 CFR 24.4, the Applicant assures that it has the requisite authority under applicable State and local law to comply with the requirements of the Uniform Relocation Act, 42 U.S.C. 4601 *et seq.*, and U.S. DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs," 49 CFR part 24, and will comply with that Act or has complied with that Act and those implementing regulations, including but not limited to the following:

(a) The Applicant will adequately inform each affected person of the benefits, policies, and procedures provided for in 49 CFR part 24;

(b) The Applicant will provide fair and reasonable relocation payments and assistance as required by 42 U.S.C. 4622, 4623, and 4624; 49 CFR part 24; and any applicable FTA procedures, to or for families, individuals, partnerships, corporations, or

associations displaced as a result of any project financed with FTA assistance;

(c) The Applicant will provide relocation assistance programs offering the services described in 42 U.S.C. 4625 to such displaced families, individuals, partnerships, corporations, or associations in the manner provided in 49 CFR part 24;

(d) Within a reasonable time before displacement, the Applicant will make available comparable replacement dwellings to displaced families and individuals as required by 42 U.S.C. 4625(c)(3);

(e) The Applicant will carry out the relocation process in such manner as to provide displaced persons with uniform and consistent services, and will make available replacement housing in the same range of choices with respect to such housing to all displaced persons regardless of race, color, religion, or national origin;

(f) In acquiring real property, the Applicant will be guided to the greatest extent practicable under State law, by the real property acquisition policies of 42 U.S.C. 4651 and 4652;

(g) The Applicant will pay or reimburse property owners for their necessary expenses as specified in 42 U.S.C. 4653 and 4654, with the understanding that FTA will provide Federal financial assistance for the Applicant's eligible costs of providing payments for those expenses, as required by 42 U.S.C. 4631;

(h) The Applicant will execute such amendments to third party contracts and subagreements financed with FTA assistance and execute, furnish, and be bound by such additional documents as FTA may determine necessary to effectuate or implement the assurances provided herein; and

(i) The Applicant agrees to make these assurances part of or incorporate them by reference into any third party contract or subagreement, or any amendments thereto, relating to any project financed by FTA involving relocation or land acquisition and provide in any affected document that these relocation and land acquisition provisions shall supersede any conflicting provisions;

(7) To the extent applicable, will comply with the Davis-Bacon Act, as amended, 40 U.S.C. 3141 *et seq.*, the Copeland "Anti-Kickback" Act, as amended, at 18 U.S.C. 874, and at 40 U.S.C. 3145, and the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 3701 *et seq.*, regarding labor standards for Federally assisted projects;

(8) To the extent applicable, will comply with the flood insurance purchase requirements of section 102(a) of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012a(a), requiring the Applicant and its subrecipients in a special flood hazard area to participate in the program and purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more;

(9) To the extent applicable, will comply with the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4831(b), which prohibits the use of lead-based paint in the construction or rehabilitation of residence structures;

(10) To the extent applicable, will not dispose of, modify the use of, or change the terms of the real property title or other interest in the site and facilities on which a construction project supported with FTA assistance takes place without permission and instructions from FTA;

(11) To the extent required by FTA, will record the Federal interest in the title of real property, and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure nondiscrimination during the useful life of the project;

(12) To the extent applicable, will comply with FTA provisions concerning the drafting, review, and approval of construction plans and specifications of any construction project supported with FTA assistance. As required by U.S. DOT regulations, "Seismic Safety," 49 CFR 41.117(d), before accepting delivery of any building financed with FTA assistance, it will obtain a certificate of compliance with the seismic design and construction requirements of 49 CFR part 41;

(13) To the extent applicable, will provide and maintain competent and adequate engineering supervision at the construction site of any project supported with FTA assistance to assure that the complete work conforms with the approved plans and specifications, and will furnish progress reports and such other information as may be required by FTA or the State;

(14) To the extent applicable, will comply with any applicable environmental standards that may be prescribed to implement the following Federal laws and executive orders:

(a) Institution of environmental quality control measures under the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 through 4335 and Executive Order No. 11514, as amended, 42 U.S.C. 4321 note;

(b) Notification of violating facilities pursuant to Executive Order No. 11738, 42 U.S.C. 7606 note;

(c) Protection of wetlands pursuant to Executive Order No. 11990, 42 U.S.C. 4321 note;

(d) Evaluation of flood hazards in floodplains in accordance with Executive Order No. 11988, 42 U.S.C. 4321 note;

(e) Assurance of project consistency with the approved State management program developed pursuant to the requirements of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1451 through 1465;

(f) Conformity of Federal actions to State (Clean Air) Implementation Plans under section 176(c) of the Clean Air Act of 1955, as amended, 42 U.S.C. 7401 through 7671q;

(g) Protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. 300f through 300j–6;

(h) Protection of endangered species under the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 through 1544; and

(i) Environmental protections for Federal transportation programs, including, but not limited to, protections for parks, recreation areas, or wildlife or waterfowl refuges of national, State, or local significance or any land from a historic site of national, State, or local significance to be used in a transportation project as required by 49 U.S.C. 303(b) and 303(c);

(j) Protection of the components of the national wild and scenic rivers systems, as required under the Wild and Scenic Rivers Act of 1968, as amended, 16 U.S.C. 1271 through 1287; and

(k) Provision of assistance to FTA in complying with section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470f; with the Archaeological and Historic Preservation Act of 1974, as amended, 16 U.S.C. 469 through 469c; and with Executive Order No. 11593 (identification and protection of historic properties), 16 U.S.C. 470 note;

(15) To the extent applicable, will comply with the requirements of the Hatch Act, 5 U.S.C. 1501 through 1508 and 7324 through 7326, which limit the political activities of State and local agencies and their officers and employees whose primary employment activities are financed in whole or part with Federal funds including a Federal loan, grant agreement, or cooperative agreement except, in accordance with 49 U.S.C. 5307(k)(2) and 23 U.S.C. 142(g), the Hatch Act does not apply to a nonsupervisory employee of a public transportation system (or of any other agency or entity performing related functions) receiving FTA assistance to whom that Act does not otherwise apply;

(16) To the extent applicable, will comply with the National Research Act, Pub. L. 93–348, July 12, 1974, as amended, 42 U.S.C. 289 *et seq.*, and U.S. DOT regulations, "Protection of Human Subjects," 49 CFR part 11, regarding the protection of human subjects involved in research, development, and related activities supported by Federal assistance;

(17) To the extent applicable, will comply with the Animal Welfare Act, as amended, 7 U.S.C. 2131 *et seq.*, and U.S. Department of Agriculture regulations, "Animal Welfare," 9 CFR subchapter A, parts 1, 2, 3, and 4, regarding the care, handling, and treatment of warm blooded animals held or used for research, teaching, or other activities supported by Federal assistance;

(18) Will have performed the financial and compliance audits as required by the Single Audit Act Amendments of 1996, 31 U.S.C. 7501 *et seq.*, U.S. OMB Circular A–133, "Audits of States, Local Governments, and Non-Profit Organizations," Revised, and the most recent applicable U.S. OMB A–133 Compliance Supplement provisions for the U.S. DOT; and

(19) To the extent applicable, will comply with all applicable provisions of all other Federal laws or regulations, and follow Federal directives governing the project, except to the extent that FTA has expressly approved otherwise in writing.

02. LOBBYING CERTIFICATION

An Applicant that submits or intends to submit an application to FTA for any Federal grant, loan (including a line of credit), cooperative agreement, loan guarantee, or loan insurance exceeding $100,000 is required to provide the following certification. FTA may not award Federal grant, loan (including a line of credit), cooperative agreement, loan guarantee, or loan insurance exceeding $100,000 until the Applicant provides this certification by selecting Category "02."

A. As required by 31 U.S.C. 1352 and U.S. DOT regulations, "New Restrictions on Lobbying," at 49 CFR 20.110, the Applicant's authorized representative certifies to the best of his or her knowledge and belief that for each application to U.S. DOT or FTA for a Federal grant, loan (including a line of credit), cooperative agreement, or a commitment that the Federal Government to guarantee or insure a loan exceeding $100,000:

(1) No Federal appropriated funds have been or will be paid by or on behalf of the Applicant to any person to influence or attempt to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress regarding the award of a Federal grant, loan (including a line of credit), cooperative agreement, loan guarantee, or loan insurance, or the extension, continuation, renewal, amendment, or modification of any Federal grant, loan (including a line of credit), cooperative agreement, loan guarantee, or loan insurance;

(2) If any funds other than Federal appropriated funds have been or will be paid to any person to influence or attempt to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any application for a Federal grant, loan (including a line of credit), cooperative agreement, loan guarantee, or loan insurance, the Applicant assures that it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and

(3) The language of this certification shall be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, subagreements, and contracts under grants, loans (including a line of credit), cooperative agreements, loan guarantees, and loan insurance).

B. The Applicant understands that this certification is a material representation of fact upon which reliance is placed by the Federal government and that submission of this certification is a prerequisite for providing a Federal grant, loan (including a line of credit), cooperative agreement, loan guarantee, or loan insurance for a transaction covered by 31 U.S.C. 1352. The Applicant also understands that any person who fails to file a required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

03. PROCUREMENT COMPLIANCE

In accordance with 49 CFR 18.36(g)(3)(ii), each Applicant that is a State, local, or Indian Tribal government that is seeking Federal assistance to acquire property or services in support of its project is requested to provide the following certification by selecting Category "03." FTA also requests other Applicants to provide the following certification. An Applicant for FTA assistance to acquire property or services in support of its project that fails to provide this certification may be determined ineligible for award of Federal assistance for the project, if FTA determines that its procurement practices and procurement system fail to comply with Federal laws or regulations in accordance with applicable Federal directives.

The Applicant certifies that its procurements and procurement system will comply with all applicable Federal laws and regulations in accordance with applicable Federal directives, except to the extent FTA has expressly approved otherwise in writing.

04. PROTECTIONS FOR PRIVATE TRANSPORTATION PROVIDERS

Each Applicant that is a State, local, or Indian Tribal government that is seeking Federal assistance authorized under 49 U.S.C. chapter 53 to acquire any property or an interest in the property of a private provider of public transportation or to operate public transportation equipment or facilities in competition with, or operate public transportation equipment or facilities in addition to, transportation service provided by an existing private provider of public transportation is required to provide the following certification. FTA may not award Federal assistance for such a project until the Applicant provides this certification by selecting Category "04."

As required by 49 U.S.C. 5323(a)(1), the Applicant certifies that before it acquires the property or an interest in the property of a private provider of public transportation or operates public transportation equipment or facilities in competition with, or in addition to, transportation service provided by an existing public transportation company, it has or will have:

A. Determined that the assistance is essential to carrying out a program of projects as required by 49 U.S.C. 5303, 5304, and 5306;

B. Provided for the participation of private companies engaged in public transportation to the maximum extent feasible; and

C. Paid just compensation under State or local law to the company for any franchise or property acquired.

05. PUBLIC HEARING

An Applicant seeking Federal assistance authorized under 49 U.S.C. chapter 53 for a capital project that will substantially affect a community or a community's public transportation service is required to provide the following certification. FTA may not award Federal assistance for a capital project of that type until the Applicant provides this certification by selecting Category "05."

As required by 49 U.S.C. 5323(b), for a proposed capital project that will substantially affect a community, or the public transportation service of a community, the Applicant certifies that it has, or before submitting its application, it will have:

A. Provided an adequate opportunity for public review and comment on the proposed project;

B. After providing notice, including a concise description of the proposed project, published in a newspaper of general circulation in the geographic area to be served, held a public hearing on the project if the project affects significant economic, social, or environmental interests;

C. Considered the economic, social, and environmental effects of the proposed project; and

D. Determined that the proposed project is consistent with official plans for developing the community.

06. ACQUISITION OF ROLLING STOCK FOR USE IN REVENUE SERVICE

An Applicant seeking Federal assistance authorized under 49 U.S.C. chapter 53 to acquire any rolling stock for use in revenue service is required to provide the following certification. FTA may not award any Federal assistance to acquire such rolling stock until the Applicant provides this certification by selecting Category "06."

As required by 49 U.S.C. 5323(m) and implementing FTA regulations, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 CFR part 663, at 49 CFR 663.7, the Applicant certifies that it will comply with the requirements of 49 CFR part 663 as modified by amendments authorized by section 3023(k) of SAFETEA–LU when procuring revenue service rolling stock. Among other things, the Applicant agrees to conduct or cause to be conducted the requisite pre-award and post delivery reviews, and maintain on file the certifications required by 49 CFR part 663, subparts B, C, and D.

07. ACQUISITION OF CAPITAL ASSETS BY LEASE

An Applicant that intends to request the use of Federal assistance authorized under 49 U.S.C. chapter 53 to acquire capital assets by lease is required to provide the following certifications. FTA may not provide Federal assistance to support those costs until the Applicant provides this certification by selecting Category "07."

As required by FTA regulations, "Capital Leases," 49 CFR part 639, at 49 CFR 639.15(b)(1) and 49 CFR 639.21, if the Applicant acquires any capital asset by lease financed with Federal assistance authorized under 49 U.S.C. chapter 53, the Applicant certifies as follows:

(1) It will not use Federal assistance authorized under 49 U.S.C. chapter 53 to finance the cost of leasing any capital asset until it performs calculations demonstrating that leasing the capital asset would be more cost-effective than purchasing or constructing a similar asset; and it will complete these calculations before entering into the lease or before receiving a capital grant for the asset, whichever is later; and

(2) It will not enter into a capital lease for which FTA can provide only incremental Federal assistance unless it has adequate financial resources to meet its future obligations under the lease if Federal assistance is not available for capital projects in the subsequent years.

08. BUS TESTING

An Applicant for Federal assistance appropriated or made available for 49 U.S.C. chapter 53 to acquire any new bus model or any bus model with a new major change in configuration or components is required to provide the following certification. FTA may not provide Federal assistance for the acquisition of any new bus model or bus

model with a major change until the Applicant provides this certification by selecting Category "08."

As required by 49 U.S.C. 5318 and FTA regulations, "Bus Testing," at 49 CFR 665.7, the Applicant certifies that, before expending any Federal assistance to acquire the first bus of any new bus model or any bus model with a new major change in configuration or components, or before authorizing final acceptance of that bus (as described in 49 CFR part 665):

A. The bus model will have been tested at FTA's bus testing facility; and

B. The Applicant will have received a copy of the test report prepared on the bus model.

09. CHARTER SERVICE AGREEMENT

An Applicant seeking Federal assistance authorized under 49 U.S.C. chapter 53 (except as permitted by 49 CFR 604.2), or under 23 U.S.C. 133 or 142, to acquire or operate any public transportation equipment or facilities is required to enter into the following Charter Service Agreement. FTA may not provide Federal assistance authorized under 49 U.S.C. chapter 53 (except as permitted by 49 CFR 604.2), or under 23 U.S.C. 133 or 142, for such projects until the Applicant enters into this Charter Service Agreement by selecting Category "09."

A. As required by 49 U.S.C. 5323(d) and (g) and FTA regulations at 49 CFR 604.4, the Applicant understands and agrees that it and each subrecipient, lessee, third party contractor, or other participant in the project at any tier may provide charter service for transportation projects that uses equipment or facilities acquired with Federal assistance authorized under the Federal transit laws (except as permitted by 49 CFR 604.2), or under 23 U.S.C. 133 or 142, only in compliance with those laws and FTA regulations, "Charter Service," 49 CFR part 604, the terms and conditions of which are incorporated herein by reference.

B. The Applicant understands and agrees that:

(1) The requirements of FTA regulations, "Charter Service," 49 CFR part 604, will apply to any charter service it or its subrecipients, lessees, third party contractors, or other participants in the project provide;

(2) The definitions of FTA regulations, "Charter Service," 49 CFR part 604, will apply to this Charter Service Agreement; and

(3) A pattern of violations of this Charter Service Agreement may require corrective measures and imposition of remedies, including barring the Applicant, subrecipient, lessee, third party contractor, or other participant in the project that has engaged in that pattern of violations from receiving FTA financial assistance, or withholding an amount of Federal assistance as set forth in FTA regulations, "Charter Service," 49 CFR part 604, Appendix D.

10. SCHOOL TRANSPORTATION AGREEMENT

An Applicant that is seeking Federal assistance authorized under 49 U.S.C. chapter 53 or under 23 U.S.C. 133 or 142 to acquire or operate public transportation facilities and equipment is required to enter into the following School Transportation Agreement. FTA may not provide Federal assistance authorized under 49 U.S.C. chapter 53 or under 23 U.S.C. 133 or 142 for such projects until the Applicant enters into this School Transportation Agreement by selecting Category "10."

A. As required by 49 U.S.C. 5323(f) and (g) and FTA regulations at 49 CFR 605.14, the Applicant understands and agrees that it and each subrecipient, lessee, third party contractor, or other participant in the project at any tier may engage in school transportation operations in competition with private school transportation operators that uses equipment or facilities acquired with Federal assistance authorized under the Federal transit laws or under 23 U.S.C. 133 or 142, only in compliance with those laws and FTA regulations, "School Bus Operations," 49 CFR part 605, to the extent consistent with 49 U.S.C. 5323(f) or (g), the terms and conditions of which are incorporated herein by reference.

B. The Applicant understands and agrees that:

(1) The requirements of FTA regulations, "School Bus Operations," 49 CFR part 605, to the extent consistent with 49 U.S.C. 5323(f) or (g), will apply to any school transportation service it or its subrecipients, lessees, third party contractors, or other participants in the project provide;

(2) The definitions of FTA regulations, "School Bus Operations," 49 CFR part 605 will apply to this School Transportation Agreement; and

(3) If there is a violation of this School Transportation Agreement, FTA will bar the Applicant, subrecipient, lessee, third party contractor, or other participant in the project that has violated this School Transportation Agreement from receiving Federal transit assistance in an amount FTA considers appropriate.

11. DEMAND RESPONSIVE SERVICE

An Applicant that operates demand responsive service and applies for direct Federal assistance authorized under 49 U.S.C. chapter 53 to acquire non-rail public transportation vehicles is required to provide the following certification. FTA may not award direct Federal assistance authorized under 49 U.S.C. chapter 53 to an Applicant that operates demand responsive service to acquire non-rail public transportation vehicles until the Applicant provides this certification by selecting Category "11."

As required by U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," at 49 CFR 37.77(d), the Applicant certifies that its demand responsive service offered to individuals with disabilities, including individuals who use wheelchairs, is equivalent to the level and quality of service offered to individuals without disabilities. Viewed in its entirety, the Applicant's service for individuals with disabilities is provided in the most integrated setting feasible and is equivalent with respect to: (1) response time, (2) fares, (3) geographic service area, (4) hours and days of service, (5) restrictions on trip purpose, (6) availability of information and reservation capability, and (7) constraints on capacity or service availability.

12. ALCOHOL MISUSE AND PROHIBITED DRUG USE

If the Applicant is required by FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," at 49 CFR part 655, to provide the following certification concerning its activities to prevent alcohol misuse and prohibited drug use in its public transportation operations, FTA may not provide Federal assistance to that Applicant until it provides this certification by selecting Category "12."

As required by FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," at 49 CFR part 655, subpart I, the Applicant certifies that it has established and implemented an alcohol misuse and anti-drug program, and has complied with or will comply with all applicable requirements of FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 CFR part 655.

13. INTEREST AND OTHER FINANCING COSTS

An Applicant that intends to request the use of Federal assistance for reimbursement of interest or other financing costs incurred for its capital projects financed with Federal assistance under the Urbanized Area Formula Program, the Capital Investment Program, or the Paul S. Sarbanes Transit in Parks Program is required to provide the following certification. FTA may not provide Federal assistance to support interest or other financing costs until the Applicant provides this certification by selecting Category "13."

As required by 49 U.S.C. 5307(g)(3), 5309(g)(2)(B)(iii), 5309(g)(3)(B)(iii), 5309(i)(2)(C), and 5320(h)(2)(C), the Applicant certifies that it will not seek reimbursement for interest or other financing costs unless it is eligible to receive Federal assistance for those costs and its records demonstrate that it has used reasonable diligence in seeking the most favorable financing terms underlying those costs, to the extent FTA may require.

14. INTELLIGENT TRANSPORTATION SYSTEMS

An Applicant for FTA assistance for an Intelligent Transportation Systems (ITS) project, defined as any project that in whole or in part finances the acquisition of technologies or systems of technologies that provide or significantly contribute to the provision of one or more ITS user services as defined in the "National ITS Architecture," is requested to provide the following assurance. FTA strongly encourages any Applicant for FTA financial assistance to support an ITS project to provide this assurance by selecting Category "14." An Applicant for FTA assistance for an ITS project that fails to provide this assurance, without providing other documentation assuring its commitment to comply with applicable Federal ITS standards and protocols, may be determined ineligible for award of Federal assistance for the ITS project.

As used in this assurance, the term Intelligent Transportation Systems (ITS) project is defined to include any project that in whole or in part finances the acquisition of technologies or systems of technologies that provide or significantly contribute to the provision of one or more ITS user services as defined in the "National ITS Architecture."

A. As provided in subsection 5307(c) of SAFETEA–LU, 23 U.S.C. 512 note, apart from certain exceptions, "intelligent transportation system projects carried out using funds made available from the Highway Trust Fund, including funds made available under this subtitle to deploy intelligent transportation system technologies, [shall] conform to the national architecture, applicable standards or provisional standards, and protocols developed under subsection (a) [of section 5307 of SAFETEA–LU]." To facilitate compliance with subsection 5307(c) of SAFETEA–LU, 23 U.S.C. 512 note, the Applicant assures it will comply with all applicable provisions of Section V (Regional ITS Architecture) and Section VI (Project Implementation) of FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," at 66 FR 1455 *et seq.,* January 8, 2001, and other FTA policies that may be issued in connection with any ITS project it undertakes financed with funds authorized under Title 49 or Title 23, United States Code, except to the extent that FTA expressly determines otherwise in writing; and

B. With respect to any ITS project financed with Federal assistance derived from a source other than Title 49 or Title 23, United States Code, the Applicant assures that it will use its best efforts to assure that any ITS project it undertakes will not preclude interface with other intelligent transportation systems in the Region.

15. URBANIZED AREA FORMULA PROGRAM

Each Applicant for Urbanized Area Formula Program assistance authorized under 49 U.S.C. 5307 is required to provide the following certifications on behalf of itself and any subrecipients participating in its projects. Unless FTA determines otherwise in writing, the Applicant is ultimately responsible for compliance with its certifications and assurances even though a subrecipient, lessee, third party contractor, or other participant may participate in that project. Consequently, in providing certifications and assurances that involve the compliance of its prospective subrecipients, the Applicant is strongly encouraged to take appropriate measures, including but not limited to obtaining sufficient documentation from each subrecipient, to assure the validity of all certifications and assurances the Applicant has made to FTA. If, however a "Designated Recipient" as defined at 49 U.S.C. 5307(a)(2)(A) enters into a Supplemental Agreement with FTA and a Prospective Grantee, that Grantee is recognized as the Applicant for Urbanized Area Formula Program assistance and must provide the following certifications and assurances.

Each Applicant is required by 49 U.S.C. 5307(d)(1)(J) to expend at least one (1) percent of its Urbanized Area Formula Program assistance for public transportation security projects, unless the Applicant has certified that such expenditures are not necessary. Information about the Applicant's intentions will be recorded in the "Security" tab page of the TEAM-Web "Project Information" window when the Applicant enters its Urbanized Area Formula Program application in TEAM-Web.

FTA may not award Urbanized Area Formula Program assistance to any Applicant that is required by 49 U.S.C. 5307(d)(1)(K) to expend one (1) percent of its Urbanized Area Formula Program assistance for eligible transit enhancements unless that Applicant's quarterly report for the fourth quarter of the preceding Federal fiscal year has been submitted to FTA and includes the requisite list or the Applicant attaches in TEAM-Web or includes in its quarterly report information sufficient to demonstrate that the Designated Recipients in its area together have expended one (1) percent of the amount of Urbanized Area Program assistance made available to them for transit enhancement projects.

FTA may not award Federal assistance for the Urbanized Area Formula Program to the Applicant until the Applicant provides these certifications and assurances by selecting Category "15."

As required by 49 U.S.C. 5307(d)(1), the Applicant certifies as follows:

A. In compliance with 49 U.S.C. 5307(d)(1)(A), the Applicant has or will have the legal, financial, and technical capacity to carry out its proposed program of projects, including the safety and security aspects of that program;

B. In compliance with 49 U.S.C. 5307(d)(1)(B), the Applicant has or will have satisfactory continuing control over the use of Project equipment and facilities;

C. In compliance with 49 U.S.C. 5307(d)(1)(C), the Applicant will adequately maintain the Project equipment and facilities;

D. In compliance with 49 U.S.C. 5307(d)(1)(D), the Applicant will assure that any elderly individual, any individual with disabilities, or any person presenting a Medicare card issued to himself or herself pursuant to title II or title XVIII of the Social Security Act (42 U.S.C. 401 *et seq.* or 42 U.S.C. 1395 *et seq.*), will be charged for transportation during non-peak hours using or involving a facility or equipment of a project financed with Federal assistance authorized for 49 U.S.C. 5307, not more than fifty (50) percent of the peak hour fare;

E. In compliance with 49 U.S.C. 5307(d)(1)(E), the Applicant, in carrying out a procurement financed with Federal assistance authorized under 49 U.S.C. 5307: (1) will use competitive procurement (as defined or approved by FTA), (2) will not use exclusionary or discriminatory specifications in its procurements, (3) will comply with applicable Buy America laws, and (4) will comply with the general provisions for FTA assistance of 49 U.S.C. 5323 and the third party procurement requirements of 49 U.S.C. 5325;

F. In compliance with 49 U.S.C. 5307(d)(1)(F), the Applicant has complied with or will comply with the requirements of 49 U.S.C. 5307(c). Specifically, the Applicant: (1) has made available, or will make available, to the public information on the amounts available for the Urbanized Area Formula Program, 49 U.S.C. 5307, and the program of projects it proposes to undertake; (2) has developed or will develop, in consultation with interested parties including private transportation providers, a proposed program of projects for activities to be financed; (3) has published or will publish a proposed program of projects in a way that affected citizens, private transportation providers, and local elected officials have the opportunity to examine the proposed program and submit comments on the proposed program and the performance of the Applicant; (4) has provided or will provide an opportunity for a public hearing to obtain the views of citizens on the proposed program of projects; (5) has assured or will assure that the proposed program of projects provides for the coordination of transportation services assisted under 49 U.S.C. 5336 with transportation services assisted by another Federal government source; (6) has considered or will consider the comments and views received, especially those of private transportation providers, in preparing its final program of projects; and (7) has made or will make the final program of projects available to the public;

G. In compliance with 49 U.S.C. 5307(d)(1)(G), the Applicant has or will have available and will provide the amount of funds required by 49 U.S.C. 5307(e) for the local share, and that those funds will be provided from approved non-Federal sources except as permitted by Federal law;

H. In compliance with 49 U.S.C. 5307(d)(1)(H), the Applicant will comply with: (1) 49 U.S.C. 5301(a) (requirements for public transportation systems that maximize the safe, secure, and efficient mobility of individuals, minimize environmental impacts, and minimize transportation-related fuel consumption and reliance on foreign oil); (2) 49 U.S.C. 5301(d) (special efforts to design and provide public transportation for elderly individuals and individuals with disabilities); and (3) 49 U.S.C. 5303 through 5306 (planning and private enterprise requirements);

I. In compliance with 49 U.S.C. 5307(d)(1)(I), the Applicant has a locally developed process to solicit and consider public comment before raising a fare or implementing a major reduction of public transportation;

J. In compliance with 49 U.S.C. 5307(d)(1)(J), each Federal fiscal year, the Applicant will spend at least one (1) percent of its funds authorized by 49 U.S.C. 5307 for public transportation security projects, unless the Applicant has certified to FTA that such expenditures are not necessary. Public transportation security projects include increased lighting in or adjacent to a public transportation system (including bus stops, subway stations, parking lots, and garages), increased camera surveillance of an area in or adjacent to that system, emergency telephone line or lines to contact law enforcement or security personnel in an area in or adjacent to that system, and any other project intended to increase the security and safety of existing or planned public transportation; and

K. In compliance with 49 U.S.C. 5307(d)(1)(K), if the Applicant is a Designated Recipient serving an urbanized area with a population of at least 200,000, (1) the Applicant certifies either that it has expended or will expend for transit enhancements as defined at 49 U.S.C. 5302(a)(15) not less than one (1) percent of the amount of the Urbanized Area Formula Assistance it receives this Federal fiscal year, or that at least one Designated Recipient in its urbanized area has certified or will certify that the Designated Recipients within that urbanized area together have expended or will expend for transit enhancements as defined at 49 U.S.C. 5302(a)(15) not less than one (1) percent of the total amounts the Designated Recipients receive each Federal fiscal year under 49 U.S.C. 5307, and (2) either the Applicant has listed or will list the transit enhancement projects it has carried out with those funds, or at least one Designated Recipient in the Applicant's urbanized area has listed or will list the transit enhancement projects carried out with funds authorized under 49 U.S.C. 5307. If the Designated Recipient's quarterly report for the fourth quarter of the preceding Federal fiscal year includes a list of transit enhancement projects the Designated Recipients in its urbanized area have implemented during that preceding Federal fiscal year using those funds, the information in that quarterly report will fulfill the requirements of 49 U.S.C. 5307(d)(1)(K)(ii), and thus that quarterly report will be incorporated by reference and made part of the Designated Recipient's and Applicant's certifications and assurances.

16. CLEAN FUELS GRANT PROGRAM

Each Applicant for Clean Fuels Grant Program assistance authorized under 49 U.S.C. 5308 is required to provide the following certifications on behalf of itself and its subrecipients. Unless FTA determines otherwise in writing, the Applicant is ultimately responsible for compliance with its certifications and assurances even though a subrecipient, lessee, third party contractor, or other participant may participate in that project. Consequently, in providing certifications and assurances that involve the compliance of its prospective subrecipients, the Applicant is strongly encouraged to take the appropriate measures, including but not limited to obtaining sufficient documentation from each subrecipient, to assure the validity of all certifications and assurances the Applicant has made to FTA. FTA may not award Federal assistance for the Clean Fuels Grant Program until the Applicant provides these certifications by selecting Category "16."

As required by 49 U.S.C. 5308(d)(1), which makes the requirements of 49 U.S.C. 5307 applicable to Clean Fuels Grant Program assistance, and 49 U.S.C. 5307(d)(1), the designated recipient or the recipient serving as the Applicant on behalf of the designated recipient, or the State or State organization serving as the Applicant on behalf of the State, certifies as follows:

A. In compliance with 49 U.S.C. 5307(d)(1)(A), the Applicant has or will have the legal, financial, and technical capacity to carry out its proposed program of projects, including the safety and security aspects of that program;

B. In compliance with 49 U.S.C. 5307(d)(1)(B), the Applicant has or will have satisfactory continuing control over the use of project equipment and facilities;

C. In compliance with 49 U.S.C. 5307(d)(1)(C), the Applicant will adequately maintain the project equipment and facilities;

D. In compliance with 49 U.S.C. 5307(d)(1)(D), the Applicant will assure that any elderly individual, any individual with disabilities, or any person presenting a Medicare card issued to himself or herself pursuant to title II or title XVIII of the Social Security Act (42 U.S.C. 401 *et seq.* or 42 U.S.C. 1395 *et seq.*), will be charged for transportation during non-peak hours using or involving a facility or equipment of a project financed with Federal assistance authorized under 49 U.S.C. 5308, not more than fifty (50) percent of the peak hour fare;

E. In compliance with 49 U.S.C. 5307(d)(1)(E), the Applicant, in carrying out a procurement financed with Federal assistance authorized under 49 U.S.C. 5308: (1) will use competitive procurement (as defined or approved by FTA), (2) will not use exclusionary or discriminatory specifications in its procurements, (3) will comply with applicable Buy America laws, and (4) will comply with the general provisions for FTA assistance of 49 U.S.C. 5323 and the third party procurement requirements of 49 U.S.C. 5325;

F. In compliance with 49 U.S.C. 5307(d)(1)(F), the Applicant has complied with or will comply with the requirements of 49 U.S.C. 5307(c). Specifically, the Applicant: (1) has made available, or will make available, to the public information on the amounts available for the Clean Fuels Grant Program, 49 U.S.C. 5308, and the projects it proposes to undertake; (2) has developed or will develop, in consultation with interested parties including private transportation providers, the proposed projects to be financed; (3) has published or will publish a list of the proposed projects in a way that affected citizens, private transportation providers, and local elected officials have the opportunity to examine the proposed projects and submit comments on the proposed projects and the performance of the Applicant; (4) has provided or will provide an opportunity for a public hearing to obtain the views of citizens on the proposed projects; (5) has assured or will assure that the proposed projects provide for the coordination of transportation services assisted under 49 U.S.C. 5336 with transportation services assisted by another Federal government source; (6) has considered or will consider the comments and views received, especially those of private transportation providers, in preparing its final list of projects; and (7) has made or will make the final list of projects available to the public;

G. In compliance with 49 U.S.C. 5307(d)(1)(G), the Applicant has or will have available and will provide the amount of funds required by 49 U.S.C. 5308(d)(2) for the local share, and that those funds will be provided from approved non-Federal sources except as permitted by Federal law;

H. In compliance with 49 U.S.C. 5307(d)(1)(H), the Applicant will comply with: (1) 49 U.S.C. 5301(a) (requirements for public transportation systems that maximize the safe, secure, and efficient mobility of individuals, minimize environmental impacts, and minimize transportation-related fuel consumption and reliance on foreign oil); (2) 49 U.S.C. 5301(d) (special efforts to design and provide public transportation for elderly individuals and individuals with disabilities); and (3) 49 U.S.C. 5303 through 5306 (planning and private enterprise requirements);

I. In compliance with 49 U.S.C. 5307(d)(1)(I), the Applicant has a locally developed process to solicit and consider public comment before raising a fare or implementing a major reduction of public transportation; and

J. The Applicant certifies it will operate vehicles purchased with Federal assistance provided under the Clean Fuels Grant Program, 49 U.S.C. 5308 only with clean fuels.

17. ELDERLY INDIVIDUALS AND INDIVIDUALS WITH DISABILITIES FORMULA GRANT PROGRAM AND PILOT PROGRAM

Before FTA may award Elderly Individuals and Individuals with Disabilities Formula Grant Program assistance and, if applicable, Elderly Individuals and Individuals with Disabilities Pilot Program assistance to a State, the U.S. Secretary of Transportation or his or her designee is required to make the pre-award determinations required by 49 U.S.C. 5310. Because certain information is needed before FTA can make those determinations, each State is requested to provide the following certifications assurances on behalf of itself and its subrecipients. Unless FTA determines otherwise in writing, the State itself is ultimately responsible for compliance with its certifications and assurances even though a subrecipient, lessee, third party contractor, or other participant may participate in that project. Consequently, in providing certifications and assurances that involve the compliance of its prospective subrecipients, the State is strongly encouraged to take the appropriate measures, including but not limited to obtaining sufficient documentation from each subrecipient, to assure the validity of all certifications and assurances the State has made to FTA. A State that fails to provide these certifications and assurances on behalf of itself and its subrecipients may be determined ineligible for a grant of Federal assistance under 49 U.S.C. 5310 if FTA lacks sufficient information from which to make those determinations required by Federal laws and regulations governing the Elderly Individuals and Individuals with Disabilities Formula Grant Program and, if applicable, the Elderly Individuals and Individuals with Disabilities Pilot Program authorized by 49 U.S.C. 5310 and section 3012 of SAFETEA–LU, respectively. The State is thus requested to select Category "17."

A. As required by 49 U.S.C. 5310(d), which makes the requirements of 49 U.S.C. 5307 applicable to the Elderly Individuals and

Individuals with Disabilities Formula Grant Program to the extent that the Federal Transit Administrator or his or her designee determines appropriate, and 49 U.S.C. 5307(d)(1), the State or State organization serving as the Applicant (State) and that administers, on behalf of the State, the Elderly Individuals and Individuals with Disabilities Program authorized by 49 U.S.C. 5310, and, if applicable, the Elderly Individuals and Individuals with Disabilities Pilot Program authorized by subsection 3012(b) of SAFETEA–LU, 49 U.S.C. 5310 note, certifies and assures on behalf of itself and its subrecipients as follows:

(1) In compliance with 49 U.S.C. 5307(d)(1)(A), the Applicant has or will have the legal, financial, and technical capacity to carry out its proposed program of projects, including the safety and security aspects of that program;

(2) In compliance with 49 U.S.C. 5307(d)(1)(B), the Applicant has or will have satisfactory continuing control over the use of project equipment and facilities;

(3) In compliance with 49 U.S.C. 5307(d)(1)(C), the Applicant will adequately maintain the project equipment and facilities;

(4) In compliance with 49 U.S.C. 5307(d)(1)(E), the Applicant, in carrying out a procurement financed with Federal assistance authorized under 49 U.S.C. 5310 or subsection 3012(b) of SAFETEA–LU: (1) will use competitive procurement (as defined or approved by FTA), (2) will not use exclusionary or discriminatory specifications in its procurements, (3) will comply with applicable Buy America laws, and (4) will comply with the general provisions for FTA assistance of 49 U.S.C. 5323 and the third party procurement requirements of 49 U.S.C. 5325;

(5) The State has or will have available and will provide the amount of funds required by 49 U.S.C. 5310(c), and if applicable by subsections 3012(b)(3) and (4) of SAFETEA–LU, for the local share, and that those funds will be provided from approved non-Federal sources except as permitted by Federal law; and

(6) In compliance with 49 U.S.C. 5307(d)(1)(H), the Applicant will comply with: (1) 49 U.S.C. 5301(a) (requirements for public transportation systems that maximize the safe, secure, and efficient mobility of individuals, minimize environmental impacts, and minimize transportation-related fuel consumption and reliance on foreign oil); (2) 49 U.S.C. 5301(d) (special efforts to design and provide public transportation for elderly individuals and individuals with disabilities); and (3) 49 U.S.C. 5303 through 5306 (planning and private enterprise requirements);

B. The State assures that each subrecipient either is recognized under State law as a private nonprofit organization with the legal capability to contract with the State to carry out the proposed project, or is a public body that has met the statutory requirements to receive Federal assistance authorized for 49 U.S.C. 5310;

C. The private nonprofit subrecipient's application for 49 U.S.C. 5310 assistance contains information from which the State concludes that the transit service provided or offered to be provided by existing public or private transit operators is unavailable, insufficient, or inappropriate to meet the special needs of the elderly and persons with disabilities;

D. In compliance with 49 U.S.C. 5310(d)(2)(A) and subsection 3012(b)(2) of SAFETEA–LU, the State certifies that, before it transfers funds to a project funded under 49 U.S.C. 5336, that project has been or will have been coordinated with private nonprofit providers of services under 49 U.S.C. 5310;

E. In compliance with 49 U.S.C. 5310(d)(2)(C), the State certifies that allocations to subrecipients of financial assistance authorized under 49 U.S.C. 5310 or subsection 3012(b) of SAFETEA–LU will be distributed on a fair and equitable basis; and

F. In compliance with 49 U.S.C. 5310(d)(2)(B) and subsection 3012(b)(2) of SAFETEA–LU, the State certifies that: (1) projects it has selected or will select for assistance under that program were derived from a locally developed, coordinated public transit-human services transportation plan; and (2) the plan was developed through a process that included representatives of public, private, and nonprofit transportation and human services providers and participation by the public.

18. NONURBANIZED AREA FORMULA PROGRAM FOR STATES

The provisions of 49 U.S.C. 5311 establishing the Nonurbanized Area Formula Program for States do not impose, as a pre-condition of award, any explicit certification or assurance requirements established specifically for that program. Only a State or a State organization acting as the Recipient on behalf of a State (State) may be a direct recipient of this Nonurbanized Area Formula Program assistance. Separate certifications and assurances have been established in Category 22 for an Indian Tribe that is an Applicant for Tribal Transit Program assistance authorized by 49 U.S.C. 5311(c)(1).

Before FTA may award Nonurbanized Area Formula Program assistance to a State, the U.S. Secretary of Transportation or his or her designee is required to make the pre-award determinations required by 49 U.S.C. 5311. Because certain information is needed before FTA can make those determinations, each State is requested to provide the following certifications and assurances on behalf of itself and its subrecipients. Unless FTA determines otherwise in writing, the State itself is ultimately responsible for compliance with its certifications and assurances even though a subrecipient, lessee, third party contractor, or other participant may participate in that project. Consequently, in providing certifications and assurances that involve the compliance of its prospective subrecipients, the State is strongly encouraged to take the appropriate measures, including but not limited to obtaining sufficient documentation from each subrecipient, to assure the validity of all certifications and assurances the State has made to FTA. A State that fails to provide these certifications and assurances on behalf of itself and its subrecipients may be determined ineligible for a grant of Federal assistance under 49 U.S.C. 5311 if FTA lacks sufficient information from which to make those determinations required by Federal laws and regulations governing the Nonurbanized Area Formula Program authorized by 49 U.S.C. 5311. The State is thus requested to select Category "18."

The State or State organization serving as the Applicant and that administers, on behalf of the State (State) the Nonurbanized Area Formula Program for States authorized by 49 U.S.C. 5311, assures on behalf of itself and its subrecipients as follows:

A. The State has or will have the necessary legal, financial, and managerial capability to apply for, receive, and disburse Federal assistance authorized for 49 U.S.C. 5311; and to carry out each project, including the safety and security aspects of that project;

B. The State has or will have satisfactory continuing control over the use of project equipment and facilities;

C. The State assures that the project equipment and facilities will be adequately maintained;

D. In compliance with 49 U.S.C. 5311(b)(2)(C)(i), the State's program has provided for a fair distribution of Federal assistance authorized for 49 U.S.C. 5311 within the State, including Indian reservations within the State;

E. In compliance with 49 U.S.C. 5311(b)(2)(C)(ii), the State's program provides or will provide the maximum feasible coordination of public transportation service to receive assistance under 49 U.S.C. 5311 with transportation service assisted by other Federal sources;

F. The projects in the State's Nonurbanized Area Formula Program are included in the Statewide Transportation Improvement Program and, to the extent applicable, the projects are included in a metropolitan Transportation Improvement Program;

G. The State has or will have available and will provide the amount of funds required by 49 U.S.C. 5311(g) for the local share, and that those funds will be provided from approved non-Federal sources except as permitted by Federal law; and

H. In compliance with 49 U.S.C. 5311(f), the State will expend not less than fifteen (15) percent of its Federal assistance authorized under 49 U.S.C. 5311 to develop and support intercity bus transportation within the State, unless the chief executive officer of the State, or his or her designee, after consultation with affected intercity bus service providers, certifies to the Federal Transit Administrator, apart from these certifications and assurances herein, that the intercity bus service needs of the State are being adequately met.

19. JOB ACCESS AND REVERSE COMMUTE FORMULA GRANT PROGRAM

Each Applicant for Job Access and Reverse Commute (JARC) Formula Grant Program assistance authorized under 49 U.S.C. 5316 is required to provide the following certifications on behalf of itself and any subrecipient that may be implementing its project. Unless FTA determines otherwise in writing, the Applicant itself is ultimately responsible for compliance with its

certifications and assurances even though a subrecipient, lessee, third party contractor, or other participant may participate in that project. Consequently, in providing certifications and assurances that involve the compliance of its prospective subrecipients, the Applicant is strongly encouraged to take the appropriate measures, including but not limited to obtaining sufficient documentation from each subrecipient, to assure the validity of all certifications and assurances the Applicant has made to FTA. FTA may not award Federal assistance for the JARC Formula Grant Program until the Applicant provides these certifications by selecting Category "19."

A. As required by 49 U.S.C. 5316(f)(1), which makes the requirements of 49 U.S.C. 5307 applicable to Job Access and Reverse Commute (JARC) formula grants, and 49 U.S.C. 5307(d)(1), the Applicant for JARC Formula Program assistance authorized under 49 U.S.C. 5316, certifies on behalf of itself and its subrecipients, if any, as follows:

(1) In compliance with 49 U.S.C. 5307(d)(1)(A), the Applicant has or will have the legal, financial, and technical capacity to carry out its proposed program of projects, including the safety and security aspects of that program;

(2) In compliance with 49 U.S.C. 5307(d)(1)(B), the Applicant has or will have satisfactory continuing control over the use of project equipment and facilities;

(3) In compliance with 49 U.S.C. 5307(d)(1)(C), the Applicant will adequately maintain the project equipment and facilities;

(4) In compliance with 49 U.S.C. 5307(d)(1)(D), the Applicant will assure that any elderly individual, any individual with disabilities, or any person presenting a Medicare card issued to himself or herself pursuant to title II or title XVIII of the Social Security Act (42 U.S.C. 401 *et seq.* or 42 U.S.C. 1395 *et seq.*), will be charged for transportation during non-peak hours using or involving a facility or equipment of a project financed with Federal assistance authorized under 49 U.S.C. 5316 not more than fifty (50) percent of the peak hour fare;

(5) In compliance with 49 U.S.C. 5307(d)(1)(E), the Applicant, in carrying out a procurement financed with Federal assistance authorized under 49 U.S.C. 5316: (1) will use competitive procurement (as defined or approved by FTA), (2) will not use exclusionary or discriminatory specifications in its procurements, (3) will comply with applicable Buy America laws, and (4) will comply with the general provisions for FTA assistance of 49 U.S.C. 5323 and the third party procurement requirements of 49 U.S.C. 5325;

(6) In compliance with 49 U.S.C. 5316(f)(1) and 49 U.S.C. 5307(d)(1)(F), the Applicant certifies that (1) with respect to financial assistance authorized under 49 U.S.C. 5316, it will conduct in cooperation with the appropriate MPO an areawide solicitation for applications, and make awards on a competitive basis and (2) with respect to financial assistance authorized under 49 U.S.C. 5316, it will conduct a statewide solicitation for applications, and make awards on a competitive basis; and that these activities will be carried out in a manner that complies with or will comply with 49 U.S.C. 5307(c);

(7) The Applicant has or will have available and will provide the amount of funds required by 49 U.S.C. 5316(h) for the local share, and that those funds will be provided from approved non-Federal sources except as permitted by Federal law; and

(8) In compliance with 49 U.S.C. 5307(d)(1)(H), the Applicant will comply with: (1) 49 U.S.C. 5301(a) (requirements for public transportation systems that maximize the safe, secure, and efficient mobility of individuals, minimize environmental impacts, and minimize transportation-related fuel consumption and reliance on foreign oil); and (2) 49 U.S.C. 5301(d) (special efforts to design and provide public transportation for elderly individuals and individuals with disabilities); and (3) 49 U.S.C. 5303 through 5306 (planning and private enterprise requirements);

B. In compliance with 49 U.S.C. 5316(d), the Applicant certifies that (1) with respect to financial assistance authorized under 49 U.S.C. 5316(c)(1)(A), it will conduct in cooperation with the appropriate MPO an areawide solicitation for applications, and make awards on a competitive basis and (2) with respect to financial assistance authorized under 49 U.S.C. 5316(c)(1)(B) or 49 U.S.C. 5316(c)(1)(C), it will conduct a statewide solicitation for applications, and make awards on a competitive basis;

C. In compliance with 49 U.S.C. 5316(f)(2), the Applicant certifies that any allocations to subrecipients of financial assistance authorized under 49 U.S.C. 5316 will be distributed on a fair and equitable basis;

D. In compliance with 49 U.S.C. 5316(g)(2), the Applicant certifies that, before it transfers funds to a project funded under 49 U.S.C. 5336, that project has been or will have been coordinated with private nonprofit providers of services;

E. In compliance with 49 U.S.C. 5316(g)(3), the Applicant certifies that: (1) the projects it has selected or will select for assistance under that program were derived from a locally developed, coordinated public transit-human services transportation plan; and (2) the plan was developed through a process that included representatives of public, private, and nonprofit transportation and human services providers and participation by the public; and

F. In compliance with 49 U.S.C. 5316(c)(3), before the Applicant uses funding apportioned under 49 U.S.C. 5316(c)(1)(B) or (C) for projects serving an area other than that specified in 49 U.S.C. 5316(2)(B) or (C), the Applicant certifies that the chief executive officer of the State, or his or her designee will have certified to the Federal Transit Administrator, apart from these certifications herein, that all of the objectives of 49 U.S.C. 5316 are being met in the area from which such funding would be derived.

20. NEW FREEDOM PROGRAM

Each Applicant for New Freedom Program assistance authorized under 49 U.S.C. 5317 must provide the following certifications on behalf of itself and any subrecipient that may be implementing its project. Unless FTA determines otherwise in writing, the Applicant itself is ultimately responsible for compliance with its certifications and assurances even though a subrecipient, lessee, third party contractor, or other participant may participate in that project. Consequently, in providing certifications and assurances that involve the compliance of its prospective subrecipients, the Applicant is strongly encouraged to take the appropriate measures, including but not limited to obtaining sufficient documentation from each subrecipient, to assure the validity of all certifications and assurances the Applicant has made to FTA. FTA may not award Federal assistance for the New Freedom Program until the Applicant provides these certifications by selecting Category "20."

A. As required by 49 U.S.C. 5317(e)(1), which makes the requirements of 49 U.S.C. 5310 applicable to New Freedom grants to the extent the Federal Transit Administrator or his or her designee determines appropriate, by 49 U.S.C. 5310(d)(1), which makes the requirements of 49 U.S.C. 5307 applicable to Elderly Individuals and Individuals with Disabilities Formula grants to the extent the Federal Transit Administrator or his or her designee determines appropriate, and by 49 U.S.C. 5307(d)(1), the Applicant for New Freedom Program assistance authorized under 49 U.S.C. 5317 certifies and assures on behalf of itself and its subrecipients, if any, as follows:

(1) In compliance with 49 U.S.C. 5307(d)(1)(A), the Applicant has or will have the legal, financial, and technical capacity to carry out its proposed program of projects, including the safety and security aspects of that program;

(2) In compliance with 49 U.S.C. 5307(d)(1)(B), the Applicant has or will have satisfactory continuing control over the use of project equipment and facilities;

(3) In compliance with 49 U.S.C. 5307(d)(1)(C), the Applicant will adequately maintain the project equipment and facilities;

(4) In compliance with 49 U.S.C. 5307(d)(1)(E), the Applicant, in carrying out a procurement financed with Federal assistance authorized under 49 U.S.C. 5317: (1) will use competitive procurement (as defined or approved by FTA), (2) will not use exclusionary or discriminatory specifications in its procurements, (3) will comply with applicable Buy America laws, and (4) will comply with the general provisions for FTA assistance of 49 U.S.C. 5323 and the third party procurement requirements of 49 U.S.C. 5325;

(5) The Applicant has or will have available and will provide the amount of funds required by 49 U.S.C. 5317(g) for the local share, and that those funds will be provided from approved non-Federal sources except as permitted by Federal law; and

(6) In compliance with 49 U.S.C. 5307(d)(1)(H), the Applicant will comply with: (1) 49 U.S.C. 5301(a) (requirements for public transportation systems that maximize the safe, secure, and efficient mobility of individuals, minimize environmental impacts, and minimize transportation-related fuel consumption and reliance on foreign oil); (2) 49 U.S.C. 5301(d) (special efforts to design and provide public transportation for elderly individuals and individuals with

disabilities); and (3) 49 U.S.C. 5303 through 5306 (planning and private enterprise requirements);

B. In compliance with 49 U.S.C. 5317(d), the Applicant certifies that (1) with respect to financial assistance authorized under 49 U.S.C. 5317(c)(1)(A), it will conduct in cooperation with the appropriate MPO an areawide solicitation for applications, and make awards on a competitive basis and (2) with respect to financial assistance authorized under 49 U.S.C. 5317(c)(1)(B) or financial assistance authorized under 49 U.S.C. 5317(c)(1)(C), it will conduct a statewide solicitation for applications, and make awards on a competitive basis;

C. In compliance with 49 U.S.C. 5317(f)(2), the Applicant certifies that, before it transfers funds to a project funded under 49 U.S.C. 5336, that project has been or will have been coordinated with private nonprofit providers of services;

D. In compliance with 49 U.S.C. 5317(e)(2), the Applicant certifies that any allocations to subrecipients of financial assistance authorized under 49 U.S.C. 5317 will be distributed on a fair and equitable basis; and

E. In compliance with 49 U.S.C. 5317(f)(3), the Applicant certifies that: (1) the projects it has selected or will select for assistance under that program were derived from a locally developed, coordinated public transit-human services transportation plan; and (2) the plan was developed through a process that included representatives of public, private, and nonprofit transportation and human services providers and through participation by the public.

21. PAUL S. SARBANES TRANSIT IN PARKS PROGRAM

Each State, Tribal area, or local government authority that is an Applicant for Paul S. Sarbanes Transit in Parks Program assistance (Applicant) authorized by 49 U.S.C. 5320, is required to provide the following certifications. FTA may not award assistance for the Paul S. Sarbanes Transit in Parks Program to the Applicant until the Applicant provides these certifications by selecting Category "21."

A. As required by 49 U.S.C. 5320(i), which makes the requirements of 49 U.S.C. 5307 applicable to the Paul S. Sarbanes Transit in Parks Program to the extent the Federal Transit Administrator or his or her designee determines appropriate, and 49 U.S.C. 5307(d)(1), the Applicant certifies as follows:

(1) In compliance with 49 U.S.C. 5307(d)(1)(A), the Applicant has or will have the legal, financial, and technical capacity to carry out its proposed project, including the safety and security aspects of that project;

(2) In compliance with 49 U.S.C. 5307(d)(1)(B), the Applicant has or will have satisfactory continuing control over the use of project equipment and facilities;

(3) In compliance with 49 U.S.C. 5307(d)(1)(C), the Applicant will adequately maintain the project equipment and facilities;

(4) In compliance with 49 U.S.C. 5307(d)(1)(E), in carrying out a procurement financed with Federal assistance authorized under 49 U.S.C. 5320, the Applicant: (1) will use competitive procurement (as defined or approved by FTA), (2) will not use exclusionary or discriminatory specifications in its procurements, (3) will comply with applicable Buy America laws, and (4) will comply with the general provisions for FTA assistance of 49 U.S.C. 5323 and the third party procurement requirements of 49 U.S.C. 5325;

(5) In compliance with 49 U.S.C. 5307(d)(1)(F) and with 49 U.S.C. 5320(e)(2)(C), the Applicant has complied with or will comply with the requirements of 49 U.S.C. 5307(c). Specifically, it: (1) has made available, or will make available, to the public information on the amounts available for the Paul S. Sarbanes Transit in Parks Program, 49 U.S.C. 5320, and the projects it proposes to undertake; (2) has developed or will develop, in consultation with interested parties including private transportation providers, projects to be financed; (3) has published or will publish a list of proposed projects in a way that affected citizens, private transportation providers, and local elected officials have the opportunity to examine the proposed projects and submit comments on the proposed projects and the performance of the Applicant; (4) has provided or will provide an opportunity for a public hearing to obtain the views of citizens on the proposed projects; (5) has assured or will assure that the proposed projects provide for the coordination of transportation services assisted under 49 U.S.C. 5336 with transportation services assisted by another Federal government source; (6) has considered or will consider the comments and views received, especially those of private transportation providers, in preparing its final list of projects; and (7) has made or will make the final list of projects available to the public;

(6) In compliance with 49 U.S.C. 5307(d)(1)(H), the Applicant will comply with: (1) 49 U.S.C. 5301(a) (requirements for public transportation systems that maximize the safe, secure, and efficient mobility of individuals, minimize environmental impacts, and minimize transportation-related fuel consumption and reliance on foreign oil); (2) 49 U.S.C. 5301(d) (special efforts to design and provide public transportation for elderly individuals and individuals with disabilities); and (3) 49 U.S.C. 5303 through 5306 (planning and private enterprise requirements); and

(7) In compliance with 49 U.S.C. 5307(d)(1)(I), the Applicant has a locally developed process to solicit and consider public comment before raising a fare or implementing a major reduction of public transportation; and

B. In compliance with 49 U.S.C. 5320(e)(2)(A), (B), and (D), the Applicant assures that it will:

(1) Comply with the metropolitan planning provisions of 49 U.S.C. 5303;

(2) Comply with the statewide planning provisions of 49 U.S.C. 5304; and

(3) Consult with the appropriate Federal land management agency during the planning process.

22. TRIBAL TRANSIT PROGRAM

Each Applicant for Tribal Transit Program assistance must provide all certifications and assurances set forth below. Except to the extent that FTA determines otherwise in writing, FTA may not award any Federal assistance under the Tribal Transit Program until the Applicant provides these certifications and assurances by selecting Category "22."

In accordance with 49 U.S.C. 5311(c)(1) that authorizes the Secretary of Transportation to establish terms and conditions for direct grants to Indian Tribal governments, the Applicant certifies and assures as follows:

A. The Applicant assures that:

(1) It has or will have the necessary legal, financial, and managerial capability to apply for, receive, and disburse Federal assistance authorized for 49 U.S.C. 5311; and to carry out each project, including the safety and security aspects of that project;

(2) It has or will have satisfactory continuing control over the use of project equipment and facilities;

(3) The project equipment and facilities will be adequately maintained; and

(4) Its project will achieve maximum feasible coordination with transportation service assisted by other Federal sources;

B. In accordance with 49 CFR 18.36(g)(3)(ii), the Applicant certifies that its procurement system will comply with the requirements of 49 CFR 18.36, or will inform FTA promptly that its procurement system does not comply with 49 CFR 18.36;

C. To the extent applicable to the Applicant or its Project, the Applicant certifies that it will comply with the certifications, assurances, and agreements in Category 08 (Bus Testing), Category 09 (Charter Bus Agreement), Category 10 (School Transportation Agreement), Category 11 (Demand Responsive Service), Category 12 (Alcohol Misuse and Prohibited Drug Use), and Category 14 (National Intelligent Transportation Systems Architecture and Standards) of this document; and

D. If its application exceeds $100,000, the Applicant agrees to comply with the certification in Category 02 (Lobbying) of this document.

23. TIFIA PROJECTS

Each Applicant for Transportation Infrastructure Finance and Innovation Act (TIFIA) credit assistance authorized under 23 U.S.C. chapter 6, is required to provide the following certifications. FTA may not award TIFIA credit assistance to the Applicant until the Applicant provides these certifications by selecting Category "23."

A. As required by 49 U.S.C. 5323(o), which makes the requirements of 49 U.S.C. 5307 applicable to Applicants seeking TIFIA credit assistance authorized under 23 U.S.C. chapter 6, and by 49 U.S.C. 5307(d)(1), the Applicant certifies as follows:

(1) In compliance with 49 U.S.C. 5307(d)(1)(A), the Applicant has or will have the legal, financial, and technical capacity to carry out its proposed program of projects, including the safety and security aspects of that program;

(2) In compliance with 49 U.S.C. 5307(d)(1)(B), the Applicant has or will have satisfactory continuing control over the use of project equipment and facilities;

(3) In compliance with 49 U.S.C. 5307(d)(1)(C), the Applicant will adequately maintain the project equipment and facilities;

(4) In compliance with 49 U.S.C. 5307(d)(1)(D), the Applicant will assure that any elderly individual, any individual with disabilities, or any person presenting a Medicare card issued to himself or herself pursuant to title II or title XVIII of the Social Security Act (42 U.S.C. 401 *et seq.* or 42 U.S.C. 1395 *et seq.*), will be charged for transportation during non-peak hours using or involving a facility or equipment of a project financed with Federal assistance authorized under 23 U.S.C. chapter 6, not more than fifty (50) percent of the peak hour fare;

(5) In compliance with 49 U.S.C. 5307(d)(1)(E), the Applicant, in carrying out a procurement financed with Federal assistance authorized under 23 U.S.C. chapter 6: (1) will use competitive procurement (as defined or approved by FTA), (2) will not use exclusionary or discriminatory specifications in its procurements, (3) will comply with applicable Buy America laws, and (4) will comply with the general provisions for FTA assistance of 49 U.S.C. 5323 and the third party procurement requirements of 49 U.S.C. 5325;

(6) In compliance with 49 U.S.C. 5307(d)(1)(F), the Applicant has complied with or will comply with the requirements of 49 U.S.C. 5307(c). Specifically, it: (a) Has made available, or will make available, to the public information on the amounts available for TIFIA credit assistance, 23 U.S.C. chapter 6, and the projects it proposes to undertake; (b) has developed or will develop, in consultation with interested parties including private transportation providers, the proposed projects to be financed; (c) has published or will publish a list of projects in a way that affected citizens, private transportation providers, and local elected officials have the opportunity to examine the proposed projects and submit comments on the proposed projects and the performance of the Applicant; (d) has provided or will provide an opportunity for a public hearing to obtain the views of citizens on the proposed projects; (e) has assured or will assure that the proposed projects provide for the coordination of transportation services assisted under 49 U.S.C. 5336 with transportation services assisted by another Federal government source; (f) has considered or will consider the comments and views received, especially those of private transportation providers, in preparing its final list of projects; and (g) has made or will make the final list of projects available to the public;

(7) In compliance with 49 U.S.C. 5307(d)(1)(G), the Applicant has or will have available and will provide the amount of funds required for the local share, and that those funds will be provided from approved non-Federal sources except as permitted by Federal law;

(8) In compliance with 49 U.S.C. 5307(d)(1)(H), (1) the Applicant will comply with: 49 U.S.C. 5301(a) (requirements for public transportation systems that maximize the safe, secure, and efficient mobility of individuals, minimize environmental impacts, and minimize transportation-related fuel consumption and reliance on foreign oil); (2) 49 U.S.C. 5301(d) (special efforts to design and provide public transportation for elderly individuals and individuals with disabilities); and (3) 49 U.S.C. 5303 through 5306 (planning and private enterprise requirements);

(9) In compliance with 49 U.S.C. 5307(d)(1)(I), the Applicant has a locally developed process to solicit and consider public comment before raising a fare or implementing a major reduction of public transportation;

(10) To the extent that the Applicant will be using funds authorized under 49 U.S.C. 5307 for the project, in compliance with 49 U.S.C. 5307(d)(1)(J), each Federal fiscal year, the Applicant will spend at least one (1) percent of those funds authorized under 49 U.S.C. 5307 for public transportation security projects (this includes only capital projects in the case of an Applicant serving an urbanized area with a population of 200,000 or more), unless the Applicant has certified to FTA that such expenditures are not necessary. Public transportation security projects include increased lighting in or adjacent to a public transportation system (including bus stops, subway stations, parking lots, and garages), increased camera surveillance of an area in or adjacent to that system, emergency telephone line or lines to contact law enforcement or security personnel in an area in or adjacent to that system, and any other project intended to increase the security and safety of an existing or planned public transportation; and

(11) To the extent that the Applicant will be using funds authorized under 49 U.S.C. 5307 for the project, in compliance with 49 U.S.C. 5309(d)(1)(K): (1) An Applicant that serves an urbanized area with a population of at least 200,000 will expend not less than one (1) percent of the amount it receives each Federal fiscal year under 49 U.S.C. 5307 for transit enhancements, as defined at 49 U.S.C. 5302(a), and (2) if it has received transit enhancement funds authorized by 49 U.S.C. 5307(k)(1), its quarterly report for the fourth quarter of the preceding Federal fiscal year includes a list of the projects it has implemented during that Federal fiscal year using those funds, and that report is incorporated by reference and made part of its certifications and assurances; and

B. As required by 49 U.S.C. 5323(o), which makes the requirements of 49 U.S.C. 5309 applicable to Applicants seeking TIFIA credit assistance authorized under 23 U.S.C. chapter 6, and by 49 U.S.C. 5309(g)(2)(B)(iii), 5309(g)(3)(B)(iii), and 5309(i)(2)(C), the Applicant certifies that it will not seek reimbursement for interest and other financing costs incurred in connection with the Project unless the Applicant is eligible to receive Federal assistance for those expenses and the Applicant's records demonstrate that it has used reasonable diligence in seeking the most favorable financing terms underlying those costs, to the extent FTA may require.

24. DEPOSITS OF FEDERAL FINANCIAL ASSISTANCE TO STATE INFRASTRUCTURE BANKS

The State organization that administers the State Infrastructure Bank (SIB) Program on behalf of a State (State) and that is also an Applicant for Federal assistance authorized under 49 U.S.C. chapter 53 that it intends to deposit in its SIB is requested to provide the following assurances on behalf of itself, its SIB, and each subrecipient. Unless FTA determines otherwise in writing, the State itself is ultimately responsible for compliance with its certifications and assurances even though the SIB and a subrecipient may participate in that project. Consequently, in providing certifications and assurances that involve the compliance of its SIB and prospective subrecipients, the State is strongly encouraged to take the appropriate measures, including but not limited to obtaining sufficient documentation from the SIB and each subrecipient, to assure the validity of all certifications and assurances the State has made to FTA. FTA may not award Federal assistance for the SIB Program to the State until the State provides these assurances by selecting Category "24."

The State organization, serving as the Applicant (State) for Federal assistance for its State Infrastructure Bank (SIB) Program authorized by section 1602 of SAFETEA–LU, now codified at 23 U.S.C. 610, or by section 1511 of TEA–21, 23 U.S.C. 181 note, or by section 350 of the National Highway System Designation Act of 1995, as amended, 23 U.S.C. 181 note, agrees and assures the agreement of its SIB and the agreement of each recipient of Federal assistance derived from the SIB within the State (subrecipient) that each public transportation project financed with Federal assistance derived from SIB will be administered in accordance with:

A. Applicable provisions of section 1602 of SAFETEA–LU, now codified at 23 U.S.C. 610, or by section 1511 of TEA–21, 23 U.S.C. 181 note, or by section 350 of the National Highway System Designation Act of 1995, as amended, 23 U.S.C. 181;

B. The provisions of the FHWA, FRA, and FTA or the FHWA and FTA cooperative agreement with the State to establish the State's SIB Program;

C. The provisions of the FTA grant agreement with the State that provides Federal assistance for the SIB, except that any provision of the Federal Transit Administration Master Agreement incorporated by reference into that grant agreement will not apply if it conflicts with any provision of section 1602 of SAFETEA–LU, now codified at 23 U.S.C. 610, or section 1511 of TEA–21, 23 U.S.C. 181 note, or section 350 of the National Highway System Designation Act of 1995, as amended, 23 U.S.C. 181 note, or Federal guidance pertaining to the SIB Program, the provisions of the cooperative agreement establishing the SIB Program within the State, or the provisions of the FTA grant agreement;

D. The requirements applicable to projects of 49 U.S.C. 5307 and 5309, as required by 49 U.S.C. 5323(o); and

E. The provisions of applicable Federal guidance that may be issued and

amendments thereto, unless FTA has provided written approval of an alternative procedure or course of action.

##

Selection and Signature Page(s) follow.

BILLING CODE P

APPENDIX A

FEDERAL FISCAL YEAR 2011 CERTIFICATIONS AND ASSURANCES FOR FEDERAL TRANSIT ADMINISTRATION ASSISTANCE PROGRAMS

(Signature page alternative to providing Certifications and Assurances in TEAM-Web)

Name of Applicant: _____

The Applicant agrees to comply with applicable provisions of Categories 01 – 24. _____

OR

The Applicant agrees to comply with applicable provisions of the Categories it has selected:

Category	Description	
01.	Assurances Required For Each Applicant.	_____
02.	Lobbying.	_____
03.	Procurement Compliance.	_____
04.	Protections for Private Providers of Public Transportation.	_____
05.	Public Hearing.	_____
06.	Acquisition of Rolling Stock for Use in Revenue Service.	_____
07.	Acquisition of Capital Assets by Lease.	_____
08.	Bus Testing.	_____
09.	Charter Service Agreement.	_____
10.	School Transportation Agreement.	_____
11.	Demand Responsive Service.	_____
12.	Alcohol Misuse and Prohibited Drug Use.	_____
13.	Interest and Other Financing Costs.	_____
14.	Intelligent Transportation Systems.	_____
15.	Urbanized Area Formula Program.	_____
16.	Clean Fuels Grant Program.	_____
17.	Elderly Individuals and Individuals with Disabilities Formula Program and Pilot Program.	_____
18.	Nonurbanized Area Formula Program for States.	_____
19.	Job Access and Reverse Commute Program.	_____
20.	New Freedom Program.	_____
21.	Paul S. Sarbanes Transit in Parks Program.	_____
22.	Tribal Transit Program.	_____
23.	TIFIA Projects	_____
24.	Deposits of Federal Financial Assistance to a State Infrastructure Banks.	_____

APPENDIX A

FEDERAL FISCAL YEAR 2011 FTA CERTIFICATIONS AND ASSURANCES SIGNATURE PAGE

(Required of all Applicants for FTA assistance and all FTA Grantees with an active capital or formula project)

AFFIRMATION OF APPLICANT

Name of Applicant: _____

Name and Relationship of Authorized Representative: _____

BY SIGNING BELOW, on behalf of the Applicant, I declare that the Applicant has duly authorized me to make these certifications and assurances and bind the Applicant's compliance. Thus, the Applicant agrees to comply with all Federal statutes and regulations, and follow applicable Federal directives, and comply with the certifications and assurances as indicated on the foregoing page applicable to each application it makes to the Federal Transit Administration (FTA) in Federal Fiscal Year 2011.

FTA intends that the certifications and assurances the Applicant selects on the other side of this document, as representative of the certifications and assurances in this document, should apply, as provided, to each project for which the Applicant seeks now, or may later, seek FTA assistance during Federal Fiscal Year 2011.

The Applicant affirms the truthfulness and accuracy of the certifications and assurances it has made in the statements submitted herein with this document and any other submission made to FTA, and acknowledges that the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801 *et seq.*, and implementing U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR part 31 apply to any certification, assurance or submission made to FTA. The criminal provisions of 18 U.S.C. 1001 apply to any certification, assurance, or submission made in connection with a Federal public transportation program authorized in 49 U.S.C. chapter 53 or any other statute

In signing this document, I declare under penalties of perjury that the foregoing certifications and assurances, and any other statements made by me on behalf of the Applicant are true and correct.

Signature_____ Date: _____

Name_____
Authorized Representative of Applicant

AFFIRMATION OF APPLICANT'S ATTORNEY

For (Name of Applicant): _____

As the undersigned Attorney for the above named Applicant, I hereby affirm to the Applicant that it has authority under State, local, or tribal government law, as applicable, to make and comply with the certifications and assurances as indicated on the foregoing pages. I further affirm that, in my opinion, the certifications and assurances have been legally made and constitute legal and binding obligations on the Applicant.

I further affirm to the Applicant that, to the best of my knowledge, there is no legislation or litigation pending or imminent that might adversely affect the validity of these certifications and assurances, or of the performance of the project.

Signature_____ Date: _____

Name_____
Attorney for Applicant

Each Applicant for FTA financial assistance and each FTA Grantee with an active capital or formula project must provide an Affirmation of Applicant's Attorney pertaining to the Applicant's legal capacity. The Applicant may enter its signature in lieu of the Attorney's signature, provided the Applicant has on file this Affirmation, signed by the attorney and dated this Federal fiscal year.

[FR Doc. 2010–27563 Filed 11–1–10; 8:45 am]
BILLING CODE C

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket ID PHMSA–2010–0294]

Pipeline Safety: Control Room Management Implementation Workshop

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of workshop.

SUMMARY: PHMSA is conducting a workshop in conjunction with the National Association of Pipeline Safety Representatives (NAPSR) on the implementation of pipeline control room management. The workshop is intended to foster an understanding of the Control Room Management Rule issued by PHMSA on December 3, 2009, and is open to the public. Panel discussions will provide insight on topics associated with fatigue management and maximum hours of service, alarm management, and adequate information. Those attending the workshop will have the opportunity to ask questions about the rule while engaging in open discussions with various stakeholders including representatives from the public, regulatory, and industry. This workshop will also provide PHMSA input to further refine guidance material currently in development.

DATES: The workshop will be held on November 17, 2010. Name badge pick up and on-site registration will be available starting at 7:30 a.m., with the workshop taking place from 8 a.m. until approximately 5:15 p.m. Refer to the meeting website for updated agenda and times at *https://primis.phmsa.dot.gov/meetings/Mtg67.mtg.* The workshop will not be a live webcast, however, all workshop presentations and an audio recording will be available on the PHMSA meeting website. Workshop presentations will also be available on the meeting docket.

ADDRESSES: The workshop will be held at the Intercontinental Hotel, 2222 West Loop South, Houston, TX 77027. Hotel reservations under the "USDOT CRM Meeting" room block for the nights of November 16 and 17, 2010, can be made at 1–800–316–8645. A daily base rate of $109.00 is available. The meeting room will be posted at the hotel on the day of the workshop.

FOR FURTHER INFORMATION CONTACT: Karen Butler at 816–329–3835, or by e-mail at *karen.butler@dot.gov.*

ADDRESSES: *Registration:* Anyone may attend this free workshop. To help ensure that adequate space is provided, all attendees are encouraged to register for the workshop at *https://primis.phmsa.dot.gov/meetings/Mtg67.mtg.* Hotel reservations must be made by contacting the hotel directly.

Comments: Anyone may submit written comments, either before or after the workshop. Comments should reference Docket ID PHMSA–2010–0294. Comments may be submitted in the following ways:

- *E-Gov Web Site: http://www.regulations.gov.* This site allows the public to enter comments on any **Federal Register** notice issued by any agency. Follow the instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590.

Hand Delivery: DOT Docket Management System, Room W12–140, on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: Identify the Docket ID at the beginning of your comments. If you submit your comments by mail, submit two copies. If you wish to receive confirmation that PHMSA has received your comments, include a self-addressed stamped postcard. Internet users may submit comments at *http://www.regulations.gov.* **Note:** Comments will be posted without changes or edits to *http://www.regulations.gov* including any personal information provided.

Privacy Act Statement: Anyone may search the electronic form of all comments received for any of our dockets. You may review DOT's complete Privacy Act Statement in the **Federal Register** published April 11, 2000, (65 FR 19477).

Information on Services for Individuals with Disabilities: For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, please contact Karen Butler at 816–329–3835, or by e-mail at *karen.butler@dot.gov* by November 5, 2010.

SUPPLEMENTARY INFORMATION: On December 3, 2009, (74 FR 63310) PHMSA issued a final rule "Control Room Management/Human Factors" which became effective on February 1, 2010. The final rule amended the Federal pipeline safety regulations to address human factors and other aspects of control room management for certain pipelines where controllers use supervisory control and data acquisition (SCADA) systems. Under the final rule, pipeline operators must implement methods to reduce the risk associated with controller fatigue. In addition, certain operators must define the roles and responsibilities of controllers and provide controllers with the necessary information, training, and processes to fulfill these responsibilities. Affected operators must also manage alarms, ensure control room considerations are taken into account when changing pipeline equipment or configurations, and review reportable incidents for accidents to determine whether control room actions contributed to the event.

The workshop will include presentations highlighting several topical areas and the sharing of specific solutions based on initial feedback received from stakeholders. The panel format will offer the opportunity for dialogue and sharing of ideas to help PHMSA generate guidance material.

Preliminary Workshop Agenda

The preliminary agenda for the workshop includes:

(1) Introduction and Overview.
(2) Definitions and Control Room Specifics.
(3) Fatigue and Maximum Hours of Service (panel).
(4) Alarm Management (panel).
(5) Roles and Responsibilities.
(6) Adequate Information (panel).
(7) Remaining Code Sections.
(8) Open Question and Answer.
(9) Wrap Up and Path Forward.

Refer to the meeting Web site for a more detailed agenda: *https://primis.phmsa.dot.gov/meetings/Mtg67.mtg.*

Issued in Washington, DC on October 22, 2010.

Jeffrey D. Wiese,

Associate Administrator for Pipeline Safety.

[FR Doc. 2010–27564 Filed 11–1–10; 8:45 am]
BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Eighth Meeting: RTCA Special Committee 221: Aircraft Secondary Barriers and Alternative Flight Deck Security Procedures

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 221 meeting: Aircraft

Secondary Barriers and Alternative Flight Deck Security Procedures.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 221: Aircraft Secondary Barriers and Alternative Flight Deck Security Procedures

DATES: The meeting will be held November 16–17, 2010. November 16th from 12 p.m. to 5 p.m., November 17th from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., Colson Board Room, 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *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., Appendix 2), notice is hereby given for a RTCA Special Committee 221: Aircraft Secondary Barriers and Alternative Flight Deck Security Procedures meeting. The agenda will include:

- Welcome/Introductions/Administrative Remarks.
- Approval of Summary of the Seventh Meeting held September 14–15, 2010, RTCA Paper No. 187–10/SC221–021.
- Leadership Comments.
- Review of Working Group actions—Status Report.
- Discussion of Working Group reports: Re-allocation of groups, capture learning points, discuss additional or follow-on goals.
- Presentation of Final Report Draft.
- Break out Sessions—continue work on Final Report Draft.
- Approval and Tasking of Existing/Proposed Working Groups.
- Other Business—Including Proposed Agenda, Date and Place for Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, 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 October 22, 2010.

Robert L. Bostiga,

RTCA Advisory Committee.

[FR Doc. 2010–27643 Filed 11–1–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Austin & Texas Central Railroad

(Waiver Petition Docket Number FRA–2010–0149)

The Austin & Texas Central Railroad (ATCX), a Class III railroad, seeks a waiver of compliance from the requirements of 49 CFR part 223, Safety Glazing Standards *49 CFR 223.15 Requirements for existing passenger cars.* Specifically, ATCX has petitioned for one lightweight passenger car built in 1948, for the Denver Rio Grande & Western Railway in 1948. ATCX operates this car on 154.1 miles of track owned by the Capital Metro Transit Authority. Since the railroad's creation in 1992, the railroad has operated primarily between milepost (MP) 54.5 at Milby in Austin, Texas, and MP 115.0 at Burnet, Texas. Since before 1992, there have been no acts of vandalism involving any glazing location associated with the operation of a train. The railroad operates five other cars that operate under a previous waiver (Docket Number FRA–2008–0066). The maximum authorized speed for this train is 20 mph.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2010–0149) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Page 19477) or at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC on October 26, 2010.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2010–27567 Filed 11–1–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

National Railroad Passenger Corporation

[Waiver Petition Docket Number FRA–2010–0152]

The National Railroad Passenger Corporation (Amtrak) seeks a waiver for relief of sanctions from 49 CFR 240.117(e)(1) through (4), 240.305, and 240.307. These sections of the regulation relate to punitive actions that are required to be taken against locomotive engineers for the violation of certain railroad operating rules. Refer to 49 CFR part 240 for a detailed listing of these sections.

Amtrak and selected employees of Amtrak's rail system, represented by the Brotherhood of Locomotive Engineers and Trainmen (BLET) and the United Transportation Union (UTU), desire to participate in a Confidential Close Call Reporting System (C3RS) Demonstration Pilot Project sponsored by FRA's Office of Railroad Policy and Development and the Office of Railroad Safety. The C3RS Demonstration Pilot Project is one of the action items included in FRA's Rail Safety Action Plan announced on January 25, 2006.

In other industries such as aviation, implementation of "close call" reporting systems that shield the reporting employee from discipline (and the employer from punitive sanctions levied by the regulation) have contributed to major reductions in accidents. In March 2005, FRA completed an overarching memorandum of understanding (MOU) with railroad labor organizations and management to develop pilot programs to document close calls, *i.e.,* unsafe events that do not result in a reportable accident but very well could have. Participating railroads will be expected to develop corrective actions to address the problems that may be revealed. The aggregate data may prove useful in FRA's decisionmaking concerning regulatory and other options to address human factor-caused accidents. Experiences on the Norwegian Railway (Sernbaneverket) showed a 40-percent reduction in accidents after 3 years of implementation of a similar program. In a manufacturing environment, Syncrude, a mining company, experienced a 33-percent reduction in lost time frequency after 1 year of implementing a close call system.

Amtrak, BLET, and UTU have developed and signed an implementing memorandum of understanding (IMOU) (based on FRA's overarching MOU) as a first step in commencing the demonstration pilot project. The project would involve approximately 1,400 yard; road service, and yardmaster employees operating within the boundaries of the C3RS pilot demonstration project as defined below:

1. South Hampton Street, Boston, MA, from the eastern fouling point of the diamond at the east end of the yard to the western limits of the yard including the "Chute" track, including loop tracks.
2. New Haven Parcel G, New Haven, CT, from the westbound home signal on the lead track east into all yard tracks.
3. Sunnyside Yard, Long Island City, NY, all tracks in Sunnyside Yard east of "F" Interlocking, including loop tracks.
4. Penn Coach Yard and Race Street Engine House, Philadelphia, PA, between South Street and Spring Garden Street, to also include 1 and 2 lead tracks, excluding main tracks.
5. Washington, DC, all nonsignal tracks that may be accessed between New York Avenue and Virginia Avenue, exclusive of Station Tracks 7–30.
6. Miami, FL, the Miami Amtrak Station Tracks 1–4; all Hialeah Yard Tracks 1–6, Rip 1–3, the North and South Coach Yard leads. The Amtrak lead and loop track from a point south of the Amtrak hold-out signal, located at Milepost SXI033.1, which is the southern end of TCS territory, on the CSX Transportation Jacksonville Division, Miami Subdivision.
7. Los Angeles, CA, roundhouse lead from Control Point (CP) San Diego Jet south including all tracks in the North Yard, 8th Street S&I and adjacent tracks, the 90's Yard, Redondo Locomotive Shop, and the PM Line/Wheel Pit tracks. It would not include the Back Way track within the limits of CP Olympic.
8. Chicago, IL, Central Division Limits of Brighton Park Mechanical Facility; Chicago Terminal from and including 21st Street Interlocking, to and including CP Canal. The Chicago Terminal also includes all station tracks in Chicago Union Station and all tracks in the Amtrak Chicago Yard and mechanical facilities.
9. Seattle, WA, Seattle King Street Station to Lander Street for all tracks other than BNSF Railway mainline.

This IMOU was sent to FRA for consideration and accepted on May 11, 2010. As referenced in the IMOU, certain "close calls" may be properly reported by the employees involved and later discovered by Amtrak, for example, through subsequent retrospective analysis of locomotive event recorder data, etc. In order to encourage employee reporting of close calls, the IMOU contains provisions to shield the reporting employee from Amtrak discipline. Amtrak, BLET, and UTU also desire to shield the reporting employees and Amtrak from punitive sanctions that would otherwise arise as provided in selected sections of 49 CFR part 240 for properly reported close call events as defined in the C3RS IMOU. The waiver petition is requested for the duration of the C3RS Demonstration Project (5 years from implementation or until the demonstration project is completed, or until parties to the IMOU withdraw as described in the IMOU, whichever is first).

Note— Article 7.2 (of the IMOU) CONDITIONS UNDER WHICH A REPORTING EMPLOYEE IS NOT PROTECTED FROM AMTRAK DISCIPLINE AND/OR DECERTIFICATION AND FROM FRA ENFORCEMENT—Amtrak employees included in this C3RS/IMOU receive no protection from discipline and/or decertification or from FRA enforcement action when one or more of the following conditions occur:

1. The employee's action or lack of action was intended to damage Amtrak or another entity's operations or equipment or to injure other individuals, or the employee's action or lack of action purposely places others in danger (*e.g.,* sabotage).
2. The employee's action or lack of action involved a criminal offense.
3. The employee's behavior involved substance abuse or the inappropriate use of controlled substances.
4. The report is rejected in accordance with Article 6.1.
5. The event resulted in any type of train accident without regard to monetary damages.
6. The event caused or is alleged to have caused any injury, illness, or medical treatment of any kind to any person involved in the event.
7. The event resulted in an identifiable release of a hazardous material.
8. The event was a real-time observation made by an FRA-certified inspector or railroad employee, and was reported to and verified by Amtrak management, except as provided in Article 6.4.

Amtrak and other parties signatory to the IMOU dated May 11, 2010, believe the data from these properly reported close call incidents (as defined in the IMOU) will be invaluable in analysis and development of effective corrective actions. Without the requested waiver of sanctions and exemption from mandatory revocation of the engineer's certificate, the employees involved in the incidents described above will not file a report of the incidents. The incidents will likely go undetected and there will be no opportunity for analysis, data trending, or appropriate corrective actions.

All parties signatory to the IMOU and participating in the demonstration pilot project believe that the C3RS Demonstration Project and granting this waiver petition is in the public interest and consistent with improving railroad safety. Results of improved safety performance have also been observed in

other modes of transportation and other industries following the implementation of C3RS. The Federal Aviation Administration (FAA) reports numerous safety benefits from their C3RS compared to non-U.S. flight operations (See FAA Aviation Safety Reporting System Web site). Examples of C3RS benefits from the U.S. Coast Guard (USCG) have included: "Response cost decline 30–40 percent resulting in potential USCG savings of $12–$16 million and potential shipping industry savings of $39–$52 million: Potential reduction in seamen injuries and claims category savings range between 15–45 percent; potential savings industry-wide scale = $100's of millions." All parties believe that the improvements cited will have a significant impact on safety in Amtrak operations.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2010–0152) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of all 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 DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Page 19477–78) or at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC on October 27, 2010.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2010–27678 Filed 11–1–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Identity Theft Red Flags and Address Discrepancies Under the Fair and Accurate Credit Transactions Act of 2003

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on its proposal to extend this information collection.

DATES: Submit written comments on or before January 3, 2011.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from Ekita Mitchell (202) 906–6451, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS'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;

d. Ways to minimize the burden of the information collection on respondents, including through the use of information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: Identity Theft Red Flags and Address Discrepancies under the Fair and Accurate Credit Transactions Act of 2003.

OMB Number: 1550–0113.

Form Number: N/A.

Description: The Fair and Accurate Credit Transactions Act of 2003 (FACT Act) Section 114 amends section 615 of the Fair Credit Reporting Act (FCRA) to require the OTS, Office of the Comptroller of the Currency, Federal Reserve Board, Federal Deposit Insurance Corporation, National Credit Union Administration, and Federal Trade Commission (Agencies) to issue jointly guidelines for financial institutions and creditors regarding identity theft with respect to their account holders and customers. In developing the guidelines, the Agencies must identify patterns, practices, and specific forms of activity that indicate the possible existence of identity theft. The regulations require each financial institution and creditor to establish

reasonable policies and procedures for implementing the guidelines to identify possible risks to account holders or customers or to the safety and soundness of the institution or creditor.

The FACT Act Section 315 amends section 605 of the FCRA to require the Agencies to issue joint regulations providing guidance regarding reasonable policies and procedures that a user of consumer reports must employ when a user receives a notice of address discrepancy from a consumer reporting agency (CRA). The regulations describe reasonable policies and procedures for users of consumer reports to enable a user to form a reasonable belief that it knows the identity of the person for whom it has obtained a consumer report, and reconcile the address of the consumer with the CRA, if the user establishes a continuing relationship with the consumer and regularly and in the ordinary course of business furnishes information to the CRA.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 739.

Estimated Frequency of Response: On occasion.

Estimated Total Burden: 11,824 hours.

Dated: October 27, 2010.

Ira L. Mills,

Paperwork Clearance Officer, Office of Chief Counsel, Office of Thrift Supervision.

[FR Doc. 2010–27556 Filed 11–1–10; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

First Arizona Savings, FSB, Scottsdale, Arizona; Notice of Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Federal Deposit Insurance Corporation as sole Receiver for First Arizona Savings, FSB, Scottsdale, Arizona, (OTS No. 08489) on October 22, 2010.

Dated: October 26, 2010.

By the Office of Thrift Supervision.

Sandra E. Evans,

Federal Register Liaison.

[FR Doc. 2010–27490 Filed 11–1–10; 8:45 am]

BILLING CODE 6720–01–M

TENNESSEE VALLEY AUTHORITY

Notice of Sunshine Act Meeting; Meeting No. 10–05

November 4, 2010.

The TVA Board of Directors will hold a public meeting on November 4, 2010, at the TVA Browns Ferry Nuclear Plant Training Center Auditorium, Shaw Road & Nuclear Plant Road, Athens, Alabama 35611, to consider the matters listed below. The public may comment on any agenda item or subject at a *public listening session* which begins at 9 a.m. CDT. Immediately following the end of the public listening session, the meeting will be called to order to consider the agenda items listed below. **Please Note:** Speakers must pre-register online at *TVA.gov* or sign in before the meeting begins at 9 a.m. on the day of the meeting. The Board will answer questions from the news media following the Board meeting.

STATUS: Open.

Agenda

Old Business

Approval of minutes of August 20, 2010, Board Meeting.

New Business

1. Welcome.
2. President's Report.
3. Chairman's Report.

A. Board Governance matters, including the creation of the TVA Board Nuclear Oversight Committee and Committee membership assignments.

4. Report of the Audit, Risk, and Regulation Committee.

A. Selection of TVA's External Auditor for Fiscal Year 2011.

5. Report of the People and Performance Committee.

A. Compensation and Incentive Pay.

B. Medco Contract Extension.

6. Report of the Finance, Rates, and Portfolio Committee.

A. Section 13 Tax Equivalent Payments for Fiscal Year 2011.

B. Corporate insurance contract with Marsh.

C. Browns Ferry Nuclear Plant Cooling Capacity Project.

7. Report of the Customer and External Relations Committee.

A. Revised Policy on Renewable Energy Standards.

B. Transfer of the Monticello-East Kentucky 69–KV transmission line and associated easements.

C. Adoption of Board Practice: Delegation for Land Transactions.

D. Douglas Nolichucky Land Plan.

E. Regional Resource Stewardship Council member approval.

FOR MORE INFORMATION: Please call TVA Media Relations at (865) 632–6000, Knoxville, Tennessee. People who plan to attend the meeting and have special needs should call (865) 632–6000. Anyone who wishes to comment on any of the agenda in writing may send their comments to: TVA Board of Directors, Board Agenda Comments, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

Dated: October 28, 2010.

Ralph E. Rodgers,

Acting General Counsel and Secretary.

[FR Doc. 2010–27718 Filed 10–29–10; 11:15 am]

BILLING CODE 8120–08–P

DEPARTMENT OF VETERANS AFFAIRS

Allowance for Private Purchase of an Outer Burial Receptacle in Lieu of a Government-Furnished Graveliner for a Grave in a VA National Cemetery

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Public Law 104–275 was enacted on October 9, 1996. It allows the Department of Veterans Affairs (VA) to provide a monetary allowance towards the private purchase of an outer burial receptacle for use in a VA national cemetery. Under VA regulation (38 CFR 38.629), the allowance is equal to the average cost of Government-furnished graveliners less any administrative costs to VA. The law provides a veteran's survivors with the option of selecting a Government-furnished graveliner for use in a VA national cemetery where such use is authorized.

The purpose of this Notice is to notify interested parties of the average cost of Government-furnished graveliners, administrative costs that relate to processing and paying the allowance and the amount of the allowance payable for qualifying interments that occur during calendar year 2011.

FOR FURTHER INFORMATION CONTACT: Tamula Jones, Budget Operations and Field Support Division (41B1B), National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Telephone: 202–461–6688 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Under 38 U.S.C. 2306(e)(3) and (4) and Public Law 104–275, Section 213, VA may provide a monetary allowance for the private purchase of an outer burial receptacle for use in a VA national cemetery where its use is authorized. The allowance for qualified interments that occur during calendar year 2011 is

the average cost of Government-furnished graveliners in fiscal year 2010, less the administrative costs incurred by VA in processing and paying the allowance in lieu of the Government-furnished graveliner.

The average cost of Government-furnished graveliners is determined by taking VA's total cost during a fiscal year for single-depth graveliners that were procured for placement at the time of interment and dividing it by the total number of such graveliners procured by VA during that fiscal year. The calculation excludes both graveliners procured and pre-placed in gravesites as part of cemetery gravesite development projects and all double-depth graveliners. Using this method of computation, the average cost was determined to be $269.00 for fiscal year 2010.

The administrative costs incurred by VA consist of those costs that relate to processing and paying an allowance in lieu of the Government-furnished graveliner. These costs have been determined to be $9.00 for calendar year 2011.

The allowance payable for qualifying interments occurring during calendar year 2011, therefore, is $260.00.

Approved: October 26, 2010.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

[FR Doc. 2010–27546 Filed 11–1–10; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Tuesday,
November 2, 2010

Part II

Federal Reserve System

12 CFR Part 226
Truth in Lending; Proposed Rule

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–1393]

RIN No. 7100–AD55

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; request for public comment.

SUMMARY: On February 22, 2010 and June 29, 2010, the Board published in the **Federal Register** final rules amending Regulation Z's provisions that apply to open-end (not home-secured) credit plans, in each case in order to implement provisions of the Credit Card Accountability Responsibility and Disclosure Act of 2009. The Board believes that clarification is needed regarding compliance with certain aspects of the final rules. Accordingly, to facilitate compliance, the Board proposes to amend specific portions of the regulations and official staff commentary.

DATES: Comments must be received on or before January 3, 2011.

ADDRESSES: You may submit comments, identified by Docket No. R–1393 and RIN No. 7100–AD55, by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include the docket number and RIN number in the subject line of the message.
- *Facsimile:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Stephen Shin, Attorney, or Amy Henderson or Benjamin K. Olson, Counsels, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

The Credit Card Act

The Credit Card Accountability Responsibility and Disclosure Act of 2009 (Credit Card Act) was signed into law on May 22, 2009. Public Law 111–24, 123 Stat. 1734 (2009). The Credit Card Act primarily amended the Truth in Lending Act (TILA) and established a number of new substantive and disclosure requirements to establish fair and transparent practices pertaining to open-end consumer credit plans.

The requirements of the Credit Card Act that pertain to credit cards or other open-end credit for which the Board has rulemaking authority became effective in three stages. First, provisions generally requiring that consumers receive 45 days' advance notice of interest rate increases and significant changes in terms (new TILA Section 127(i)) and provisions regarding the amount of time that consumers have to make payments (revised TILA Section 163) became effective on August 20, 2009 (90 days after enactment of the Credit Card Act). A majority of the requirements under the Credit Card Act for which the Board has rulemaking authority, including, among other things, provisions regarding interest rate increases (revised TILA Section 171), over-the-limit transactions (new TILA Section 127(k)), and student cards (new TILA Sections 127(c)(8), 127(p), and 140(f)) became effective on February 22, 2010 (9 months after enactment). Finally, two provisions of the Credit Card Act addressing the reasonableness and proportionality of penalty fees and charges (new TILA Section 149) and re-evaluation by creditors of rate increases (new TILA Section 148) became effective on August 22, 2010 (15 months after enactment).

Implementation of Credit Card Act

The Board issued rules to implement the provisions of the Credit Card Act in stages, consistent with the statutory timeline established by Congress. On July 22, 2009, the Board published an interim final rule to implement the provisions of the Credit Card Act that became effective on August 20, 2009. *See* 74 FR 36077. On January 12, 2010, the Board issued a final rule adopting in final form the requirements of the July 2009 interim final rule and implementing the provisions of the Credit Card Act that became effective on February 22, 2010. *See* 75 FR 7658 (February 2010 Final Rule). On June 15, 2010, the Board issued a final rule implementing the provisions of the Credit Card Act that became effective on August 22, 2010. *See* 75 FR 37526 (June 2010 Final Rule).

Since publication of the February 2010 and June 2010 Final Rules, the Board has become aware that clarification is needed to resolve confusion regarding how institutions will comply with particular aspects of those rules. Accordingly, in order to provide guidance and facilitate compliance with the final rules, the Board proposes to amend portions of the regulations and the accompanying staff commentary. These proposed amendments are discussed in detail in Section III of this **SUPPLEMENTARY INFORMATION**.

Although comment is requested on the proposed amendments, the Board emphasizes that the purpose of this rulemaking is to clarify and facilitate compliance with the consumer protections contained in the February 2010 and June 2010 Final Rules, not to reconsider the need for—or the extent of—the protections implemented in those rules. Thus, commenters are encouraged to limit their submissions accordingly.

II. Statutory Authority

In the **SUPPLEMENTARY INFORMATION** for the February 2010 and June 2010 Final Rules, the Board set forth the sources of its statutory authority under the Truth in Lending Act and the Credit Card Act. *See* 75 FR 7662 and 75 FR 37528. For purposes of these proposed rules, the Board continues to rely on this legal authority.

III. Section-by-Section Analysis

Section 226.2 Definitions and Rules of Construction

2(a) Definitions

2(a)(15) Credit Card

2(a)(15)(ii) Credit Card Account Under an Open-End (Not Home-Secured)

Consumer Credit Plan

In the February 2010 Final Rule, the Board retained the pre-existing definition of "credit card" as any card, plate, or other single credit device that may be used from time to time to obtain credit. *See* § 226.2(a)(15)(i). However, the Board also defined a new, somewhat narrower term in order to implement the

provisions of the Credit Card Act that apply to "credit card account[s] under an open end consumer credit plan." Specifically, in a new § 226.2(a)(15)(ii), the Board defined the term "credit card account under an open-end (not home-secured) consumer credit plan" as meaning any open-end credit account accessed by a credit card except a home-equity plan subject to the requirements of § 226.5b accessed by a credit card or an overdraft line of credit accessed by a debit card.

The Board declined requests from industry commenters to exempt all lines of credit accessed solely by an account number from the definition in § 226.2(a)(15)(ii), noting Congress' apparent intent to apply the Credit Card Act broadly to products that meet the definition of "credit card." *See* 75 FR 7664–7665. However, the Board understands that this determination has caused uncertainty about whether *all* credit products accessed by an account number are subject to TILA's credit card provisions.

In particular, some institutions offer general purpose open-end lines of credit that are linked to a checking or other asset account with the same institution. The consumer can use the line's account number to request an extension of credit, which is then deposited into the asset account. The Board understands that there has been some confusion as to whether, in these circumstances, the account number is a "credit card" for purposes of § 226.2(a)(15)(i) and therefore a "credit card account under an open-end (not home-secured) consumer credit plan" for purposes of § 226.2(a)(15)(ii). Because most if not all credit accounts can be accessed in some fashion by an account number, the Board does not believe that Congress generally intended to treat account numbers as credit cards for purposes of TILA. However, the Board is concerned that, when an account number can be used to access an open-end line of credit to purchase goods or services, it would be inconsistent with the purposes of the Credit Card Act to exempt the line of credit from the protections provided for credit card accounts. For example, creditors may offer open-end credit accounts designed for online purchases that function like a traditional credit card account but can only be accessed using an account number. In these circumstances, the Board believes that TILA's credit card protections should apply.

Accordingly, the Board proposes to clarify the application of § 226.2(a)(15)(i) and (a)(15)(ii) to account numbers by amending comment 2(a)(15)–2, which provides illustrative examples of credit devices that are and are not credit cards. Specifically, the Board would add an additional example clarifying that an account number that accesses a credit account is not credit card, unless the account number can access an open-end line of credit to purchase goods or services. The comment would further clarify that, if, for example, a creditor provides a consumer with an open-end line of credit that can be accessed by an account number in order to transfer funds into another account (such as an asset account), the account number is not a credit card for purposes of § 226.2(a)(15)(i). However, if the account number can also access the line of credit in order to purchase goods or services (such as an account number that can be used to purchase goods or services on the Internet), the account number is a credit card for purposes of § 226.2(a)(15)(i). Furthermore, if the line of credit can also be accessed by a card (such as a debit card or prepaid card), then that card is a credit card for purposes of § 226.2(a)(15)(i).

In addition, the Board proposes to adopt a new comment 2(a)(15)–4, which would clarify the test used for determining whether an account is a credit card account under an open-end (not home-secured) consumer credit plan for purposes of § 226.2(a)(15)(ii). The Board would also amend the exception in § 226.2(a)(15)(ii)(B) to clarify that—like an overdraft line of credit accessed by a debit card—an overdraft line of credit accessed by an account number (such as when a debit card number or checking account number is used to make an online purchase that overdraws the asset account) is excluded from the definition of "credit card account under an open-end (not home-secured) consumer credit plan." Finally, for clarity and consistency, the Board would make non-substantive revisions to the exception for home-equity plans in § 226.2(a)(15)(ii)(A).

2(a)(15)(iii) Charge Card

The Board understands that there has been some confusion as to whether a charge card is a "credit card account under an open-end (not home-secured) consumer credit plan," as defined in § 226.2(a)(15)(ii). Section 226.2(a)(15)(iii) defines a "charge card" as a credit card on an account for which no periodic rate is used to compute a finance charge. The Board has historically applied the same requirements to credit and charge cards, unless otherwise stated. *See* § 226.2(a)(15); comment 2(a)(15)–3. Therefore, as discussed in the February 2010 Final Rule, the Board adopted a similar approach when implementing the provisions of the Credit Card Act. *See* 75 FR 7672–7673. Nevertheless, for clarity and consistency, the Board proposes to amend comment 2(a)(15)–3 to state that references to a credit card account under an open-end (not home-secured) consumer credit plan in Subpart B (Open-End Credit) and Subpart G (Special Rules Applicable to Credit Card Accounts and Open-End Credit Offered to Students) include charge cards unless otherwise stated.

The Board would also update the list of provisions in comment 2(a)(15)–3 that distinguish charge cards from credit cards. In addition, the Board would remove the statement in the comment that, when the term "credit card" is used in the listed provisions, it refers to credit cards other than charge cards. While generally accurate, this statement may be overbroad in certain circumstances. For example, the exemption in § 226.7(b)(12)(v)(A) and the safe harbor in § 226.52(b)(1)(ii)(C) are limited to charge card accounts that require payment of outstanding balances in full at the end of each billing cycle. Accordingly, the applicability of a particular provision should be determined based on a review of that provision and the relevant staff commentary.

Section 226.5 General Disclosure Requirements

5(b) Time of Disclosures

5(b)(2) Periodic Statements

Prior to the Credit Card Act, TILA Section 163 generally required creditors to send periodic statements for open-end consumer credit plans at least 14 days before the expiration of any period within which any credit extended may be repaid without incurring a finance charge (*i.e.,* a "grace period"). *See* 15 U.S.C. 1666b (2008). The Board's Regulation Z, however, extended this 14-day requirement to apply even if no grace period was provided. Specifically, prior to the 2009 amendments implementing the Credit Card Act, § 226.5(b)(2)(ii) required that creditors mail or deliver periodic statements at least 14 days before the date by which payment was due for purposes of avoiding not only finance charges as a result of the loss of a grace period but also any other charges (such as late payment fees). *See also* former comment 5(b)(2)(ii)–1 (2008). Thus, before the Credit Card Act, creditors were generally required to provide consumers with at least 14 days to make payments for all open-end consumer credit accounts.

Effective August 20, 2009, the Credit Card Act amended TILA Section 163 to generally prohibit a creditor from treating a payment as late or imposing additional finance charges with respect to open-end consumer credit plans unless the creditor mailed or delivered the periodic statement at least 21 days before the payment due date and the expiration of any grace period. *See* Credit Card Act § 106(b)(1). The Board's July 2009 interim final rule made corresponding amendments to § 226.5(b)(2)(ii) and the accompanying official staff commentary. *See* 74 FR 36077 (July 22, 2009). Because amended TILA 163 required that periodic statements be mailed at least 21 days before the payment due date for all open-end consumer credit accounts even if no grace period was provided, the amendments to § 226.5(b)(2)(ii) removed the pre-existing 14-day requirement as unnecessary.

However, in November 2009, the Credit CARD Technical Corrections Act of 2009 (Technical Corrections Act) further amended TILA Section 163. Public Law 111–93, 123 Stat. 2998 (Nov. 6, 2009). The Technical Corrections Act narrowed the requirement that statements be mailed or delivered at least 21 days before the payment due date to apply only to credit card accounts, rather than to all open-end consumer credit plans. However, open-end consumer credit plans that provide a grace period remain subject to the 21-day requirement in Section 163(b). In its February 2010 Final Rule, the Board narrowed the application of § 226.5(b)(2)(ii) for consistency with the Technical Corrections Act. However, in doing so, the Board inadvertently failed to reinsert the 14-day requirement for open-end consumer credit plans without a grace period.

The Board believes that it would be inconsistent with the purposes of the Credit Card Act for consumers to receive less time to make payments after its implementation than they did beforehand. Accordingly, pursuant to its authority under Section 105(a) of TILA and Section 2 of the Credit Card Act, the Board proposes to amend § 226.5(b)(2)(ii) to reinsert the 14-day requirement for open-end consumer credit plans that are not subject to the Credit Card Act's 21-day requirements. Specifically, the Board would revise § 226.5(b)(2)(ii) to require that, when an open-end account is not accessed by a credit card and does not provide a grace period, creditors must adopt reasonable procedures designed to ensure that periodic statements are mailed or delivered at least 14 days prior to the date on which the required minimum periodic payment must be made to avoid being treated as late. In addition, creditors would be required to adopt reasonable procedures designed to ensure that required minimum periodic payments received within 14 days after mailing or delivery of the periodic statement are not treated as late for any purpose. The Board would also revise the commentary to § 226.5(b)(2)(ii) for consistency with these proposed revisions.

Finally, the proposed rule would delete comment 5(b)(2)(iii)–1, which implemented the pre-Credit Card Act version of TILA Section 163 and was inadvertently retained in the February 2010 Final Rule.

Section 226.5a Credit and Charge Card Applications and Solicitations

5a(b) Required Disclosures

5a(b)(1) Annual Percentage Rate

Limitations on Rate Decreases

Section 226.5a(b)(1) requires that the tabular disclosure provided with credit and charge card applications and solicitations state each periodic rate that may be used to compute the finance charge on an outstanding balance for purchases, a cash advance, or a balance transfer, expressed as an annual percentage rate. Section 226.5a(b)(1)(i) clarifies this disclosure requirement when a rate is a variable rate. In part, § 226.5a(b)(1)(i) provides that a card issuer may not disclose any applicable limitations on rate increases or decreases in the table.

Section 226.55 sets forth limitations on rate increases applicable to credit card accounts under an open-end (not home-secured) consumer credit plan. Section 226.55(b)(2) provides that a card issuer may increase an annual percentage rate when (1) the rate varies according to an index that is not under the card issuer's control and is available to the general public, and (2) the rate increase is due to an increase in that index. In the February 2010 Final Rule, the Board adopted comment 55(b)(2)–2 that clarified that a card issuer exercises control over the operation of an index if the variable rate based on that index is subject to a fixed minimum rate or similar requirement that does not permit the variable rate to decrease consistent with reductions in the index.

The Board is proposing to amend § 226.5a(b)(1)(i) for conformity with comment 55(b)(2)–2. The Board is aware that, as a practical matter, § 226.55(b)(2) and comment 55(b)(2)–2 preclude card issuers from imposing a variable rate that is subject to a fixed minimum rate. Accordingly, the Board is proposing to delete as unnecessary language in § 226.5a(b)(1)(i) providing that a card issuer may not disclose any applicable limitations on rate decreases in the table. The Board notes that § 226.6(b)(2)(i)(A) contains analogous language regarding limitations on rate decreases. However, § 226.55(b)(2) applies only to credit card accounts under an open-end (not home-secured) consumer credit plan while § 226.6(b) applies to all open-end (not home-secured) credit. Therefore, the Board is not proposing to delete the reference to limitations on rate decreases from § 226.6(b)(2)(i)(A). *But see* the discussion in the supplementary information to § 226.9(c)(2)(v)(C) regarding the notice requirements that apply to an open-end (not home-secured) plan with a variable rate that is subject to a fixed minimum rate.

Loss of Employee Preferential Rates

If a rate may increase as a penalty for one or more events specified in the account agreement, § 226.5a(b)(1)(iv) requires that the card issuer disclose the increased rate that may apply, a brief description of the event or events that may result in the increased rate, and a brief description of how long the increased rate will remain in effect. This disclosure generally must appear in the § 226.5a table; however, § 226.5a(b)(1)(iv)(B) provides that, for introductory rates as defined in § 226.16(g)(2)(ii), the card issuer must briefly disclose directly beneath the table the circumstances, if any, under which the introductory rate may be revoked, and the type of rate that will apply after the introductory rate is revoked. The Board adopted this format requirement for the disclosure regarding loss of an introductory rate in part due to concerns that including this information in the tabular disclosure could lead to "information overload." *See* 74 FR 5244, 5286.

The Board is aware that some issuers may offer preferential or reduced rates at account opening that are not "introductory rates" as defined in § 226.16(g)(2)(ii). For example, an issuer may offer a preferential rate to its employees. Eligibility for the preferential or reduced rate is conditioned upon the consumer's continued employment with the issuer. Accordingly, if the consumer's employment is terminated, the contract provides that the rate will increase from the reduced preferential rate to a higher rate, such as the standard rate on the account.[1]

[1] The Board notes that 45 days' advance notice is required pursuant to § 226.9(g) prior to imposition

The Board is proposing a new § 226.5a(b)(1)(iv)(C), which would require that disclosures regarding the loss of an employee preferential rate be placed directly below the tabular disclosure. New § 226.5a(b)(1)(iv)(C) would generally mirror § 226.5a(b)(1)(iv)(B) and would provide that if a card issuer discloses in the table a preferential annual percentage rate for which only employees of the creditor or employees of a third party are eligible, the card issuer must briefly disclose directly beneath the table the circumstances under which such preferential rate may be revoked, and the rate that will apply after such preferential rate is revoked. The Board believes that this placement requirement is appropriate in order to prevent "information overload" and to focus consumers' attention on the disclosures that they find the most important.

The Board is proposing a new comment 5a(b)(1)–5.iv to provide guidance regarding the disclosure below the table of the circumstances under which an employee preferential rate may be revoked. Comment 5a(b)(1)–5.iv would generally mirror relevant portions of the guidance set forth in comment 5a(b)(1)–5.iii regarding the revocation of introductory rates. In addition, proposed comment 5a(b)(1)–5.iv would clarify that the description of the circumstances in which an employee preferential rate could be revoked should be brief. For example, if an issuer may increase an employee preferential rate based upon termination of the employee's employment relationship with the issuer or a third party, the comment would clarify that an issuer may describe this circumstance as "if your employment with [issuer or third party] ends."

Proposed § 226.5a(b)(1)(iv)(C) would apply only to loss of employee preferential rates. The Board solicits comment on whether there are other types of preferential or reduced rates that are not introductory rates as defined in § 226.16(g)(2)(ii) but for which similar treatment under § 226.5a would be appropriate.

For the reasons discussed above, the Board also is proposing a new § 226.6(b)(2)(i)(D)(*3*) that would mirror proposed § 226.5a(b)(1)(iv)(C) and would require that brief disclosures regarding the loss of an employee preferential rate be placed directly below the tabular disclosure provided at account opening. The Board is also proposing conforming amendments to the formatting requirements set forth in §§ 226.5a(a)(2)(iii) and 226.6(b)(1)(ii).

Disclosure of How Long a Penalty Rate Will Remain in Effect

If a rate may increase as a penalty for one or more events specified in the account agreement, § 226.5a(b)(1)(iv) requires that the card issuer disclose the increased rate that may apply, a brief description of the event or events that may result in the increased rate, and a brief description of how long the increased rate will remain in effect. The Board understands that, in light of several provisions of the Credit Card Act, there may be confusion regarding how issuers must disclose the period for which the penalty rate will remain in effect. The Board understands that historically some issuers' card agreements provided that penalty rates, once triggered, could remain in effect indefinitely. However, the enactment of the Credit Card Act established certain circumstances in which a card issuer must reduce the rate even after penalty pricing has been triggered. In particular, § 226.55(b)(4) requires a card issuer to reduce a rate that was raised based upon a delinquency of more than 60 days, if the consumer makes the first six required minimum payments on time following the effective date of the rate increase. In addition, § 226.59 requires a card issuer to periodically review accounts on which a rate increase has been imposed and, where appropriate based on the review, reduce the rate applicable to the account.

As a consequence of § 226.55(b)(4) and 226.59, the Board understands that it may be unclear how issuers should disclose the duration for which a penalty rate will be in effect, for example if the contract provides that the penalty rate may remain in effect indefinitely, except to the extent otherwise required by §§ 226.55(b)(4) and 226.59. Accordingly, the Board is proposing to amend comment 5a(b)(1)–5.i to clarify that a card issuer may not disclose in the table any limitations imposed by §§ 226.55(b)(4) and 226.59 on the duration of increased rates. Proposed comment 5a(b)(1)–5.i would set forth two examples. First, the proposed comment states that if a card issuer reserves the right to apply the increased rate to any balances indefinitely, to the extent permitted by §§ 226.55(b)(4) and 226.59, the issuer should disclose that the penalty rate may apply indefinitely. The second example would provide that if the issuer generally provides that the increased rate will apply until the consumer makes twelve timely consecutive required minimum periodic payments, except to the extent that §§ 226.54(b)(4) and 226.59 apply, the issuer should disclose that the penalty rate will apply until the consumer makes twelve consecutive timely minimum payments.

The Board believes more complex disclosures explaining the applicability of the rules in §§ 226.55(b)(4) and 226.59 would be confusing to consumers, and would be of limited assistance in shopping for credit, given that those provisions apply to all issuers. In addition, consumers to whose accounts the cure right under § 226.55(b)(4) applies will be notified of that right when they receive a notice under § 226.9(c)(2) or 226.9(g) disclosing the associated rate increase.

Other Proposed Amendments to § 226.5a(b)(1)

The Board is proposing an amendment to comment 5a(b)(1)–5.ii to correct a technical error. As discussed above, pursuant to § 226.5a(b)(1)(iv)(B), information regarding the revocation of an introductory rate is required to be disclosed directly beneath the table. Comment 5a(b)(1)–5.ii, which discusses the disclosures regarding the revocation of an introductory rate, contains an erroneous reference to a disclosure *in,* rather than *beneath,* the table. Accordingly, the Board is proposing a technical amendment to comment 5a(b)(1)–5.ii for conformity with the placement requirements in § 226.5a(b)(1)(iv)(B).

5a(b)(2) Fees for Issuance or Availability

Comment 5a(b)(2)–4 states that, if fees required to be disclosed are waived or reduced for a limited time, the introductory fees or the fact of fee waivers may be disclosed in the table in addition to the required fees if the card issuer also discloses how long the reduced fees or waivers will remain in effect. For the reasons discussed below, the Board would revise this comment to clarify that the card issuer must comply with the disclosure requirements in §§ 226.9(c)(2)(v)(B) and 226.55(b)(1).

5a(b)(5) Grace Period

Section 226.5a(b)(5) requires that the tabular disclosure provided with credit and charge card applications and solicitations state the date by which or the period within which any credit extended for purchases may be repaid without incurring a finance charge due to a periodic interest rate and any conditions on the availability of the grace period. If no grace period is provided, that fact must be disclosed.

Comment 5a(b)(5)–1 states that an issuer that offers a grace period on all purchases and conditions the grace

of the higher rate. *See* 74 FR 5346. In addition, the limitations set forth in § 226.55 apply.

period on the consumer paying his or her outstanding balance in full by the due date each billing cycle, or on the consumer paying the outstanding balance in full by the due date in the previous and/or the current billing cycle(s) will be deemed to meet the requirements in § 226.5a(b)(5) by providing the following disclosure, as applicable: "Your due date is [at least] ___ days after the close of each billing cycle. We will not charge you any interest on purchases if you pay your entire balance by the due date each month." This model language was developed through extensive consumer testing.

In the February 2010 Final Rule, the Board adopted comment 5a(b)(5)–4, which clarifies that § 226.5a(b)(5) does not require a card issuer to disclose the limitations on the imposition of finance charges in § 226.54. Implementing the Credit Card Act, § 226.54 provides that, when a consumer pays some but not all of the balance subject to a grace period prior to the expiration of the grace period, the card issuer is prohibited from imposing finance charges on the portion of the balance paid. In adopting comment 5a(b)(5)–4, the Board was concerned that the inclusion of language attempting to describe the limitations set forth in § 226.54 could reduce the effectiveness of the grace period disclosure. The Board also stated its belief that a disclosure of the limitations set forth in § 226.54 is not necessary insofar as the model language set forth in comment 5a(b)(5)–1 accurately states that a consumer generally will not be charged any interest on purchases if the entire balance is paid by the due date each month. Thus, although § 226.54 limits the imposition of finance charges if the consumer pays less than the entire balance shown on the periodic statement, the model language achieves its intended purpose of explaining succinctly how a consumer can avoid all interest charges on purchases.

Many issuers offer a grace period on all purchases under which no interest will be charged on purchases shown on a periodic statement if a consumer pays his or her outstanding balance shown on the periodic statement in full by the due date in the previous and/or the current billing cycle(s). Many of these issuers are using the model language set forth in comment 5a(b)(5)–1, or substantially similar language, to describe the grace period and the conditions on its availability. Nonetheless, other issuers have chosen not to use the model language set forth in comment 5a(b)(5)–1, even though the issuers would be permitted to do so. Some of the issuers that have chosen not to use the model language are disclosing the grace period in more technical detail, including a discussion of the limitations on imposition of finance charges under § 226.54, and the impact of payment allocation on whether interest will be charged on purchases due to the loss of a grace period. Other issuers are including detailed language to explain the conditions on the grace period, such as an explanation that the consumer will not be charged any interest on new purchases, or any portion of a new purchase, paid by the due date on the consumer's current billing statement if the consumer paid his or her entire balance on the previous billing statement in full by the due date on that statement.

As discussed above, the Board believes the inclusion of language attempting to describe the limitations set forth in § 226.54 or the impact of payment allocation on whether interest will be charged on purchases due to the loss of a grace period could reduce the effectiveness of the grace period disclosure. Thus, the Board proposes to revise comment 5a(b)(5)–1 to clarify that issuers must not disclose in the table required by § 226.5a the limitations on the imposition of finance charges as a result of a loss of a grace period in § 226.54, or the impact of payment allocation on whether interest is charged on purchases as a result of a loss of a grace period. However, issuers would not be prohibited from disclosing this information outside the table. Comment 5a(b)(5)–4, which states that card issuers are not required to disclose the limitations set forth in § 226.54, would be deleted.

In addition, the Board proposes to revise comment 5a(b)(5)–1 to clarify that, for purposes of the tabular disclosures required by § 226.5a, certain issuers must use the disclosure language set forth in proposed comment 5a(b)(5)–1. Specifically, proposed comment 5a(b)(5)–1 notes that some issuers may offer a grace period on all purchases under which interest will not be charged on purchases if the consumer pays the outstanding balance shown on a periodic statement in full by the due date shown on that statement for one or more billing cycles. The proposed comment clarifies that in these circumstances, § 226.5a(b)(5) requires that the issuer disclose the grace period and the conditions for its applicability using the following language, or substantially similar language, as applicable: "Your due date is [at least] __ days after the close of each billing cycle. We will not charge you any interest on purchases if you pay your entire balance by the due date each month." As discussed above, this disclosure language was developed through extensive consumer testing, and the Board believes this disclosure language achieves its intended purpose of explaining succinctly how a consumer can avoid all interest charges on purchases.

The Board recognizes that some issuers may structure their grace periods differently than as described above, and the disclosure language described above may not be accurate for those issuers. Proposed comment 5a(b)(5)–1 notes that some issuers may offer a grace period on all purchases under which interest may be charged on purchases even if the consumer pays the outstanding balance shown on a periodic statement in full by the due date shown on that statement each billing cycle. For example, an issuer may charge interest on purchases if the consumer uses the account for a cash advance, regardless of whether the outstanding balance shown on the periodic statement is paid in full by the due date shown on that statement. In these circumstances, § 226.5a(b)(5) requires the issuer to amend the above disclosure language to describe accurately the conditions on the applicability of the grace period. Nonetheless, under the proposal, these issuers in disclosing the grace period and the conditions on its availability in the § 226.5a table still may not disclose the limitations on the imposition of finance charges as a result of a loss of a grace period in § 226.54, or the impact of payment allocation on whether interest is charged on purchases as a result of a loss of a grace period.

5a(b)(6) Balance Computation Method

Section 226.5a(b)(6) requires that a card issuer disclose on or with a credit card application or solicitation information about the method it uses to determine the balance for purchases on which the finance charge is computed. Comment 5a(b)(6)–1 provides guidance on how to comply with this requirement to disclose balance computation information for purchase balances. This comment also contains a cross-reference to the commentary to § 226.5a(g) for guidance on particular balance computation methods. There currently is no commentary to § 226.5a(g), so this cross-reference would be deleted as obsolete.

Section 226.6—Account-Opening Disclosures

6(b) Rules Affecting Open-End (Not Home-Secured) Plans

6(b)(2) Required Disclosures for Account-Opening Table for Open-End (Not Home-Secured) Plans

6(b)(2)(i) Annual Percentage Rate

The Board proposes to replace the reference to "card issuer" in § 226.6(b)(2)(i)(B) with "creditor" in order to correct a typographical error and to provide clarity and consistency with the scope of § 226.6(b).

In addition, for the reasons discussed in the supplementary information to § 226.5a(b)(1), the Board is proposing a new § 226.6(b)(2)(i)(D)(*3*) that would require that certain information regarding revocation of an employee preferential rate be disclosed directly beneath the account-opening table.

6(b)(2)(v) Grace Period

Section 226.6(b)(2)(v) requires that the account-opening summary table state the date by which or the period within which any credit may be repaid without incurring a finance charge due to a periodic interest rate and any conditions on the availability of the grace period. If no grace period is provided, that fact must be disclosed.

Many creditors offer a grace period on purchases, but do not offer a grace period on cash advances and balance transfers. Samples G–17(B) and G–17(C) provide guidance on complying with § 226.6(b)(2)(v) when a creditor offer a grace period on purchases but no grace period on balance transfers and cash advances. *See* comment 6(b)(2)(v)–3. Specifically, Samples G–17(B) and G–17(C) contain the following model language to meet the requirements in § 226.6(b)(2)(v): "Your due date is [at least] __ days after the close of each billing cycle. We will not charge you any interest on purchases if you pay your entire balance by the due date each month. We will begin charging interest on cash advances and balance transfers on the transaction date." This model language was developed through extensive consumer testing.

Comment 6(b)(2)(v)–1 provides model language for creditors to use when they provide a grace period on all types of transactions for the account. Specifically, this comment states that an issuer that offers a grace period on all types of transactions for the account and conditions the grace period on the consumer paying his or her outstanding balance in full by the due date each billing cycle, or on the consumer paying the outstanding balance in full by the due date in the previous and/or the current billing cycle(s) will be deemed to meet the requirements in § 226.6(b)(2)(v) by providing the following disclosure, as applicable: "Your due date is [at least] __ days after the close of each billing cycle. We will not charge you any interest on your account if you pay your entire balance by the due date each month."

In addition, for the reasons discussed in the section-by-section analysis to § 226.5a(b)(5), in the February 2010 Final Rule, the Board adopted comment 6(b)(2)(v)–4, which clarifies that § 226.6(b)(2)(v) does not require a card issuer to disclose the limitations on the imposition of finance charges in § 226.54. Implementing the Credit Card Act, § 226.54 provides that, when a consumer pays some but not all of the balance subject to a grace period prior to the expiration of the grace period, the card issuer is prohibited from imposing finance charges on the portion of the balance paid. In adopting comment 6(b)(2)–4, the Board was concerned that the inclusion of language attempting to describe the limitations set forth in § 226.54 could reduce the effectiveness of the grace period disclosure.

As discussed above, many creditors offer a grace period on purchases, but do not offer a grace period on cash advances and balance transfers. Many of these creditors are using the model language set forth in Samples G–17(B) and G–17(C), or substantially similar language, to meet the requirements in § 226.6(b)(2)(v). Nonetheless, other creditors have chosen not to use this model language, even though the creditors would be permitted to do so. Some of the creditors that have chosen not to use the model language are disclosing the grace period for purchases in more technical detail, including a discussion of the limitations on imposition of finance charges under § 226.54, and the impact of payment allocation on whether interest will be charged on purchases due to the loss of a grace period. Other creditors are including detailed language to explain the conditions on the grace period for purchases, such as an explanation that the consumer will not be charged any interest on new purchases, or any portion of a new purchase, paid by the due date on the consumer's current billing statement if the consumer paid his or her entire balance on the previous billing statement in full by the due date on that statement.

Consistent with proposed changes to comment 5a(b)(5)–1 and for the reasons discussed in the section-by-section analysis to § 226.5a(b)(5), the Board proposes to revise comment 6(b)(2)(v)–1 to clarify that creditors must not disclose in the table required by § 226.6(b) the limitations on the imposition of finance charges as a result of a loss of a grace period in § 226.54, or the impact of payment allocation on whether interest is charged on transactions as a result of a loss of a grace period. The Board believes the inclusion of language attempting to describe the limitations set forth in § 226.54 and the impact of payment allocation on whether interest will be charged on transactions due to the loss of a grace period could reduce the effectiveness of the grace period disclosure required by § 226.6(b)(2)(v). Comment 6(b)(2)(v)–4, which states that card issuers are not required to disclose the limitations set forth in § 226.54, would be deleted.

In addition, consistent with proposed changes to comment 5a(b)(5)–1 and for the reasons discussed in the section-by-section analysis to § 226.5a(b)(5), the Board proposes to revise comment 6(b)(2)(v)–3 to clarify that § 226.6(b)(2)(v) requires certain creditors that provide a grace period on purchases but not on cash advances and balance transfers to use the disclosure language this is currently set forth in Samples G–17(B) and G–17(C). Specifically, proposed comment 6(b)(2)(v)–3 notes that some creditors do not offer a grace period on cash advances and balance transfers, but offers a grace period for all purchases under which interest will not be charged on purchases if the consumer pays the outstanding balance shown on a periodic statement in full by the due date shown on that statement for one or more billing cycles. Proposed comment 6(b)(2)(v)–3 clarifies that in these circumstances, § 226.6(b)(2)(v) requires that the creditor disclose the grace period for purchases and the conditions for its applicability, and the lack of a grace period for cash advances and balance transfers using the following language, or substantially similar language, as applicable: "Your due date is [at least] __ days after the close of each billing cycle. We will not charge you any interest on purchases if you pay your entire balance by the due date each month. We will begin charging interest on cash advances and balance transfers on the transaction date." This disclosure language, which also is set forth in the "Paying Interest" row in Samples G–17(B) and G–17(C), was developed through extensive consumer testing. The Board believes this disclosure language achieves its intended purpose of explaining succinctly how a consumer can avoid all interest charges on purchases, while

explaining that no grace period is offered for cash advances and balance transfers.

The Board recognizes that some creditors may offer a grace period on purchases but structure their grace periods differently than as described above, and the disclosure language described above may not be accurate for those creditors. Proposed comment 6(b)(2)(v)–3 notes that some creditors may offer a grace period on all purchases under which interest may be charged on purchases even if the consumer pays the outstanding balance shown on a periodic statement in full by the due date shown on that statement each billing cycle. For example, a creditor may charge interest on purchases if the consumer uses the account for a cash advance, regardless of whether the outstanding balance shown on the periodic statement is paid in full by the due date shown on that statement. Proposed comment 6(b)(2)(v)–3 clarifies that in these circumstances, § 226.6(a)(2)(v) requires the creditor to amend the above disclosure language to accurately describe the conditions on the applicability of the grace period. Nonetheless, under the proposal, these creditors in disclosing the grace period and the conditions on its availability still may not disclose the limitations on the imposition of finance charges as a result of a loss of a grace period in 226.54, or the impact of payment allocation on whether interest is charged on purchases as a result of a loss of a grace period.

Similarly, some creditors may not offer a grace period on cash advances and balance transfers, and will begin charging interest on these transactions from a date other than the transaction date, such as the posting date. Proposed comment 6(b)(2)(v)–3 clarifies that in these circumstances, § 226.6(a)(2)(v) requires the creditor to amend the above disclosure language to be accurate.

Consistent with the proposed changes to comment 6(b)(2)(v)–3, the Board also proposes changes to comment 6(b)(2)(v)–1 which discusses circumstances where a creditor offers a grace period on all types of transactions on the account, including purchases, cash advances, and balances transfers. Specifically, proposed comment 6(b)(2)(v)–1 notes that some creditors may offer a grace period on all types of transactions under which interest will not be charged on transactions if the consumer pays the outstanding balance shown on a periodic statement in full by the due date shown on that statement for one or more billing cycles. In these circumstances, § 226.6(b)(2)(v) requires that the creditor disclose the grace period and the conditions for its applicability using the following language, or substantially similar language, as applicable: "Your due date is [at least] __ days after the close of each billing cycle. We will not charge you any interest on your account if you pay your entire balance by the due date each month." Proposed comment 6(b)(2)(v)–1 also notes that other creditors may offer a grace period on all types of transactions under which interest may be charged on transactions even if the consumer pays the outstanding balance shown on a periodic statement in full by the due date shown on that statement each billing cycle. This proposed comment clarifies that in these circumstances, § 226.6(b)(2)(v) requires the creditor to amend the above disclosure language to describe accurately the conditions on the applicability of the grace period.

6(b)(2)(vi) Balance Computation Method

Section 226.6(b)(2)(vi) requires that a creditor disclose information about balance computation methods as part of the account-opening disclosures. Specifically, § 226.6(b)(2)(vi) provides that a creditor must disclose the name of the balance computation method listed in § 226.5a(g) that is used to determine the balance on which the finance charge is computed for each feature, or an explanation of the method used if it is not listed, along with a statement that an explanation of the method(s) required by § 226.6(b)(4)(i)(D) is provided with the account-opening disclosures. The information required by § 226.6(b)(2)(vi) must appear directly beneath the account-opening summary table. *See* § 226.6(b)(2)(ii).

The names of the balance computation methods listed in § 226.5a(g) describe balance computation methods for purchases (*e.g.,* "*average daily balance (including new purchases)*" and "*average daily balance (excluding new purchases)*"). Nonetheless, unlike § 226.5a(b)(6), creditors are required in § 226.6(b)(2)(vi) to disclose the balance computation method used for each feature on the account. Samples G–17(B) and G–17(C) provide guidance on how to disclose the balance computation method where the same method is used for all features on the account. *See* comment 6(b)(2)(vi)–1. Samples G–17(B) and G–17(C) disclose, as an example, the "*average daily balance (including new purchases)*" as the method that is being used to calculate the balance for all features on the account. Thus, for simplicity, where the balance for each feature is computed using the same balance computation method, a creditor may use the name of the appropriate balance computation method listed in § 226.5a(g) (*e.g.,* "*average daily balance (including new purchases)*") to satisfy the requirement to disclose the name of the method for all features on the account, even though the name only refers to purchases.

Questions have been asked, however, regarding whether a creditor may revise the names of the balance computation methods listed in § 226.5a(g) to be more accurate by referring more broadly to all new transactions (rather than referring only to "new purchases") when the same method is used to calculate the balances for all features on the account. For example, creditors have asked whether they can revise the name listed in § 226.5a(g)(i) to disclose it as "*average daily balance (including new transactions)*" when this method is used to calculate the balances for all features of the account. Also, creditors have asked whether they may revise the names listed in § 226.5a(g) to be applicable to features other than purchases. Creditors in some cases may disclose the balance computation methods separately for each feature, such as when a different balance computation method applies to purchases than to cash advances.

To address these compliance issues and to provide additional flexibility to creditors, the Board proposes to revise comment 6(b)(2)(vi)–1 to provide that in cases where the balance for each feature is computed using the same balance computation method, a single identification of the name of the balance computation method is sufficient. In that case, the proposed comment makes explicitly clear that a creditor may use an appropriate name listed in § 226.5a(g) (*e.g.,* "*average daily balance (including new purchases)*") to satisfy the requirement to disclose the name of the method for all features on the account, even though the name only refers to purchases. For example, if a creditor uses the average daily balance method including new transactions as the balance computation method for all features, a creditor may use the name "*average daily balance (including new purchases)*" listed in § 226.5a(g)(i) to satisfy the requirement to disclose the name of the balance computation method for all features. As an alternative, the proposed comment provides that a creditor may revise the balance computation names listed in § 226.5a(g) to refer more broadly to all new credit transactions, such as using the language "new transactions" or "current transactions" (*e.g.,* "*average daily balance (including new transactions)*"), rather than simply

referring to new purchases when the same method is used to calculate the balances for all features of the account.

In addition, the Board proposes to add comment 6(b)(2)(vi)–2 to address situations where a creditor is disclosing the name of the balance computation methods separately for each feature. In that case, in using the names listed in § 226.5a(g) to satisfy the requirements of § 226.6(b)(2)(vi) for features other than purchases, a creditor must revise the names listed in § 226.5a(g) to refer to the other features. For example, when disclosing the name of the balance computation method applicable to cash advances, a creditor must revise the name listed in § 226.5a(g)(i) to disclose it as "*average daily balance (including new cash advances)*" when the balance for cash advances is figured by adding the outstanding balance (including new cash advances and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle. Similarly, a creditor must revise the name listed in § 226.5a(g)(ii) to disclose it as "*average daily balance (excluding new cash advances)*" when the balance for cash advances is figured by adding the outstanding balance (excluding new cash advances and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle.

Section 226.7 Periodic Statement

7(b) Rules Affecting Open-End (Not Home-Secured) Plans

7(b)(5) Balance on Which Finance Charge Computed

Section 226.7(b)(5) provides that a creditor must disclose on the periodic statement the amount of the balance to which a periodic rate was applied and an explanation of how that balance was determined, using the term *Balance Subject to Interest Rate.* As an alternative to providing an explanation of how the balance was determined, a creditor that uses a balance computation method identified in § 226.5a(g) may, at the creditor's option, identify the name of the balance computation method and provide a toll-free telephone number where consumers may obtain from the creditor more information about the balance computation method and how resulting interest charges were determined. If the method used is not identified in § 226.5a(g), the creditor shall provide a brief explanation of the method used.

Comment 7(b)(5)–7 provides guidance on the use of one balance computation method explanation or name when multiple balances are disclosed. Specifically, comment 7(b)(5)–7 notes that sometimes the creditor will disclose more than one balance to which a periodic rate was applied, even though each balance was computed using the same balance computation method. For example, if a plan involves purchases and cash advances that are subject to different rates, more than one balance must be disclosed, even though the same computation method is used for determining the balance for each feature. In these cases, one explanation or a single identification of the name of the balance computation method is sufficient. In addition, sometimes the creditor separately discloses the portions of the balance that are subject to different rates because different portions of the balance fall within two or more balance ranges, even when a combined balance disclosure would be permitted under comment 7(b)(5)–1. In these cases, one explanation or a single identification of the name of the balance computation method is also sufficient (assuming, of course, that all portions of the balance were computed using the same method).

The comment does not specify, however, whether in this case a creditor may use the balance computation method names listed in § 226.5a(g) (*e.g.,* "*average daily balance (including new purchases)*") as the single identification of the name of the balance computation method used for all features, even though the name only refers to purchases. In addition, as discussed in the section-by-section analysis to § 226.6(b)(2)(vi), questions have been asked as to whether a creditor may revise the names of the balance computation methods listed in § 226.5a(g) to refer more broadly to all new transactions (rather than referring only to "new purchases") when the same method is used to calculate the balances for all features on the account. For example, creditors have asked whether they may revise the name listed in § 226.5a(g)(i) to disclose it as "*average daily balance (including new transactions)*" when this method is used to calculate the balances for all features of the account. Also, creditors have asked whether they may revise the names listed in § 226.5a(g) to be applicable to features other than purchases. Creditors in some cases may disclose the balance computation methods separately for each feature, such as when a different balance computation method applies to purchases than for cash advances.

To address these compliance issues and to provide additional flexibility to creditors, consistent with proposed guidance in comment 6(b)(2)(vi), the Board proposes to revise comment 7(b)(5)–7 to provide that in cases where each balance was computed using the same balance computation method, a creditor may use an appropriate name listed in § 226.5a(g) (*e.g.,* "*average daily balance (including new purchases)*") as the single identification of the name of the balance computation method applicable to all features, even though the name only refers to purchases. For example, if a creditor uses the average daily balance method including new transactions as the balance computation method for all features, a creditor may use the name "*average daily balance (including new purchases)*" listed in § 226.5a(g)(i) to satisfy the requirement to disclose the name of the balance computation method for all features. As an alternative, the proposed comment provides that a creditor may revise the balance computation names listed in § 226.5a(g) to refer more broadly to all new credit transactions, such as using the language "new transactions" or "current transactions" (*e.g.,* "*average daily balance (including new transactions)*"), rather than simply referring to new purchases when the same method is used to calculate the balances for all features of the account.

Also consistent with proposed comment 6(b)(2)(vi)–2, the Board proposes to add a new comment 7(b)(5)–8 to address situations where a creditor is disclosing the name of the balance computation methods separately for each feature. Proposed comment 7(b)(5)–8 provides that in those cases, where a creditor is using the names listed in § 226.5a(g) to satisfy the requirements of § 226.7(b)(5) for features other than purchases, a creditor must revise the names listed in § 226.5a(g) to refer to the other features. For example, when disclosing the name of the balance computation method applicable to cash advances, a creditor must revise the name listed in § 226.5a(g)(i) to disclose it as "*average daily balance (including new cash advances)*" when the balance for cash advances is figured by adding the outstanding balance (including new cash advances and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle. Similarly, a creditor must revise the name listed in § 226.5a(g)(ii) to disclose it as "*average daily balance (excluding new cash advances)*" when the balance for cash advances is figured by adding the outstanding balance (excluding new cash advances and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle.

7(b)(6) Charges Imposed

Section 226.7(b)(6) generally requires the disclosure of the amounts of any charges imposed on a plan, which consists of finance charges attributable to periodic interest rates (disclosed as *Interest Charged*), and charges imposed as part of a plan other than charges attributable to periodic interest rates (disclosed as *Fees*). In addition, calendar year to date totals for both interest and fees must be disclosed. Comment 7(b)(6)–3 provides guidance for disclosing calendar-year-to-date totals for fees. In order to avoid inconsistency, the Board proposes to amend comment 7(b)(6)–3 to clarify that this guidance applies to fees as well as interest charged.

7(b)(12) Repayment Disclosures

Section 226.7(b)(12) requires that for a credit card account under an open-end (not home-secured) consumer credit plan, card issuers generally must disclose the following repayment disclosures on each periodic statement: (1) A "warning" statement indicating that making only the minimum payment will increase the interest the consumer pays and the time it takes to repay the consumer's balance; (2) the length of time it would take to repay the outstanding balance if the consumer pays only the required minimum monthly payments and no further advances are made; (3) the total cost to the consumer of paying the balance in full if the consumer pays only the required minimum monthly payment and no further advances are made; (4) the monthly payment amount that would be required for the consumer to pay off the outstanding balance in 36 months, if not further advances are made; (5) the total cost to the consumer of paying the balance in full if the consumer pays the balance over 36 months; (6) the total savings of paying the balance in 36 months (rather than making only minimum payments); and (7) a toll-free telephone number at which the consumer may receive information about accessing consumer credit counseling. *See* § 226.7(b)(12)(i).

To simplify the disclosures, § 226.7(b)(12)(i) and (ii) provide that card issuers must round the following disclosures to the nearest whole dollar when disclosing them on the periodic statement: (1) The minimum payment total cost estimate, (2) the estimated monthly payment for repayment in 36 months, (3) the total cost estimate for repayment in 36 months, and (4) the savings estimate for repayment in 36 months. *See* § 226.7(b)(12)(i)(C), (b)(12)(i)(F)(*1*)(*i*), (b)(12)(i)(F)(*1*)(*iii*), (b)(12)(i)(F)(*1*)(*iv*) and (b)(12)(ii)(C). Some card issuers have requested, however, that they be permitted to provide these disclosures on the periodic statement rounded to the nearest cent to be more accurate and to avoid potential consumer confusion that rounding to the dollar might cause in certain circumstances. For example, assume that a consumer's balance is $3,000 and the APR on the account is 14.4%. The estimated monthly payment to repay the balance in 36 months would be $103.12 (rounded to the nearest cent). A card issuer would be required to disclose on the periodic statement the estimated monthly payment for repayment in 36 months as $103, and the total cost estimate for repayment in 36 months as $3,712. (The total cost estimate for repayment in 36 months is calculated by multiplying $103.12 times 36, and rounding that result to the nearest whole dollar.) Nonetheless, if a consumer pays $103 each month for 36 months, the consumer will have paid only $3,708 (not the $3,712 shown on the statement). Thus, rounding the disclosures to whole dollars when providing them on the periodic statement in some cases may make the disclosures appear to be inconsistent with each other.

To provide additional flexibility to card issuers, the Board proposes to revise § 226.7(b)(12)(i) and (b)(12)(ii) to allow card issuers, at their option, to provide the following disclosures on the periodic statement either rounded to the nearest whole dollar or to the nearest cent: (1) The minimum payment total cost estimate, (2) the estimated monthly payment for repayment in 36 months, (3) the total cost estimate for repayment in 36 months, and (4) the savings estimate for repayment in 36 months. Nonetheless, proposed comment 7(b)(12)–1 would provide that an issuer's rounding for all of these disclosures must be consistent. An issuer may round all of these disclosures to the nearest whole dollar when providing them on periodic statements, or may round all of these disclosures to the nearest cent. An issuer may not, however, round some of the disclosures to the nearest whole dollar, while rounding other disclosures to the nearest cent. Requiring an issuer to be consistent in how it rounds these disclosures helps to ensure that these disclosures remain consistent with each other.

7(b)(14) Deferred Interest or Similar Transactions

Section 226.7(b)(14) generally requires disclosure of the date by which any outstanding balance subject to a deferred interest or similar program must be paid in full in order to avoid finance charges on the front of each periodic statement issued during the deferred interest period. In order to avoid potential confusion, the Board proposes to amend § 226.7(b)(14) to clarify that the disclosure required by § 226.7(b)(14) may be on the front of any page of each periodic statement issued during the deferred interest period that reflects the deferred interest or similar transaction. The Board believes this clarification will ensure that consumers continue to receive conspicuous disclosure of the end of the deferred interest period and also provides greater certainty and flexibility to creditors in order to facilitate compliance. Accordingly, the Board also proposes to amend the example in comment 7(b)–1.iv for consistency with the proposed revision.

Section 226.9 Subsequent Disclosure Requirements

9(b) Disclosures for Supplemental Credit Access Devices and Additional Features

9(b)(3) Checks That Access a Credit Card Account

Section 226.9(b)(3) sets forth requirements for disclosures that must be provided with checks that access a credit card account. These disclosures set forth certain key terms, such as the rates that will apply to the checks, any transaction fees applicable to the checks, and whether or not a grace period is given within which any credit extended by use of the checks may be repaid without incurring interest charges. The Board is proposing to clarify that if any rate disclosed pursuant to § 226.9(b)(3) is a variable rate, the card issuer must disclose that the rate may vary and how the rate is determined. The Board believes that it is appropriate that consumers be informed if the rates that apply to checks that access a credit card account are variable rates, to better assist consumers with making an informed decision regarding use of the checks.

Proposed § 226.9(b)(3)(iii) would generally mirror the disclosure requirements for variable rates set forth in §§ 226.5a(b)(1)(i) and 226.6(b)(2)(i)(A). Proposed § 226.9(b)(3)(iii) provides that if any annual percentage rate required to be disclosed pursuant to § 226.9(b)(3)(i) is a variable rate, the card issuer must also disclose the fact that the rate may vary and how the rate is determined. In describing how the applicable rate will be determined, the card issuer must identify the type of index or formula

that is used in setting the rate. The value of the index and the amount of the margin that are used to calculate the variable rate shall not be disclosed in the table. In addition, a card issuer may not disclose any applicable limitations on rate increases in the table. The Board believes that the approach in §§ 226.5a(b)(1)(i) and 226.6(b)(2)(i)(A), which was based in part on consumer testing conducted on behalf of the Board, strikes the appropriate balance between informing consumers of key information regarding the variable rate or rates while avoiding overly detailed information that may be confusing to consumers.

Section 226.9(b)(3)(i) requires that the disclosures given in connection with checks that access a credit card account be in the form of a table with headings, content, and form substantially similar to Sample G–19. The Board has been asked whether the "substantially similar" standard would permit a card issuer to provide a combined table that discloses the terms applicable both to access checks and other types of transactions. The Board is proposing a new comment 9(b)(3)(i)–2 to clarify that a card issuer may include in the tabular disclosure provided pursuant to § 226.9(b)(3) disclosures regarding the terms offered on non-check transactions, provided that such transactions are subject to the same terms that are required to be disclosed pursuant to § 226.9(b)(3)(i) for the checks that access a credit card account. Proposed comment 9(b)(3)(i)–2 would further state, however, that a card issuer may not include in the table information regarding additional terms that are not required disclosures for access checks pursuant to § 226.9(b)(3).

The Board believes that if a card issuer offers a single set of terms that apply both to checks that access a credit card account and to other transactions, it is appropriate to permit the card issuer to present one combined tabular disclosure. For example, a card issuer may offer a single set of promotional terms that apply both to checks that access a credit card account and to balance transfers made without use of an access check. Under these circumstances, the Board believes that it is unnecessary to require card issuers to provide two substantively identical but separate sets of disclosures, one for check transactions and one for other balance transfers. Accordingly, the Board believes that proposed comment 9(b)(3)(i)–2 would ensure that consumers continue to receive clear disclosures regarding checks that access a credit card account, while at the same time minimizing the operational burden that would be associated with providing two sets of disclosures of substantively identical terms.

9(c)(2) Rules Affecting Open-End (Not Home-Secured) Plans

Comment 9(c)(2)–1 states that, except as provided in § 226.9(g)(1), no notice of a change in terms need be given if the specific change is set forth initially, such as rate increases under a properly disclosed variable-rate plan in accordance with § 226.9(c)(2)(v)(C). The Board would revise this comment to clarify that the initial disclosure of the change must be provided consistent with any applicable requirements. For example, no notice of a change in terms is required when a promotional rate expires, provided that the card issuer disclosed the terms associated with that promotional rate consistent with § 226.9(c)(2)(v)(B).

9(c)(2)(i) Changes Where Written Advance Notice Is Required

9(c)(2)(ii) Significant Changes in Account Terms

Section 226.9(c)(2) sets forth the change-in-terms notice requirements for open-end consumer credit plans that are not home-secured. Section 226.9(c)(2)(i) states that, when a significant change in account terms as described in § 226.9(c)(2)(ii) is made to a term required to be disclosed under § 226.6(b)(3), (b)(4), or (b)(5), a creditor must generally provide a written notice at least 45 days prior to the effective date of the change. Section 226.9(c)(2)(i) defines a "significant change in account terms" as a change to a term required to be disclosed under § 226.6(b)(1) and (b)(2), an increase in the required minimum periodic payment, or the acquisition of a security interest.

The Board is aware that some confusion has arisen regarding the references to § 226.6(b)(3), (b)(4), and (b)(5) contained in § 226.9(c)(2). In particular, given that "significant change in account terms" is defined in § 226.9(c)(2)(ii) generally with respect to terms required to be disclosed in the account-opening table under § 226.6(b)(1) and (b)(2), several creditors have asked the Board to clarify what advance notice requirements apply when a change is made to a term required to be disclosed under § 226.6(b)(3), (b)(4), or (b)(5) that (1) may impact a term required to be disclosed in the account-opening table pursuant to § 226.6(b)(1) and (b)(2), but (2) is not a term that itself is required or permitted to be included in the account-opening table. For example, the Board has been asked whether 45 days' advance notice is required prior to changing the schedule on which the value of a variable annual percentage rate is adjusted, if the formula for computing the value of the variable rate otherwise remains the same (*i.e.,* based on the same index and margin). The Board notes that the variable annual percentage rate is a term required to be disclosed pursuant to § 226.6(b)(1) and (b)(2). In contrast, the schedule on which the rate is computed is not required or permitted to be disclosed in the tabular disclosure pursuant to § 226.6(b)(1) and (b)(2). However, the schedule on which the rate is computed is required to be disclosed at account opening outside of the table pursuant to § 226.6(b)(4).

The Board is proposing several amendments to § 226.6(b)(1) and (b)(2) to clarify the advance notice requirements for changes to terms specified in § 226.6(b)(3), (b)(4), or (b)(5) that are not also terms required to be disclosed under § 226.6(b)(1) and (b)(2). First, the Board is proposing to delete as unnecessary the references to § 226.6(b)(3), (b)(4) and (b)(5), as well as a reference to increases in the required minimum periodic payment, from § 226.9(c)(2)(i). The Board believes that for clarity the term "significant change in account terms" should be defined exclusively in § 226.9(c)(2)(ii) and that deletion of the references to § 226.6(b)(3), (b)(4) and (b)(5) and increases in the required minimum periodic payment in § 226.9(c)(2)(i) will alleviate confusion regarding compliance with the change-in-terms notice requirements.

Second, the Board is proposing to amend the definition of "significant change in account terms" in § 226.9(c)(2)(ii) to clarify to which terms the 45-day advance notice requirements in § 226.9(c)(2) apply. Section 226.9(c)(2)(ii) would be amended to define "significant change in account terms" as a change to a term required to be disclosed under § 226.6(b)(1) and (b)(2), an increase in the required minimum periodic payment, a change to a term required to be disclosed under § 226.6(b)(4), or the acquisition of a security interest.

The Board notes that proposed § 226.9(c)(2)(ii) would not specifically identify changes in terms required to be disclosed under § 226.6(b)(3) in the list of "significant change[s] in account terms." The Board believes that a reference to § 226.6(b)(3) is unnecessary, for several reasons. Section 226.6(b)(3) addresses disclosure of charges imposed as part of an open-end (not home-secured) plan. Certain charges imposed as part of a plan are specifically

required to be disclosed in the account-opening table under § 226.6(b)(1) and (b)(2), while other charges imposed as part of the plan are not required or permitted to be disclosed in the table. Therefore, the 45-day advance notice requirement would continue to apply to charges that are identified in § 226.6(b)(3) that are also required to be disclosed in the account-opening table under § 226.6(b)(1) and (b)(2). In addition, § 226.9(c)(2)(iii) sets forth a special rule for notice of changes to charges imposed as part of the plan that are not required to be disclosed in the account-opening table. In particular, for charges imposed as part of the plan under § 226.6(b)(3) that are not required to be disclosed in the account-opening table under § 226.6(b)(1) and (b)(2), § 226.9(c)(2)(iii) requires a creditor to either, at its option (1) provide at least 45 days' written advance notice before the change becomes effective, or (2) provide notice orally or in writing of the amount of the charge to an affected consumer at a relevant time before the consumer agrees to or becomes obligated to pay the charge. The Board is proposing one wording change to § 226.9(c)(2)(iii) and comment 9(c)(2)(iii)–1; the Board proposes to replace the word "may" with "must," in order to clarify that increases in, or the introduction of new, charges imposed as part of the plan under § 226.6(b)(3) must be disclosed in accordance with § 226.9(c)(2)(iii).

Proposed § 226.9(c)(2)(ii) would specifically categorize changes in terms required to be disclosed under § 226.6(b)(4) as "significant change[s] in account terms." Section 226.6(b)(4) requires disclosure of certain information regarding periodic rates that may be used to calculate interest. The Board believes that changes in the manner in which annual percentage rates are computed are significant changes because they may impact the amount of interest imposed on a consumer's account, which is one of the key costs associated with open-end (not home-secured) credit. While certain details regarding rates mandated by § 226.6(b)(4) are not required or permitted to be disclosed in the account-opening table, changes in the manner in which an interest rate is computed may have a direct impact on the annual percentage rate expressed as a yearly rate, which is a required disclosure in the account-opening table under § 226.6(b)(1) and (b)(2). For example, for variable rates § 226.6(b)(4) requires disclosure of the frequency with which the rate may increase and the circumstances under which the rate may increase, both of which may impact the computation of the rate required to be disclosed in the account-opening table. Thus, the Board believes that 45 days' advance notice of such changes is appropriate to ensure that consumers can take actions to mitigate the potential impact of changes in the way in which the annual percentage rate or rates applicable to their accounts are computed.

Finally, unlike current § 226.9(c)(2)(i), the definition of "significant change[s] in account terms" in proposed § 226.9(c)(2)(ii) would not expressly reference the disclosures required by § 226.6(b)(5). Section 226.6(b)(5) requires that a creditor disclose, to the extent applicable, certain information regarding voluntary credit insurance, debt cancellation or debt suspension coverage, security interests, and a statement regarding the consumer's billing rights. The disclosures regarding voluntary credit insurance and similar products and the statement of billing rights set forth in § 226.6(b)(5) are not terms of the account, but specific forms of disclosures that must be given. Accordingly, given that these are not terms of the account, the Board believes that there are no corresponding changes in terms for which it is appropriate to require advance notice.[2] In contrast, in the February 2010 Final Rule, the Board expressly included the acquisition of a security interest in the definition of "significant change in account terms" for which 45 days' advance notice must generally be provided.

9(c)(2)(iv) Disclosure Requirements

As discussed above, the Board is proposing to amend § 226.9(c)(2)(ii) to expressly provide that changes to terms required to be disclosed under § 226.6(b)(4) are "significant change[s] in account terms." The Board is proposing several conforming changes to § 226.9(c)(2)(iv), which sets forth the disclosure requirements for the 45-day advance notice of a significant change in account terms. First, the Board is proposing to amend § 226.9(c)(iv)(A)(*1*) to provide that the notice must include a summary of changes made to terms required to be disclosed under § 226.6(b)(4). Second, the Board is proposing to amend § 226.9(c)(2)(iv)(D)(*1*) to clarify the formatting requirements for the notice provided in advance of a change to a term required to be disclosed under § 226.6(b)(4). Section 226.9(c)(2)(iv)(D)(*1*) generally requires that the summary of changes included with a change-in-terms notice be in a tabular format, with headings and format substantially similar to any of the account-opening tables found in G–17 to appendix G. However, terms required to be disclosed under § 226.6(b)(4), such as the margin for a variable rate, are not permitted to be included in the account-opening table, and accordingly would not be in a tabular format in the samples in G–17 to appendix G. Accordingly, the Board proposes to amend § 226.9(c)(2)(iv)(D)(*1*) to expressly state that the summary of a term required to be disclosed under § 226.6(b)(4) that is not required to be disclosed under § 226.6(b)(1) and (b)(2) need not be in a tabular format.

The Board also is proposing several changes related to disclosure of the right to reject certain types of changes. When a creditor makes a significant change in account terms on a credit card account under an open-end (not home-secured) consumer credit plan, § 226.9(c)(2)(iv)(B) generally requires the creditor to disclose certain information regarding the consumer's right to reject that change under § 226.9(h). Section 226.9(c)(2)(iv)(B) also lists several types of changes to which the right to reject does not apply, including a change in the balance computation method necessary to comply with § 226.54. The Board adopted this exemption in the February 2010 Final Rule in order to facilitate compliance with the limitations on the imposition of finance charges in § 226.54, which implemented the Credit Card Act's prohibition on the two-cycle balance computation method. *See* 75 FR 7696, 7730.

Because § 226.54 went into effect on February 22, 2010, the Board proposes to remove the exemption in § 226.9(c)(2)(iv)(B) for changes necessary to comply with § 226.54. In its place, the Board is proposing to adopt an exemption stating that, when a fee has been reduced consistent with the Servicemembers Civil Relief Act (SCRA), 50 U.S.C. app. 501 *et seq.,* or a similar federal or state statute or regulation, the right to reject does not apply to an increase in that fee once the statute or regulation no longer applies, provided that the amount of the increased fee does not exceed the amount of that fee prior to the reduction.

As discussed in greater detail below with respect to § 226.55(b)(6), the SCRA and some state statutes generally require creditors to reduce interest rates and

[2] The Board notes that charges for voluntary credit insurance, debt cancellation or debt suspension coverage are "charges imposed as part of the plan" under § 226.6(b)(3)(ii)(F), and accordingly changes in the cost of such coverage would be required to be disclosed in accordance with § 226.9(c)(2)(iii).

fees for consumers who are engaged in military service. When the SCRA or similar state statute ceases to apply, § 226.9(c) generally requires the creditor to provide 45 days' advance notice of any increase in a rate or fee. The right to reject does not apply to rate increases, but § 226.55(b)(6) limits the ability of a card issuer to increase the rate that applies to the existing balance on a credit card account under an open-end (not home-secured) consumer credit plan in these circumstances. Specifically, § 226.55(b)(6) provides that, if the SCRA requires a card issuer to reduce an interest rate on an existing balance when a consumer enters military service, the rate applied to that balance when the consumer leaves military service cannot exceed the rate that applied prior to military service. In other words, consumers cannot be worse off once the SCRA ceases to apply than they were before the SCRA began to apply.

The Board understands that, in order to comply with the SCRA and similar federal or state statute or regulation, many creditors reduce or cease to impose annual fees, late payment fees, and other types of fees while a consumer is in military service. Although the right to reject generally applies to increases in fees required to be disclosed under § 226.6(b)(1) and (b)(2) (such as annual fees and late payment fees), the Board believes that, when a consumer leaves military service and the legal requirements of the SCRA or a similar federal or state statute or regulation cease to apply, it is appropriate to permit creditors to return fees to pre-existing levels. Accordingly, the Board would exempt such increases from the right to reject. However, the right to reject would continue to apply if a creditor sought to apply a fee that exceeded the amount of the fee prior to the consumer entering military service.

Comments 9(c)(2)(iv)–3 and –4 and comments 9(c)(2)(v)–3 and –4 clarify that, if a creditor is changing a rate applicable to a consumer's account from a non-variable rate to a variable rate (or vice versa), the creditor must provide a notice pursuant to § 226.9(c) even if the new rate is lower than the prior rate. The Board would revise this guidance to clarify that notice is not required pursuant to § 226.9(c)(2) when a lower rate is applied in connection with a promotional or other temporary rate program or a workout or temporary hardship arrangement, provided that the terms of that program or arrangement are disclosed consistent with § 226.9(c)(2)(v)(B) or (c)(2)(v)(D). In these circumstances, the Board believes that the 45-day notice requirement would unnecessarily delay application of a lower rate to a consumer's account in circumstances where § 226.9(c)(2)(v)(B) or (c)(2)(v)(D) generally require that the consumer be informed of the terms associated with the lower rate before it is applied to the account. Furthermore, when a promotional or temporary rate or workout or temporary hardship arrangement is applied to an account, the substantive limitations in § 226.55(b)(1) and (b)(5) protect consumers from unanticipated increases in the rates that apply to existing balances.

The Board would also clarify that notice pursuant to § 226.9(c)(2) is not required when the creditor applies a lower rate in order to comply with the SCRA or a similar federal or state statute or regulation. Finally, in order to eliminate redundancy and ensure consistent guidance, the Board would replace comments 9(c)(2)(v)–3 and –4 with cross references to comments 9(c)(2)(iv)–3 and –4.

9(c)(2)(v) Notice Not Required

Temporary Rate Exception

Section 226.9(c)(2) generally requires that 45 days' advance notice be provided of significant changes in account terms for open-end (not home-secured) consumer credit plans. Several exceptions to this 45-day advance notice requirement are set forth in § 226.9(c)(2)(v). Section 226.9(c)(2)(v)(B) sets forth an exception for increases in annual percentage rates upon the expiration of a period of time, provided that prior to the commencement of that period, the creditor discloses to the consumer clearly and conspicuously in writing the length of the period and the annual percentage rate that will apply after that period. Section 226.9(c)(2)(v)(B)(*2*) requires that the disclosure of the length of the period and the rate that will apply after expiration of the period must be disclosed in close proximity and equal prominence to the first listing of the disclosure of the rate that applies during the specified period of time.

The Board is proposing to clarify the proximity and prominence requirements for the disclosure of introductory rates that are disclosed at account opening. The Board understands that there is confusion regarding how to comply with the proximity and prominence rules in § 226.9(c)(2)(v)(B) when an introductory rate is being disclosed in the account-opening table. The rules in § 226.6(b) contain prescriptive formatting and font size requirements for the disclosures required to be provided in tabular form at account opening. Section 226.6(b)(1) requires that the tabular disclosure have headings, content, and format substantially similar to any of the applicable tables in G–17 in appendix G. In addition, § 226.6(b)(2)(i) requires that annual percentage rates for purchases be disclosed in the tabular disclosure provided at account opening in 16-point font. Section 226.6(b)(1)(i) requires that annual percentage rates required to be disclosed pursuant to § 226.6(b)(2)(i), including introductory rates required to be disclosed under § 226.6(b)(2)(i)(F), be disclosed in bold text.

Sample G–17(C) contains a sample disclosure of an introductory rate on purchases, where the introductory and standard annual percentage rates are presented in bold 16-point font in accordance with § 226.6(b)(1)(i) and (b)(2)(i). However, the disclosure of the introductory period is displayed in 10-point font and is not presented in bold text, consistent with § 226.6(b). The Board understands that there is confusion regarding whether the § 226.6(b) tabular disclosure would be deemed to comply with the formatting requirements in § 226.9(c)(2)(v)(B)(*2*), because the period is disclosed in a smaller font than the font in which the relevant rates are disclosed, and is not in bold text.

The Board believes that additional clarification is appropriate as to the relationship between the formatting requirements of §§ 226.9(c)(2)(v)(B)(*2*) and 226.6(b). The Board believes that if the information described in § 226.9(c)(2)(v)(B)(*2*) is included in the account-opening table provided pursuant to, and in compliance with, § 226.6(b), it should be deemed to meet the equal prominence and close proximity requirements of § 226.9(c)(2)(v)(B). The format and presentation of information in the account-opening table was informed by the Board's consumer testing, and the Board believes that the requirements of § 226.6(b) are appropriate and sufficient to convey key information regarding introductory rates to consumers. Accordingly, the Board is proposing to adopt a new comment 9(c)(2)(v)–10 which states that a disclosure of the information described in § 226.9(c)(2)(v)(B)(*1*) provided in the account-opening table in accordance with § 226.6(b) complies with the requirements of § 226.9(c)(2)(v)(B)(*2*), if the listing of the introductory rate in such tabular disclosure also is the first listing as described in comment 9(c)(2)(v)–6. Existing comments

9(c)(2)(v)–10 through 9(c)(2)(v)–12 would be renumbered accordingly.

Comment 9(c)(2)(v)–5 sets forth guidance regarding the disclosure requirements for temporary rates when the temporary rate reduction is initially offered to the consumer by telephone. Comment 9(c)(2)(v)–5 states that the timing requirements of § 226.9(c)(2)(v)(B) are deemed to have been met, and written disclosures required by § 226.9(c)(2)(v)(B) may be provided as soon as reasonably practicable after the first transaction subject to a rate that will be in effect for a specified period of time (a temporary rate) if: (1) The consumer accepts the offer of the temporary rate by telephone; (2) the creditor permits the consumer to reject the temporary rate offer and have the rate or rates that previously applied to the consumer's balances reinstated for 45 days after the creditor mails or delivers the written disclosures required by § 226.9(c)(2)(v)(B); and (3) the disclosures required by § 226.9(c)(2)(v)(B) and the consumer's right to reject the temporary rate offer and have the rate or rates that previously applied to the consumer's account reinstated are disclosed to the consumer as part of the temporary rate offer.

As discussed in the supplementary information to the February 2010 Final Rule, the Board believes that this rule for telephone offers of promotional rates ensures that consumers may take immediate advantage of promotions that they believe to be beneficial, while protecting consumers by allowing them to terminate the promotion with no adverse consequences, upon receipt of written disclosures. Consistent with the rationale discussed in the February 2010 Final Rule, the Board is proposing to amend comment 9(c)(2)(v)–5.ii to provide that, in connection with telephone offers of temporary rates or fees,[3] the creditor need not permit the consumer to reject the temporary rate or temporary fee offer if the rate or rates or fee that will apply following expiration of the temporary rate do not exceed the rate or rates or fee that applied immediately prior to commencement of the temporary rate. The Board believes that, since such an offer never results in the increase in an interest rate or fee even on a prospective basis, it is unnecessary to provide consumers with the opportunity to reject such an offer.

[3] As discussed below, the Board is proposing to apply the exception in § 226.9(c)(2)(v)(B) to temporary fee reductions; accordingly, proposed comment 9(c)(2)(v)–5.ii would apply both to temporary rate and temporary fee offers.

The Board is proposing a conforming change to comment 9(c)(2)(v)–5.iii.

Exception for Temporary Reductions in Fees

The Board also is proposing to amend § 226.9(c)(2)(v)(B) to provide an exception to the advance notice requirements for increases in fees that occur after the expiration of a specified period of time. The Board declined to adopt a specific exception for temporary or promotional fee programs in the February 2010 Final Rule because the Credit Card Act did not contain such an exception and because an exception did not appear to be necessary. *See* 75 FR 7699. In the supplementary information to the February 2010 Final Rule, the Board noted that nothing in Regulation Z prohibits a creditor from providing notice of a future increase in a fee at the same time it temporarily reduces the fee; a creditor could provide information regarding the temporary reduction in the same notice, provided that it is not interspersed with the content required to be disclosed pursuant to § 226.9(c)(2)(iv). See 75 FR 7699.

Nevertheless, upon further review, for the reasons also discussed in the supplementary information to § 226.55(b)(1), the Board believes that it may be appropriate to use its authority under TILA Section 105(a) to specifically address the advance notice requirements for temporary or promotional fees in order to encourage issuers to disclose and structure such programs in a consistent manner that enables consumers to understand the associated costs. Accordingly, the Board proposes to amend § 226.9(c)(2)(v)(B) to apply to increases in fees upon the expiration of a specified period of time. Thus, § 226.9(c)(2)(v)(B) would permit a card issuer to increase a fee after a specified period of time without providing 45 days' advance notice, if the card issuer provides the consumer in advance with a clear and conspicuous written disclosure of the length of the period and the fee or charge that will apply after expiration of the period. In addition, the Board is proposing to amend comments 9(c)(2)(v)–5 through 9(c)(2)(v)–7 to expressly refer to temporary fee offers.

In addition, for clarity, and for consistency with the proposed changes to § 226.9(c)(2)(v)(B), the Board is proposing to amend comment 9(c)(2)(v)–2, which addresses skip features offered in connection with open-end (not home-secured) consumer credit plans. Comment 9(c)(2)(v)–2 addresses the disclosures that must be given when a credit program allows consumers to skip or reduce one or more payments during the year or involves temporary reductions in finance charges. The Board notes that comment 9(c)(2)(v)–2 was amended in the February 2010 Final Rule for conformity with the exception in § 226.9(c)(2)(v)(B) for temporary reductions in interest rates. In particular, the Board added a new comment 9(c)(2)(v)–2.ii that clarifies the notice requirements for temporary reductions in interest rates. *See* 75 FR 7702. Because the Board is proposing to expand § 226.9(c)(2)(v)(B) to cover promotional fee offers in addition to promotional rate offers, the Board is proposing to amend comment 9(c)(2)(v)–2.ii to also cover temporary reductions in fees; comment 9(c)(2)(v)–2.i would accordingly apply only to programs that permit a consumer to skip or reduce a payment.

Variable Rate Exception

The Board is proposing to correct a typographical error in § 226.9(c)(2)(v)(C). Section 226.9(c)(2)(v)(C) contains an exception to the 45-day advance notice requirements for increases in variable annual percentage rates in accordance with a credit card agreement that provides for a change in the rate according to operation of an index that is not under the control of the creditor and is available to the general public. In the proposal that led to the February 2010 Final Rule, proposed § 226.9(c)(2)(v)(C) referred to an increase "in accordance with a credit card or other account agreement." In the February 2010 Final Rule, the phrase "or other account" was inadvertently deleted, without explanation in the supplementary information. The Board's intent was for the exception in § 226.9(c)(2)(v)(C) to apply both to credit card accounts and to other open-end (not home-secured) consumer credit plans. Accordingly, the Board is proposing to insert the phrase "or other account" into § 226.9(c)(2)(v)(C).

The exception to the advance notice requirements for an increase in a variable annual percentage rate is conditioned on the rate varying according to the operation of an index that is not under the control of the creditor and is available to the general public. Comment 9(c)(2)(v)–11 contains a cross-reference to comment 55(b)(2)–2 for guidance on when an index is deemed to be under the "card issuer's" control. The Board is aware that there has been some confusion regarding the relationship between comment 55(b)(2)–2 and the exception set forth in § 226.9(c)(2)(v)(C). Comment 55(b)(2)–2

provides that an index is under a card issuer's control if, among other things, the variable rate is subject to a fixed minimum rate or similar requirement that does not permit the variable rate to decrease consistent with reductions in the index. The substantive limitations on rate increases in § 226.55 and comment 55(b)(2)–2 apply only to credit card accounts under an open-end (not home-secured) consumer credit plan, while the advance notice requirements in § 226.9(c)(2) and the variable-rate exception in § 226.9(c)(2)(v)(C) apply to all open-end (not home-secured) consumer credit plans. Thus, the Board has been asked whether the variable-rate exception to the advance notice requirements set forth in § 226.9(c)(2)(v)(C) applies to an open-end (not home-secured) consumer credit plan, if the variable rate is subject to a fixed minimum or "floor."

The Board proposes to clarify that a variable rate plan that is subject to a fixed minimum or "floor" does not meet the conditions of the exception to the advance notice requirements set forth in § 226.9(c)(2)(v)(C). The Board believes that it is appropriate to adopt a consistent interpretation of "an index that is not under the control of the creditor" for all open-end (not home-secured) credit. The Board is proposing to amend comment 9(c)(2)(v)–11 (renumbered as comment 9(c)(2)(v)–12) to refer to guidance on when an index is deemed to be under "a creditor's" control, rather than "the card issuer's" control. The Board notes that the substantive provisions of § 226.55 continue to apply only to credit card accounts under an open-end (not home-secured) consumer credit plan; however, the proposed change would clarify that 45 days' advance notice is required prior to a rate increase on a variable-rate plan subject to a fixed minimum or floor, for all open-end (not home-secured) plans.

Section 226.10 Payments

10(b) Specific Requirements for Payments

10(b)(4) Nonconforming Payments

Section 226.10 sets forth rules regarding the prompt crediting of payments and the permissibility of assessing fees to make expedited payments. Section 226.10(a) generally requires that payments be credited to a consumer's account as of the date of receipt, except that § 226.10(b) permits creditors to specify reasonable requirements for payments provided that those requirements enable most consumers to make conforming payments. Section 226.10(b)(4) addresses the crediting of payments that do not conform to the requirements specified by the creditor; if a creditor specifies requirements for the consumer to follow in making payments as permitted under § 226.10 but accepts a payment that does not conform to the requirements, such nonconforming payments must be credited within five days of receipt.

The Board is aware that there is confusion regarding the distinction between conforming payments, which must be credited as of the date of receipt, and nonconforming payments, which must be credited within five days of receipt. Currently, § 226.10(b)(4) refers to requirements specified "on or with the periodic statement," which may be read to suggest that payments received by any means not specified on or with the periodic statement generally are nonconforming payments. However, the rule in § 226.10(b) that permits a creditor to specify reasonable requirements for making payments is silent as to the manner in which these requirements must be communicated to consumers in order for such payments to be considered conforming payments. In addition, comment 10(b)–2 expressly provides that if a creditor promotes electronic payment via its Web site, any payments made via the Web site are generally conforming payments for purposes of § 226.10(b), which indicates that conforming payments are not only those payments made via methods specified on the periodic statement.

The Board believes that additional clarification is appropriate regarding the distinction between conforming and nonconforming payments, in order to facilitate compliance with the rule and to ensure that payments are posted promptly in accordance with consumer expectations and the intent of TILA Section 164. TILA Section 164, as amended by the Credit Card Act, provides in part that payments received from a consumer for an open-end consumer credit plan shall be posted promptly to the account as specified in regulations of the Board. The Board believes that, if a creditor promotes a specific method of making payments, the intent of TILA Section 164 is best effectuated by a rule that requires payments made by that method to be credited as of the date of receipt.

Accordingly, the Board is proposing to amend comment 10(b)–2 to provide that if a creditor promotes a specific payment method, any payments made via that method (prior to any cut-off time specified by the creditor to the extent permitted by § 226.10(b)(2)), are generally conforming payments for purposes of § 226.10(b). To provide further guidance, the Board also proposes to add two additional examples to comment 10(b)–2. Proposed comment 10(b)(2)–ii states that if a creditor promotes payment by telephone (for example, by including the option to pay by telephone in a menu of options provided to consumers at a toll-free number disclosed on its periodic statement), payments made by telephone would generally be conforming payments for purposes of § 226.10(b). Similarly, proposed comment 10(b)(2)–iii states that if a creditor promotes in-person payments, for example by stating in an advertisement that payments may be made in person at its branch locations, such in-person payments made at a branch or office of the creditor generally would be conforming payments for purposes of § 226.10(b). The Board believes that if a creditor promotes that payments may be made via a certain method, it would be inappropriate to permit the creditor to delay crediting such payments for five days after receipt. In contrast, proposed comment 10(b)–2 would not apply if the creditor makes a general promotional statement regarding payments that does not refer to a specific payment method, for example a statement that the creditor offers "many convenient payment options."

For conformity, the Board also is proposing to amend § 226.10(b)(4), which addresses the treatment of nonconforming payments, to provide that if a creditor specifies, on or with the periodic statement, requirements for the consumer to follow in making payments, but accepts a payment that does not conform to the requirements via a payment method that the creditor does not otherwise promote, the creditor shall credit the payment within five days of receipt.

10(e) Limitations on Fees Related to Method of Payment

Section 226.10(e) generally prohibits imposing a separate fee for allowing consumers to make a payment by any method, unless such payment method involves expedited service by a customer service representative of the card issuer. The Board understands that card issuers may use third-party service providers to provide payment-related services on behalf of the issuer, such as receiving or processing payments from consumers. In some circumstances, the third-party service provider may charge consumers a separate fee for making a payment—for example, when a payment is made electronically through a Web site. The Board believes that it would be inconsistent with the purposes of the

Credit Card Act for consumers to pay a separate fee for making a payment through a third party who is receiving payment on behalf of the issuer, unless the issuer itself would be permitted to charge the fee. Accordingly, the Board proposes to adopt a new comment 10(e)–4 to prohibit third party service providers or other third parties who receive payments on behalf of a card issuer from charging a separate fee for payment, except as otherwise permitted by paragraph (e).

10(f) Changes by Card Issuer

The Board proposes to replace a reference to "consumer" in comment 226.10(f)–3.ii with "card issuer" in order to correct a typographical error.

Section 226.12 Special Credit Card Provisions

12(c) Right of Cardholder To Assert Claims or Defenses Against Card Issuer

Section 226.12(c)(1) provides that, when a cardholder asserts a claim or defense against a card issuer, the cardholder may withhold payment up to the amount of credit outstanding for the property or services that gave rise to the dispute and any finance or other charges imposed on that amount. Comment 12(c)–4 clarifies that the amount of the claim or defense that the cardholder may assert shall not exceed the amount of credit outstanding for the disputed transaction at the time the cardholder first notifies the card issuer or the person honoring the credit card of the existence of the claim or defense. It further clarifies that, to determine the amount of credit outstanding, payments and other credits shall be applied to: (i) Late charges in the order of entry to the account; then to (ii) finance charges in the order of entry to the account; and then to (iii) any other debits in the order of entry to the account. It also clarifies that, if more than one item is included in a single extension of credit, credits are to be distributed pro rata according to prices and applicable taxes. Although the February 2010 Final Rule moved this language from a footnote in § 226.12 to the commentary, the guidance itself remained unchanged.

The Board understands that there has been some confusion about the interaction between the guidance on applying payments in comment 12(c)–4 and the payment allocation requirements in § 226.53. For credit card accounts under an open-end (not home-secured) consumer credit plan, § 226.53 generally requires card issuers to apply payments above the minimum first to the balance with the highest rate. Comment 53–3 clarifies that, when a consumer has asserted a claim or defense against a card issuer pursuant to § 226.12(c), the card issuer must apply any payment above the minimum in a manner that avoids or minimizes any reduction in the amount subject to that claim or defense. Illustrative examples are provided.

In order to remove any inconsistency and to facilitate compliance, the Board would revise comment 12(c)–4 to clarify that, with respect to credit card accounts under an open-end (not home-secured) consumer credit plan, card issuers must comply with § 226.53 and the guidance in comment 53–3. However, with respect to other types of credit card accounts (such as credit cards that access home-equity plans), the Board would retain the long-standing guidance in comment 12(c)–4.

Section 226.13 Billing Error Resolution

13(c) Time for Resolution; General Procedures

Section 226.13(c)(2) generally requires a creditor to complete the billing error investigation procedures within two billing cycles (but no later than 90 days) after receiving a billing error notice. To ensure that creditors promptly complete their investigations under TILA, the Board adopted a new comment 13(c)(2)–2 in the February 2010 Final Rule to clarify that a creditor must conclusively determine whether an error occurred within two complete billing cycles (but in no event later than 90 days) after receiving a billing error notice. Once this period has expired, the comment further clarified that the creditor may not reverse any amounts previously credited for an asserted billing error, even if the creditor subsequently obtains evidence indicating that the billing error did not occur as asserted.

Since adoption of the comment, the Board has received questions regarding whether § 226.13(c)(2) would prohibit creditors from reversing amounts previously credited by the creditor after conclusion of the two billing cycle time frame if the consumer subsequently receives a credit in the amount of the error from the merchant or person that had honored the credit card. Such an occurrence might arise, for example, because the error investigation time frames under card network rules provide merchants additional time beyond the time frame under § 226.13 to respond to a consumer error claim. As a result, a merchant may not issue a credit to the consumer's account until after the creditor has already resolved the consumer's error claim in the consumer's favor in order to comply with the time frame established under Regulation Z. In those cases, the consumer could receive more than one credit for the same billing error, one from the creditor and another from the merchant or other person honoring the credit card.

The purpose of the billing error resolution time frame is to enable consumers to have their error claims investigated and resolved promptly. That is, TILA Section 161, as implemented by § 226.13, is intended to bring finality to the billing error resolution process, and to avoid the potential of undue surprise for consumers caused by the reversal of previously credited funds when a creditor fails to complete its investigation in a timely manner. In contrast, the potential for consumer harm would not arise when a consumer has already been made whole for the error by the person honoring the credit card. In such a case, the Board believes that the creditor should be permitted to reverse amounts previously credited by the creditor to correct the error in order to avoid giving the consumer a windfall for that transaction.

Accordingly, the Board proposes to revise comment 13(c)(2)–2 to clarify that the requirement to complete an error investigation within two billing cycles does not prevent a creditor from reversing amounts it has previously credited to a consumer's account in circumstances where a consumer's account has been credited more than once for the same billing error. The proposed comment further clarifies that the reversal of the credit by the creditor is appropriate so long as the total amount of the remaining credits is equal to or more than the amount of the error and the consumer does not incur any fees or other charges as a result of the timing of the creditor's reversal. Thus, to ensure compliance with the requirements of § 226.13, a creditor should delay the reversal of the amounts the creditor has previously credited to the consumer's account until after the subsequent merchant credit has posted to the consumer's account. An illustrative example is set forth in the proposed comment.

Section 226.14 Determination of Annual Percentage Rate

14(a) General Rule

The Board understands that clarification may be appropriate regarding the effect of a leap year on determining the annual percentage rate for disclosures required for open-end (not home-secured) credit accounts. The Board proposes to add a new comment 14(a)–6 to clarify that a creditor may

disregard any variance in the annual percentage rate which occurs solely by reason of the addition of February 29 in a leap year. For example, a creditor may use 365 days as the number of periods in a leap year when computing an annual percentage rate. In addition, if an annual percentage rate is computed using 366 days as the number of periods in a leap year, a variance in rate which occurs solely because of the addition of February 29 in the annual percentage rate computation would not trigger disclosure and other requirements under §§ 226.9 and 226.55. The Board believes that the proposed comment promotes accuracy in the disclosure of annual percentage rates and minimizes potential consumer confusion and operational burden for creditors.

Section 226.16 Advertising

16(g) Promotional Rates and Fees

Section 226.16(g) currently sets forth the requirements for advertisements of promotional or introductory rates on open-end (not home-secured) plans. In general, § 226.16(g) requires that certain advertisements of promotional or introductory rates state the promotional period, post-promotional rate, and, in some cases, the term "introductory" or "intro," in order to promote consumer understanding of the terms of such a promotional or introductory rate offer. As discussed elsewhere in this supplementary information, the Board is proposing changes to §§ 226.9(c)(2) and 226.55 to implement additional disclosure requirements and limitations for offers of temporary reduced or promotional fees. The Board is proposing conforming changes to § 226.16(g) to require that certain advertisements of promotional fees also state the promotional period, post-promotional fee, and, in some cases, the term "introductory" or "intro," in order to promote consumer understanding of the terms of such promotional or introductory fee offers. The Board is proposing these changes using its authority under TILA Section 105(a) to effectuate the purposes of TILA. The Board believes requiring that creditors clearly disclose the conditions of a promotional fee offer will promote the informed use of credit by consumers.

The disclosure requirements under § 226.16(g) generally would apply to "promotional fee[s]," as defined in new § 226.16(g)(2)(iv). In particular, § 226.16(g)(2)(iv) would define "promotional fee" as a fee required to be disclosed under § 226.6(b)(1) and (b)(2) on an open-end (not home-secured) plan for a specified period of time that is lower than the fee that will be in effect at the end of that period. Accordingly, the new advertising requirements for promotional fee offers would apply only when the promotional fee being offered is a fee required to be disclosed in the account-opening table provided pursuant to § 226.6(b). The Board believes, based in part on its consumer testing, that § 226.6(b)(1) and (b)(2) require disclosure of the fees that are the most important to consumers. Accordingly, the Board believes that these key fees are those for which a creditor is the most likely to advertise a promotion. In addition, the application of the § 226.16(g) disclosure requirements to fees required to be disclosed pursuant to § 226.6(b)(1) and (b)(2) is consistent with the approach that the Board has taken in § 226.9(c)(2)(ii) when defining "significant changes in account terms." The Board also proposes several additional amendments to § 226.16(g) and the associated commentary in order to conform the advertising disclosures for promotional fees to the advertising disclosures for promotional rate offers in § 226.16(g).

Section 226.30 Limitation on Rates

The Board proposes to make a technical correction to comment 30–8.i.C to correct a typographical error.

Section 226.51 Ability To Pay

Section 226.51 implements the provisions of the Credit Card Act that require card issuers to assess a consumer's ability to pay before opening a new credit card account or increasing the credit limit on an existing account. Section 226.51(a) implements TILA Section 150, which provides that "[a] card issuer may not open any credit card account for any consumer under an open end consumer credit plan, or increase any credit limit applicable to such account, unless the card issuer considers the ability of the consumer to make the required payments under the terms of such account." Section 226.51(b) implements TILA Section 127(c)(8), which prohibits a card issuer from opening a credit card account for a consumer who is under the age of 21 unless the consumer has submitted a written application that meets certain requirements. Specifically, the application must require either: (1) "Submission by the consumer of financial information, including through an application, indicating an independent means of repaying any obligation arising from the proposed extension of credit in connection with the account"; or (2) the signature of a cosigner who has such means, is 21 or older, and assumes joint liability for the account.[4]

The Board generally intended § 226.51 to establish consistent standards for evaluating a consumer's ability to pay. Specifically, § 226.51 requires that card issuers establish and maintain reasonable written policies and procedures to consider the income or assets and the current obligations of all consumers, regardless of age. *See* § 226.51(a)(1)(ii), (b)(1)(i), and (b)(2)(ii)(B). For all consumers, a card issuer must consider either the ratio of debt obligations to income, the ratio of debt obligations to assets, or the income the consumer will have after paying debt obligations. *See id.* Furthermore, regardless of a consumer's age, it would be unreasonable for a card issuer not to review any information about a consumer's income, assets, or current obligations, or to issue a credit card to a consumer who does not have any income or assets. *See id.*

Some card issuers request on application forms that applicants simply provide their "income," while other issuers request that applicants provide their "household income." The Board understands that there has been some confusion as to whether information provided by a consumer in response to a request for household income can be used by a card issuer to satisfy the requirements of § 226.51. In particular, the Board understands that there has been some uncertainty as to whether § 226.51 established different standards for underage consumers and other consumers with respect to the consideration of household income or assets. There appear to be three sources of this confusion.

First, the Board understands that some of the uncertainty regarding household income results from the fact that, in the February 2010 Final Rule, the Board expressly concluded that the income of an underage consumer's spouse could not be used to satisfy the requirements of § 226.51(b) but did not state a similar conclusion with respect to the general rule in § 226.51(a). *See* 75 FR 7723. However, the issue of spousal or other household income was not addressed in the context of § 226.51(a) because it was not raised during the comment period. Accordingly, the Board is addressing the issue in this rulemaking.

[4] Section 226.51(b) also implements TILA Section 127(p), which requires that, when a cosigner has assumed joint liability for a credit card account issued to an underage consumer, the account's credit limit may not be increased unless the cosigner approves in writing, and assumes joint liability for, the increase.

Second, the Board understands that there has been some confusion as to whether Regulation B (12 CFR Part 202) requires a card issuer to consider spousal or other household income when considering a consumer's ability to pay under § 226.51. In response to concerns raised by commenters, the Board stated in the February 2010 Final Rule that, when a card issuer is evaluating an underage consumer's ability to pay under § 226.51(b), Regulation B does not compel the issuer to consider the income of the consumer's spouse. *See* 75 FR 7723. The Board also stated that card issuers would not violate Regulation B by virtue of complying with the requirements in § 226.51(b). *Id.* However, the Board understands that these statements may have left some uncertainty because they did not expressly address the general ability to pay requirement in § 226.51(a), which applies to all consumers regardless of age. Accordingly, the Board clarifies that Regulation B does not compel a card issuer to consider spousal or other household income when considering an applicant's ability to pay under either § 226.51(a) or (b), unless, for example, the spouse or household member is a joint applicant or accountholder or state law grants the applicant an ownership interest in the income of his or her spouse. Furthermore, the Board clarifies that card issuers would not violate Regulation B by virtue of complying with the requirements in § 226.51(a) or (b). Thus, to the extent that a card issuer is not permitted to consider spousal or other household income when evaluating a consumer's ability to pay under § 226.51, the card issuer's failure to consider such income when performing that evaluation does not violate Regulation B.

Third, the Board understands that the use of the word "independent" in § 226.51(b) but not in § 226.51(a) has been interpreted by some as prohibiting consideration of household income with respect to underage consumers but permitting it for other consumers. This difference in wording reflects the language in the statutory provisions implemented by § 226.51(a) and (b). Specifically, § 226.51(a)(1) follows TILA Section 150 in requiring a card issuer to consider the ability of the consumer to make the required payments, whereas § 226.51(b)(1)(i) tracks TILA Section 127(c)(8)(B)(ii) by requiring a card issuer to obtain financial information indicating that an underage consumer without a cosigner has an independent ability to make those payments.

Congress' use of "independent" in TILA Section 127(c)(8)(B)(ii) but not in TILA Section 150 could be interpreted as establishing a less stringent standard for consideration of household income if the consumer is 21 or older. However, TILA Section 150 requires card issuers to consider "the ability of *the consumer* to make the required payments," which indicates that Congress intended card issuers to base this evaluation only on the ability of the consumer (or consumers) applying for the account. Indeed, to the extent that TILA Section 150 was intended to ensure that credit cards are not issued to consumers who lack the ability to pay, it could be inconsistent with that purpose to permit a card issuer to open a credit card account for a consumer without income or assets based on the income or assets of a spouse or other household member (unless the consumer has an ownership interest in the household income or assets). Accordingly, using its authority under TILA Section 105(a) and Section 2 of the Credit Card Act, the Board proposes to amend § 226.51 to require that, regardless of the consumer's age, a card issuer must consider the consumer's *independent* ability to make the required payments. In addition to providing a single, consistent standard for evaluating a consumer's ability to pay, the Board believes that this proposed revision is consistent with the intent of TILA Section 150.

Consistent with the proposed amendments to § 226.51, the Board would revise comment 51(a)(1)–4 to clarify that, as a general matter, consideration of information regarding the consumer's household income or assets does not by itself satisfy the requirement in § 226.51(a)(1) to consider the consumer's independent ability to pay. The comment would further clarify that, if, for example, a card issuer requests on its application form that applicants provide their household income, the card issuer may not rely solely on that income information to satisfy the requirements of § 226.51(a). Instead, the card issuer would need to obtain additional information about the applicants' independent income (such as by contacting the applicants). However, the comment would also clarify that, if a card issuer requests on its application form that applicants provide their income (without referring to household income), the card issuer may rely on the information provided to satisfy the requirements of § 226.51(a). For organizational purposes, comment 51(a)(1)–4 would be divided into subparagraphs, and this guidance would be set forth in subparagraph 51(a)(1)–4.iii.

The Board would also add additional guidance regarding spousal income in new subparagraph 52(a)(1)–4.i, which addresses the types of income or assets that may be considered when performing the § 226.51(a) analysis. The Board would clarify that, when an applicant's spouse is not a joint applicant or joint accountholder, a card issuer may consider the spouse's income or assets to the extent that a federal or state statute or regulation grants the applicant an ownership interest in that income or those assets. For example, assume that a consumer is applying for a credit card account, but the consumer's spouse is not a joint applicant. If the consumer and the spouse reside in a community property state where state law grants the consumer joint ownership of income or assets acquired by the spouse during the marriage, the income or assets are considered the consumer's income or assets for purposes of the § 226.51(a) analysis.

The Board acknowledges that the proposed amendments to § 226.51 and its commentary could prevent a consumer without income or assets from opening a credit card account despite the fact that the consumer has access to (but not an ownership interest in) the income or assets of a spouse or other household member. However, the Board has previously concluded that it would be inconsistent with the intent of the Credit Card Act for a card issuer to issue a credit card to a consumer who does not have any income or assets. *See* § 226.51(a)(1)(ii). Furthermore, a consumer without independent income or assets could still open a credit card account by applying jointly with a spouse or household member who has sufficient income or assets. *See* comment 51(a)(1)–6. Nevertheless, the Board solicits comment on whether it would be appropriate to provide greater flexibility in these circumstances.

The Board also notes that, as discussed in the February 2010 Final Rule, neither the Credit Card Act nor § 226.51 requires verification of information provided by a consumer regarding income or assets. *See* 75 FR 7721. Thus, while a card issuer that, for example, prompts applicants to provide household income on an application form could not rely on that information by itself to satisfy the requirements of § 226.51(a), a card issuer that requests on the application form that applicants provide their own income is not required to verify that the income provided by the applicant does not include household income.

Finally, consistent with the proposed amendments to §§ 226.9, 226.16, and 226.55 regarding fees that increase after a specified period of time, the Board

would amend comment 51(a)(2)–3 to clarify that, when estimating the required minimum periodic payments for purposes of the safe harbor in § 226.51(a)(2)(ii), the issuer must use the fee that will apply after the specified period. This approach is consistent with the guidance regarding promotional rates in comment 51(a)(2)–2.

Section 226.52 Limitations on Fees

52(a) Limitations Prior to Account Opening and During First Year After Account Opening

Section 226.52(a)(1) generally limits the total amount of fees that a consumer may be required to pay with respect to a credit card account under an open-end (not home-secured) consumer credit plan to 25 percent of the account's credit limit at account opening.[5] This limitation applies "during the first year after the account is opened." However, the Board understands that some card issuers are requiring consumers to pay application, processing, or similar fees prior to account opening that, when combined with other fees charged after account opening, exceed the 25 percent threshold in § 226.52(a)(1). As discussed below, to the extent that § 226.52(a)(1) permits this practice, the Board is concerned that the regulation is inconsistent with the purposes of TILA (as amended by the Credit Card Act). Accordingly, pursuant to its authority under TILA Section 105(a) and Section 2 of the Credit Card Act, the Board proposes to amend § 226.52(a)(1) to apply to fees the consumer is required to pay prior to account opening.

The Credit Card Act amended TILA Section 127 by creating a new paragraph (n). *See* Credit Card Act § 105. Section 127(n)(1) provides that, "[i]f the terms of a credit card account under an open end consumer credit plan require the payment of any fees (other than any late fee, over-the-limit fee, or fee for a payment returned for insufficient funds) by the consumer in the first year during which the account is opened in an aggregate amount in excess of 25 percent of the total amount of credit authorized under the account when the account is opened, no payment of any fees (other than any late fee, over-the-limit fee, or fee for a payment returned for insufficient funds) may be made from the credit made available under the terms of the account." 15 U.S.C. 1637(n)(1). Section 127(n)(2) further provides that Section 127(n) may not "be construed as authorizing any imposition or payment of advance fees otherwise prohibited by any provision of law." 15 U.S.C. 1637(n)(2).

As discussed in the February 2010 Final Rule, the Board believes that Section 127(n) was intended to prevent card issuers from requiring consumers to pay excessive fees in order to obtain a credit card account. *See* 75 FR 7724–7726. Many subprime credit card issuers require payment of substantial one-time fees when an account is opened (such as application fees, program fees, and annual fees). By linking the maximum amount of permissible fees to the amount of credit extended, Section 127(n)(1) and § 226.52(a)(1) establish a direct relationship between the costs and benefits associated with opening a credit card account. If, for example, a card issuer provides a consumer with a $500 credit limit when the account is opened, the issuer is prohibited from requiring the consumer to pay more than $125 in non-exempt fees at account opening. Furthermore, in order to ensure that the statutory relationship between fees and the account's credit limit is maintained for a reasonable period of time, Section 127(n)(1) and § 226.52(a)(1) apply for one year after an account is opened. Thus, a card issuer that charges non-exempt fees that equal 25 percent of the credit limit at account opening cannot require the consumer to pay any transaction fees, monthly maintenance fees, or other non-exempt fees for one year after account opening.

52(a)(1) General Rule

The Board understands that, because § 226.52(a)(1) states that its limitations apply "*during* the first year after the account is opened," there has been some uncertainty as to whether those limitations apply to fees that a consumer is required to pay prior to account opening. As noted above, some card issuers are currently requiring consumers to pay application or processing fees prior to account opening that, when combined with other fees charged to the account after account opening, exceed 25 percent of the account's initial credit limit. While this practice is consistent with the current language of § 226.52(a)(1), the Board believes that it is inconsistent with intent of Section 127(n)(1) insofar as it disturbs the statutory relationship between the costs and benefits of opening a credit card account. Accordingly, in order to effectuate the purpose of Section 127(n)(1), the Board proposes to use its authority under TILA Section 105(a) and Section 2 of the Credit Card Act to amend § 226.52(a)(1) to apply to fees the consumer is required to pay before account opening and during the first year after account opening.[6]

The Board is also aware of some confusion regarding when the one-year period in § 226.52(a)(1) begins and ends. For this reason, the Board proposes to further amend § 226.52(a)(1) to provide that, for purposes of that paragraph, an account is considered open no earlier than the date on which the account may first be used by the consumer to engage in transactions. This approach is generally consistent with § 226.5(b)(1)(i), which provides that the account-opening disclosures required by § 226.6 must be provided before the first transaction is made under the plan. Although § 226.5(b)(1)(iv) and (b)(1)(v) permit creditors to collect membership fees and application fees excludable from the finance charge under § 226.4(c)(1) before providing account-opening disclosures in certain circumstances, the Board is concerned that, because the ability to engage in transactions is a primary benefit of a credit card account, it would be inconsistent with the purpose of Section 127(n)(1) if the one-year period expired less than one year after the consumer could first use the account for transactions. However, because card issuers may have different processes for opening credit card accounts, the Board solicits comment on any operational difficulties posed by this amendment.

The Board also understands that the references in § 226.52(a)(1) and comment 52(a)(1)–1 to the charging of fees *to* a credit card account have raised concerns as to whether § 226.52(a)(1) permits card issuers to require consumers to pay an unlimited amount of fees with respect to a credit card account so long as none of those fees are actually charged to the account. Although this language was based on the language of the Credit Card Act, the Board does not believe that Congress intended this result. Indeed, as discussed in the February 2010 Final

[5] Late payment fees, over-the-limit fees, and returned payment fees are exempt from this requirement, as are fees that the consumer is not required to pay with respect to the account. *See* § 226.52(a)(2).

[6] Although TILA Section 127(n)(2) refers to the "imposition or payment of advance fees," the Board does not interpret this reference as excluding "advance fees" from the application of Section 127(n)(1). On the contrary, Section 127(n)(2) specifically states that Section 127(n) cannot "be construed as authorizing any imposition or payment of advance fees otherwise prohibited by any provision of law," which the Board understands to mean that a fee that falls under the 25 percent threshold may nevertheless be subject to other legal restrictions. For example, comment 52(a)(3)–1 cites 16 CFR § 310.4(a)(4), which prohibits any telemarketer or seller from "[r]equesting or receiving payment of any fee or consideration in advance of obtaining a loan or other extension of credit when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or other extension of credit for a person."

Rule, the Board believes that Congress intended the 25 percent limitation to apply not only to fees charged to a credit card account but also to fees collected from other sources with respect to the account (such as fees that are charged to a consumer's deposit account). See 75 FR 7724–7726. Accordingly, in order to resolve any ambiguity, the Board would use its authority under TILA Section 105(a) and Section 2 of the Credit Card Act to simplify § 226.52(a)(1) by removing this language. The Board would also make conforming amendments to comment 52(a)(1)–1.

The Board also proposes to amend the commentary to § 226.52(a)(1) for consistency with the proposed revisions discussed above and to make certain non-substantive clarifications and corrections.

52(a)(2) Fees Not Subject to Limitations

In addition, the Board understands that there has been some uncertainty as to whether minimum interest charges are subject to § 226.52(a)(1). The Board has previously stated elsewhere in Regulation Z that such charges should be treated as fees. *See* comment 7(b)(6)–4. Accordingly, for consistency, the Board proposes to amend comment 52(a)(2)–1 to clarify that, while § 226.52(a)(1) does not apply to charges attributable to periodic interest rates, it applies to charges imposed as a substitute for interest when the interest charge would not otherwise exceed a minimum threshold. In addition, the Board would clarify that § 226.52(a)(1) applies to other fixed finance charges.

52(a)(3) Rule of Construction

The Board proposes to correct a typographical error in § 226.52(a)(3) by replacing the words "This paragraph (a)" with "Paragraph (a) of this section."

52(b) Limitations on Penalty Fees

Section 226.52(b)(1) prohibits card issuers from imposing fees for violating the terms or other requirements of an open-end (not home-secured) consumer credit plan unless the dollar amount of the fee either represents a reasonable proportion of the total costs incurred by the issuer as a result of the type of violation or complies with the applicable safe harbor amount. Furthermore, under § 226.52(b)(2), the dollar amount of the fee cannot exceed the dollar amount associated with the violation and a card issuer cannot impose more than one fee based on a single event or transaction. In order to facilitate compliance, the Board proposes to amend § 226.52(b) and the accompanying commentary to provide additional guidance and illustrative examples.

52(b)(1)(ii) Safe Harbors

The safe harbors in § 226.52(b)(1)(ii)(A)–(B) provide that a card issuer may impose a fee of $25 for an initial violation and a fee of $35 for any additional violation of the same type during the next six billing cycles. As discussed in the June 2010 Final Rule, the Board believes that permitting card issuers to impose a higher fee for repeated violations during a relatively brief period generally reflects the increased costs incurred by issuers as a result of repeated violations, deters future violations, and addresses consumer conduct that is more indicative of loss. *See* 75 FR 37531–37534, 37540–37543.

The safe harbors in § 226.52(b)(1)(ii) address circumstances in which a violation is repeated in one of the six billing cycles following the billing cycle during which the initial violation occurred. However, the safe harbors do not expressly address circumstances in which a repeated violation occurs in the *same* billing cycle as the initial violation. The Board would correct this oversight by amending § 226.52(b)(1)(ii)(B) to state that a card issuer may impose a $35 fee for a subsequent violation of the same type that occurs *during the same billing cycle* or during the next six billing cycles. The Board would also make additional, non-substantive clarifying amendments to § 226.52(b)(1)(ii).[7]

There are relatively few circumstances in which a card issuer may impose multiple fees for multiple violations of the same type during a billing cycle. Section 226.56(j)(1) prohibits card issuers from imposing more than one over-the-limit fee per billing cycle. Furthermore, § 226.52(b)(2)(ii) prohibits the imposition of more than one penalty fee based on a single event or transaction, which prevents card issuers from imposing more than one late payment fee during a billing cycle. In addition, as discussed in comment 52(b)(2)(i)–1, a card issuer may not impose multiple returned payment fees by submitting the same check for payment multiple times. However, if, for example, a consumer makes two separate payments that are returned during the same billing cycle, the Board believes that it is consistent with the purpose of the safe harbors in § 226.52(b)(1)(ii)(A)–(B) to permit the card issuer to impose a $35 fee for the second returned payment. Accordingly, the Board would revise § 226.52(b)(1)(ii)(B) to clarify that this is permitted. The Board would also amend comment 52(b)(1)(ii)–1 for consistency with the proposed revisions to § 226.52(b)(1)(ii)(A)–(B) and provide an illustrative example in comment 52(b)(2)(ii)–1.

In addition, the Board would revise comment 52(b)(1)(ii)–1.ii to provide additional guidance regarding the relationship between the safe harbors in § 226.52(b)(1)(ii), the prohibition on imposing multiple fees based on a single event or transaction in § 226.52(b)(2)(ii), and the limitations on fees for exceeding the credit limit in § 226.56(j)(1). Consistent with the Credit Card Act, § 226.56(j)(1) permits card issuers to impose multiple over-the-limit fees based on a single over-the-limit transaction when the consumer does not make payments sufficient to bring the balance under the credit limit by the next payment due date (although no more than three fees may be imposed with respect to any single transaction). *See* Credit Card Act § 102(a); TILA Section 127(k); *see also* 75 FR 7751–7752. Because it appears that Congress intended to permit multiple over-the-limit fees based on a single over-the-limit transaction in these circumstances, the Board does not believe that it would be appropriate to interpret § 226.52(b) as prohibiting such fees. Accordingly, the Board would provide additional guidance in comment 52(b)(1)(ii)–1.ii clarifying that, to the extent permitted by § 226.56(j)(1), § 226.52(b)(2)(ii) does not prohibit a card issuer from imposing fees for exceeding the credit limit in consecutive billing cycles based on the same over-the-limit transaction. The Board would further clarify that, in these circumstances, the second and third over-the-limit fees permitted by § 226.56(j)(1) may be $35, consistent with the safe harbor for repeated violations in § 226.52(b)(1)(ii)(B). A cross-reference would be inserted to comment 52(b)(2)(ii)–1, where similar guidance and an illustrative example would also be provided.

52(b)(2)(i) Fees That Exceed Dollar Amount Associated With Violation

Section 226.52(b)(2)(i)(B)(*2*) prohibits a card issuer from imposing a fee based on account inactivity (including the consumer's failure to use the account for a particular number or dollar amount of transactions or a particular type of transaction). As an illustrative example, comment 52(b)(2)(i)–5 states that § 226.52(b)(2)(i)(B)(*2*) prohibits a card issuer from imposing a $50 fee when a

[7] In particular, the Board would move the language in § 226.52(b)(1)(ii)(A) and (B) regarding adjustments to the safe harbor amounts based on changes in the Consumer Price Index to a new § 226.52(b)(1)(ii)(D).

consumer fails to use the account for $2,000 in purchases over the course of a year. Furthermore, the comment clarifies that § 226.52(b)(2)(i)(B)(*2*) prohibits a card issuer from imposing a $50 annual fee on all accounts but waiving the fee if the consumer uses the account for $2,000 in purchases over the course of a year.

The Board understands that comment 52(b)(2)(i)–5 has created some confusion as to whether card issuers are prohibited from considering account activity as a factor when, for example, responding to an individual consumer's request that an annual fee be waived. This was not the Board's intent. Instead, the example in comment 52(b)(2)(i)–5 was intended to clarify that card issuers are prohibited from achieving indirectly through a systematic waiver of annual fees a result that is directly prohibited by § 226.52(b)(2)(i)(B)(*2*): Establishing a program under which only consumers who do not use an account for at least $2,000 in purchases over the course of a year are charged an additional $50. Accordingly, the Board proposes to amend comment 52(b)(2)(i)–5 to clarify that, if a card issuer does not promote the waiver or rebate of the annual fee for purposes of § 226.55(e), § 226.52(b)(2)(i)(B)(*2*) does not prohibit the issuer from considering account activity when waiving or rebating annual fees on individual accounts (such as in response to a consumer's request). The promotion of waivers and rebates is discussed in detail below with respect to proposed § 226.55(e).

52(b)(2)(ii) Multiple Fees Based On a Single Event or Transaction

The Board proposes to amend comment 52(b)(2)(ii)–1 to provide additional examples further illustrating the application of § 226.52(b)(2)(ii). Among other things, these examples clarify that—if the required minimum periodic payment is not made during a billing cycle and a late payment fee is imposed—the card issuer may include the unpaid amount in the required minimum periodic payment due during the next billing cycle and impose a second late payment fee under § 226.52(b)(2)(ii) if the consumer fails to make the second minimum payment. However, the examples also clarify that—if a consumer makes a required minimum periodic payment by the applicable due date—the card issuer may not impose a late payment fee based on the consumer's failure to also pay past due amounts that the card issuer chose not to include in that required minimum periodic payment.

The Board understands that, for loss mitigation and other purposes, some card issuers do not include past due amounts in the required minimum periodic payment. The Board acknowledges that this practice is beneficial to consumers to the extent that it prevents some delinquent consumers from becoming even more delinquent. For example, if a card issuer does not include past due amounts in the required minimum periodic payment, a consumer could remain one payment past due indefinitely without ever becoming more than 60 days delinquent and thereby avoid the application of a penalty rate to existing balances pursuant to § 226.55(b)(4). However, a consumer who makes the required minimum periodic payment reflected on the periodic statement by the due date should not be charged a late payment fee. It is inconsistent with the purpose of § 226.52(b)(2)(ii) for a consumer to be charged more than one late payment fee based on the failure to make a single required minimum periodic payment.

The Board proposal also amends comment 52(b)(2)(ii)–1 to provide an example of the application of § 226.52(b)(2)(ii) in circumstances where an over-the-limit fee and a returned payment fee could be based on a single event or transaction such that § 226.52(b)(2)(ii) would only permit the card issuer to impose a single fee. In addition, the Board would provide an example illustrating that § 226.52(b)(2)(ii) would permit multiple returned payment fees to be imposed during a single billing cycle if each fee was based on a separate returned payment.

Section 226.53 Allocation of Payments

53(b) Special Rules

Section 226.53(a) implements TILA Section 164(b)(1), which requires that card issuers generally allocate amounts paid by the consumer in excess of the required minimum periodic payment first to the balance with the highest annual percentage rate and then to other balances in descending order based on the applicable rate. However, TILA Section 164(b)(2) and § 226.53(b)(1) set forth a special rule for accounts with balances subject to a deferred interest or similar program. In these circumstances, a card issuer is required to allocate excess payments first to the balance subject to the program during the two billing cycles immediately preceding expiration of the program. In addition, in the February 2010 Final Rule, the Board used its authority under TILA Section 105(a) and Section 2 of the Credit Card Act to adopt § 226.53(b)(2), which permits card issuers to allocate excess payments among the balances in the manner requested by the consumer when a balance on the account is subject to a deferred interest or similar program. *See* 75 FR 7728–7729.

The Board understands that there is some concern regarding the appropriate allocation of payments when an account has multiple balances, one of which is secured. For example, some private label credit cards permit consumers to purchase equipment that is subject to a security interest (such as a motorcycle, snowmachine, or riding lawnmower) as well as related items that are not (such as helmets and other accessories). If the rate that applies to an unsecured balance is higher than the rate that applies to the secured balance, § 226.53(a) currently requires the card issuer to apply excess payments first to the unsecured balance. While this allocation method is generally beneficial to consumers insofar as it minimizes interest charges, it could also make it difficult for a consumer to pay off the secured balance in order to obtain a release of the security interest. For example, if a consumer wishes to sell, trade in, or otherwise dispose of the property in which the card issuer has a security interest, § 226.53(a) requires the consumer to pay off not only the secured balance but also any other balances to which a higher rate applies.

The Board believes that, in this narrow set of circumstances, it may be beneficial to consumers to provide greater flexibility regarding the allocation of excess payments. Accordingly, pursuant to its authority under TILA Section 105(a) and Section 2 of the Credit Card Act, the Board proposes to redesignate the special rules for accounts with deferred interest or similar balances as § 226.53(b)(1)(i) and (b)(1)(ii) and to adopt a new special rule for accounts with secured balances in § 226.53(b)(2). Specifically, the revised § 226.53(b)(2) would provide that, when a balance on a credit card account under an open-end (not home-secured) consumer credit plan is secured, the card issuer may at its option allocate any amount paid by the consumer in excess of the required minimum periodic payment to that balance if requested by the consumer.

The Board would also revise the commentary to § 226.53 consistent with the proposed revisions to § 226.53(b). In particular, the Board would clarify that the guidance in comment 53(b)–3 on what constitutes a consumer request when an account has a deferred interest or similar balance also applies when an account has a secured balance.

Section 226.55 Limitations on Increasing Annual Percentage Rates, Fees, and Charges

55(a) General Rule

Section 226.55 implements the restrictions on increases in annual percentage rates and certain fees and charges in TILA Sections 171 and 172. Section 226.55(a) prohibits card issuers from increasing an annual percentage rate or any fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) unless specifically permitted by one of the exceptions in § 226.55(b). The Board understands that there has been some confusion as to whether an increase in a rate, fee, or charge is subject to this prohibition when the consumer was previously notified of the circumstances giving rise to the increase. Accordingly, in order to remove any ambiguity, the Board proposes to amend comment 55(a)–1 to clarify that—except as specifically provided in § 226.55(b)—the prohibition in § 226.55(a) applies even if the circumstances under which an increase will occur are disclosed in advance.

55(b) Exceptions

Section 226.55(b) contains exceptions to the general rule in § 226.55(a). As a general matter, these exceptions are not mutually exclusive, and a card issuer may increase a rate, fee, or charge pursuant to one exception even if that increase would not be permitted under a different exception. Comment 55(b)–1 provides illustrative examples of the interaction between the different exceptions in § 226.55(b).

The Board proposes to amend comment 55(b)–1 to provide additional guidance regarding the interaction between the exception in § 226.55(b)(4) for accounts that become more than 60 days delinquent, the exception in § 226.55(b)(5) for accounts subject to a workout or temporary hardship arrangement, and the exception in § 226.55(b)(6) for accounts subject to the SCRA or a similar federal or state statute or regulation. Section 226.55(b)(4)(ii) implements the "cure" provision in TILA Section 171(b)(4)(B), which allows a consumer whose rate has been increased as a result of a delinquency of more than 60 days to "terminate" the increase (in other words, reduce the rate to the pre-existing value) by making the next six required minimum payments by the due date. For example, if the rate on a $1,000 balance was increased from 12% to 30% on January 31 based on a delinquency of more than 60 days, § 226.55(b)(4)(ii) requires the card issuer to reduce the rate on any remaining portion of the $1,000 balance to 12% if the consumer makes the required minimum periodic payments for February, March, April, May, June, and July by the relevant due date.

However, the Board understands that, in certain circumstances, a consumer may be placed on a workout or temporary hardship arrangement or enter military service after a rate has been increased based on a delinquency of more than 60 days but before the consumer has made the six timely payments necessary to obtain a reduction under § 226.55(b)(4)(ii). Section 226.55(b)(5) implements TILA Section 171(b)(3), which provides that a card issuer may increase the rate on an existing balance when a workout or temporary hardship arrangement is completed or fails, so long as the increased rate does not exceed the rate that applied prior to the arrangement. For example, if a card issuer reduced a consumer's rate on a $1,000 balance from 30% to 15% as part of a workout or temporary hardship arrangement, § 226.55(b)(5) would permit the card issuer to increase the rate on any remaining portion of the $2,000 balance to 30% upon completion or failure of the arrangement.

Similarly, when the rate that applies to a balance is reduced pursuant to the SCRA because the consumer enters military service, § 226.55(b)(6) permits the card issuer to reinstate the pre-existing rate for that balance once the consumer leaves military service. For example, if a card issuer reduced a consumer's rate on a $1,000 balance from 30% to 6% pursuant to the SCRA, § 226.55(b)(6) would permit the card issuer to increase the rate on any remaining portion of the $1,000 balance to 30% once the consumer leaves military service and the SCRA no longer applies.

Accordingly, when a consumer obtains a § 226.55(b)(4)(ii) reduction during a workout or temporary hardship arrangement or while in military service, it is unclear whether § 226.55(b)(5) or (b)(6) would permit the card issuer to negate that reduction by returning existing balances to the rate that applied prior to commencement of the arrangement or military service. Because § 226.55(b)(4)(ii) implements a specific statutory requirement that a rate increase based on a delinquency of more than 60 days be terminated if the consumer makes the next six required minimum payments on time, the Board believes it would be inconsistent with the intent of that requirement to interpret the exceptions in § 226.55(b)(5) and (b)(6) as overriding the reduction in rate. Thus, the Board would revise comment 55(b)–1 to clarify that, if § 226.55(b)(4)(ii) requires a card issuer to decrease the rate, fee, or charge that applies to a balance while the account is subject to a workout or temporary hardship arrangement or subject to the SCRA or a similar federal or state statute or regulation, the card issuer may not impose a higher rate, fee, or charge on that balance pursuant to § 226.55(b)(5) or (b)(6). The Board would also provide the following illustrative example: Assume that, on January 1, the annual percentage rate that applies to a $1,000 balance is increased from 12% to 30% pursuant to § 226.55(b)(4). On February 1, the rate on that balance is decreased from 30% to 15% consistent with § 226.55(b)(5) as a part of a workout or temporary hardship arrangement. On July 1, § 226.55(b)(4)(ii) requires the card issuer to reduce the rate that applies to any remaining portion of the $1,000 balance from 15% to 12%. If the consumer subsequently completes or fails to comply with the terms of the workout or temporary hardship arrangement, the card issuer may not increase the 12% rate on any remaining portion of the $1,000 balance pursuant to § 226.55(b)(5).

55(b)(1) Temporary Rate, Fee, or Charge Exception

Section 226.55(b)(1) implements TILA Section 171(b)(1), which permits a card issuer to increase a temporary or promotional rate upon expiration of a period of at least six months, provided that the card issuer discloses in advance the length of the period and the rate that will apply after expiration. However, neither § 226.55(b)(1) nor TILA Section 171(b)(1) addresses circumstances in which an annual fee or other fee or charge subject to § 226.55 increases after a specified period of time. As discussed above, the Board declined to adopt a specific exception for temporary or promotional fee programs in the February 2010 Final Rule because the Credit Card Act did not contain such an exception and because an exception did not appear to be necessary. *See* 75 FR 7734 n. 48; *see also id.* 7699, 7706–7707. Indeed, the Board noted that nothing in the February 2010 Final Rule prohibited a creditor from providing notice of an increase in a fee at the same time it temporarily reduces the fee; a creditor could provide information regarding the temporary reduction in the same notice, provided that it is not interspersed with the content required to be disclosed pursuant to § 226.9(c)(2)(iv). *See* 75 FR 7699; *see also* comment 5a(b)(2)–4.

Nevertheless, as discussed above with respect to § 226.9(c)(2)(v)(B), the Board

believes that, upon further review, it may be appropriate to use its authority under TILA Section 105(a) and Section 2 of the Credit Card Act to specifically address temporary or promotional programs for fees or charges subject to § 226.55 in order to encourage issuers to disclose and structure such programs in a consistent manner that enables consumers to understand the associated costs. Accordingly, the Board proposes to amend § 226.55(b)(1) to apply to temporary or promotional programs for fees and charges required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii). Thus, for example, § 226.55(b)(1) would permit a card issuer to increase an annual fee after a specified period of time if the card issuer provides the consumer in advance with a clear and conspicuous written disclosure of the length of the period and the fee or charge that will apply after expiration of the period.

In addition, the Board would amend comments 55(b)(1)–2 and –4 for consistency with the proposed revisions to § 226.55(b)(1), to provide additional illustrative examples, and to make other non-substantive clarifications. The Board would also add a new comment 55(b)(1)–5 to clarify that, although the limitations in § 226.55(b)(1)(ii) on applying an increased rate to certain types of transactions would also apply to increased fees or charges subject to § 226.55, card issuers generally are not prohibited from increasing a fee or charge that applies to the account as whole (to the extent consistent with the notice requirements in § 226.9 and § 226.55(b)(3)). Finally, the Board would add an additional example to comment 55(b)–3 to clarify the application of § 226.55 when the specified time periods for temporary rates overlap.

55(b)(3) Advance Notice Exception

Section 226.55(b)(3) provides that a card issuer may generally increase the rate, fee, or charge that will apply to new transactions after complying with the notice requirements in § 226.9. However, § 226.55(b)(3)(iii) further provides that a card issuer cannot use this exception to increase a rate, fee, or charge during the first year after account opening.

The Board understands that there has been some confusion regarding the circumstances under which an increased fee or charge applies to an existing balance (as opposed to the account as a whole) and therefore does not qualify for the exception in § 226.55(b)(3). In particular, there has been uncertainty as to whether an increased fee or charge can be applied to a closed account or an account on which transaction privileges have been suspended. Because an account cannot be used for new transactions in these circumstances, an increased fee or charge subject to § 226.55 could only be applied to the account's existing balance. In addition, §§ 226.52(b)(2)(i)(B)(*3*) and 226.55(d)(1) generally prohibit a card issuer from applying a new or increased fee or charge to a closed account. Accordingly, to provide greater clarity, the Board would amend § 226.55(b)(3)(iii) to state that § 226.55(b)(3) does not permit a card issuer to increase a rate, fee, or charge subject to § 226.55 while an account is closed or while the card issuer does not permit the consumer to use the account for new transactions.

Finally, consistent with the proposed amendments to § 226.52(a)(1), the Board would clarify that, for purposes of § 226.55(b)(3)(iii), an account is considered open no earlier than the date on which the account may first be used by the consumer to engage in transactions.

55(b)(6) Servicemembers Civil Relief Act Exception

Section 226.55(b)(6) provides that, when a card issuer is required by the SCRA to reduce the annual percentage rate for an account to 6% when the consumer enters military service, the card issuer may increase the rate once the SCRA no longer applies, subject to certain limitations. However, § 226.55(b)(6) does not address circumstances in which the SCRA's broad definition of "interest" requires the card issuer to reduce not only the annual percentage rate but also fees or charges while the consumer is in military service. *See* 50 U.S.C. app. 527(d)(1) (defining "interest" as including "service charges, renewal charges, fees, or any other charges (except bona fide insurance) with respect to an obligation or liability"). Accordingly, the Board would amend § 226.55(b)(6) and the relevant commentary to clarify that, to the extent the SCRA also requires the card issuer to reduce a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii), the card issuer is generally permitted to increase that fee or charge once the SCRA no longer applies.

The Board also understands that many states have enacted statutes that—like the SCRA—require creditors to reduce rates, fees, and charges while a consumer is in military service. *See, e.g.,* La. Rev. Stat. Ann. § 29:312; N.Y. Mil. Law art. 13 § 323–a; R.I. Gen. Laws § 30–7–10; Utah Code Ann. § 39–7–111. Accordingly, in order to clarify that § 226.55 does not prevent a card issuer from increasing a rate, fee, or charge to the pre-existing amount once a state law requirement no longer applies, the Board would amend the exception in § 226.55(b)(6) to apply to decreases imposed pursuant to the SCRA or "a similar federal or state statute or regulation." Corresponding amendments would be made to the relevant commentary.

Finally, the Board understands that, while the SCRA and some similar state statutes only require creditors to reduce the rates, fees, and charges that apply to obligations incurred *before* the consumer enters military service, some card issuers voluntarily apply the reduced rate, fee, or charge to transactions that occur *after* the consumer has entered military service. Accordingly, the Board would adopt a new comment 55(b)(6)–2 clarifying that, if a card issuer decreases all rates, fees, and charges to amounts that are consistent with the SCRA or a similar federal or state statute or regulation (including rates, fees, and charges that apply to new transactions), the card issuer may increase those rates, fees, and charges consistent with § 226.55(b)(6). The Board would also revise the example in current comment 55(b)(6)–2 to illustrate the application of this guidance and redesignate that example as comment 55(b)(6)–3.

55(c) Treatment of Protected Balances

Section 226.55(c) addresses the treatment of "protected balances," which are the existing balances to which a card issuer may not apply an increased rate, fee, or charge under § 226.55. Comment 55(c)(1)-3 provides guidance regarding the application of increased fees or charges to protected balances. In particular, this comment clarifies that, while a card issuer is prohibited from applying an increased fee or charge that is subject to § 226.55 to a protected balance, a card issuer is not prohibited from increasing a fee or charge that applies to the account as a whole or to balances other than the protected balance. The Board would revise this comment to clarify that a card issuer's ability to increase a fee or charge is also subject to the limitations in § 226.55(b)(3)(iii) on increasing fees during the first year after account opening, while an account is closed, or while transaction privileges are suspended.

The Board would also add a new comment 55(c)(1)-4 clarifying that nothing in § 226.55 prohibits a card issuer from changing the balance computation method that applies to new transactions as well as protected

balances. However, the Board notes that, before changing the balance computation method, a card issuer must comply with the notice requirements in § 226.9(c)(2).

55(e) Promotional Waivers or Rebates of Interest, Fees, and Other Charges

Some card issuers offer promotional programs under which interest charges or fees will be waived or rebated so long as the consumer pays on time and otherwise complies with the account terms. For example, a card issuer might offer a promotion under which interest accrues on purchases at an annual percentage rate of 15% but will be waived for six months if the consumer pays on time each billing cycle. While this type of promotional program may be intended to encourage timely payment, a consumer who relies on the promotion when making transactions and then, for example, inadvertently pays one day late will experience a significant and potentially unexpected increase in the cost of those transactions. In contrast, if a consumer relies on a promotional rate when making transactions, TILA Section 171(b)(1) and § 226.55(b)(1) do not permit the card issuer to increase the cost of those transactions by revoking the promotional rate unless the account becomes more than 60 days past due. Thus, the Board is concerned that the revocation of promotional waiver or rebate programs based on so-called "hair trigger" violations of the account terms may be inconsistent with the purposes of the Credit Card Act.

In order to address these concerns, the Board is proposing to use its authority under TILA Section 105(a) and Section 2 of the Credit Card Act to add a new § 226.55(e), which would clarify that, if a card issuer promotes the waiver or rebate of interest, fees, or other charges subject to § 226.55, any cessation of the waiver or rebate constitutes an increase in a rate, fee, or charge for purposes of § 226.55. Thus, for example, if a card issuer promotes an interest waiver program, the card issuer must comply with § 226.55(b)(1) by disclosing the length of the promotion and the rate that will apply after the promotion expires. Furthermore, the card issuer would be prohibited from effectively increasing the interest charges for existing balances by ceasing or terminating the waiver during the promotional period, unless the account becomes more than 60 days delinquent consistent with § 226.55(b)(4).

The Board notes that § 226.55(e) is intended to address *promotional* programs involving waivers or rebates of interest, fees, and charges. The Board does not intend to restrict a card issuer's ability to waive or rebate interest, fees, or other charges in order to resolve disputes, address compliance concerns, or retain customers. Accordingly, comment 55(e)-1 would clarify that nothing in § 226.55 prohibits a card issuer from waiving or rebating finance charges due to a periodic interest rate or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii). This comment would also provide examples of promotional waiver or rebate programs that would comply with § 226.55.

Comment 55(e)-2 would clarify the circumstances under which a card issuer would be considered to promote a waiver or rebate program for purposes of § 226.55(e). As a general matter, this comment would follow the existing guidance regarding advertisements in § 226.2(a)(2) and the accompanying commentary. Thus, a card issuer would promote a waiver or rebate program for purposes of § 226.55(e) if, for example, it disclosed the waiver or rebate in a newspaper, magazine, leaflet, promotional flyer, catalog, sign, or point-of-sale display. Similarly, a card issuer would promote a waiver or rebate program for purposes of § 226.55(e) if disclosed the waiver or rebate on radio or television or through electronic advertisements (such as on the Internet). *See* comment 2(a)(2)-1.i. In contrast, a card issuer generally would not promote a program for purposes of § 226.55(e) if it disclosed the waiver or rebate in a communication that is not an advertisement for purposes of § 226.2(a)(2), such as in educational materials that do not solicit business. *See* comment 2(a)(2)-1.ii.

However, the Board would deviate from the guidance in comment 2(a)(2)-1 in one important respect. Comments 2(a)(2)-1.ii.A and F provide, respectively, as examples of communications that are not advertisements "direct personal contacts" and "[c]ommunications about an existing credit account (for example, a promotion encouraging additional or different uses of an existing credit card account)." While these exclusions are appropriate for purposes of § 226.2(a)(2), it would be inconsistent with the purpose of § 226.55(e) to exclude from coverage waiver or rebate programs that are promoted directly to existing account holders. Accordingly, comment 55(e)-2 would clarify that programs disclosed to existing account holders are subject to § 226.55(e), unless the disclosure is either provided in relation to an inquiry or dispute about a specific charge or occurs after the card issuer has waived or rebated the interest, fees, or other charges. Thus, the comment would clarify that a card issuer is not promoting a waiver or rebate for purposes of § 226.55(e) if, for example, a consumer calls the issuer to dispute a fee that appears on his or her periodic statement and the issuer offers to waive the fee in order to resolve the dispute. Similarly, a card issuer would not be promoting a waiver or rebate if, for example, it waives interest charges that were erroneously imposed and then discloses that waiver on a periodic statement or in a letter. This guidance is consistent with the Board's desire to avoid restricting card issuers' ability to waive or rebate interest, fees, or other charges in order to resolve disputes, address compliance concerns, or retain customers.

Similarly, the comment would also provide a number of additional examples of circumstances in which a waiver or rebate is not promoted for purposes of § 226.55(e), including when a card issuer communicates with a consumer about a waiver or rebate in relation to an inquiry or dispute about a specific charge, when a card issuer waives or rebates interest, fees, or other charges in order to comply with a legal requirement (such as the fee limitations in § 226.52(a)), when a card issuer discloses a grace period, and when a card issuer provides an undisclosed period after the payment due date during which interest, fees, or other charges are waived or rebated even if a payment has not been received. The Board solicits comment on other examples of circumstances in which a card issuer may waive or rebate interest, fees, or charges subject to § 226.55 without promoting the waiver or rebate.

The Board understands that many card issuers promote rewards programs under which consumers can earn points, cash back, or similar benefits based on purchases, interest charges, or other factors. The Board further understands that some card issuers condition these benefits on the consumer making timely payments and otherwise complying with the account terms. Because TILA Sections 171 and 172 do not address these types of benefits, the loss of rewards generally does not raise the same concerns as the loss of a waiver or rebate of interest, fees, or other charges subject to § 226.55. Accordingly, comment 55(e)-2 would clarify that a card issuer is not promoting a waiver or rebate for purposes of § 226.55(e) if it provides benefits (such as rewards points or cash back based on purchases or finance charges) that can be applied to the account as credits, provided that the benefits are not promoted as reducing

interest, fees, or other charges subject to § 226.55.

Finally, comment 55(e)-3 would provide guidance regarding the relationship between § 226.55(e) and a grace period. Specifically, this comment would clarify that § 226.55(e) does not apply to the waiver of finance charges due to a periodic rate consistent with a grace period, as defined in § 226.5(b)(2)(ii)(*3*).

Section 226.58 Internet Posting of Credit Card Agreements

58(b) Definitions

58(b)(4) Card Issuer

The Board proposes to add new § 226.58(b)(4) which would define the term card issuer solely for purposes of § 226.58. New § 226.58(b)(4) would provide that, for purposes of § 226.58, card issuer or issuer means the entity to which a consumer is legally obligated, or would be legally obligated, under the terms of a credit card agreement.

The Board also proposes to add new comment 58(b)(4)–1, which would provide the following example of how the definition of card issuer would apply. Bank X and Bank Y work together to issue credit cards. A consumer that obtains a credit card issued pursuant to this arrangement between Bank X and Bank Y is subject to an agreement that states "This is an agreement between you, the consumer, and Bank X that governs the terms of your Bank Y Credit Card." The card issuer in this example is Bank X, because the agreement creates a legally enforceable obligation between the consumer and Bank X. Bank X is the issuer even if the consumer applied for the card through a link on Bank Y's Web site and the cards prominently feature the Bank Y logo on the front of the card.

The Board understands that, in some cases, more than one institution is involved in the administration of a credit card program. For example, a smaller bank may partner with a larger bank to market credit cards to the smaller bank's customers. The Board also understands that the terms of these arrangements can vary, for example with respect to which institution uses its name and brand in marketing materials, develops and implements underwriting criteria, sets interest rates and other terms, approves applications, provides monthly statements and other disclosures to consumers, collects payments, and absorbs the risk of default or fraud.

Section 226.2(a)(7) of Regulation Z defines a card issuer as a person that issues a credit card or that person's agent with respect to the card. Under this definition, more than one card issuer may be associated with a single credit card account. This definition may be a source of confusion with respect to § 226.58. For example, the § 226.58(c)(5) de minimis exception provides that an issuer is not required to submit agreements to the Board under § 226.58(c)(1) if the issuer has fewer than 10,000 open credit card accounts as of the last business day of the calendar quarter. If two institutions are involved in issuing a credit card, one institution may have fewer than 10,000 open accounts while the other has more than 10,000 open accounts. It may be difficult to determine whether the de minimis exception applies in such cases. In addition, § 226.58(d) requires an issuer to post and maintain on its publicly available Web site the credit card agreements the issuer is required to submit to the Board. Where two institutions are involved in issuing a credit card, it may be unclear which institution should post and maintain the agreements on its Web site. Similarly, § 226.58(e)(2) provides that an issuer that does not maintain an interactive Web site is permitted to allow individual cardholders to request copies of their agreements solely by calling a readily available telephone line, rather than both by using the issuer's Web site and by calling a readily available telephone line. If two institutions are involved in issuing a credit card, one institution may maintain a Web site from which cardholders can access specific information about their accounts while the other does not. In such cases, it may be difficult to determine whether the § 226.58(e)(2) special rule applies.

The Board therefore believes that it would be beneficial to clarify which institution is the card issuer for purposes of § 226.58. The Board is proposing to define card issuer with respect to a particular agreement as the entity to which a consumer is legally obligated, or would be legally obligated, under the terms of that agreement. The Board is proposing this approach for several reasons.

First, the proposed definition creates a bright-line rule that would enable institutions involved in issuing credit cards to determine their obligations under § 226.58. Second, the proposed definition is consistent with the actual legal relationship into which a consumer enters under a credit card agreement.

Third, the Board understands that the institution to which the consumer is legally obligated under the agreement in most cases will be in a better position to provide accurate, up-to-date agreements both to the Board and to consumers. The Board understands that, in many cases, the institution that is a party to the agreement also is the institution that prepares the agreement, sends the agreement to consumers at account opening, and updates and revises the agreement. That institution likely would be in the best position to determine which agreements currently are offered to the public and to identify the agreement to which a particular cardholder is subject. The Board also understands that, in many cases, the institution that is a party to the agreement also is the institution that maintains a Web site on which cardholders can obtain information about their accounts (if such a Web site is maintained). Many consumers would look to such a Web site when attempting to obtain a copy of their credit card agreements.

Fourth, the Board understands that an institution that partners with multiple other institutions to issue credit cards in many cases will use the same agreement for all of the credit cards issued in connection with those arrangements. Therefore, while the number of credit cards issued with a given partner institution may be small, the total number of consumers subject to the corresponding agreement may be quite large. The Board believes that it would be beneficial to have such agreements submitted to the Board for posting on the Board's Web site.

The Board is aware that consumers in some cases may be unsure about which institution issues their credit card. For example, a consumer may apply for a credit card through a link on the Web site of a bank with which the consumer has a pre-existing relationship, and the face of the credit card may prominently display that bank's logo. In some such cases, the consumer may assume that the card is issued by that bank, even though Web site disclaimers, the credit card agreement, the back of the credit card, and other materials explain that the card is issued by another institution. The Board believes, however, that institutions can take steps to alleviate this confusion, for example by disclosing the identity of the other institution and providing contact information for the other institution or a link to the other institution's Web site. The Board also believes that consumers would benefit from having a clearer understanding of to what institution they are legally obligated under a credit card agreement.

The proposed definition would apply solely with respect to § 226.58 and would not change the definition of card issuer for purposes of other provisions

of Regulation Z. The proposed definition therefore should not affect other Regulation Z compliance obligations.

The Board solicits comment on the proposed definition of card issuer, on what additional guidance with respect to the definition would be helpful, and on whether there are alternative, preferable approaches to defining card issuer for purposes of § 226.58.

As a result of the Board's proposal to add new § 226.58(b)(4) defining the term card issuer, the Board proposes to renumber §§ 226.58(b)(4), (b)(5), (b)(6), and (b)(7) as §§ 226.58(b)(5), (b)(6), (b)(7), and (b)(8), respectively. The Board also proposes to make conforming changes to references to these subsections included in other subsections of § 226.58 and the official staff commentary.

58(b)(6) Pricing Information

The Board proposes to amend the definition of pricing information included in § 226.58(b) to omit the information listed in § 226.6(b)(4) from the definition. The Board continues to believe that consumers should receive the more robust disclosure regarding rates required by § 226.6(b)(4) in the account-opening disclosures governed by § 226.6(b). However, under § 226.58 it appears that at least some of the additional disclosures required by § 226.6(b)(4) may be a source of confusion to both consumers and issuers. For example, § 226.6(b)(4) requires card issuers to disclose the periodic rate as well as the corresponding APR. Account-opening disclosures reflect the terms of a specific consumer's account at the time that account is opened. The APR is disclosed as a value, and the corresponding periodic rate therefore is relatively straightforward to state and understand. However, agreements submitted to the Board under § 226.58 reflect a range of pricing terms that may be offered in connection with a set of terms and conditions and are updated only quarterly. Section 226.58(c)(8)(ii)(C) therefore requires issuers to identify the index or formula and the margin used to set a variable rate, rather than the value of the rate or the value of the index. In this context, it is difficult to state the corresponding periodic rate in a way that is accurate and understandable. With respect to other information required to be disclosed under § 226.6(b)(4), such as the circumstances and frequency under which a variable rate may increase and any limitation on the amount a variable rate may change, it is not clear whether this information is useful to consumers when reviewing agreements under § 226.58.

The Board solicits comment on whether the definition of pricing information should continue to include some or all of the additional disclosure regarding rates specified in § 226.6(b)(4), or whether the Board should omit this disclosure from the definition as proposed.

58(c) Submission of Agreements to Board

58(c)(1) Quarterly Submissions

Quarterly Submission Deadlines. The Board proposes to amend § 226.58(c)(1) to state that quarterly submissions must be sent to the Board no later than the first business day on or after January 31, April 30, July 31, and October 31 of each year. These quarterly submission deadlines were inadvertently omitted from the February 2010 Final Rule.

Submission of Amended Agreements. The Board proposes to revise § 226.58(c)(1)(iii) to clarify that issuers are required to submit amended agreements to the Board only if the issuer offered the amended agreement to the public as of the last business day of the preceding calendar quarter. Amended agreements that the issuer no longer offered to the public as of the last business day of the preceding calendar quarter are not required to be submitted to the Board.

The Board also proposes to revise § 226.58(c)(3) regarding amended agreements, as discussed below.

Notice of Withdrawal of Agreements. The Board proposes to amend § 226.58(c)(1)(iv) to include cross references to §§ 226.58(c)(6) and (c)(7), in addition to §§ 226.58(c)(4) and (c)(5). These cross references were unintentionally omitted from the February 2010 Final Rule.

58(c)(2) Timing of First Two Submissions

The Board proposes to delete the § 226.58(c)(2) special rules for the initial and second submissions to the Board and to reserve § 226.58(c)(2). Section 226.58(c)(2) provided special rules for the timing and contents of submissions required to be sent to the Board by February 22, 2010, and August 2, 2010. These special rules were necessary to reconcile the statutorily-mandated February 22, 2010, initial submission deadline with the ongoing reporting schedule based on calendar quarters set forth in the February 2010 Final Rule. Because the February 22, 2010, and August 2, 2010, deadlines have passed, § 226.58(c)(2) has no prospective relevance. The Board therefore proposes to delete the special rules related to those deadlines and reserve this section.

58(c)(3) Amended Agreements

The Board proposes to amend § 226.58(c)(3) to clarify that issuers are required to submit amended agreements to the Board only if the issuer offered the amended agreement to the public as of the last business day of the preceding calendar quarter. Amended agreements that the issuer no longer offered to the public as of the last business day of the calendar quarter should not be submitted to the Board.

The Board also proposes to revise comment 58(c)(3)–2 to reflect this clarification and to add new comment 58(c)(3)–3, which would provide the following example of the application of revised § 226.58(c)(3): On December 31 a card issuer offers two agreements, Agreement A and Agreement B. The issuer submits these agreements to the Board by January 31 as required by § 226.58. On February 15, the issuer amends both Agreement A and Agreement B. On February 28, the issuer stops offering Agreement A to the public. On March 15, the issuer amends Agreement B a second time. As a result, on March 31, the last business day of the calendar quarter, the issuer offers to the public one agreement—Agreement B as amended on March 15. By the April 30 quarterly submission deadline, the issuer must: (1) Notify the Board that it is withdrawing Agreement A because Agreement A is no longer offered to the public; and (2) submit to the Board Agreement B as amended on March 15. The issuer should not submit to the Board either Agreement A as amended on February 15 or the earlier version of Agreement B (as amended on February 15), as neither was offered to the public on March 31, the last business day of the calendar quarter.

The Board also proposes to renumber existing comment 58(c)(3)–3, regarding change-in-terms notices, as 58(c)(3)–4.

58(c)(8) Form and Content of Agreements Submitted to the Board

The Board proposes to revise § 226.58(c)(8)(i)(C)(*1*) to clarify that billing rights notices are not deemed to be part of the agreement for purposes of § 226.58 and therefore are not required to be included in agreements submitted to the Board. The Board understands that the appropriate treatment of billing rights notices under this provision has been a source of confusion for card issuers and others. The Board therefore proposes to specifically indicate in § 226.58(c)(8)(i)(C)(*1*) that billing rights notices are disclosures required by state or federal law that, like affiliate

marketing notices, privacy policies, and E-Sign Act disclosures, are not considered to be part of the agreement for purposes of § 226.58.

It is important to note that § 226.58(c)(8)(i)(C)(*1*) is not intended to provide an exhaustive list of the state and federal law disclosures that are not deemed to be part of an agreement under § 226.58. As indicated by the use of the phrase "such as," the listed disclosures are merely examples of "disclosures required by state or federal law." The Board does not believe it is feasible to include in § 226.58(c)(8)(i)(C)(*1*) a comprehensive list of all such disclosures, as such a list would be extensive and would change as state and federal laws and regulations are amended. However, because billing rights notices appear to be a specific source of confusion, the Board is proposing to address their treatment by amending § 226.58(c)(8)(i)(C)(*1*).

58(e) Agreements for All Open Accounts

58(e)(2) Special Rule for Issuers Without Interactive Web Sites

The Board proposes to revise comment 58(e)–3 to clarify the application of the special rule provided in § 226.58(e)(2) to issuers that provide online access to individual account information through third-party interactive Web sites. Section 226.58(e)(2) provides that an issuer that does not maintain an interactive Web site (i.e., a Web site from which a cardholder can access specific information about his or her individual account) may provide cardholders with the ability to request a copy of their agreements by calling a readily available telephone line, the number for which is: (1) Displayed on the issuer's Web site and clearly identified as to purpose; or (2) included on each periodic statement sent to the cardholder and clearly identified as to purpose.

The Board understands that some issuers provide cardholders with access to specific information about their individual accounts, such as balance information or copies of statements, through a third-party interactive Web site. As revised, comment 58(e)–3 would clarify that such an issuer is considered to maintain an interactive Web site for purposes of the § 226.58(e)(2) special rule. Such a Web site is deemed to be maintained by the issuer for purposes of § 226.58(e)(2) even where, for example, an unaffiliated entity designs the Web site and owns and maintains the information technology infrastructure that supports the Web site, cardholders with credit cards from multiple issuers can access individual account information through the same Web site, and the Web site is not labeled, branded, or otherwise held out to the public as belonging to the issuer. An issuer that provides cardholders with access to specific information about their individual accounts through such a Web site is not permitted to use the procedures described in the § 226.58(e)(2) special rule. Instead, such an issuer must comply with § 226.58(e)(1).

The special rule in § 226.58(e)(2) provides cardholders with a convenient means to request copies of their credit card agreements without requiring issuers that do not have interactive Web sites to build such Web sites for the sole purpose of facilitating cardholder requests for agreements. Building an interactive Web site and complying with privacy and data security requirements would represent a significant compliance burden, especially for smaller issuers. In adopting the § 226.58(e)(2) final rule, the Board noted its belief that the added convenience to cardholders of being able to request a copy of their agreement through a Web site, rather than by alternative means, does not outweigh the burden on issuers that do not otherwise maintain interactive Web sites of creating such Web sites solely to facilitate cardholder requests for agreements. This rationale does not apply, however, to an issuer that already provides cardholders with access to individual account information through a Web site, whether through the issuer's own Web site or through an arrangement with a third party.

Section 226.59 Reevaluation of Rate Increases

59(a) General Rule

Section 226.59 implements TILA Section 148, which was added by the Credit Card Act. TILA Section 148, as implemented in § 226.59(a), generally requires card issuers that increase an annual percentage rate applicable to a credit card account under an open-end (not home-secured) consumer credit plan, based on the credit risk of the consumer, market conditions, or other factors, to evaluate factors described in the rule no less frequently than once every six months and, as appropriate based upon that review, reduce the annual percentage rate applicable to the consumer's account. Consistent with TILA Section 148, § 226.59 generally applies to rate increases made on or after January 1, 2009.

Since publication of the June 2010 Final Rule, several issuers have requested additional clarification regarding what constitutes a rate increase for purposes of § 226.59. In particular, the Board understands that there is a need for additional guidance regarding the circumstances in which a change in the type of rate—for example, from a non-variable rate to a variable rate—is considered to be a rate increase triggering review obligations under § 226.59. The Board notes that in several other contexts, Regulation Z treats a change in a type of rate as equivalent to a rate increase. For example, comments 9(c)(2)(iv)–3 and 9(c)(2)(iv)–4 clarify that 45 days' advance notice is generally required under § 226.9(c)(2) when the annual percentage rate on an open-end (not home-secured) consumer credit plan is changed from a variable to a non-variable rate or from a non-variable to a variable rate. In addition, comment 55(b)(2)–4 treats changing a non-variable rate to a variable rate as equivalent to a rate increase for purposes of § 226.55.

The Board is proposing to adopt new comment 59(a)(1)–3 to clarify the applicability of the rate reevaluation requirements when a card issuer changes the type of rate applicable to a credit card account under an open-end (not home-secured) consumer credit plan. Existing comments 59(a)(1)–3 and 59(a)(1)–4 would be renumbered accordingly. Comment 59(a)(1)–3.i would provide that a change from a variable rate to a non-variable rate or from a non-variable rate to a variable rate generally is not a rate increase for purposes of § 226.59, if the rate in effect immediately prior to the change in the type of rate is equal to or greater than to the rate in effect immediately after the change. The proposed comment states that, for example, a change from a variable rate of 15.99% to a non-variable rate of 15.99% is not a rate increase for purposes of § 226.59 at the time of the change. Proposed comment 59(a)(1)–3.i also cross-references § 226.55 for limitations on the permissibility of changing from a non-variable rate to a variable rate.

Proposed comment 59(a)(1)–3.ii would set forth special guidance regarding a change from a non-variable to a variable rate. Proposed comment 59(a)(1)–3.ii states that a change from a non-variable to a variable rate constitutes a rate increase for purposes of § 226.59 if the variable rate exceeds the non-variable rate that would have applied if the change in type of rate had not occurred. The proposed comment illustrates the applicability of § 226.59 to a change from a non-variable to a variable rate with the following example: Assume a new credit card account under an open-end (not home-

secured) consumer credit plan is opened on January 1 of year 1 and that a non-variable annual percentage rate of 12% applies to all transactions on the account. On January 1 of year 2, upon 45 days' advance notice pursuant to § 226.9(c)(2), the rate on all new transactions is changed to a variable rate that is currently 12% and is determined by adding a margin of 10 percentage points to a publicly-available index not under the card issuer's control. The change from the 12% non-variable rate to the 12% variable rate is not a rate increase for purposes of § 226.59(a). On April 1 of year 2, the value of the variable rate increases to 12.5%. The increase in the variable rate from 12% to 12.5% is a rate increase for purposes of § 226.59, and the card issuer must begin periodically conducting reviews of the account pursuant to § 226.59.

Similarly, proposed comment 59(a)(1)–3.iii states that a change from a variable to a non-variable rate constitutes a rate increase for purposes of § 226.59 if the non-variable rate exceeds the variable rate that would have applied if the change in the type of rate had not occurred. The proposed comment sets forth the following illustrative example: assume a new credit card account under an open-end (not home-secured) consumer credit plan is opened on January 1 of year 1 and that a variable annual percentage rate that is currently 15% and is determined by adding a margin of 10 percentage points to a publicly-available index not under the card issuer's control applies to all transactions on the account. On January 1 of year 2, upon 45 days' advance notice pursuant to § 226.9(c)(2), the rate on all existing balances and new transactions is changed to a non-variable rate that is currently 15%. The change from the 15% variable rate to the 15% non-variable rate on January 1 of year 2 is not a rate increase for purposes of § 226.59(a). On April 1 of year 2, the value of the variable rate that would have applied to the account decreases to 12.5%. Accordingly, on April 1 of year 2, the non-variable rate of 15% exceeds the 12.5% variable rate that would have applied but for the change in type of rate. At this time, the change to the non-variable rate of 15% constitutes a rate increase for purposes of § 226.59, and the card issuer must begin periodically conducting reviews of the account pursuant to § 226.59.

The Board believes that this clarification regarding changes in types of rates is appropriate to effectuate the purposes of TILA Section 148. As discussed in the supplementary information to its final rule published on January 29, 2009, the Board recognizes that a change from one type of rate to another (e.g., variable or non-variable) may, over time, result in the new rate being higher than the rate that would have applied but for the change, even if at the time of the change the prior rate exceeded the new rate. *See* 74 FR 5345. For this reason, as discussed above, comments 9(c)(2)(iv)–3 and 9(c)(2)(iv)–4 clarify that 45 days' advance notice is generally required under § 226.9(c)(2) when the annual percentage rate on an open-end (not home-secured) consumer credit plan is changed from a variable to a non-variable rate or from a non-variable to a variable rate. The Board believes that consistent treatment is generally appropriate under § 226.59, because a change in type of rate may, over time, result in a rate increase on a consumer's account; however, the Board proposes to apply the review requirement under § 226.59 only if and when the new rate exceeds the rate that would have applied if the change in type of rate had not occurred. For example, a consumer who has an existing account with a non-variable rate has an expectation that the rate generally will not change. However, if the issuer changes the non-variable rate to a variable rate, an increase in the index value may result in the rate applicable to the consumer's account increasing, and exceeding the non-variable rate that previously applied. Accordingly, the Board believes that in such circumstances a rate increase has occurred and must be reviewed under § 226.59.

The Board solicits comment on whether there are other types of changes to rates for which clarification of the applicability of § 226.59 would be appropriate.

59(d) Factors

Section 226.59(d) sets forth guidance regarding the factors that an issuer must consider when conducting reviews of a rate increase pursuant to § 226.59. Section 226.59(d)(1) sets forth the general rule and states that, except as provided in § 226.59(d)(2) (which is discussed below), a card issuer must review either: (1) The factors on which the increase in an annual percentage rate was originally based; or (2) the factors that the card issuer currently considers when determining the annual percentage rates applicable to similar new credit card accounts. Section 226.59(d)(2) sets forth a special rule for certain rate increases imposed between January 1, 2009 and February 21, 2010. Section 226.59(d)(2) provides that, when conducting the first two reviews required under § 226.59(a) for rate increases imposed between January 1, 2009 and February 21, 2010, an issuer must consider the factors that it currently considers when determining the annual percentage rates applicable to similar new credit card accounts, unless the rate increase was based solely upon factors specific to the consumer, such as a decline in the consumer's credit risk, the consumer's delinquency or default, or a violation of the terms of the account.

As discussed in the supplementary information to the June 2010 Final Rule, § 226.59(d)(2) was adopted to address the Board's concerns regarding portfolio-wide rate increases made following the enactment of the Credit Card Act but prior to the effective date of many of the substantive protections contained in the statute. Some rate increases that occurred prior to February 22, 2010 resulted from adjustments in issuers' pricing practices to take into account the limitations that the Credit Card Act imposed on rate increases on existing balances. The Board was concerned that permitting card issuers to review the factors on which the rate increase was based may not result in a meaningful review in these circumstances, because the legal restrictions imposed by the Credit Card Act have continuing application. In other words, if a card issuer were to consider the factors on which the rate increase was based—*i.e.,* the enactment of the Credit Card Act's legal restrictions regarding rate increases—it might determine that a rate decrease is not required.

Accordingly, the Board adopted § 226.59(d)(2) to require card issuers to consider, for a brief transition period, the factors that they use when setting the rates applicable to similar new accounts for rate increases imposed prior to February 22, 2010, if the rate increase was not based on consumer-specific factors. For the reasons discussed in the supplementary information to the June 2010 Final Rule, the requirement to consider the factors that an issuer evaluates when setting the rates applicable to similar new accounts applies only during the first two review periods following the effective date of § 226.59 and only for rate increases imposed between January 1, 2009 and February 21, 2010.

For rate increases based solely on consumer behavior or other consumer-specific factors, § 226.59(d) does not distinguish between rate increases imposed prior to or after February 22, 2010. Accordingly, for such rate increases an issuer may consider either the factors on which the increase in an annual percentage rate was originally

based or the factors that the card issuer currently considers when determining the annual percentage rates applicable to similar new credit card accounts. Consumer-specific factors, such as a consumer's credit score or payment history on the account, can and do change over time. Accordingly, the Board noted in the supplementary information to the June 2010 Final Rule that it believes consideration of the consumer-specific factors that an issuer considered when imposing the rate increase would result in a meaningful review and, where appropriate, rate decreases, for rate increases imposed between January 1, 2009 and February 21, 2010.

The Board understands that some confusion has arisen regarding compliance with the special rule set forth in § 226.59(d)(2) in the case where two rate increases occurred between January 1, 2009 and February 21, 2010, one of which was based on conditions that are not specific to the consumer and one of which was based on consumer-specific behavior. The Board understands that there is particular concern regarding the application of the rule if the issuer made a market-based rate increase and subsequently increased the rate to a penalty rate, due to a late payment or other consumer behavior that violates the terms of the account. The Board is proposing a new comment 59(d)–6 to clarify the application of the rule in these circumstances. Proposed comment 59(d)–6 notes that § 226.59(d)(2) applies if an issuer increased the rate applicable to a credit card account under an open-end (not home-secured) consumer credit plan between January 1, 2009 and February 21, 2010, and the increase was not based solely upon factors specific to the consumer. The proposed comment further notes that in some cases, a credit card account may have been subject to multiple rate increases during the period from January 1, 2009 to February 21, 2010. Some such rate increases may have been based solely upon factors specific to the consumer, while others may have been based on factors not specific to the consumer, such as the issuer's cost of funds or market conditions. The comment would clarify that in such circumstances, when conducting the first two reviews required under § 226.59, the card issuer may separately review: (A) Rate increases imposed based on factors not specific to the consumer, using the factors described in § 226.59(d)(1)(ii) (as required by § 226.59(d)(2)); and (B) rate increases imposed based on consumer-specific factors, using the factors described in § 226.59(d)(1)(i). If the review of factors described in § 226.59(d)(1)(i) indicates that it is appropriate to continue to apply a penalty rate to the account as a result of the consumer's payment history or other behavior on the account, proposed comment 59(d)–6 clarifies that § 226.59 permits the card issuer to continue to impose the penalty rate, even if the review of the factors described in § 226.59(d)(1)(ii) would otherwise require a rate decrease.

Proposed comment 59(d)–6.ii would set forth the following example: Assume a credit card account was subject to a rate of 15% on all transactions as of January 1, 2009. On May 1, 2009, the issuer increased the rate on existing balances and new transactions to 18%, based upon market conditions or other factors not specific to the consumer or the consumer's account. Subsequently, on September 1, 2009, based on a payment that was received five days after the due date, the issuer increased the applicable rate on existing balances and new transactions from 18% to a penalty rate of 25%. When conducting the first review required under § 226.59, the card issuer reviews the rate increase from 15% to 18% using the factors described in § 226.59(d)(1)(ii) (as required by § 226.59(d)(2)), and separately but concurrently reviews the rate increase from 18% to 25% using the factors described in paragraph § 226.59(d)(1)(i). The review of the rate increase from 15% to 18% based upon the factors described in § 226.59(d)(1)(ii) indicates that a similarly situated new consumer would receive a rate of 17%. The review of the rate increase from 18% to 25% based upon the factors described in § 226.59(d)(1)(i) indicates that it is appropriate to continue to apply the 25% penalty rate based upon the consumer's late payment. Section 226.59 permits the rate on the account to remain at 25%.

The Board notes that the intent of the special rule in § 226.59(d)(2) was not to require card issuers to reduce penalty rates, if the consumer's credit risk or behavior on the account justifies the maintenance of a penalty rate in order to account for the additional risk of nonpayment posed by the consumer. The Board believes that the clarification in proposed comment 59(d)–6 is appropriate in order to ensure that § 226.59(d)(2) does not lead to unintended consequences in cases where a market-based rate increase and a rate increase due to the imposition of a penalty rate both occurred between January 1, 2009 and February 21, 2010.

59(f) Termination of Obligation To Review Factors

Section 226.59(f) generally provides that the obligation to conduct periodic reevaluations of a rate increase ceases to apply if the issuer reduces the annual percentage rate applicable to the account to a rate equal to or lower than the rate that was in effect immediately prior to the increase. The Board understands that some confusion has arisen regarding the relationship between the general rule in § 226.59(a) and the termination provision in § 226.59(f). For example, a card issuer may periodically review a consumer's account on which the rate has been increased, consistent with § 226.59(d)(1)(ii), by evaluating the factors that it currently considers when determining the annual percentage rates applicable to similar new credit card accounts. In the course of conducting such a review, the card issuer may determine that it would offer a lower rate on a new account than the rate that applied, prior to the rate increase, to the existing account being reviewed. In these circumstances, issuers have asked the Board for guidance regarding the amount of the rate reduction required under § 226.59.

The Board proposes to clarify that in these circumstances, § 226.59 requires that the rate on the existing account be reduced to the rate that was in effect prior to the rate increase, not to the lower rate that would be offered to a comparable new consumer. The Board notes that the review requirements of TILA Section 148 are triggered only if an annual percentage rate applicable to a credit card account is increased. The Board believes that if Congress had intended for all annual percentage rates on all credit card accounts to be reviewed indefinitely, regardless of whether the account is subject to a rate increase, it would have so provided in the Credit Card Act. Accordingly, the Board believes that it would be inappropriate to require card issuers to reduce a rate on a credit card account to a rate that is lower than the rate that applied to the account prior to the increase.

To clarify the relationship between § 226.59(a) and (f), the Board is proposing to adopt a new comment 59(f)–2, which would set forth the following illustrative example: Assume that on January 1, 2011, a consumer opens a new credit card account under an open-end (not home-secured) consumer credit plan. The annual percentage rate applicable to purchases is 15%. Upon providing 45 days' advance notice and to the extent

permitted under § 226.55, the card issuer increases the rate applicable to new purchases to 18%, effective on September 1, 2012. The card issuer conducts reviews of the increased rate in accordance with § 226.59 on January 1, 2013 and July 1, 2013, based on the factors described in § 226.59(d)(1)(ii). Based on the January 1, 2013 review, the rate applicable to purchases remains at 18%. In the review conducted on July 1, 2013, the card issuer determines that, based on the relevant factors, the rate it would offer on a comparable new account would be 14%. Consistent with § 226.59(f), § 226.59(a) requires that the card issuer reduce the rate on the existing account to the 15% rate that was in effect prior to the September 1, 2012 rate increase.

Appendix M1—Repayment Disclosures

As discussed in the section-by-section analysis to § 226.7(b)(12), Appendix M1 contains guidance for how to calculate the repayment disclosures required to be disclosed under § 226.7(b)(12). Specifically, § 226.7(b)(12)(i) generally requires card issuers to disclose the following repayment disclosures on each periodic statement: (1) A "warning" statement indicating that making only the minimum payment will increase the interest the consumer pays and the time it takes to repay the consumer's balance; (2) the length of time it would take to repay the outstanding balance if the consumer pays only the required minimum monthly payments and no further advances are made; (3) the total cost to the consumer of paying the balance in full if the consumer pays only the required minimum monthly payments and no further advances are made; (4) the minimum payment amount that would be required for the consumer to pay off the outstanding balance in 36 months, if no further advances are made; (5) the total cost to the consumer of paying the balance in full if the consumer pays the balance over 36 months; (6) the total savings of paying the balance in 36 months (rather than making only minimum payments); and (7) a toll-free telephone number at which the consumer may receive information about accessing consumer credit counseling.

Section 226.7(b)(12)(i) and (ii) provides that card issuers must round the following disclosures to the nearest whole dollar when disclosing them on the periodic statement: (1) The minimum payment total cost estimate, (2) the estimated minimum payment for repayment in 36 months, (3) the total cost estimate for repayment in 36 months, and (4) the savings estimate for repayment in 36 months. *See* 226.7(b)(12)(i)(C), (b)(12)(i)(F)(*1*)(*i*), (b)(12)(i)(F)(*1*)(*iii*), (b)(12)(i)(F)(*1*)(*iv*) and (b)(12)(ii)(C). For the reasons discussed in the section-by-section analysis to § 226.7(b)(12), the Board proposes to revise § 226.7(b)(12)(i) and (ii) to allow card issuers to round these disclosures to either the nearest whole dollar or to the nearest cent when disclosing them on the periodic statement. Currently, paragraph (f) of Appendix M1 references rounding disclosures to the nearest whole dollar when calculating the total saving estimate for repayment in 36 months. Specifically, paragraph (f) of Appendix M1 states that when calculating the savings estimate for repayment in 36 months, a card issuer must subtract the total cost estimate for repayment in 36 months calculated under paragraph (e) of Appendix M1 (rounded to the nearest whole dollar as set forth in § 226.7(b)(12)(i)(F)(*1*)(*iii*)) from the minimum payment total cost estimate calculated under paragraph (c) of Appendix M1 (rounded to the nearest whole dollar as set forth in § 226.7(b)(12)(i)(C)).

Consistent with the proposed changes to § 226.7(b)(12), paragraph (f) of Appendix M1 would be revised to indicate that a card issuer, at its option, may round the disclosures either to the nearest whole dollar or to the nearest cent in calculating the savings estimate for repayment in 36 months. If a card issuer chooses under § 226.7(b)(12) to round the disclosures to the nearest whole dollar, the card issuer must calculate the savings estimate for repayment in 36 months by subtracting the total cost estimate for repayment in 36 months calculated under paragraph (e) of Appendix M1 (rounded to the nearest whole dollar) from the minimum payment total cost estimate calculated under paragraph (c) of Appendix M1 (rounded to the nearest whole dollar). If a card issuer chooses, however, to round the disclosures to the nearest cent, the card issuer must calculate the savings estimate for repayment in 36 months by subtracting the total cost estimate for repayment in 36 months calculated under paragraph (e) of Appendix M1 (rounded to the nearest cent) from the minimum payment total cost estimate calculated under paragraph (c) of Appendix M1 (rounded to the nearest cent). This ensures that the savings estimate for repayment in 36 months is calculated consistent with how the other disclosures will be shown on the periodic statement.

IV. Regulatory Analysis

This proposed rule would clarify aspects of the Board's February and June 2010 Final Rules implementing the Credit Card Act. Section VI of the **SUPPLEMENTARY INFORMATION** to the February 2010 Final Rule and section VII of the **SUPPLEMENTARY INFORMATION** to the June 2010 Final Rule set forth the Board's analyses and determinations under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) with respect to those rules. *See* 75 FR 7789–7791, 75 FR 37565–37567. In addition, section VII of the **SUPPLEMENTARY INFORMATION** to the February 2010 Final Rule and section VIII of the **SUPPLEMENTARY INFORMATION** to the June 2010 Final Rule set forth the Board's analyses and determinations under the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR Part 1320 Appendix A.1) with respect to those rules. *See* 75 FR 7791, 75 FR 37567–37568. Because the proposed amendments are clarifications and would not, if adopted, alter the substance of these analyses and determinations, the Board continues to rely on those analyses and determinations for purposes of this rulemaking.[8]

The Board has a continuing interest in the public's opinion of the collection of information. Comments on the collection of information should be sent to Cynthia Ayouch, Acting Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 95–A, Board of Governors of the Federal Reserve System, Washington, DC 20551, with copies of such comments sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0199), Washington, DC 20503.

List of Subjects in 12 CFR Part 226

Advertising, Consumer protection, Federal Reserve System, Reporting and recordkeeping requirements, Truth in Lending.

Text of Final Revisions

For the reasons set forth in the preamble, the Board proposes to amend Regulation Z, 12 CFR part 226, as set forth below:

[8] The Board notes that the proposed amendments to § 226.9(c)(2)(v)(B) would permit a card issuer to provide the consumer in advance with certain written disclosures of a fee increase upon expiration of a specified period of time, without providing 45 days' advance notice pursuant to § 226.9(c)(2). The Board anticipates that the proposed rule would impose no additional burden on card issuers because the proposed clarification would provide an alternative means of complying with disclosures that are otherwise required by § 226.9(c)(2).

PART 226—TRUTH IN LENDING (REGULATION Z)

1. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604, 1637(c)(5), and 1639(l); Pub. L. 111–24 § 2, 123 Stat. 1734.

Subpart A—General

* * * * *

Subpart B—Open-End Credit

2. Section 226.2(a)(15)(ii) is revised to read as follows:

§ 226.2 Definitions and rules of construction.

(a) * * *

(15) * * *

(ii) *Credit card account under an open-end (not home-secured) consumer credit plan* means any open-end credit account ►that is◄ accessed by a credit card, except:

(A) A [credit card that accesses a] home-equity plan subject to the requirements of § 226.5b ►that is accessed by a credit card◄; or

(B) An overdraft line of credit ►that is◄ accessed by a debit card ►or an account number◄.

* * * * *

3. Section 226.5 is amended by revising the heading to paragraph (b)(2)(ii)(A) and by revising paragraph (b)(2)(ii)(B) to read as follows:

§ 226.5 General disclosure requirements.

* * * * *

(b) * * *

(2) * * *

(ii) *Timing requirements.*

(A) ►*Credit card accounts under an open-end (not home-secured) consumer credit plan.*◄ [*Payment due date.*] * * *

(B) ►*Open-end consumer credit plans.*◄ [*Grace period expiration date.*] For ►accounts under an◄ open-end consumer credit plan[s], a creditor must adopt reasonable procedures designed to ensure that:

(*1*) ►If a grace period applies to the account:

(*i*)◄ Periodic statements are mailed or delivered at least 21 days prior to the date on which ►the◄ [any] grace period expires; and

►(*ii*)◄ [(*2*)] The creditor does not impose finance charges as a result of the loss of ►the◄ [a] grace period if a payment that satisfies the terms of the grace period is received by the creditor within 21 days after mailing or delivery of the periodic statement.

►(*2*) If a grace period does not apply to the account:

(*i*) Periodic statements are mailed or delivered at least 14 days prior to the date on which the required minimum periodic payment must be received in order to avoid being treated as late for any purpose; and

(*ii*) The creditor does not treat as late for any purpose a required minimum periodic payment received by the creditor within 14 days after mailing or delivery of the periodic statement.◄

(*3*) For purposes of paragraph (b)(2)(ii)(B) of this section, "grace period" means a period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate.[10]

* * * * *

4. Section 226.5a is amended by revising paragraphs (a)(2)(iii), (b)(1)(i), and (b)(1)(iv) to read as follows:

§ 226.5a Credit and charge card applications and solicitations.

(a) * * *

(2) * * *

(iii) Disclosures required by paragraphs (b)(1)(iv)(B)►, (b)(1)(iv)(C)◄ and (b)(6) of this section must be placed directly beneath the table.

* * * * *

(b) * * *

(1) * * *

(i) *Variable rate information.* If a rate disclosed under paragraph (b)(1) of this section is a variable rate, the card issuer shall also disclose the fact that the rate may vary and how the rate is determined. In describing how the applicable rate will be determined, the card issuer must identify the type of index or formula that is used in setting the rate. The value of the index and the amount of the margin that are used to calculate the variable rate shall not be disclosed in the table. A disclosure of any applicable limitations on rate increases [or decreases] shall not be included in the table.

* * * * *

(iv) *Penalty rates.* (A) *In general.* Except as provided in paragraph (b)(1)(iv)(B) ►and (b)(1)(iv)(C)◄ of this section, if a rate may increase as a penalty for one or more events specified in the account agreement, such as a late payment or an extension of credit that exceeds the credit limit, the card issuer must disclose pursuant to paragraph (b)(1) of this section the increased rate that may apply, a brief description of the event or events that may result in the increased rate, and a brief description of how long the increased rate will remain in effect.

(B) *Introductory rates.* If the issuer discloses an introductory rate, as that term is defined in § 226.16(g)(2)(ii), in the table or in any written or electronic promotional materials accompanying applications or solicitations subject to paragraph (c) or (e) of this section, the issuer must briefly disclose directly beneath the table the circumstances, if any, under which the introductory rate may be revoked, and the type of rate that will apply after the introductory rate is revoked.

►(C) *Employee preferential rates.* If a card issuer discloses in the table a preferential annual percentage rate for which only employees of the creditor or employees of a third party are eligible, the card issuer must briefly disclose directly beneath the table the circumstances under which such preferential rate may be revoked, and the rate that will apply after such preferential rate is revoked.◄

* * * * *

5. Section 226.6 is amended by revising paragraphs (b)(1)(ii), (b)(2)(i)(B), and (b)(2)(i)(D) to read as follows:

§ 226.6 Account-opening disclosures.

* * * * *

(b) * * *

(1) * * *

(ii) *Location.* Only the information required or permitted by paragraphs (b)(2)(i) through (b)(2)(v) (except for (b)(2)(i)(D)(*2*)) and (b)(2)(vii) through (b)(2)(xiv) of this section shall be in the table. Disclosures required by paragraphs (b)(2)(i)(D)(*2*), ►(b)(2)(i)(D)(*3*), ◄(b)(2)(vi) and (b)(2)(xv) of this section shall be placed directly below the table. Disclosures required by paragraphs (b)(3) through (b)(5) of this section that are not otherwise required to be in the table and other information may be presented with the account agreement or account-opening disclosure statement, provided such information appears outside the required table.

* * * * *

(2) * * *

(i) * * *

(B) *Discounted initial rates.* If the initial rate is an introductory rate, as that term is defined in § 226.16(g)(2)(ii), the creditor must disclose the rate that would otherwise apply to the account pursuant to paragraph (b)(2)(i) of this section. Where the rate is not tied to an index or formula, the creditor must disclose the rate that will apply after the introductory rate expires. In a variable-rate account, the [card issuer] ►creditor◄ must disclose a rate based on the applicable index or formula in accordance with the

[10] [Reserved]

accuracy requirements of paragraph (b)(4)(ii)(G) of this section. Except as provided in paragraph (b)(2)(i)(F) of this section, the creditor is not required to, but may disclose in the table the introductory rate along with the rate that would otherwise apply to the account if the creditor also discloses the time period during which the introductory rate will remain in effect, and uses the term "introductory" or "intro" in immediate proximity to the introductory rate.

* * * * *

(D) *Penalty rates.* (*1*) *In general.* Except as provided in paragraph (b)(2)(i)(D)(*2*) ►and (b)(2)(i)(D)(*3*)◄ of this section, if a rate may increase as a penalty for one or more events specified in the account agreement, such as a late payment or an extension of credit that exceeds the credit limit, the creditor must disclose pursuant to paragraph (b)(2)(i) of this section the increased rate that may apply, a brief description of the event or events that may result in the increased rate, and a brief description of how long the increased rate will remain in effect. If more than one penalty rate may apply, the creditor at its option may disclose the highest rate that could apply, instead of disclosing the specific rates or the range of rates that could apply.

(*2*) *Introductory rates.* If the creditor discloses in the table an introductory rate, as that term is defined in § 226.16(g)(2)(ii), creditors must briefly disclose directly beneath the table the circumstances under which the introductory rate may be revoked, and the rate that will apply after the introductory rate is revoked.

►(*3*) *Employee preferential rates.* If a creditor discloses in the table a preferential annual percentage rate for which only employees of the creditor or employees of a third party are eligible, the creditor must briefly disclose directly beneath the table the circumstances under which such preferential rate may be revoked, and the rate that will apply after such preferential rate is revoked.◄

* * * * *

6. Section 226.7 is amended by revising paragraphs (b)(12) and (b)(14) to read as follows:

§ 226.7 Periodic statement.

* * * * *

(b) * * *

(12) *Repayment disclosures*—(i) *In general.* Except as provided in paragraphs (b)(12)(ii) and (b)(12)(v) of this section, for a credit card account under an open-end (not home-secured) consumer credit plan, a card issuer must provide the following disclosures on each periodic statement:

(A) The following statement with a bold heading: "Minimum Payment Warning: If you make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your balance";

(B) The minimum payment repayment estimate, as described in Appendix M1 to this part. If the minimum payment repayment estimate is less than 2 years, the card issuer must disclose the estimate in months. Otherwise, the estimate must be disclosed in years and rounded to the nearest whole year;

(C) The minimum payment total cost estimate, as described in Appendix M1 to this part. The minimum payment total cost estimate must be rounded ►either◄ to the nearest whole dollar ►or to the nearest cent, at the card issuer's option◄;

(D) A statement that the minimum payment repayment estimate and the minimum payment total cost estimate are based on the current outstanding balance shown on the periodic statement. A statement that the minimum payment repayment estimate and the minimum payment total cost estimate are based on the assumption that only minimum payments are made and no other amounts are added to the balance;

(E) A toll-free telephone number where the consumer may obtain from the card issuer information about credit counseling services consistent with paragraph (b)(12)(iv) of this section; and

(F)(*1*) Except as provided in paragraph (b)(12)(i)(F)(2) of this section, the following disclosures:

(*i*) The estimated monthly payment for repayment in 36 months, as described in Appendix M1 to this part. The estimated monthly payment for repayment in 36 months must be rounded ►either◄ to the nearest whole dollar ►or to the nearest cent, at the card issuer's option◄;

(*ii*) A statement that the card issuer estimates that the consumer will repay the outstanding balance shown on the periodic statement in 3 years if the consumer pays the estimated monthly payment each month for 3 years;

(*iii*) The total cost estimate for repayment in 36 months, as described in Appendix M1 to this part. The total cost estimate for repayment in 36 months must be rounded ►either◄ to the nearest whole dollar ►or to the nearest cent, at the card issuer's option◄; and

(*iv*) The savings estimate for repayment in 36 months, as described in Appendix M1 to this part. The savings estimate for repayment in 36 months must be rounded ►either◄ to the nearest whole dollar ►or to the nearest cent, at the card issuer's option◄.

(*2*) The requirements of paragraph (b)(12)(i)(F)(*1*) of this section do not apply to a periodic statement in any of the following circumstances:

(*i*) The minimum payment repayment estimate that is disclosed on the periodic statement pursuant to paragraph (b)(12)(i)(B) of this section after rounding is three years or less;

(*ii*) The estimated monthly payment for repayment in 36 months, as described in Appendix M1 to this part, ►after rounding as set forth in paragraph (b)(12)(f)(*1*)(*i*) of this section◄ [rounded to the nearest whole dollar] that is calculated for a particular billing cycle is less than the minimum payment required for the plan for that billing cycle; and

(*iii*) A billing cycle where an account has both a balance in a revolving feature where the required minimum payments for this feature will not amortize that balance in a fixed amount of time specified in the account agreement and a balance in a fixed repayment feature where the required minimum payment for this fixed repayment feature will amortize that balance in a fixed amount of time specified in the account agreement which is less than 36 months.

(ii) *Negative or no amortization.* If negative or no amortization occurs when calculating the minimum payment repayment estimate as described in Appendix M1 of this part, a card issuer must provide the following disclosures on the periodic statement instead of the disclosures set forth in paragraph (b)(12)(i) of this section:

(A) The following statement: "Minimum Payment Warning: Even if you make no more charges using this card, if you make only the minimum payment each month we estimate you will never pay off the balance shown on this statement because your payment will be less than the interest charged each month";

(B) The following statement: "If you make more than the minimum payment each period, you will pay less in interest and pay off your balance sooner";

(C) The estimated monthly payment for repayment in 36 months, as described in Appendix M1 to this part. The estimated monthly payment for repayment in 36 months must be rounded ►either◄ to the nearest whole dollar ►or to the nearest cent, at the issuer's option◄;

(D) A statement that the card issuer estimates that the consumer will repay the outstanding balance shown on the periodic statement in 3 years if the consumer pays the estimated monthly payment each month for 3 years; and

(E) A toll-free telephone number where the consumer may obtain from the card issuer information about credit counseling services consistent with paragraph (b)(12)(iv) of this section.

* * * * *

(14) *Deferred interest or similar transactions.* For accounts with an outstanding balance subject to a deferred interest or similar program, the date by which that outstanding balance must be paid in full in order to avoid the obligation to pay finance charges on such balance must be disclosed on the front of ►any page of◄ each periodic statement issued during the deferred interest period beginning with the first periodic statement issued during the deferred interest period that reflects the deferred interest or similar transaction. The disclosure provided pursuant to this paragraph must be substantially similar to Sample G–18(H) in Appendix G to this part.

7. Section 226.9 is amended by adding paragraph (b)(3)(iii) and by revising paragraphs (c)(2)(i)(A), (c)(2)(ii), (iii), (c)(2)(iv) (A)(*1*), (c)(2)(iv)(B), (c)(2)(iv)(D), (c)(2)(v)(B), and (c)(2)(v)(C) to read as follows:

§ 226.9 Subsequent disclosure requirements.

* * * * *

(b) * * *

(3) * * *

►(iii) *Variable rates.* If any annual percentage rate required to be disclosed pursuant to paragraph (b)(3)(i) of this section is a variable rate, the card issuer shall also disclose the fact that the rate may vary and how the rate is determined. In describing how the applicable rate will be determined, the card issuer must identify the type of index or formula that is used in setting the rate. The value of the index and the amount of the margin that are used to calculate the variable rate shall not be disclosed in the table. A disclosure of any applicable limitations on rate increases shall not be included in the table.◄

(c) * * *

(2) * * * (i) * * *

(A) *General.* For plans other than home-equity plans subject to the requirements of § 226.5b, except as provided in paragraphs (c)(2)(i)(B), (c)(2)(iii) and (c)(2)(v) of this section, when a significant change in account terms as described in paragraph (c)(2)(ii) of this section is made ❚to a term required to be disclosed under § 226.6(b)(3), (b)(4) or (b)(5) or the required minimum periodic payment is increased❚, a creditor must provide a written notice of the change at least 45 days prior to the effective date of the change to each consumer who may be affected. The 45-day timing requirement does not apply if the consumer has agreed to a particular change; the notice shall be given, however, before the effective date of the change. Increases in the rate applicable to a consumer's account due to delinquency, default or as a penalty described in paragraph (g) of this section that are not due to a change in the contractual terms of the consumer's account must be disclosed pursuant to paragraph (g) of this section instead of paragraph (c)(2) of this section.

* * * * *

(ii) *Significant changes in account terms.* For purposes of this section, a "significant change in account terms" means a change to a term required to be disclosed under § 226.6(b)(1) and (b)(2), an increase in the required minimum periodic payment, ►a change to a term required to be disclosed under § 226.6(b)(4),◄ or the acquisition of a security interest.

(iii) *Charges not covered by § 226.6(b)(1) and (b)(2).* Except as provided in paragraph (c)(2)(vi) of this section, if a creditor increases any component of a charge, or introduces a new charge, required to be disclosed under § 226.6(b)(3) that is not a significant change in account terms as described in paragraph (c)(2)(ii) of this section, a creditor ❚may❚►must◄ either, at its option:

(A) Comply with the requirements of paragraph (c)(2)(i) of this section; or

(B) Provide notice of the amount of the charge before the consumer agrees to or becomes obligated to pay the charge, at a time and in a manner that a consumer would be likely to notice the disclosure of the charge. The notice may be provided orally or in writing.

(iv) * * *

(A) * * *

(*1*) A summary of the changes made to terms required by § 226.6(b)(1) and (b)(2) ►or § 226.6(b)(4)◄, a description of any increase in the required minimum periodic payment, and a description of any security interest being acquired by the creditor;

* * * * *

(B) *Right to reject for credit card accounts under an open-end (not home-secured) consumer credit plan.* In addition to the disclosures in paragraph (c)(2)(iv)(A) of this section, if a card issuer makes a significant change in account terms on a credit card account under an open-end (not home-secured) consumer credit plan, the creditor must generally provide the following information on the notice provided pursuant to paragraph (c)(2)(i) of this section. This information is not required to be provided in the case of an increase in the required minimum periodic payment, an increase in a fee as a result of a reevaluation of a determination made under § 226.52(b)(1)(i) or an adjustment to the safe harbors in § 226.52(b)(1)(ii) to reflect changes in the Consumer Price Index, a change in an annual percentage rate applicable to a consumer's account, ►an increase in a fee previously reduced consistent with 50 U.S.C. app. 527 or a similar federal or state statute or regulation if the amount of the increased fee does not exceed the amount of that fee prior to the reduction◄ ❚a change in the balance computation method applicable to consumer's account necessary to comply with § 226.54❚, or when the change results from the creditor not receiving the consumer's required minimum periodic payment within 60 days after the due date for that payment:

* * * * *

(D) *Format requirements*—(*1*) *Tabular format.* The summary of changes described in paragraph (c)(2)(iv)(A)(*1*) of this section must be in a tabular format (except for a summary of any increase in the required minimum periodic payment ►, a summary of a term required to be disclosed under § 226.6(b)(4) that is not required to be disclosed under § 226.6(b)(1) and (b)(2), or a description of any security interest being acquired by the creditor◄), with headings and format substantially similar to any of the account-opening tables found in G–17 in appendix G to this part. The table must disclose the changed term and information relevant to the change, if that relevant information is required by § 226.6(b)(1) and (b)(2). The new terms shall be described in the same level of detail as required when disclosing the terms under § 226.6(b)(2).

* * * * *

(v) * * *

(B) When the change is an increase in an annual percentage rate ►or fee◄ upon the expiration of a specified period of time, provided that:

(*1*) Prior to commencement of that period, the creditor disclosed in writing to the consumer, in a clear and conspicuous manner, the length of the period and the annual percentage rate ►or fee◄ that would apply after expiration of the period;

(*2*) The disclosure of the length of the period and the annual percentage rate ►or fee◄ that would apply after expiration of the period are set forth in close proximity and in equal prominence to the first listing of the disclosure of the rate ►or fee◄ that

applies during the specified period of time; and

(*3*) The annual percentage rate ►or fee◄ that applies after that period does not exceed the rate ►or fee◄ disclosed pursuant to paragraph (c)(2)(v)(B)(*1*) of this paragraph or, if the rate disclosed pursuant to paragraph (c)(2)(v)(B)(*1*) of this section was a variable rate, the rate following any such increase is a variable rate determined by the same formula (index and margin) that was used to calculate the variable rate disclosed pursuant to paragraph (c)(2)(v)(B)(*1*);

(C) When the change is an increase in a variable annual percentage rate in accordance with a credit card ►or other account◄ agreement that provides for changes in the rate according to operation of an index that is not under the control of the creditor and is available to the general public; or

* * * * *

8. Section 226.10(b)(4) is revised to read as follows:

§ 226.10 Payments.

* * * * *

(b) * * *

(4) *Nonconforming payments.* If a creditor specifies, on or with the periodic statement, requirements for the consumer to follow in making payments as permitted under this § 226.10, but accepts a payment that does not conform to the requirements ►via a payment method that the creditor does not otherwise promote◄, the creditor shall credit the payment within five days of receipt.

* * * * *

9. Section 226.16(g) is revised to read as follows:

§ 226.16 Advertising.

* * * * *

(g) *Promotional rates* ►*and fees*◄. (1) *Scope.* The requirements of this paragraph apply to any advertisement of an open-end (not home-secured) plan, including promotional materials accompanying applications or solicitations subject to § 226.5a(c) or accompanying applications or solicitations subject to § 226.5a(e).

(2) *Definitions.* (i) *Promotional rate* means any annual percentage rate applicable to one or more balances or transactions on an open-end (not home-secured) plan for a specified period of time that is lower than the annual percentage rate that will be in effect at the end of that period on such balances or transactions.

(ii) *Introductory rate* means a promotional rate offered in connection with the opening of an account.

(iii) *Promotional period* means the maximum time period for which [the] ►a◄ promotional rate ► or promotional fee◄ may be applicable.

►(iv) *Promotional fee* means a fee required to be disclosed under § 226.6(b)(1) and (b)(2) applicable to an open-end (not home-secured) plan for a specified period of time that is lower than the fee that will be in effect at the end of that period.

(v) *Introductory fee* means a promotional fee offered in connection with the opening of an account.◄

(3) *Stating the term "introductory".* If any annual percentage rate ►or fee◄ that may be applied to the account is an introductory rate ►or introductory fee◄, the term *introductory* or *intro* must be in immediate proximity to each listing of the introductory rate ►or introductory fee◄ in a written or electronic advertisement.

(4) *Stating the promotional period and post-promotional rate* ►*or fee*◄. If any annual percentage rate that may be applied to the account is a promotional rate under paragraph (g)(2)(i) of this section ►or any fee that may be applied to the account is a promotional fee under paragraph (g)(2)(iv) of this section◄, the information in paragraphs (g)(4)(i) and►, as applicable,◄ (g)(4)(ii) ►or (g)(4)(iii)◄ of this section must be stated in a clear and conspicuous manner in the advertisement. If the rate ►or fee◄ is stated in a written or electronic advertisement, the information in paragraphs (g)(4)(i) and ►, as applicable,◄ (g)(4)(ii) ►or (g)(4)(iii)◄ of this section must also be stated in a prominent location closely proximate to the first listing of the promotional rate ►or promotional fee◄.

(i) When the promotional rate ►or promotional fee◄ will end; [and]

(ii) The annual percentage rate that will apply after the end of the promotional period. If such rate is variable, the annual percentage rate must comply with the accuracy standards in §§ 226.5a(c)(2), 226.5a(d)(3), 226.5a(e)(4), or 226.16(b)(1)(ii), as applicable. If such rate cannot be determined at the time disclosures are given because the rate depends at least in part on a later determination of the consumer's creditworthiness, the advertisement must disclose the specific rates or the range of rates that might apply[.]►; and

(iii) The fee that will apply after the end of the promotional period.◄

(5) *Envelope excluded.* The requirements in paragraph (g)(4) of this section do not apply to an envelope or other enclosure in which an application or solicitation is mailed, or to a banner advertisement or pop-up advertisement, linked to an application or solicitation provided electronically.

* * * * *

10. Section 226.51 is amended by revising paragraphs (a)(1), and (b)(1)(ii)(B) to read as follows:

§ 226.51 Ability to pay.

(a) * * *

(1)(i) *Consideration of ability to pay.* A card issuer must not open a credit card account for a consumer under an open-end (not home-secured) consumer credit plan, or increase any credit limit applicable to such account, unless the card issuer considers the ►the consumer's independent◄ ability [of the consumer] to make the required minimum periodic payments under the terms of the account based on the consumer's income or assets and current obligations.

(ii) *Reasonable policies and procedures.* Card issuers must establish and maintain reasonable written policies and procedures to consider a consumer's ►independent◄ income or assets and current obligations. Reasonable policies and procedures to consider a consumer's ►independent◄ ability to make the required payments include a consideration of at least one of the following: The ratio of debt obligations to income; the ratio of debt obligations to assets; or the income the consumer will have after paying debt obligations. It would be unreasonable for a card issuer to not review any information about a consumer's income, assets, or current obligations, or to issue a credit card to a consumer who does not have any ►independent◄ income or assets.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(B) Financial information indicating such cosigner, guarantor, or joint applicant has the ►independent◄ ability to make the required minimum periodic payments on such debts, consistent with paragraph (a) of this section.

* * * * *

11. Section 226.52 is amended by revising the heading to paragraph (a) and by revising paragraphs (a)(1), (a)(3), and (b)(1)(ii) to read as follows:

§ 226.52 Limitations on fees.

(a) *Limitations* ►*prior to account opening and*◄ *during first year after account opening.* (1) *General rule.* ►Except as provided in paragraph (a)(2) of this section, the total amount of fees a consumer is required to pay with respect to a credit card account under

an open-end (not home-secured) consumer credit plan prior to account opening or during the first year after account opening must not exceed 25 percent of the credit limit in effect when the account is opened.◀ [Except as provided in paragraph (a)(2) of this section, if a card issuer charges any fees to a credit card account under an open-end (not home-secured) consumer credit plan during the first year after the account is opened, the total amount of fees the consumer is required to pay with respect to the account during that year must not exceed 25 percent of the credit limit in effect when the account is opened.] ▶For purposes of this paragraph, an account is considered open no earlier than the date on which the account may first be used by the consumer to engage in transactions.◀

* * * * *

(3) *Rule of construction.* [This paragraph (a)]▶Paragraph (a) of this section◀ does not authorize the imposition or payment of fees or charges otherwise prohibited by law.

* * * * *

(b) * * *

(1) * * *

(ii) *Safe harbors.* A card issuer may impose a fee for violating the terms or other requirements of an account if the dollar amount of the fee does not exceed ▶, as applicable◀:

(A) ▶$25.00;◀ [For the first violation of a particular type, $25.00, adjusted annually by the Board to reflect changes in the Consumer Price Index;]

(B) ▶$35.00 if the card issuer previously imposed a fee pursuant to paragraph (b)(1)(ii)(A) of this section for a violation of the same type that occurred during the same billing cycle or one of the next six billing cycles;◀ [For an additional violation of the same type during the next six billing cycles, $35.00, adjusted annually by the Board to reflect changes in the Consumer Price Index;] or

(C) ▶Three percent of the delinquent balance on a charge card account that requires payment of outstanding balances in full at the end of each billing cycle if the card issuer has not received the required payment for two or more consecutive billing cycles.◀ [When a card issuer has not received the required payment for two or more consecutive billing cycles for a charge card account that requires payment of outstanding balances in full at the end of each billing cycle, three percent of the delinquent balance.]

▶(D) The amounts in paragraphs (b)(1)(ii)(A) and (b)(1)(ii)(B) of this section will be adjusted annually by the Board to reflect changes in the Consumer Price Index.◀

* * * * *

12. Section 226.53(b) is revised to read as follows:

§ 226.53 Allocation of payments.

* * * * *

(b) *Special rule*▶*s*◀ [*for accounts with balances subject to deferred interest or similar programs*]. ▶(1) *Accounts with balances subject to deferred interest or similar program.*◀ When a balance on a credit card account under an open-end (not home-secured) consumer credit plan is subject to a deferred interest or similar program that provides that a consumer will not be obligated to pay interest that accrues on the balance if the balance is paid in full prior to the expiration of a specified period of time:

▶(i)◀ [(1)] *Last two billing cycles.* The card issuer must allocate any amount paid by the consumer in excess of the required minimum periodic payment consistent with paragraph (a) of this section, except that, during the two billing cycles immediately preceding expiration of the specified period, the excess amount must be allocated first to the balance subject to the deferred interest or similar program and any remaining portion allocated to any other balances consistent with paragraph (a) of this section; or

▶(ii)◀ [(2)] *Consumer request.* The card issuer may at its option allocate any amount paid by the consumer in excess of the required minimum periodic payment among the balances on the account in the manner requested by the consumer.

▶(2) *Accounts with secured balances.* When a balance on a credit card account under an open-end (not home-secured) consumer credit plan is secured, the card issuer may at its option allocate any amount paid by the consumer in excess of the required minimum periodic payment to that balance if requested by the consumer.◀

13. Section 226.55 is amended by revising paragraphs (b)(1), (b)(3)(iii), and (b)(6), and by adding paragraph (e) to read as follows:

§ 226.55 Limitations on increasing annual percentage rates, fees, and charges.

* * * * *

(b) * * *

(1) *Temporary rate* ▶*, fee, or charge*◀ *exception.* A card issuer may increase an annual percentage rate ▶or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii)◀ upon the expiration of a specified period of six months or longer, provided that:

(i) Prior to the commencement of that period, the card issuer disclosed in writing to the consumer, in a clear and conspicuous manner, the length of the period and the annual percentage rate ▶, fee, or charge◀ that would apply after expiration of the period; and

(ii) Upon expiration of the specified period:

(A) The card issuer must not apply an annual percentage rate ▶, fee, or charge◀ to transactions that occurred prior to the period that exceeds the annual percentage rate ▶, fee, or charge◀ that applied to those transactions prior to the period;

(B) If the disclosures required by paragraph (b)(1)(i) of this section are provided pursuant to § 226.9(c), the card issuer must not apply an annual percentage rate ▶, fee, or charge◀ to transactions that occurred within 14 days after provision of the notice that exceeds the annual percentage rate ▶, fee, or charge◀ that applied to that category of transactions prior to provision of the notice; and

(C) The card issuer must not apply an annual percentage rate ▶, fee, or charge◀ to transactions that occurred during the period that exceeds the increased annual percentage rate ▶, fee, or charge◀ disclosed pursuant to paragraph (b)(1)(i) of this section.

* * * * *

(3) * * *

(iii) This exception does not permit a card issuer to increase an annual percentage rate or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) during the first year after the account is opened ▶, while the account is closed, or while the card issuer does not permit the consumer to use the account for new transactions. For purposes of this paragraph, an account is considered open no earlier than the date on which the account may first be used by the consumer to engage in transactions◀.

* * * * *

(6) *Servicemembers Civil Relief Act exception.* If an annual percentage rate ▶or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii)◀ has been decreased pursuant to 50 U.S.C. app. 527 ▶or a similar federal or state statute or regulation◀, a card issuer may increase that annual percentage rate▶, fee, or charge◀ once 50 U.S.C. app. 527 ▶or the similar statute or regulation◀ no longer applies, provided that the card issuer must not apply to any transactions that occurred prior to the decrease an annual percentage rate▶, fee, or charge◀ that exceeds the annual percentage rate▶, fee, or charge◀ that

applied to those transactions prior to the decrease.

* * * * *

►(e) *Promotional waivers or rebates of interest, fees, and other charges.* If a card issuer promotes the waiver or rebate of finance charges due to a periodic interest rate or fees or charges required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) and applies the waiver or rebate to a credit card account under an open-end (not home-secured) consumer credit plan, any cessation of the waiver or rebate constitutes an increase in an annual percentage rate, fee, or charge for purposes of this section.◄

14. Section 226.58 is amended by:

A. Redesignating paragraphs (b)(4) through (b)(7) as (b)(5) through (b)(8) respectively;

B. Adding a new paragraph (b)(4);

C. Revising paragraphs (b)(1), (b)(2), newly redesignated paragraph (b)(7); and

D. Revising paragraphs (c)(1), (c)(2), (c)(3), and (c)(8)(i)(C)(*1*) to read as follows:

§ 226.58 Internet posting of credit card agreements.

* * * * *

(b) *Definitions*—(1) *Agreement.* For purposes of this section, "agreement" or "credit card agreement" means the written document or documents evidencing the terms of the legal obligation, or the prospective legal obligation, between a card issuer and a consumer for a credit card account under an open-end (not home-secured) consumer credit plan. "Agreement" or "credit card agreement" also includes the pricing information, as defined in [§ 226.58(b)(6)]►§ 226.58(b)(7)◄.

(2) *Amends.* For purposes of this section, an issuer "amends" an agreement if it makes a substantive change (an "amendment") to the agreement. A change is substantive if it alters the rights or obligations of the card issuer or the consumer under the agreement. Any change in the pricing information, as defined in [§ 226.58(b)(6)]►§ 226.58(b)(7)◄, is deemed to be substantive.

* * * * *

►(4) *Card issuer.* For purposes of this section, "card issuer" or "issuer" means the entity to which a consumer is legally obligated, or would be legally obligated, under the terms of a credit card agreement.◄

[(4)]►(5)◄ * * *

[(5)]►(6)◄ * * *

[(6)]►(7)◄ *Pricing information.* For purposes of this section, "pricing information" means the information listed in § 226.6(b)(2)(i) through (b)(2)(xii) [and (b)(4)]. Pricing information does not include temporary or promotional rates and terms or rates and terms that apply only to protected balances.

[(7)]►(8)◄ * * *

(c) * * *

(1) *Quarterly submissions.* A card issuer must make quarterly submissions to the Board, in the form and manner specified by the Board►. Quarterly submissions must be sent to the Board no later than the first business day on or after January 31, April 30, July 31, and October 31 of each year. Each submission must contain:◄[, that contain:]

(i) Identifying information about the card issuer and the agreements submitted, including the issuer's name, address, and identifying number (such as an RSSD ID number or tax identification number);

(ii) The credit card agreements that the card issuer offered to the public as of the last business day of the preceding calendar quarter that the card issuer has not previously submitted to the Board;

(iii) Any credit card agreement previously submitted to the Board that was amended during the preceding calendar quarter ►and that the card issuer offered to the public as of the last business day of the preceding calendar quarter◄, as described in § 226.58(c)(3); and

(iv) Notification regarding any credit card agreement previously submitted to the Board that the issuer is withdrawing, as described in ►§ 226.58(c)(4), (c)(5), (c)(6), and (c)(7)◄[§ 226.58(c)(4) and (c)(5)].

(2) ►*Reserved.*◄[*Timing of first two submissions.* The first submission following the effective date of this section must be sent to the Board no later than February 22, 2010, and must contain the credit card agreements that the card issuer offered to the public as of December 31, 2009. The next submission must be sent to the Board no later than August 2, 2010, and must contain:

(i) Any credit card agreement that the card issuer offered to the public as of June 30, 2010, that the card issuer has not previously submitted to the Board;

(ii) Any credit card agreement previously submitted to the Board that was amended after December 31, 2009, and on or before June 30, 2010, as described in § 226.58(c)(3); and

(iii) Notification regarding any credit card agreement previously submitted to the Board that the issuer is withdrawing as of June 30, 2010, as described in § 226.58(c)(4) and (c)(5).]

(3) *Amended agreements.* If a credit card agreement has been submitted to the Board, the agreement has not been amended and the card issuer continues to offer the agreement to the public, no additional submission regarding that agreement is required. If a credit card agreement that previously has been submitted to the Board is amended ►and the card issuer offered the amended agreement to the public as of the last business day of the calendar quarter in which the change became effective◄, the card issuer must submit the entire amended agreement to the Board, in the form and manner specified by the Board, by the first quarterly submission deadline after the last day of the calendar quarter in which the change became effective.

* * * * *

(8) * * *

(i) * * *

(C) * * *

(*1*) disclosures required by state or federal law, such as affiliate marketing notices, privacy policies, ►billing rights notices,◄ or disclosures under the E–Sign Act;

* * * * *

15. Appendix M1 to part 226 is amended by revising paragraph (f) to read as follows:

Appendix M1 to Part 226—Repayment Disclosures

* *

(f) *Calculating the savings estimate for repayment in 36 months.* ►When calculating the savings estimate for repayment in 36 months, if a card issuer chooses under § 226.7(b)(12)(i) to round the disclosures to the nearest whole dollar when disclosing them on the periodic statement, the card issuer must calculate the savings estimate for repayment in 36 months by subtracting the total cost estimate for repayment in 36 months calculated under paragraph (e) of this appendix (rounded to the nearest whole dollar) from the minimum payment total cost estimate calculated under paragraph (c) of this appendix (rounded to the nearest whole dollar). If a card issuer chooses under § 227.7(b)(12)(i), however, to round the disclosures to the nearest cent when disclosing them on the periodic statement, the card issuer must calculate the savings estimate for repayment in 36 months by subtracting the total cost estimate for repayment in 36 months calculated under paragraph (e) of this appendix (rounded to the nearest cent) from the minimum payment total cost estimate calculated under paragraph (c) of this appendix (rounded to the nearest cent).◄ [When calculating the saving estimate for repayment in 36 months, a card issuer must subtract the total cost estimate for repayment in 36 months calculated under paragraph (e) of this appendix (rounded to the nearest whole dollar as set forth in § 226.7(b)(12)(i)(F)(*1*)(*iii*)) from the minimum payment total cost estimate calculated under paragraph (c) of this appendix (rounded to

the nearest whole dollar as set forth in § 226.7(b)(12)(i)(C)).] The savings estimate for repayment in 36 months shall be considered accurate if it is based on the total cost estimate for repayment in 36 months that is calculated in accordance with paragraph (e) of this appendix and the minimum payment total cost estimate calculated under paragraph (c) of this appendix.

* * * * *

16. In Supplement I to Part 226:

A. Under *Section 226.2—Definitions and Rules of Construction,* subheading *2(a)(15) Credit card,* paragraphs 2. and 3. are revised and paragraph 4. is added.

B. Under *Section 226.5—General Disclosure Requirements,* subheading *5(b)(2) Periodic statements:*

i. Under *Paragraph 5(b)(2)(ii),* paragraphs 1. through 4. are revised; and

ii. The heading *Paragraph 5(b)(2)(iii)* and paragraph 1. under that heading are deleted.

C. Under *Section 226.5a—Credit and Charge Card Applications and Solicitations,* subheading *5a(b) Required disclosures:*

i. Under *5a(b)(1) Annual percentage rate,* paragraph 5. is revised;

ii. Under *5a(b)(2) Fees for issuance or availability,* paragraph 4. is revised; and

iii. Under *5a(b)(5) Grace period,* paragraph 1. is revised and paragraph 4. is deleted; and

iv. Under *5a(b)(6) Balance computation method,* paragraph 1. is revised.

D. Under *Section 226.6—Account-Opening Disclosures:*

i. Under *6(b)(2)(v) Grace period,* paragraphs 1. and 3. are revised and paragraph 4. is deleted; and

ii. Under *6(b)(2)(vi) Balance computation method,* paragraph 1. is revised and paragraph 2. is added.

E. Under *Section 226.7—Periodic Statement,* under *7(b) Rules affecting open-end (not home-secured) plans:*

i. Paragraph 1. is revised;

ii. Under *7(b)(5) Balance on which finance charge computed,* paragraphs 7. and 8. are revised;

iii. Under *7(b)(6) Charges imposed,* paragraph 3. is revised; and

iv. Under *7(b)(12) Repayment disclosures,* paragraph 1. is added.

F. Under *Section 226.9—Subsequent Disclosure Requirements:*

i. Under *9(b) Disclosures for supplemental credit access devices and additional features,* under *9(b)(3) Checks that access a credit card account,* under *9(b)(3)(i) Disclosures,* paragraph 2. is added;

ii. Under *9(c) Change in terms,* under *9(c)(2) Rules affecting open-end (not home-secured) plans:*

1. Paragraph 1. is revised;

2. Under *9(c)(2)(iii) Charges not covered by § 226.6(b)(1) and (b)(2),* paragraph 1. is revised;

3. Under *9(c)(2)(iv) Disclosure requirements,* paragraphs 3. and 4. are revised; and

4. Under *9(c)(2)(v) Notice not required,* paragraphs 2., 3., 4., 5., 6., 7., 10., 11., and 12. are revised and paragraph 13. is added.

G. Under *Section 226.10—Payments:*

i. Under *10(b) Specific requirements for payments,* paragraph 2. is revised;

ii Under *10(e) Limitations on fees related to method of payment,* paragraph 4. is added; and

iii. Under *10(f) Changes by card issuer,* paragraph 3. is revised.

H. Under *Section 226.12—Special Credit Card Provisions,* under *12(c) Right of cardholder to assert claims or defenses against card issuer,* paragraph 4. is revised.

I. Under *Section 226.13—Billing Error Resolution,* under *13(c) Time for resolution; general procedures,* under *Paragraph 13(c)(2),* paragraph 2. is revised.

J. Under *Section 226.14—Determination of Annual Percentage Rate,* under *14(a) General rule,* paragraph 6. is added.

K. Under *Section 226.16—Advertising:*

i. Paragraphs 1. and 2. are revised; and

ii. Under *16(g) Promotional rates,* paragraphs 2., 3., and 4. are revised.

L. Under *Section 226.30—Limitation on Rates,* paragraph 8. is revised.

M. Under *Section 226.51—Ability to Pay:*

i. Under *51(a) General rule,* paragraphs 1., 2. and 4. are revised; and

ii. Under *51(a)(2) Minimum periodic payments,* paragraph 3. is revised.

N. Under *Section 226.52—Limitations on Fees:*

i. Under *52(a) Limitations during first year after account opening:*

1. The heading *52(a) Limitations during first year after account opening* is revised to read *52(a) Limitations prior to account opening and during first year after account opening;*

2. Under *52(a)(1) General rule,* paragraphs 1., 2., and 3. are revised; and

3 Under *52(a)(2) Fees not subject to limitations,* paragraph 1. is revised;

ii. Under *52(b) Limitations on penalty fees:*

1. Under *52(b)(1)(ii) Safe harbors,* paragraph 1. is revised; and

2. Under *52(b)(2) Prohibited fees:*

A. Under *52(b)(2)(i) Fees that exceed dollar amount associated with violation,* paragraph 5. is revised; and

B. Under *52(b)(2)(ii) Multiple fees based on single event or transaction,* paragraph 1. is revised.

O. Under *Section 226.53— Allocation of Payments:*

i. Paragraphs 4. and 5. are revised; and

ii. Under *53(b) Special rule for accounts with balances subject to deferred interest or similar programs:*

1. The heading is revised to read *53(b) Special rules;* and

2. Paragraphs 1., 2., and 3. are revised.

P. Under *Section 226.55—Limitations on Increasing Annual Percentage Rates, Fees, and Charges:*

i. Under *55(a) General rule,* paragraph 1. is revised;

ii. Under *55(b) Exceptions,* paragraphs 1. and 3. are revised;

iii. Under *55(b)(1) Temporary rate exception:*

1. The heading is revised to read *55(b)(1) Temporary rate, fee, or charge exception;* and

2. Paragraphs 2. and 4. are revised and paragraph 5. is added;

iv. Under *55(b)(6) Servicemembers Civil Relief Act exception,* paragraphs 1. and 2. are revised and paragraph 3. is added;

v. Under *55(c) Treatment of protected balances,* under *55(c)(1) Definition of protected balance,* paragraph 3. is revised and paragraph 4. is added; and

vi. The heading *55(e) Promotional waivers or rebates of interest, fees, and other charges* is added and paragraphs 1., 2., and 3. are added under that heading.

Q. Under *Section 226.58—Internet Posting of Credit Card Agreements:*

i. Under *58(b) Definitions:*

1. Under *58(b)(1) Agreement,* paragraph 1. is revised;

2 Under *58(b)(2) Amends,* paragraph 1. is revised;

3. The heading *58(b)(4) Card issuer* is added and paragraph 1. is added under that heading;

4. The heading *58(b)(4) Offers* is revised to read *58(b)(5) Offers;*

5. The heading *58(b)(5) Open account* is revised to read *58(b)(6) Open account;* and

6. The heading *58(b)(7) Private label credit card account and private label credit card plan* is revised to read *58(b)(8) Private label credit card account and private label credit card plan* and under that heading paragraphs 2. and 4. are revised;

ii. Under *58(c) Submission of agreements to Board,* under *58(c)(3) Amended agreements,* paragraph 2. is revised, paragraph 3. is renumbered as paragraph 4., and a new paragraph 3. is added; and

iii. Under *58(e) Agreements for all open accounts,* paragraph 3. is revised.

R. Under *Section 226.59—Reevaluation of Rate Increases:*

i. Under *59(a) General rule,* under *59(a)(1) Evaluation of increased rate,* paragraphs 3., 4., and 5. are renumbered and a new paragraph 3. is added;

ii. Under *59(d) Factors,* paragraph 6. is added; and

iii. Under *59(f) Termination of obligation to review factors,* paragraph 2. is added.

Supplement I to Part 226—Official Staff Interpretations

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Subpart A—General

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Section 226.2—Definitions and Rules of Construction

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2(a)(15) Credit card.

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2. *Examples.*

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ii. In contrast, credit card does not include, for example:

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►C. An account number that accesses a credit account, unless the account number can access an open-end line of credit to purchase goods or services. For example, if a creditor provides a consumer with an open-end line of credit that can be accessed by an account number in order to transfer funds into another account (such as an asset account with the same creditor), the account number is not a credit card for purposes of § 226.2(a)(15)(i). However, if the account number can also access the line of credit to purchase goods or services (such as an account number that can be used to purchase goods or services on the Internet), the account number is a credit card for purposes of § 226.2(a)(15)(i). Furthermore, if the line of credit can also be accessed by a card (such as a debit card or prepaid card), that card is a credit card for purposes of § 226.2(a)(15)(i).◄

3. *Charge card.* Generally, charge cards are cards used in connection with an account on which outstanding balances cannot be carried from one billing cycle to another and are payable when a periodic statement is received. Under the regulation, a reference to credit cards generally includes charge cards. ►In particular, references to credit card accounts under an open-end (not home-secured) consumer credit plan in Subparts B and G generally include charge cards.◄ The term *charge card* is, however, distinguished from *credit card* ►or *credit card account under an open-end (not home-secured) consumer credit plan*◄ in §§ 226.5a, ►226.6(b)(2)(xiv),◄ 226.7(b)(11), 226.7(b)(12), 226.9(e), 226.9(f)►,◄ [and] 226.28(d), ►226.52(b)(1)(ii)(C),◄ and appendices G–10 through G–13. [When the term *credit card* is used in those provisions, it refers to credit cards other than charge cards.]

►4. *Credit card account under an open-end (not home-secured) consumer credit plan.* An open-end consumer credit account is a credit card account under an open-end (not home-secured) consumer credit plan for purposes of § 226.2(a)(15)(ii) if:

i. The account is accessed by a credit card, as defined in § 226.2(a)(15)(i); and

ii. The account is not excluded under § 226.2(a)(15)(ii)(A) or (a)(15)(ii)(B).◄

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Subpart B—Open-End Credit

Section 226.5—General Disclosure Requirements

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5(b) Time of disclosures.

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5(b)(2) Periodic statements.

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Paragraph 5(b)(2)(ii).

1. *Mailing or delivery of periodic statements.* A creditor is not required to determine the specific date on which a periodic statement is mailed or delivered to an individual consumer for purposes of § 226.5(b)(2)(ii). A creditor complies with § 226.5(b)(2)(ii) if it has adopted reasonable procedures designed to ensure that periodic statements are mailed or delivered to consumers no later than a certain number of days after the closing date of the billing cycle and adds that number of days to the 21-day ►or 14-day◄ period required by § 226.5(b)(2)(ii) when determining►, as applicable,◄ the payment due date ► for purposes of § 226.5(b)(2)(ii)(A),◄ [and] the date on which any grace period expires for purposes of ►§ 226.5(b)(2)(ii)(B)(*1*), or the date after which the payment will be treated as late for purposes of § 226.5(b)(2)(ii)(B)(*2*).◄ [§ 226.5(b)(2)(ii)(A)(*1*) and (b)(2)(ii)(B)(*1*).] For example►:◄ [,]

►A. If◄ [if] a creditor has adopted reasonable procedures designed to ensure that periodic statements ►for a credit card account under an open-end (not home-secured) consumer credit plan or an account under an open-end consumer credit plan that provides a grace period◄ are mailed or delivered to consumers no later than three days after the closing date of the billing cycle, the payment due date ►for purposes of § 226.5(b)(2)(ii)(A)◄ and the date on which any grace period expires ►for purposes of § 226.5(b)(2)(ii)(B)(*1*)◄ must be no less than 24 days after the closing date of the billing cycle. Similarly, in these circumstances, the limitations in § 226.5(b)(2)(ii)(A)[(*2*)] and (b)(2)(ii)(B)►(*1*)◄[(*2*)] on treating a payment as late and imposing finance charges apply for 24 days after the closing date of the billing cycle.

►B. If a creditor has adopted reasonable procedures designed to ensure that periodic statements for an account under an open-end consumer credit plan that does not provide a grace period are mailed or delivered to consumers no later than five days after the closing date of the billing cycle, the date on which a payment must be received in order to avoid being treated as late for purposes of § 226.5(b)(2)(ii)(B)(*2*) must be no less than 19 days after the closing date of the billing cycle. Similarly, in these circumstances, the limitation in § 226.5(b)(2)(ii)(B)(*2*) on treating a payment as late for any purpose applies for 19 days after the closing date of the billing cycle.◄

2. *Treating a payment as late for any purpose.* Treating a payment as late for any purpose includes increasing the annual percentage rate as a penalty, reporting the consumer as delinquent to a credit reporting agency, assessing a late fee or any other fee, initiating collection activities, or terminating benefits (such as rewards on purchases) based on the consumer's failure to make a payment within a specified amount of time or by a specified date. The prohibition►s◄ in § 226.5(b)(2)(ii)(A)(*2*) ►and (b)(2)(B)(*2*)(*ii*)◄ on treating a payment as late for any purpose ►apply◄ [applies] only during the 21-day ►or 14-day◄ period ►(as applicable)◄ following mailing or delivery of the periodic statement stating the due date for that payment and only if the required minimum periodic payment is received within that period. For example:

i. Assume that►, for a credit card account under an open-end (not home-secured) consumer credit plan,◄ a periodic statement mailed on April 4 states that a required minimum periodic payment of $50 is due on April 25. If the card issuer does not receive any payment on or before April 25, § 226.5(b)(2)(ii)(A)(*2*) does not prohibit the card issuer from treating the required minimum periodic payment as late.

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►iv. Assume that, for an account under an open-end consumer credit plan that does not provide a grace period, a periodic statement mailed on September 10 states that a required minimum periodic payment of $100 is due on September 24. If the creditor does not receive any payment on or before September 24, § 226.5(b)(2)(ii)(B)(*2*)(*ii*) does not prohibit the creditor from treating the required minimum periodic payment as late.◄

3. *Grace periods.*

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ii. *Applicability of § 226.5(b)(2)(ii)(B)►(1)◄.* Section 226.5(b)(2)(ii)(B)►(*1*)◄ applies if an account is eligible for a grace period when the periodic statement is mailed or delivered. Section 226.5(b)(2)(ii)(B)►(*1*)◄ does not require the creditor to provide a grace period or prohibit the creditor from placing limitations and conditions on a grace period to the extent consistent with § 226.5(b)(2)(ii)(B) and § 226.54. See comment 54(a)(1)–1. Furthermore, the prohibition in § 226.5(b)(2)(ii)(B)►(*1*)(*ii*)◄ [(*2*)] applies only during the 21-day period following mailing or delivery of the periodic statement and applies only when the creditor receives a payment within that 21-day period that satisfies the terms of the grace period.

iii. *Example.*

Assume that the billing cycles for an account begin on the first day of the month and end on the last day of the month and that the payment due date for the account is the twenty-fifth of the month. Assume also that, under the terms of the account, the balance at the end of a billing cycle must be paid in full by the following payment due date in order for the account to remain eligible for the grace period. At the end of the April

billing cycle, the balance on the account is $500. The grace period applies to the $500 balance because the balance for the March billing cycle was paid in full on April 25. Accordingly, § 226.5(b)(2)(ii)(B)(*1*)►(*i*)◄ requires the creditor to have reasonable procedures designed to ensure that the periodic statement reflecting the $500 balance is mailed or delivered on or before May 4. Furthermore, § 226.5(b)(2)(ii)(B) ►(*1*)(*ii*)◄ **[**(*2*)**]** requires the creditor to have reasonable procedures designed to ensure that the creditor does not impose finance charges as a result of the loss of the grace period if a $500 payment is received on or before May 25. However, if the creditor receives a payment of $300 on April 25, § 226.5(b)(2)(ii)(B) ►(*1*)(*ii*)◄ **[**(*2*)**]** would not prohibit the creditor from imposing finance charges as a result of the loss of the grace period (to the extent permitted by § 226.54).

4. *Application of § 226.5(b)(2)(ii) to charge card and charged-off accounts.*

i. *Charge card accounts.* For purposes of § 226.5(b)(2)(ii)(A)(*1*), the payment due date ►for a credit card account under an open-end (not home-secured) consumer credit plan◄ is the date the card issuer is required to disclose on the periodic statement pursuant to § 226.7(b)(11)(i)(A). Because § 226.7(b)(11)(ii) provides that § 226.7(b)(11)(i) does not apply to periodic statements provided solely for charge card accounts, § 226.5(b)(2)(ii)(A)(*1*) also does not apply to the mailing or delivery of periodic statements provided solely for such accounts. However, in these circumstances, § 226.5(b)(2)(ii)(A)(*2*) requires the card issuer to have reasonable procedures designed to ensure that a payment is not treated as late for any purpose during the 21-day period following mailing or delivery of the statement. Section 226.5(b)(2)(ii)(B)►(*1*)◄ does not apply to charge card accounts because, for purposes of § 226.5(b)(2)(ii)(B), a grace period is a period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate and, consistent with § 226.2(a)(15)(iii), charge card accounts do not impose a finance charge based on a periodic rate. ►Similarly, § 226.5(b)(2)(ii)(B)(*2*) does not apply to charge card accounts.◄

ii. *Charged-off accounts.* For purposes of § 226.5(b)(2)(ii)(A)(*1*), the payment due date ►for a credit card account under an open-end (not home-secured) consumer credit plan◄ is the date the card issuer is required to disclose on the periodic statement pursuant to § 226.7(b)(11)(i)(A). Because § 226.7(b)(11)(ii) provides that § 226.7(b)(11)(i) does not apply to periodic statements provided for charged-off accounts where full payment of the entire account balance is due immediately, § 226.5(b)(2)(ii)(A)(*1*) also does not apply to the mailing or delivery of periodic statements provided solely for such accounts. Furthermore, although § 226.5(b)(2)(ii)(A)(*2*) requires the card issuer to have reasonable procedures designed to ensure that a payment is not treated as late for any purpose during the 21-day period following mailing or delivery of the statement, § 226.5(b)(2)(ii)(A)(*2*) does not prohibit a card issuer from continuing to treat prior payments as late during that period. See comment 5(b)(2)(ii)–2. ►Similarly, although § 226.5(b)(2)(ii)(B)(*2*) applies to open-end consumer credit accounts in these circumstances, § 226.5(b)(2)(ii)(B)(*2*)(*ii*) does not prohibit a creditor from continuing treating prior payments as late during the 14-day period following mailing or delivery of a periodic statement.◄ Section 226.5(b)(2)(ii)(B)►(*1*)◄ does not apply to charged-off accounts where full payment of the entire account balance is due immediately because such accounts do not provide a grace period.

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[*Paragraph 5(b)(2)(iii).*

1. *Computer malfunction.* The exceptions identified in § 226.5(b)(2)(iii) of this section do not extend to the failure to provide a periodic statement because of computer malfunction.**]**

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Section 226.5a—Credit and Charge Card Applications and Solicitations

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5a(b) Required disclosures.

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5a(b)(1) Annual percentage rate.

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5. *Increased penalty rates.* i. *In general.* For rates that are not introductory rates ►or employee preferential rates◄, if a rate may increase as a penalty for one or more events specified in the account agreement, such as a late payment or an extension of credit that exceeds the credit limit, the card issuer must disclose the increased rate that would apply, a brief description of the event or events that may result in the increased rate, and a brief description of how long the increased rate will remain in effect. The description of the specific event or events that may result in an increased rate should be brief. For example, if an issuer may increase a rate to the penalty rate because the consumer does not make the minimum payment by 5 p.m., Eastern Time, on its payment due date, the issuer should describe this circumstance in the table as "make a late payment." Similarly, if an issuer may increase a rate that applies to a particular balance because the account is more than 60 days late, the issuer should describe this circumstance in the table as "make a late payment." An issuer may not distinguish between the events that may result in an increased rate for existing balances and the events that may result in an increased rate for new transactions. (*See* Samples G–10(B) and G–10(C) (in the row labeled "Penalty APR and When it Applies") for additional guidance on the level of detail in which the specific event or events should be described.) The description of how long the increased rate will remain in effect also should be brief. If a card issuer reserves the right to apply the increased rate ►to any balances◄ indefinitely, ►to the extent permitted by §§ 226.55(b)(4) and 226.59, the issuer should disclose that the penalty rate may apply indefinitely◄ **[**that fact should be stated**]**. ►The card issuer may not disclose in the table any limitations imposed by §§ 226.55(b)(4) and 226.59 on the duration of increased rates. For example, if the issuer generally provides that the increased rate will apply until the consumer makes twelve timely consecutive required minimum periodic payments, except to the extent that §§ 226.54(b)(4) and 226.59 apply, the issuer should disclose that the penalty rate will apply until the consumer makes twelve consecutive timely minimum payments.◄ (*See* Samples G–10(B) and G–10(C) (in the row labeled "Penalty APR and When it Applies") for additional guidance on the level of detail which the issuer should use to describe how long the increased rate will remain in effect.) A card issuer will be deemed to meet the standard to clearly and conspicuously disclose the information required by § 226.5a(b)(1)(iv)(A) if the issuer uses the format shown in Samples G–10(B) and G–10(C) (in the row labeled "Penalty APR and When it Applies") to disclose this information.

ii. *Introductory rates—general.* An issuer is required to disclose directly beneath the table the circumstances under which an introductory rate, as that term is defined in § 226.16(g)(2)(ii), may be revoked, and the rate that will apply after the revocation. This information about revocation of an introductory rate and the rate that will apply after revocation must be provided even if the rate that will apply after the introductory rate is revoked is the rate that would have applied at the end of the promotional period. In a variable-rate account, the rate that would have applied at the end of the promotional period is a rate based on the applicable index or formula in accordance with the accuracy requirements set forth in § 226.5a(c)(2) or (e)(4). In describing the rate that will apply after revocation of the introductory rate, if the rate that will apply after revocation of the introductory rate is already disclosed in the table, the issuer is not required to repeat the rate, but may refer to that rate in a clear and conspicuous manner. For example, if the rate that will apply after revocation of an introductory rate is the standard rate that applies to that type of transaction (such as a purchase or balance transfer transaction), and the standard rates are labeled in the table as "standard APRs," the issuer may refer to the "standard APR" when describing the rate that will apply after revocation of an introductory rate. (*See* Sample G–10(C) in the disclosure labeled "Loss of Introductory APR" directly beneath the table.) The description of the circumstances in which an introductory rate could be revoked should be brief. For example, if an issuer may increase an introductory rate because the account is more than 60 days late, the issuer should describe this circumstance ►directly beneath◄**[**in**]** the table as "make a late payment." In addition, if the circumstances in which an introductory rate could be revoked are already listed elsewhere in the table, the issuer is not required to repeat the circumstances again, but may refer to those circumstances in a clear and conspicuous manner. For example, if the circumstances in which an introductory rate could be revoked are the same as the event or events that may trigger a "penalty rate" as described in § 226.5a(b)(1)(iv)(A), the issuer may refer to the actions listed in the Penalty APR row, in

describing the circumstances in which the introductory rate could be revoked. (See Sample G–10(C) in the disclosure labeled "Loss of Introductory APR" directly beneath the table for additional guidance on the level of detail in which to describe the circumstances in which an introductory rate could be revoked.) A card issuer will be deemed to meet the standard to clearly and conspicuously disclose the information required by § 226.5a(b)(1)(iv)(B) if the issuer uses the format shown in Sample G–10(C) to disclose this information.

iii. *Introductory rates—limitations on revocation.* Issuers that are disclosing an introductory rate are prohibited by § 226.55 from increasing or revoking the introductory rate before it expires unless the consumer fails to make a required minimum periodic payment within 60 days after the due date for the payment. In making the required disclosure pursuant to § 226.5a(b)(1)(iv)(B), issuers should describe this circumstance directly beneath the table as "make a late payment."

►iv. *Employee preferential rates.* An issuer is required to disclose directly beneath the table the circumstances under which an employee preferential rate may be revoked, and the rate that will apply after the revocation. In describing the rate that will apply after revocation of the employee preferential rate, if the rate that will apply after revocation of the employee preferential rate is already disclosed in the table, the issuer is not required to repeat the rate, but may refer to that rate in a clear and conspicuous manner. For example, if the rate that will apply after revocation of an employee preferential rate is the standard rate that applies to that type of transaction (such as a purchase or balance transfer transaction), and the standard rates are labeled in the table as "standard APRs," the issuer may refer to the "standard APR" when describing the rate that will apply after revocation of an employee preferential rate. The description of the circumstances in which an employee preferential rate could be revoked should be brief. For example, if an issuer may increase an employee preferential rate based upon termination of the employee's employment relationship with the issuer or a third party, issuers may describe this circumstance as "if your employment with [issuer or third party] ends."◄

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5a(b)(2) Fees for issuance or availability.

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4. *Waived or reduced fees.* If fees required to be disclosed are waived or reduced for a limited time, the introductory fees or the fact of fee waivers may be ►disclosed◄ [provided] in the table in addition to the required fees if the card issuer also discloses how long the reduced fees or waivers will remain in effect ►in accordance with the requirements of §§ 226.9(c)(2)(v)(B) and 226.55(b)(1)◄.

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5a(b)(5) Grace period.

1. *How grace period disclosure is made.* The card issuer must state any conditions on the applicability of the grace period. ►An issuer, however, may not disclose under § 226.5a(b)(5) the limitations on the imposition of finance charges as a result of a loss of a grace period in § 226.54, or the impact of payment allocation on whether interest is charged on purchases as a result of a loss of a grace period. Some issuers may offer a grace period on all purchases under which interest will not be charged on purchases if the consumer pays the outstanding balance shown on a periodic statement in full by the due date shown on that statement for one or more billing cycles. In these circumstances, § 226.5a(b)(5) requires that the issuer disclose the grace period and the conditions for its applicability using the following language, or substantially similar language, as applicable: "Your due date is [at least] __ days after the close of each billing cycle. We will not charge you any interest on purchases if you pay your entire balance by the due date each month."◄ [An issuer that offers a grace period on all purchases and conditions the grace period on the consumer paying his or her outstanding balance in full by the due date each billing cycle, or on the consumer paying the outstanding balance in full by the due date in the previous and/or the current billing cycle(s) will be deemed to meet these requirements by providing the following disclosure, as applicable: "Your due date is [at least] __ days after the close of each billing cycle. We will not charge you any interest on purchases if you pay your entire balance by the due date each month."]

►However, other issuers may offer a grace period on all purchases under which interest may be charged on purchases even if the consumer pays the outstanding balance shown on a periodic statement in full by the due date shown on that statement each billing cycle. For example, an issuer may charge interest on purchases if the consumer uses the account for a cash advance, regardless of whether the outstanding balance shown on the periodic statement is paid in full by the due date shown on that statement. In these circumstances, § 226.5a(b)(5) requires the issuer to amend the above disclosure language to describe accurately the conditions on the applicability of the grace period.◄

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[4. *Limitations on the imposition of finance charges in § 226.54.* Section 226.5a(b)(5) does not require a card issuer to disclose the limitations on the imposition of finance charges in § 226.54.]

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5a(b)(6) Balance computation method.

1. *Form of disclosure.* In cases where the card issuer uses a balance computation method that is identified by name in the regulation, the card issuer must disclose below the table only the name of the method. In cases where the card issuer uses a balance computation method that is not identified by name in the regulation, the disclosure below the table must clearly explain the method in as much detail as set forth in the descriptions of balance methods in § 226.5a(g). The explanation need not be as detailed as that required for the disclosures under § 226.6(b)(4)(i)(D). [(See the commentary to § 226.5a(g) for guidance on particular methods.)]

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Section 226.6—Account-Opening Disclosures

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6(b)(2)(v) Grace period.

1. *Grace period.* Creditors must state any conditions on the applicability of the grace period. ►A creditor, however, may not disclose under § 226.6(b)(2)(v) the limitations on the imposition of finance charges as a result of a loss of a grace period in § 226.54, or the impact of payment allocation on whether interest is charged on transactions as a result of a loss of a grace period. Some creditors may offer a grace period on all types of transactions under which interest will not be charged on transactions if the consumer pays the outstanding balance shown on a periodic statement in full by the due date shown on that statement for one or more billing cycles. In these circumstances, § 226.6(b)(2)(v) requires that the creditor disclose the grace period and the conditions for its applicability using the following language, or substantially similar language, as applicable: "Your due date is [at least] _ days after the close of each billing cycle. We will not charge you any interest on your account if you pay your entire balance by the due date each month."◄ [A creditor that offers a grace period on all types of transactions for the account and conditions the grace period on the consumer paying his or her outstanding balance in full by the due date each billing cycle, or on the consumer paying the outstanding balance in full by the due date in the previous and/or the current billing cycle(s) will be deemed to meet these requirements by providing the following disclosure, as applicable: "Your due date is [at least] _ days after the close of each billing cycle. We will not charge you any interest on your account if you pay your entire balance by the due date each month."]► However, other creditors may offer a grace period on all types of transactions under which interest may be charged on transactions even if the consumer pays the outstanding balance shown on a periodic statement in full by the due date shown on that statement each billing cycle. In these circumstances, § 226.6(b)(2)(v) requires the creditor to amend the above disclosure language to describe accurately the conditions on the applicability of the grace period.◄

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3. *Grace period on some features.* [*See* Samples G–17(B) and G–17(C) for guidance on complying with § 226.6(b)(2)(v) when a creditor offers a grace period for purchases but no grace period on balance transfers and cash advances.] ►Some creditors do not offer a grace period on cash advances and balance transfers, but offers a grace period for all purchases under which interest will not be charged on purchases if the consumer pays the outstanding balance shown on a periodic statement in full by the due date shown on that statement for one or more billing cycles. In these circumstances, § 226.6(b)(2)(v) requires that the creditor disclose the grace period for purchases and the conditions for its applicability, and the lack of a grace period for cash advances and

balance transfers using the following language, or substantially similar language, as applicable: "Your due date is [at least] _ days after the close of each billing cycle. We will not charge you any interest on purchases if you pay your entire balance by the due date each month. We will begin charging interest on cash advances and balance transfers on the transaction date." However, other creditors may offer a grace period on all purchases under which interest may be charged on purchases even if the consumer pays the outstanding balance shown on a periodic statement in full by the due date shown on that statement each billing cycle. For example, a creditor may charge interest on purchases if the consumer uses the account for a cash advance, regardless of whether the outstanding balance shown on the periodic statement is paid in full by the due date shown on that statement. In these circumstances, § 226.6(a)(2)(v) requires the creditor to amend the above disclosure language to accurately describe the conditions on the applicability of the grace period. Also, some creditors may not offer a grace period on cash advances and balance transfers, and will begin charging interest on these transactions from a date other than the transaction date, such as the posting date. In these circumstances, § 226.6(a)(2)(v) requires the creditor to amend the above disclosure language to be accurate. ◄

[4. *Limitations on the imposition of finance charges in § 226.54.* Section 226.6(b)(2)(v) does not require a card issuer to disclose the limitations on the imposition of finance charges in § 226.54.]

6(b)(2)(vi) Balance computation method.

[1. *Content.*]►1. *Use of same balance computation method for all features.* In cases where the balance for each feature is computed using the same balance computation method, a single identification of the name of the balance computation method is sufficient. In this case, a creditor may use an appropriate name listed in § 226.5a(g) (e.g., "*average daily balance (including new purchases)*") to satisfy the requirement to disclose the name of the method for all features on the account, even though the name only refers to purchases. For example, if a creditor uses the average daily balance method including new transactions for all features, a creditor may use the name "*average daily balance (including new purchases)*" listed in § 226.5a(g)(i) to satisfy the requirement to disclose the name of the balance computation method for all features. As an alternative, in this situation, a creditor may revise the balance computation names listed in § 226.5a(g) to refer more broadly to all new credit transactions, such as using the language "new transactions" or "current transactions" (*e.g.,* "*average daily balance (including new transactions)*"), rather than simply referring to new purchases when the same method is used to calculate the balances for all features of the account.◄ *See* Samples G–17(B) and G–17(C) for guidance on how to disclose the balance computation method where the same method is used for all features on the account.

►2. *Use of balance computation names in § 226.5a(g) for balances other than purchases.* The names of the balance computation methods listed in § 226.5a(g) describe balance computation methods for purchases. When a creditor is disclosing the name of the balance computation methods separately for each feature, in using the names listed in § 226.5a(g) to satisfy the requirements of § 226.6(b)(2)(vi) for features other than purchases, a creditor must revise the names listed in § 226.5a(g) to refer to the other features. For example, when disclosing the name of the balance computation method applicable to cash advances, a creditor must revise the name listed in § 226.5a(g)(i) to disclose it as "*average daily balance (including new cash advances)*" when the balance for cash advances is figured by adding the outstanding balance (including new cash advances and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle. Similarly, a creditor must revise the name listed in § 226.5a(g)(ii) to disclose it as "*average daily balance (excluding new cash advances)*" when the balance for cash advances is figured by adding the outstanding balance (excluding new cash advances and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle. See comment 6(b)(2)(vi)–1 for guidance on the use of one balance computation name when the same balance computation method is used for all features on the account.◄

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Section 226.7—Periodic Statement

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7(b) Rules affecting open-end (not home-secured) plans.

1. *Deferred interest or similar transactions.*

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iv. *Due date to avoid obligation for finance charges under a deferred interest or similar program.* Section 226.7(b)(14) requires disclosure on periodic statements of the date by which any outstanding balance subject to a deferred interest or similar program must be paid in full in order to avoid the obligation for finance charges on such balance. This disclosure must appear on the front of ►any page of◄ each periodic statement issued during the deferred interest period beginning with the first periodic statement issued during the deferred interest period that reflects the deferred interest or similar transaction.

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7(b)(5) Balance on which finance charge computed.

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7. *Use of one balance computation method explanation when multiple balances disclosed.* Sometimes the creditor will disclose more than one balance to which a periodic rate was applied, even though each balance was computed using the same balance computation method. For example, if a plan involves purchases and cash advances that are subject to different rates, more than one balance must be disclosed, even though the same computation method is used for determining the balance for each feature. In these cases, one explanation or a single identification of the name of the balance computation method is sufficient. Sometimes the creditor separately discloses the portions of the balance that are subject to different rates because different portions of the balance fall within two or more balance ranges, even when a combined balance disclosure would be permitted under comment 7(b)(5)–1. In these cases, one explanation or a single identification of the name of the balance computation method is also sufficient (assuming, of course, that all portions of the balance were computed using the same method). ►In these cases, a creditor may use an appropriate name listed in § 226.5a(g) (*e.g.,* "*average daily balance (including new purchases)*") as the single identification of the name of the balance computation method applicable to all features, even though the name only refers to purchases. For example, if a creditor uses the average daily balance method including new transactions for all features, a creditor may use the name "*average daily balance (including new purchases)*" listed in § 226.5a(g)(i) to satisfy the requirement to disclose the name of the balance computation method for all features. As an alternative, in this situation, a creditor may revise the balance computation names listed in § 226.5a(g) to refer more broadly to all new credit transactions, such as using the language "new transactions" or "current transactions" (*e.g.,* "*average daily balance (including new transactions)*"), rather than simply referring to new purchases, when the same method is used to calculate the balances for all features of the account.

8. *Use of balance computation names in § 226.5a(g) for balances other than purchases.* The names of the balance computation methods listed in § 226.5a(g) describe balance computation methods for purchases. When a creditor is disclosing the name of the balance computation methods separately for each feature, in using the names listed in § 226.5a(g) to satisfy the requirements of § 226.7(b)(5) for features other than purchases, a creditor must revise the names listed in § 226.5a(g) to refer to the other features. For example, when disclosing the name of the balance computation method applicable to cash advances, a creditor must revise the name listed in § 226.5a(g)(i) to disclose it as "*average daily balance (including new cash advances)*" when the balance for cash advances is figured by adding the outstanding balance (including new cash advances and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle. Similarly, a creditor must revise the name listed in § 226.5a(g)(ii) to disclose it as "*average daily balance (excluding new cash advances)*" when the balance for cash advances is figured by adding the outstanding balance (excluding new cash advances and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle. See comment 7(b)(5)–7 for guidance on the use of one balance computation method explanation or name when multiple balances are disclosed.◄

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7(b)(6) Charges imposed.

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3. *Total fees* ►*and interest charged*◄ *for calendar year to date.*

i. *Monthly statements.* Some creditors send monthly statements but the statement periods do not coincide with the calendar month. For creditors sending monthly statements, the following comply with the requirement to provide calendar year-to-date totals.

A. A creditor may disclose [a] calendar-year-to-date total►s◄ at the end of the calendar year by aggregating ►finance charges attributable to periodic interest rates and◄ fees for 12 monthly cycles, starting with the period that begins during January and finishing with the period that begins during December. For example, if statement periods begin on the 10th day of each month, the statement covering December 10, 2011 through January 9, 2012, may disclose the year-to-date total►s◄ for ►interest charged and◄ fees imposed from January 10, 2011, through January 9, 2012. Alternatively, the creditor could provide a statement for the cycle ending January 9, 2012, showing the year-to-date total►s◄ for ►interest charged and◄ fees imposed January 1, 2011, through December 31, 2011.

B. A creditor may disclose a calendar-year-to-date total►s◄ at the end of the calendar year by aggregating ►finance charges attributable to periodic interest rates and◄ fees for 12 monthly cycles, starting with the period that begins during December and finishing with the period that begins during November. For example, if statement periods begin on the 10th day of each month, the statement covering November 10, 2011 through December 9, 2011, may disclose the year-to-date total►s◄ for ►interest charged and◄ fees imposed from December 10, 2010, through December 9, 2011.

* * * * *

7(b)(12) Repayment disclosures.

►1. *Rounding.* In disclosing on the periodic statement the minimum payment total cost estimate, the estimated monthly payment for repayment in 36 months, the total cost estimate for repayment in 36 months, and the savings estimate for repayment in 36 months under § 226.7(b)(12)(i) or (b)(12)(ii) as applicable, a card issuer, at its option, must either round these disclosures to the nearest whole dollar or to the nearest cent. Nonetheless, an issuer's rounding for all of these disclosures must be consistent. An issuer may round all of these disclosures to the nearest whole dollar when disclosing them on the periodic statement, or may round all of these disclosures to the nearest cent. An issuer may not, however, round some of the disclosures to the nearest whole dollar, while rounding other disclosures to the nearest cent.◄

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Section 226.9—Subsequent Disclosure Requirements

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9(b) Disclosures for supplemental credit access devices and additional features.

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9(b)(3) Checks that access a credit card account.

9(b)(3)(i) Disclosures.

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►2. *Combined disclosures for checks and other transactions subject to the same terms.* A card issuer may include in the tabular disclosure provided pursuant to § 226.9(b)(3) disclosures regarding the terms offered on non-check transactions, provided that such transactions are subject to the same terms that are required to be disclosed pursuant to § 226.9(b)(3)(i) for the checks that access a credit card account. However, a card issuer may not include in the table information regarding additional terms that are not required disclosures for checks that access a credit card account pursuant to § 226.9(b)(3).◄

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9(c) Change in terms.

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9(c)(2) Rules affecting open-end (not home-secured) plans.

1. *Changes initially disclosed.* Except as provided in § 226.9(g)(1), no notice of a change in terms need be given if the specific change is set forth initially ►consistent with any applicable requirements◄, such as ►rate or fee increases upon expiration of a specific period of time that were disclosed in accordance with § 226.9(c)(2)(v)(B) or◄ rate increases under a properly disclosed variable-rate plan in accordance with § 226.9(c)(2)(v)(C). In contrast, notice must be given if the contract allows the creditor to increase the rate at its discretion.

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9(c)(2)(iii) Charges not covered by § 226.6(b)(1) and (b)(2).

1. *Applicability.* Generally, if a creditor increases any component of a charge, or introduces a new charge, that is imposed as part of the plan under § 226.6(b)(3) but is not required to be disclosed as part of the account-opening summary table under § 226.6(b)(1) and (b)(2), the creditor [may]►must◄ either, at its option (i) provide at least 45 days' written advance notice before the change becomes effective to comply with the requirements of § 226.9(c)(2)(i), or (ii) provide notice orally or in writing, or electronically if the consumer requests the service electronically, of the amount of the charge to an affected consumer before the consumer agrees to or becomes obligated to pay the charge, at a time and in a manner that a consumer would be likely to notice the disclosure. (*See* the commentary under § 226.5(a)(1)(iii) regarding disclosure of such changes in electronic form.) For example, a fee for expedited delivery of a credit card is a charge imposed as part of the plan under § 226.6(b)(3) but is not required to be disclosed in the account-opening summary table under § 226.6(b)(1) and (b)(2). If a creditor changes the amount of that expedited delivery fee, the creditor may provide written advance notice of the change to affected consumers at least 45 days before the change becomes effective. Alternatively, the creditor may provide oral or written notice, or electronic notice if the consumer requests the service electronically, of the amount of the charge to an affected consumer before the consumer agrees to or becomes obligated to pay the charge, at a time and in a manner that the consumer would be likely to notice the disclosure. (*See* comment 5(b)(1)(ii)–1 for examples of disclosures given at a time and in a manner that the consumer would be likely to notice them.)

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9(c)(2)(iv) Disclosure requirements.

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3. *Changing from a variable rate to a non-variable rate.* If a creditor is changing a rate applicable to a consumer's account from a variable rate to a non-variable rate, the creditor ►generally◄ must provide a notice as otherwise required under § 226.9(c) even if the variable rate at the time of the change is higher than the non-variable rate. ►However, a creditor is not required to provide a notice under § 226.9(c) if the creditor provides the disclosures required by § 226.9(c)(2)(v)(B) or (c)(2)(v)(D) in connection with changing a variable rate to a lower non-variable rate. Similarly, a creditor is not required to provide a notice under § 226.9(c) when changing a variable rate to a lower non-variable rate in order to comply with 50 U.S.C. app. 527 or a similar federal or state statute or regulation.◄

4. *Changing from a non-variable rate to a variable rate.* If a creditor is changing a rate applicable to a consumer's account from a non-variable rate to a variable rate, the creditor ►generally◄ must provide a notice as otherwise required under § 226.9(c) even if the non-variable rate is higher than the variable rate at the time of the change. ►However, a creditor is not required to provide a notice under § 226.9(c) if the creditor provides the disclosures required by § 226.9(c)(2)(v)(B) or (c)(2)(v)(D) in connection with changing a non-variable rate to a lower variable rate. Similarly, a creditor is not required to provide a notice under § 226.9(c) when changing a non-variable rate to a lower variable rate in order to comply with 50 U.S.C. app. 527 or a similar federal or state statute or regulation.◄

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9(c)(2)(v) Notice not required.

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2. *Skip features.* i. [*General*]►*Skipped or reduced payments*◄. If a credit program allows consumers to skip or reduce one or more payments during the year[, or involves temporary reductions in finance charges other than reductions in an interest rate (except if § 226.9(c)(2)(v)(B) or (c)(2)(v)(D) applies)], no notice of the change in terms is required either prior to the reduction ►in payments◄ or upon resumption of the higher [finance charges or] payments if these features are explained on the account-opening disclosure statement (including an explanation of the terms upon resumption). For example, a merchant may allow consumers to skip the December payment to encourage holiday shopping, or a teacher's credit union may not require payments during summer vacation. Otherwise, the creditor must give notice prior to resuming the original ►payment◄ schedule [or finance charge], even though no notice is required prior to the reduction. The change-in-terms notice may be combined with the notice offering the reduction. For example, the periodic statement reflecting the

[reduction or] skip feature may also be used to notify the consumer of the resumption of the original ►payment◄ schedule [or finance charge], either by stating explicitly when the higher payment [or charges] resume►s◄ or by indicating the duration of the skip option. Language such as "You may skip your October payment" may serve as the change-in-terms notice.

ii. *Temporary reductions in interest rates ►or fees◄.* If a credit program involves temporary reductions in an interest rate ►or fee◄, no notice of the change in terms is required either prior to the reduction or upon resumption of the original rate ►or fee◄ if these features are disclosed in advance in accordance with the requirements of § 226.9(c)(2)(v)(B). Otherwise, the creditor must give notice prior to resuming the original rate ►or fee◄, even though no notice is required prior to the reduction. The notice provided prior to resuming the original rate ►or fee◄ must comply with the timing requirements of § 226.9(c)(2)(i) and the content and format requirements of § 226.9(c)(2)(iv)(A), (B) (if applicable), (C) (if applicable), and (D). See comment 55(b)–3 for guidance regarding the application of § 226.55 in these circumstances.

3. *Changing from a variable rate to a non-variable rate.* ►See comment 9(c)(2)(iv)–3.◄ [If a creditor is changing a rate applicable to a consumer's account from a variable rate to a non-variable rate, the creditor must provide a notice as otherwise required under § 226.9(c) even if the variable rate at the time of the change is higher than the non-variable rate. (See comment 9(c)(2)(iv)(A)–3.)]

4. *Changing from a non-variable rate to a variable rate.* ►See comment 9(c)(2)(iv)–4.◄ [If a creditor is changing a rate applicable to a consumer's account from a non-variable rate to a variable rate, the creditor must provide a notice as otherwise required under § 226.9(c) even if the non-variable rate is higher than the variable rate at the time of the change. (See comment 9(c)(2)(iv)(A)–4.)]

5. *Temporary rate ►or fee◄ reductions offered by telephone.* The timing requirements of § 226.9(c)(2)(v)(B) are deemed to have been met, and written disclosures required by § 226.9(c)(2)(v)(B) may be provided as soon as reasonably practicable after the first transaction subject to a rate that will be in effect for a specified period of time (a temporary rate) ►or the imposition of a fee that will be in effect for a specified period of time (a temporary fee)◄ if:

i. The consumer accepts the offer of the temporary rate ►or temporary fee◄ by telephone;

ii. The creditor permits the consumer to reject the temporary rate ►or temporary fee◄ offer and have the rate or rates ►or fee◄ that previously applied to the consumer's balances reinstated for 45 days after the creditor mails or delivers the written disclosures required by § 226.9(c)(2)(v)(B)►, except that the creditor need not permit the consumer to reject a temporary rate or temporary fee offer if the rate or rates or fee that will apply following expiration of the temporary rate do not exceed the rate or rates or fee that applied immediately prior to commencement of the temporary rate or temporary fee◄; and

iii. The disclosures required by § 226.9(c)(2)(v)(B) and the consumer's right to reject the temporary rate ►or temporary fee◄ offer and have the rate or rates ►or fee◄ that previously applied to the consumer's account reinstated►, if applicable,◄ are disclosed to the consumer as part of the temporary rate ►or temporary fee◄ offer.

6. *First listing.* The disclosures required by § 226.9(c)(2)(v)(B)(*1*) are only required to be provided in close proximity and in equal prominence to the first listing of the temporary rate ►or fee◄ in the disclosure provided to the consumer. For purposes of § 226.9(c)(2)(v)(B), the first statement of the temporary rate ►or fee◄ is the most prominent listing on the front side of the first page of the disclosure. If the temporary rate ►or fee◄ does not appear on the front side of the first page of the disclosure, then the first listing of the temporary rate ►or fee◄ is the most prominent listing of the temporary rate on the subsequent pages of the disclosure. For advertising requirements for promotional rates, *see* § 226.16(g).

7. *Close proximity—point of sale.* Creditors providing the disclosures required by § 226.9(c)(2)(v)(B) of this section in person in connection with financing the purchase of goods or services may, at the creditor's option, disclose the annual percentage rate ►or fee◄ that would apply after expiration of the period on a separate page or document from the temporary rate ►or fee◄ and the length of the period, provided that the disclosure of the annual percentage rate ►or fee◄ that would apply after the expiration of the period is equally prominent to, and is provided at the same time as, the disclosure of the temporary rate ►or fee◄ and length of the period.

* * * * *

►10. *Relationship between §§ 226.9(c)(2)(v)(B) and 226.6(b).* A disclosure of the information described in § 226.9(c)(2)(v)(B)(*1*) provided in the account-opening table in accordance with § 226.6(b) complies with the requirements of § 226.9(c)(2)(v)(B)(*2*), if the listing of the introductory rate in such tabular disclosure also is the first listing as described in comment 9(c)(2)(v)–6.◄

[10]►11◄. *Disclosure of the terms of a workout or temporary hardship arrangement.* In order for the exception in § 226.9(c)(2)(v)(D) to apply, the disclosure provided to the consumer pursuant to § 226.9(c)(2)(v)(D)(*2*) must set forth:

i. The annual percentage rate that will apply to balances subject to the workout or temporary hardship arrangement;

ii. The annual percentage rate that will apply to such balances if the consumer completes or fails to comply with the terms of, the workout or temporary hardship arrangement;

iii. Any reduced fee or charge of a type required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) that will apply to balances subject to the workout or temporary hardship arrangement, as well as the fee or charge that will apply if the consumer completes or fails to comply with the terms of the workout or temporary hardship arrangement;

iv. Any reduced minimum periodic payment that will apply to balances subject to the workout or temporary hardship arrangement, as well as the minimum periodic payment that will apply if the consumer completes or fails to comply with the terms of the workout or temporary hardship arrangement; and

v. If applicable, that the consumer must make timely minimum payments in order to remain eligible for the workout or temporary hardship arrangement.

[11]►12◄. *Index not under creditor's control.* See comment 55(b)(2)–2 for guidance on when an index is deemed to be under [the card issuer's] ►a creditor's◄ control.

[12]►13◄. *Temporary rates—relationship to § 226.59.* i. *General.* Section 226.59 requires a card issuer to review rate increases imposed due to the revocation of a temporary rate. In some circumstances, § 226.59 may require an issuer to reinstate a reduced temporary rate based on that review. If, based on a review required by § 226.59, a creditor reinstates a temporary rate that had been revoked, the card issuer is not required to provide an additional notice to the consumer when the reinstated temporary rate expires, if the card issuer provided the disclosures required by § 226.9(c)(2)(v)(B) prior to the original commencement of the temporary rate. *See* § 226.55 and the associated commentary for guidance on the permissibility and applicability of rate increases.

ii. *Example.* A consumer opens a new credit card account under an open-end (not home-secured) consumer credit plan on January 1, 2011. The annual percentage rate applicable to purchases is 18%. The card issuer offers the consumer a 15% rate on purchases made between January 1, 2012 and January 1, 2014. Prior to January 1, 2012, the card issuer discloses, in accordance with § 226.9(c)(2)(v)(B), that the rate on purchases made during that period will increase to the standard 18% rate on January 1, 2014. In March 2012, the consumer makes a payment that is ten days late. The card issuer, upon providing 45 days' advance notice of the change under § 226.9(g), increases the rate on new purchases to 18% effective as of June 1, 2012. On December 1, 2012, the issuer performs a review of the consumer's account in accordance with § 226.59. Based on that review, the card issuer is required to reduce the rate to the original 15% temporary rate as of January 15, 2013. On January 1, 2014, the card issuer may increase the rate on purchases to 18%, as previously disclosed prior to January 1, 2012, without providing an additional notice to the consumer.

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Section 226.10—Payments

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10(b) Specific requirements for payments.

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2. *Payment ►methods promoted by creditor◄[via creditor's Web site].* ►If a creditor promotes a specific payment method, any payments made via that method (prior to any cut-off time specified by the creditor, to the extent permitted by § 226.10(b)(2)) are generally conforming

payments for purposes of § 226.10(b). For example:◄

►i.◄ If a creditor promotes electronic payment via its Web site (such as by disclosing on the Web site itself that payments may be made via the Web site), any payments made via the creditor's Web site prior to the creditor's specified cut-off time, if any, would generally be conforming payments for purposes of § 226.10(b).

►ii. If a creditor promotes payment by telephone (for example, by including the option to pay by telephone in a menu of options provided to consumers at a toll-free number disclosed on its periodic statement), payments made by telephone would generally be conforming payments for purposes of § 226.10(b).

iii. If a creditor promotes in-person payments, for example by stating in an advertisement that payments may be made in person at its branch locations, such in-person payments made at a branch or office of the creditor generally would be conforming payments for purposes of § 226.10(b).◄

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10(e) Limitations on fees related to method of payment.

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►4. *Third parties.* For purposes of § 226.10(e), the term "creditor" includes third-party service providers or other third parties who collect, receive, or process payments on behalf of the creditor.◄

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10(f) Changes by card issuer.

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3. *Safe harbor.*

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(ii) *Retail location.* For a material change in the address of a retail location or procedures for handling cardholder payments at a retail location, a card issuer may impose a late fee or finance charge on a consumer's account for a late payment during the 60-day period following the date on which the change took effect. However, if a ⟦consumer⟧►card issuer◄ is notified by a consumer no later than 60 days after the card issuer transmitted the first periodic statement that reflects the late fee or finance charge for a late payment that the late payment was caused by such change, the card issuer must waive or remove any late fee or finance charge, or credit an amount equal to any late fee or finance charge, imposed on the account during the 60-day period following the date on which the change took effect.

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Section 226.12—Special Credit Card Provisions

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12(c) Right of cardholder to assert claims or defenses against card issuer.

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4. *Method of calculating the amount of credit outstanding.* The amount of the claim or defense that the cardholder may assert shall not exceed the amount of credit outstanding for the disputed transaction at the time the cardholder first notifies the card issuer or the person honoring the credit card of the existence of the claim or defense. ►However, when a consumer has asserted a claim or defense against a creditor pursuant to § 226.12(c), the creditor must apply any payment or other credit in a manner that avoids or minimizes any reduction in the amount subject to that claim or defense. Accordingly, to determine the amount of credit outstanding for purposes of this section, payments and other credits must be applied first to amounts other than the disputed transaction. For examples of how to comply with §§ 226.12 and 226.53 for credit card accounts under an open-end (not home-secured) consumer credit plan, see comment 53–3. For other types of credit card accounts◄ ⟦To determine the amount of credit outstanding for purposes of this section⟧, payments and other credits ►may◄ ⟦shall⟧ be applied to: (i) Late charges in the order of entry to the account; then to (ii) finance charges in the order of entry to the account; and then to (iii) any ⟦other⟧ debits ►other than the transaction subject to the claim or defense◄ in the order of entry to the account. In these circumstances, if◄ ⟦If⟧ more than one item is included in a single extension of credit, credits are to be distributed pro rata according to prices and applicable taxes.

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Section 226.13—Billing Error Resolution

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13(c) Time for resolution; general procedures.

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Paragraph 13(c)(2).

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2. *Finality of error resolution procedure.* A creditor must comply with the error resolution procedures and complete its investigation to determine whether an error occurred within two complete billing cycles as set forth in § 226.13(c)(2). Thus, for example, ►§ 226.13(c)(2) prohibits a◄ ⟦the⟧ creditor ⟦would be prohibited⟧ from reversing amounts previously credited for an alleged billing error even if the creditor obtains evidence after the error resolution time period has passed indicating that the billing error did not occur as asserted by the consumer. Similarly, if a creditor fails to mail or deliver a written explanation setting forth the reason why the billing error did not occur as asserted, or otherwise fails to comply with the error resolution procedures set forth in § 226.13(f), the creditor generally must credit the disputed amount and related finance or other charges, as applicable, to the consumer's account. ►However, if a consumer receives more than one credit to correct the same billing error, this section does not prevent a creditor from reversing amounts it has previously credited to correct that error, provided that the total amount of the remaining credits is equal to or more than the amount of the error and that the consumer does not incur any fees or other charges as a result of the timing of the creditor's reversal. For example, assume that a consumer asserts a billing error with respect to a $100 transaction and that the creditor posts a $100 credit to the consumer's account to correct that error during the time period set forth in § 226.13(c)(2). However, following that time period, a merchant or other person honoring the credit card issues a $100 credit to the consumer to correct the same error. In these circumstances, § 226.13(c)(2) does not prohibit the creditor from reversing its $100 credit once the $100 credit from the merchant or other person has posted to the consumer's account.◄

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Section 226.14—Determination of Annual Percentage Rate

14(a) General rule.

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►6. *Effect of leap year.* Any variance in the annual percentage rate that occurs solely by reason of the addition of February 29 in a leap year, may be disregarded, and such a rate may be disclosed without regard to such variance.◄

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Section 226.16—Advertising

1. *Clear and conspicuous standard—general.* Section 226.16 is subject to the general "clear and conspicuous" standard for subpart B (see § 226.5(a)(1)) but prescribes no specific rules for the format of the necessary disclosures, other than the format requirements related to the disclosure of a promotional rate or payment under § 226.16(d)(6), a promotional rate ►or promotional fee◄ under § 226.16(g), or a deferred interest or similar offer under § 226.16(h). Other than the disclosure of certain terms described in §§ 226.16(d)(6), (g), or (h), the credit terms need not be printed in a certain type size nor need they appear in any particular place in the advertisement.

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2. *Clear and conspicuous standard—promotional rates►, fees,◄ or payments; deferred interest or similar offers.*

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ii. For purposes of § 226.16(g)(4) as it applies to written or electronic advertisements only, a clear and conspicuous disclosure means the required information in § 226.16(g)(4)(i) and►, as applicable,◄ (g)(4)(ii) ►and (g)(4)(iii)◄ must be equally prominent to the promotional rate ►or promotional fee◄ to which it applies. If the information in § 226.16(g)(4)(i) and►, as applicable,◄ (g)(4)(ii) ►and (g)(4)(iii)◄ is the same type size as the promotional rate ►or promotional fee◄ to which it applies, the disclosures would be deemed to be equally prominent. For purposes of § 226.16(h)(3) as it applies to written or electronic advertisements only, a clear and conspicuous disclosure means the required information in § 226.16(h)(3) must be equally prominent to each statement of "no interest," "no payments," "deferred interest," "same as cash," or similar term regarding interest or payments during the deferred interest period. If the information required to be disclosed under § 226.16(h)(3) is the same type size as the statement of "no interest," "no payments," "deferred interest," "same as cash," or similar term regarding interest or payments during

the deferred interest period, the disclosure would be deemed to be equally prominent.

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16(g) Promotional rates.

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2. *Immediate proximity.* For written or electronic advertisements, including the term "introductory" or "intro" in the same phrase as the listing of the introductory rate ►or introductory fee◄ is deemed to be in immediate proximity of the listing.

3. *Prominent location closely proximate.* For written or electronic advertisements, information required to be disclosed in § 226.16(g)(4)(i) and►, as applicable,◄ (g)(4)(ii) ►and (g)(4)(iii)◄ that is in the same paragraph as the first listing of the promotional rate ►or promotional fee◄ is deemed to be in a prominent location closely proximate to the listing. Information disclosed in a footnote will not be considered in a prominent location closely proximate to the listing.

4. *First listing.* For purposes of § 226.16(g)(4) as it applies to written or electronic advertisements, the first listing of the promotional rate ►or promotional fee◄ is the most prominent listing of the rate ►or fee◄ on the front side of the first page of the principal promotional document. The principal promotional document is the document designed to be seen first by the consumer in a mailing, such as a cover letter or solicitation letter. If the promotional rate ►or promotional fee◄ does not appear on the front side of the first page of the principal promotional document, then the first listing of the promotional rate ►or promotional fee◄ is the most prominent listing of the rate ►or fee◄ on the subsequent pages of the principal promotional document. If the promotional rate ►or promotional fee◄ is not listed on the principal promotional document or there is no principal promotional document, the first listing is the most prominent listing of the rate ►or fee◄ on the front side of the first page of each document listing the promotional rate ►or promotional fee◄. If the promotional rate ►or promotional fee◄ does not appear on the front side of the first page of a document, then the first listing of the promotional rate ►or promotional fee◄ is the most prominent listing of the rate ►or fee◄ on the subsequent pages of the document. If the listing of the promotional rate ►or promotional fee◄ with the largest type size on the front side of the first page (or subsequent pages if the promotional rate ►or promotional fee◄ is not listed on the front side of the first page) of the principal promotional document (or each document listing the promotional rate ►or promotional fee◄ if the promotional rate ►or promotional fee◄ is not listed on the principal promotional document or there is no principal promotional document) is used as the most prominent listing, it will be deemed to be the first listing. Consistent with comment 16(c)–1, a catalog or multiple-page advertisement is considered one document for purposes of § 226.16(g)(4).

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Section 226.30—Limitation on Rates

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8. *Manner of stating the maximum interest rate.* The maximum interest rate must be stated in the credit contract either as a specific amount or in any other manner that would allow the consumer to easily ascertain, at the time of entering into the obligation, what the rate ceiling will be over the term of the obligation.

i. For example, the following statements would be sufficiently specific:

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C. The interest rate will not exceed X%, or X percentage points [about]►above◄ [a rate to be determined at some future point in time], whichever is less.

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Subpart G—Special Rules Applicable to Credit Card Accounts and Open-End Credit Offered to College Students

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Section 226.51—Ability To Pay

51(a) General rule.

51(a)(1) Consideration of ability to pay.

1. *Consideration of additional factors.* Section 226.51(a) requires a card issuer to consider a consumer's ►independent◄ ability to make the required minimum periodic payments under the terms of an account based on the consumer's ►independent◄ income or assets and current obligations. The card issuer may also consider consumer reports, credit scores, and other factors, consistent with Regulation B (12 CFR part 202).

2. *Ability to pay as of application or consideration of increase.* A card issuer complies with § 226.51(a) if it bases its determination regarding a consumer's ►independent◄ ability to make the required minimum periodic payments on the facts and circumstances known to the card issuer at the time the consumer applies to open the credit card account or when the card issuer considers increasing the credit line on an existing account.

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4. ►*Information regarding income,*◄ [*Income,*] *assets, and employment.*

►i. *Types of information.* ►For purposes of § 226.51(a), a card issuer may consider any current or reasonably expected income or assets of the consumer or consumers who are applying for a new account or, when the card issuer is considering whether to increase the credit limit on an existing account, the consumer or consumers who are accountholders.◄ [Any current or reasonably expected assets or income may be considered by the card issuer.] For example, a card issuer may use information about current or expected salary, wages, bonus pay, tips and commissions. Employment may be full-time, part-time, seasonal, irregular, military, or self-employment. Other sources of income could include interest or dividends, retirement benefits, public assistance, alimony, child support, or separate maintenance payments. A card issuer may also take into account assets such as savings accounts or investments [that the consumer can or will be able to use]. ►In addition, when a consumer's spouse is not a joint applicant or joint accountholder, a card issuer may consider the spouse's income or assets to the extent that a federal or state statute or regulation grants the consumer an ownership interest in the spouse's income or asserts.◄

►ii. *Sources of information.*◄ A card issuer may consider the consumer's income or assets based on information provided by the consumer, in connection with this credit card account or any other financial relationship the card issuer or its affiliates has with the consumer, subject to any applicable information-sharing rules, and information obtained through third parties, subject to any applicable information-sharing rules. A card issuer may also consider information obtained through any empirically derived, demonstrably and statistically sound model that reasonably estimates a consumer's income or assets.

►iii. *Information regarding household income or assets.* Consideration of information regarding a consumer's household income or assets does not by itself satisfy the requirement in § 226.51(a) to consider the consumer's independent ability to pay. For example, if a card issuer requests on its application form that applicants provide their household income, the card issuer may not rely solely on the information provided to satisfy the requirements of § 226.51(a). Instead, the card issuer would need to obtain additional information about an applicant's independent income (such as by contacting the applicant). However, if a card issuer requests on its application form that applicants provide their income (without reference to household income), the card issuer may rely on the information provided to satisfy the requirements of § 226.51(a).◄

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51*(a)(2) Minimum periodic payments.*

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3. *Mandatory fees.* For purposes of estimating required minimum periodic payments under the safe harbor set forth in § 226.51(a)(2)(ii), mandatory fees that must be assumed to be charged include those fees the card issuer knows the consumer will be required to pay under the terms of the account if the account is opened, such as an annual fee. ►If a mandatory fee is a promotional fee (as defined in § 226.16(g)), the issuer must use the post-promotional fee amount for purposes of § 226.51(a)(2)(ii).◄

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Section 226.52—Limitations on Fees

52(a) Limitations ►*prior to account opening and*◄ *during first year after account opening.*

52(a)(1) General rule.

1. *Application.* [Section 226.52(a)(1) applies if a card issuer charges any fees to the account during the first year after the account is opened (unless the fees are specifically exempted by § 226.52(a)(2)). Thus, if a card issuer charges a non-exempt fee to the account during the first year after account opening, § 226.52(a)(1) provides that the total amount of non-exempt fees the consumer is required to pay with respect to the account during the first year cannot exceed 25 percent of the credit limit in effect when the account is opened.] ►The◄ [This] 25

percent limit ►in § 226.52(a)(1)◄ applies to fees that the card issuer charges to the account as well as to fees that the card issuer requires the consumer to pay with respect to the account through other means (such as through a payment from the consumer►'s asset account◄ to the card issuer or from another credit account provided by the card issuer). For example:

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ii. Assume that, under the terms of a credit card account, a consumer is required to pay $125 in fees for the issuance or availability of credit during the first year after account opening. At account opening on January 1 of year one, the credit limit for the account is $500. Section 226.52(a)(1) permits the card issuer to charge the $125 in fees to the account. However, § 226.52(a)(1) prohibits the card issuer from requiring the consumer to make payments to the card issuer for additional non-exempt fees with respect to the account ►prior to account opening or◄ during the first year after account opening►.◄**[**or**]** ►Section 226.52(a)(1) also prohibits the card issuer from◄ requiring the consumer to open a separate credit account with the card issuer to fund the payment of additional non-exempt fees ►prior to the opening of the credit card account or ◄ during the first year ►after the credit card account is opened◄.

►iii. Assume that, on January 1 of year one, a consumer is required to pay a $100 fee in order to apply for a credit card account. On January 5, the card issuer approves the consumer's application, assigns the account a credit limit of $1,000, and provides the consumer with account-opening disclosures consistent with § 226.6. The card issuer also permits the consumer to begin using the account for transactions on January 5. The consumer is required to pay $150 in fees for the issuance or availability of credit, which § 226.52(a)(1) permits the card issuer to charge to the account on January 5. However, because the $100 application fee is subject to the 25 percent limit in § 226.52(a)(1), the card issuer is prohibited from requiring the consumer to pay any additional non-exempt fees with respect to the account until January 5 of year two.◄

2. *Fees that exceed 25 percent limit.* A card issuer that charges a fee to a credit card account that exceeds the 25 percent limit complies with § 226.52(a)(1) if the card issuer waives or removes the fee and any associated interest charges or credits the account for an amount equal to the fee and any associated interest charges within a reasonable amount of time but no later than the end of the billing cycle following the billing cycle during which the fee was charged. For example, assuming the facts in ►the example in◄ comment 52(a)(1)–1►.i.◄ above, the card issuer complies with § 226.52(a)(1) if the card issuer charged the $2.50 cash advance fee to the account on July 15 of year one but waived or removed the fee or credited the account for $2.50 (plus any interest charges on that $2.50) at the end of the billing cycle.

3. *Changes in credit limit during first year.*

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ii. *Decreases in credit limit.* If a card issuer decreases the credit limit during the first year after the account is opened, § 226.52(a)(1) requires the card issuer to waive or remove any fees charged to the account that exceed 25 percent of the reduced credit limit or to credit the account for an amount equal to any fees the consumer was required to pay with respect to the account that exceed 25 percent of the reduced credit limit within a reasonable amount of time but no later than the end of the billing cycle following the billing cycle during which ►the credit limit was reduced◄**[**the fee was charged**]**. For example►:◄**[**,**]**

►A. Assume◄**[**assume**]** that, at account opening on January 1, the credit limit for a credit card account is $1,000 and the consumer is required to pay $250 in fees for the issuance or availability of credit. The billing cycles for the account begin on the first day of the month and end on the last day of the month. On July 30, the card issuer decreases the credit limit for the account to $500. Section 226.52(a)(1) requires the card issuer to waive or remove $175 in fees from the account or to credit the account for an amount equal to $175 within a reasonable amount of time but no later than August 31.

►B. Assume that, on June 25 of year one, a consumer is required to pay a $75 fee in order to apply for a credit card account. At account opening on July 1 of year one, the credit limit for the account is $500 and the consumer is required to pay $50 in fees for the issuance or availability of credit. The billing cycles for the account begin on the first day of the month and end on the last day of the month. On February 15 of year two, the card issuer decreases the credit limit for the account to $250. Section 226.52(a)(1) requires the card issuer to waive or remove fees from the account or to credit the account for an amount equal to $62.50 within a reasonable amount of time but no later than March 31 of year two.◄

52(a)(2) Fees not subject to limitations.

1. *Covered fees.* Except as provided in § 226.52(a)(2), § 226.52(a) applies to any fees ►or other charges◄ that a card issuer will or may require the consumer to pay with respect to a credit card account ►prior to account opening and◄ during the first year after account opening►, other than charges attributable to periodic interest rates◄. For example, § 226.52(a) applies to:

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iii. Fees that the consumer is required to pay in order to engage in transactions using the account (such as cash advance fees, balance transfer fees, foreign transaction fees, and fees for using the account for purchases); **[**and**]**

iv. Fees that the consumer is required to pay for violating the terms of the account (except to the extent specifically excluded by § 226.52(a)(2)(i))►;◄**[**.**]**

►v. Fixed finance charges; and

vi. Minimum charges imposed if a charge would otherwise have been determined by applying a periodic interest rate to a balance except for the fact that such charge is smaller than the minimum.◄

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52(b) *Limitations on penalty fees.*

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52(b)(1)(ii) Safe harbors.

1. *Multiple violations of same type.* **[**Section 226.52(b)(1)(ii)(A) permits a card issuer to impose a fee that does not exceed $25 for the first violation of a particular type. For a subsequent violation of the same type during the next six billing cycles, § 226.52(b)(1)(ii)(B) permits the card issuer to impose a fee that does not exceed $35.**]**

i. ►*Same billing cycle or next six billing cycles.*◄ **[***Next six billing cycles.***]** ►A card issuer cannot impose a fee for a violation pursuant to § 226.52(b)(1)(ii)(B) unless a fee has previously been imposed for the same type of violation pursuant to § 226.52(b)(1)(ii)(A). Once a fee has been imposed for a violation pursuant to § 226.52(b)(1)(ii)(A), the card issuer may impose a fee pursuant to § 226.52(b)(1)(ii)(B) for any subsequent violation of the same type until that type of violation has not occurred for a period of six consecutive complete billing cycles.◄ **[**A fee may be imposed pursuant to § 226.52(b)(1)(ii)(B) if, during the six billing cycles following the billing cycle in which a violation occurred, another violation of the same type occurs.**]**

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ii. *Relationship to §§ 226.52(b)(2)(ii) and 226.56(j)(1)***[***(i)***]**. If multiple violations are based on the same event or transaction such that § 226.52(b)(2)(ii) prohibits the card issuer from imposing more than one fee, the event or transaction constitutes a single violation for purposes of § 226.52(b)(1)(ii). Furthermore, consistent with § 226.56(j)(1)(i), no more than one violation for exceeding an account's credit limit can occur during a single billing cycle for purposes of § 226.52(b)(1)(ii). ►However, § 226.52(b)(2)(ii) does not prohibit a card issuer from imposing fees for exceeding the credit limit in consecutive billing cycles based on the same over-the-limit transaction to the extent permitted by § 226.56(j)(1). In these circumstances, the second and third over-the-limit fees permitted by § 226.56(j)(1) may be imposed pursuant to § 226.52(b)(1)(ii)(B). See comment 52(b)(2)(ii)-1.◄

iii. *Examples*►.◄ **[**:**]** * * * * *

* * * * *

52(b)(2) Prohibited fees.

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52(b)(2)(i) Fees that exceed dollar amount associated with violation.

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5. *Inactivity fees.* Section 226.52(b)(2)(i)(B)(*2*) prohibits a card issuer from imposing a fee ►with respect to a credit card account under an open-end (not home-secured) consumer credit plan◄ based on **[**account**]** inactivity ►on that account◄ (including the consumer's failure to use the account for a particular number or dollar amount of transactions or a particular type of transaction). For example, § 226.52(b)(2)(i)(B)(*2*) prohibits a card issuer from imposing a $50 fee ►when a credit card account under an open-end (not home-secured) consumer credit plan is not used◄ **[**when a consumer fails to use the account**]** for ►at least◄ $2,000 in purchases over the course of a year. Similarly, ►if the card issuer promotes the waiver or rebate of an annual fee for purposes of § 226.55(e) with respect to a particular type of account,◄ § 226.52(b)(2)(i)(B)(*2*) prohibits a card issuer

from imposing a $50 annual fee on all ►such ◄ accounts but waiving the fee ►on any account that is used◄ [if the consumer uses the account] for ►at least◄ $2,000 in purchases over the course of a year. ►However, if the card issuer does not promote the waiver or rebate of an annual fee for purposes of § 226.55(e), § 226.52(b)(2)(i)(B)(*2*) does not prohibit a card issuer from considering account activity along with other factors when deciding whether to waive or rebate annual fees on individual accounts (such as in response to a consumer's request).◄

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52(b)(2)(ii) Multiple fees based on single event or transaction.

1. *Single event or transaction.* Section 226.52(b)(2)(ii) prohibits a card issuer from imposing more than one fee for violating the terms or other requirements of an account based on a single event or transaction. ►If § 226.56(j)(1) permits a card issuer to impose fees for exceeding the credit limit in consecutive billing cycles based on the same over-the-limit transaction, those fees are not based on a single event or transaction for purposes of § 226.52(b)(2)(ii).◄ The following examples illustrate the application of § 226.52(b)(2)(ii). Assume for purposes of these examples that the billing cycles for a credit card account begin on the first day of the month and end on the last day of the month and that the payment due date for the account is the twenty-fifth day of the month.

i. Assume that the required minimum periodic payment due on March 25 is $20. On March 26, the card issuer has not received any payment and imposes a late payment fee. ►Consistent with §§ 226.52(b)(1)(ii)(A) and (b)(2)(i), the card issuer may impose a $20 late payment fee on March 26. However, §◄ [Section] 226.52(b)(2)(ii) prohibits the card issuer from imposing an additional late payment fee if the $20 minimum payment has not been received by a subsequent date (such as March 31). [However, § 226.52(b)(2)(ii) does not prohibit the card issuer from imposing an additional late payment fee if the required minimum periodic payment due on April 25 (which may include the $20 due on March 25) is not received on or before that date.]

►A. On April 3, the card issuer provides a periodic statement disclosing that a $70 required minimum periodic payment is due on April 25. This minimum payment includes the $20 minimum payment due on March 25 and the $20 late payment fee imposed on March 26. On April 20, the card issuer receives a $20 payment. No additional payments are received during the April billing cycle. Section 226.52(b)(2)(ii) does not prohibit the card issuer from imposing a late payment fee based on the consumer's failure to make the $70 required minimum periodic payment on or before April 25. Accordingly, consistent with § 226.52(b)(1)(ii)(B) and (b)(2)(i), the card issuer may impose a $35 late payment fee on April 26.

B. On April 3, the card issuer provides a periodic statement disclosing that a $20 required minimum periodic payment is due on April 25. This minimum payment does not include the $20 minimum payment due on March 25 or the $20 late payment fee imposed on March 26. On April 20, the card issuer receives a $20 payment. No additional payments are received during the April billing cycle. Because the card issuer has received the required minimum periodic payment due on April 25 and because § 226.52(b)(2)(ii) prohibits the card issuer from imposing a second late payment fee based on the consumer's failure to make the $20 minimum payment due on March 25, the card issuer cannot impose a late payment fee in these circumstances.◄

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iv. Assume that the credit limit for an account is $1,000 and that, consistent with § 226.56, the consumer has affirmatively consented to the payment of transactions that exceed the credit limit. On March 31, the balance on the account is $970 and the card issuer has not received the $35 required minimum periodic payment due on March 25. On that same date (March 31), a $70 transaction is charged to the account, which increases the balance to $1,040. Consistent with § 226.52(b)(1)(ii)(A) and (b)(2)(i)(A), the card issuer may impose a late payment fee of $25 and an over-the-limit fee of $25. Section 226.52(b)(2)(ii) does not prohibit the imposition of both fees because those fees are based on different events or transactions. ►No additional transactions are charged to the account during the March, April, or May billing cycles. If the account balance remains more than $35 above the credit limit on April 26, the card issuer may impose an over-the-limit fee of $35 pursuant to § 226.52(b)(1)(ii)(B), consistent with § 226.56(j)(1). Furthermore, if the account balance remains more than $35 above the credit limit on May 26, the card issuer may again impose an over-the-limit fee of $35 pursuant to § 226.52(b)(1)(ii)(B), to the extent consistent with § 226.56(j)(1). Thereafter, § 226.56(j)(1) does not permit the card issuer to impose additional over-the-limit fees unless another over-the-limit transaction occurs. However, if an over-the-limit transaction occurs during the six billing cycles following the May billing cycle, the card issuer may impose an over-the-limit fee of $35 pursuant to § 226.52(b)(1)(ii)(B).◄

►v. Assume that the credit limit for the account is $5,000 and that, consistent with § 226.56, the consumer has affirmatively consented to the payment of transactions that exceed the credit limit. On July 23, the balance on the account is $4,950. On July 24, the card issuer receives the $100 required minimum periodic payment due on July 25, reducing the balance to $4,850. On July 26, a $75 transaction is charged to the account, which increases the balance to $4,925. On July 27, the $100 payment is returned for insufficient funds, increasing the balance to $5,025. Consistent with §§ 226.52(b)(1)(ii)(A) and (b)(2)(i)(A), the card issuer may impose a returned payment fee of $25 or an over-the-limit fee of $25. However, § 226.52(b)(2)(ii) prohibits the card issuer from imposing both fees because those fees would be based on a single event or transaction.

vi. Assume that the required minimum periodic payment due on March 25 is $50. On March 20, the card issuer receives a check for $50, but the check is returned for insufficient funds on March 22. Consistent with §§ 226.52(b)(1)(ii)(A) and (b)(2)(i)(A), the card issuer may impose a returned payment fee of $25. On March 25, the card issuer receives a second check for $50, but the check is returned for insufficient funds on March 27. Consistent with §§ 226.52(b)(1)(ii)(A), (b)(1)(ii)(B), and (b)(2)(i)(A), the card issuer may impose a late payment fee of $25 or a returned payment fee of $35. However, § 226.52(b)(2)(ii) prohibits the card issuer from imposing both fees because those fees would be based on a single event or transaction.

vii. Assume that the required minimum periodic payment due on February 25 is $100. On February 25, the card issuer receives a check for $100. On March 3, the card issuer provides a periodic statement disclosing that a $120 required minimum periodic payment is due on March 25. On March 4, the $100 check is returned to the card issuer for insufficient funds. Consistent with §§ 226.52(b)(1)(ii)(A) and (b)(2)(i)(A), the card issuer may impose a late payment fee of $25 or a returned payment fee of $25 with respect to the $100 payment. However, § 226.52(b)(2)(ii) prohibits the card issuer from imposing both fees because those fees would be based on a single event or transaction. On March 20, the card issuer receives a $120 check, which is not returned. No additional payments are received during the March billing cycle. Because the card issuer has received the required minimum periodic payment due on March 25 and because § 226.52(b)(2)(ii) prohibits the card issuer from imposing a second fee based on the $100 payment that was returned for insufficient funds, the card issuer cannot impose a late payment fee in these circumstances.◄

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Section 226.53—Allocation of Payments

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4. *Balances with the same rate.* When the same annual percentage rate applies to more than one balance on an account and a different annual percentage rate applies to at least one other balance on that account, § 226.53 generally does not require that any particular method be used when allocating among the balances with the same annual percentage rate. Under these circumstances, a card issuer may treat the balances with the same rate as a single balance or separate balances. See example in comment 53–5.iv. However, when a balance on a credit card account is subject to a deferred interest or similar program that provides that a consumer will not be obligated to pay interest that accrues on the balance if the balance is paid in full prior to the expiration of a specified period of time, that balance must be treated as a balance with an annual percentage rate of zero for purposes of § 226.53 during that period of time. For example, if an account has a $1,000 purchase balance and a $2,000 balance that is subject to a deferred interest program that expires on July 1 and a 15% annual percentage rate applies to both, the balances must be treated as balances with different rates for purposes of § 226.53 until July 1. In addition, unless the card issuer allocates amounts paid by the consumer in excess of the required minimum

periodic payment in the manner requested by the consumer pursuant to § 226.53(b)►(1)(ii)◄ [(2)], § 226.53(b)(1)►(i)◄ requires the card issuer to apply any excess payments first to the $1,000 purchase balance except during the last two billing cycles of the deferred interest period (when it must be applied first to any remaining portion of the $2,000 balance). *See* example in comment 53–5.v.

5. * * * * *

v. * * * * *

A. Each month from February through June, the consumer pays $400 in excess of the required minimum periodic payment on the payment due date, which is the twenty-fifth of the month. Any interest that accrues on the purchases not subject to the deferred interest program is paid by the required minimum periodic payment. The card issuer does not accept requests from consumers regarding the allocation of excess payments pursuant to § 226.53(b)►(1)(ii)◄ [(2)]. Thus, § 226.53(b)(1)►(i)◄ requires the card issuer to allocate the $400 excess payments received on February 25, March 25, and April 25 consistent with § 226.53(a). In other words, the card issuer must allocate those payments as follows: $200 to pay off the balance not subject to the deferred interest program (which is subject to the 15% rate) and the remaining $200 to the deferred interest balance (which is treated as a balance with a rate of zero). However, § 226.53(b)(1)►(i)◄ requires the card issuer to allocate the entire $400 excess payment received on May 25 to the deferred interest balance. Similarly, § 226.53(b)(1)►(i)◄ requires the card issuer to allocate the $400 excess payment received on June 25 as follows: $200 to the deferred interest balance (which pays that balance in full) and the remaining $200 to the balance not subject to the deferred interest program.

B. Same facts as above, except that the card issuer does accept requests from consumers regarding the allocation of excess payments pursuant to § 226.53(b)►(1)(ii)◄ [(2)]. In addition, on April 25, the card issuer receives an excess payment of $800, which the consumer requests be allocated to pay off the $800 balance subject to the deferred interest program. Section 226.53(b)►(1)(ii)◄ [(2)] permits the card issuer to allocate the $800 excess payment in the manner requested by the consumer.

53(b) Special rule►s◄ [for accounts with balances subject to deferred interest or similar programs].

1. *Deferred interest and similar programs.* Section 226.53(b)►(1)◄ applies to deferred interest or similar programs under which the consumer is not obligated to pay interest that accrues on a balance if that balance is paid in full prior to the expiration of a specified period of time. For purposes of § 226.53(b)►(1)◄, "deferred interest" has the same meaning as in § 226.16(h)(2) and associated commentary. Section 226.53(b)►(1)◄ applies regardless of whether the consumer is required to make payments with respect to that balance during the specified period. However, a grace period during which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate is not a deferred interest or similar program for purposes of § 226.53(b)►(1)◄. Similarly, a temporary annual percentage rate of zero percent that applies for a specified period of time consistent with § 226.55(b)(1) is not a deferred interest or similar program for purposes of § 226.53(b)►(1)◄ unless the consumer may be obligated to pay interest that accrues during the period if a balance is not paid in full prior to expiration of the period.

2. *Expiration of ►deferred interest or similar◄ program during billing cycle.* For purposes of § 226.53(b)(1)►(i)◄, a billing cycle does not constitute one of the two billing cycles immediately preceding expiration of a deferred interest or similar program if the expiration date for the program precedes the payment due date in that billing cycle. For example, assume that a credit card account has a balance subject to a deferred interest program that expires on June 15. Assume also that the billing cycles for the account begin on the first day of the month and end on the last day of the month and that the required minimum periodic payment is due on the twenty-fifth day of the month. The card issuer does not accept requests from consumers regarding the allocation of excess payments pursuant to § 226.53(b)►(1)(ii)◄ [(2)]. Because the expiration date for the deferred interest program (June 15) precedes the due date in the June billing cycle (June 25), § 226.53(b)(1)►(i)◄ requires the card issuer to allocate first to the deferred interest balance any amount paid by the consumer in excess of the required minimum periodic payment during the April and May billing cycles (as well as any amount paid by the consumer before June 15). However, if the deferred interest program expired on June 25 or on June 30 (or on any day in between), § 226.53(b)(1)►(i)◄ would apply only to the May and June billing cycles.

3. *Consumer requests.*

i. *Generally.* Section 226.53(b) does not require a card issuer to allocate amounts paid by the consumer in excess of the required minimum periodic payment in the manner requested by the consumer, provided that the card issuer instead allocates such amounts consistent with § 226.53►(a)◄ or (b)(1)►(i), as applicable◄. For example, a card issuer may decline consumer requests regarding payment allocation as a general matter or may decline such requests when a consumer does not comply with requirements set by the card issuer (such as submitting the request in writing or submitting the request prior to or contemporaneously with submission of the payment), provided that amounts paid by the consumer in excess of the required minimum periodic payment are allocated consistent with § 226.53►(a)◄ or (b)(1)►(i), as applicable◄. Similarly, a card issuer that accepts requests pursuant to § 226.53(b)►(1)(ii) or (b)◄(2) must allocate amounts paid by a consumer in excess of the required minimum periodic payment consistent with § 226.53►(a)◄ or (b)(1)►(i), as applicable,◄ if the consumer does not submit a request. Furthermore, [in these circumstances,] a card issuer ►that accepts requests pursuant to § 226.53(b)(1)(ii) or (b)(2)◄ must allocate consistent with § 226.53►(a)◄ or (b)(1)►(i), as applicable,◄ if the consumer submits a request with which the card issuer cannot comply (such as a request that contains a mathematical error), unless the consumer submits an additional request with which the card issuer can comply.

ii. *Examples of consumer requests that satisfy § 226.53►(b)(1)(ii) or◄ (b)(2).* A consumer has made a request for purposes of § 226.53►(b)(1)(ii) or◄ (b)(2) if:

A. The consumer contacts the card issuer orally, electronically, or in writing and specifically requests that a payment or payments be allocated in a particular manner during the period of time that the deferred interest or similar program applies to a balance on the account ►or the period of time that a balance on the account is secured◄.

B. The consumer completes ►and submits to the card issuer◄ a form or payment coupon provided by the card issuer for the purpose of requesting that a payment or payments be allocated in a particular manner during the period of time that the deferred interest or similar program applies to a balance on the account ►or the period of time that a balance on the account is secured◄ [and submits that form or coupon to the card issuer].

C. The consumer contacts the card issuer orally, electronically, or in writing and specifically requests that a payment that the card issuer has previously allocated consistent with § 226.53►(a) or◄ (b)(1)►(i), as applicable,◄ instead be allocated in a different manner.

iii. *Examples of consumer requests that do not satisfy § 226.53►(b)(1)(ii) or◄ (b)(2).* A consumer has not made a request for purposes of § 226.53►(b)(1)(ii) or◄ (b)(2) if:

A. The terms and conditions of the account agreement contain preprinted language stating that by applying to open an account►,◄ [or] by using that account for transactions subject to a deferred interest or similar program►, or by using the account to purchase property in which the card issuer holds a security interest◄ the consumer requests that payments be allocated in a particular manner.

* * * * *

D. The card issuer requires a consumer to accept a particular payment allocation method as a condition of using a deferred interest or similar program, ►purchasing property in which the card issuer holds a security interest,◄ making a payment, or receiving account services or features.

* * * * *

Section 226.55—Limitations on Increasing Annual Percentage Rates, Fees, and Charges

55(a) General rule.

1. ►*Increase in rate, fee, or charge*◄ [*Examples*]. Section 226.55(a) prohibits card issuers from increasing an annual percentage rate or any fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) on a credit card account unless specifically permitted by one of the exceptions in § 226.55(b). ►Except as specifically provided in § 226.55(b), this prohibition applies even if the circumstances under which an increase will occur are

disclosed in advance.◄ The following examples illustrate the general application of § 226.55(a) and (b). Additional examples illustrating specific aspects of the exceptions in § 226.55(b) are provided in the commentary to those exceptions.

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55(b) Exceptions.

1. *Exceptions not mutually exclusive.* A card issuer may increase an annual percentage rate or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) pursuant to an exception set forth in § 226.55(b) even if that increase would not be permitted under a different exception. For example, although a card issuer cannot increase an annual percentage rate pursuant to § 226.55(b)(1) unless that rate is provided for a specified period of at least six months, the card issuer may increase an annual percentage rate during a specified period due to an increase in an index consistent with § 226.55(b)(2). Similarly, although § 226.55(b)(3) does not permit a card issuer to increase an annual percentage rate during the first year after account opening, the card issuer may increase the rate during the first year after account opening pursuant to § 226.55(b)(4) if the required minimum periodic payment is not received within 60 days after the due date. ►However, if § 226.55(b)(4)(ii) requires a card issuer to decrease the rate, fee, or charge that applies to a balance while the account is subject to a workout or temporary hardship arrangement or subject to 50 U.S.C. app. 527 or a similar federal or state statute or regulation, the card issuer may not impose a higher rate, fee, or charge on that balance pursuant to § 226.55(b)(5) or (b)(6) upon completion or failure of the arrangement or once 50 U.S.C. app. 527 or the similar federal or state statute or regulation no longer applies. For example, assume that, on January 1, the annual percentage rate that applies to a $1,000 balance is increased from 12% to 30% pursuant to § 226.55(b)(4). On February 1, the rate on that balance is decreased from 30% to 15% consistent with § 226.55(b)(5) as a part of a workout or temporary hardship arrangement. On July 1, § 226.55(b)(4)(ii) requires the card issuer to reduce the rate that applies to any remaining portion of the $1,000 balance from 15% to 12%. If the consumer subsequently completes or fails to comply with the terms of the workout or temporary hardship arrangement, the card issuer may not increase the 12% rate that applies to any remaining portion of the $1,000 balance pursuant to § 226.55(b)(5).◄

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iii. * * *

►C. *Application of lower temporary rate during specified period.* Same facts as in paragraph iii. above. On June 30 of year two, the account has a purchase balance of $1,000 at the 15% non-variable rate. On July 1, the card issuer provides a notice pursuant to § 226.9(c) informing the consumer that the rate for the $1,000 balance and new purchases will decrease to a non-variable rate of 12% for six months (from July 1 through December 31 of year two) and that, beginning on January 1 of year three, the rate for purchases will increase to a variable rate that is currently 20% and is determined by adding a margin of 10 percentage points to a publicly-available index not under the card issuer's control. On August 15 of year two, the consumer makes a $500 purchase. On October 1, the card issuer provides another notice pursuant to § 226.9(c) informing the consumer that the rate for the $1,000 balance, the $500 purchase, and new purchases will decrease to a non-variable rate of 5% for six months (from October 1 of year two through March 31 of year three) and that, beginning on April 1 of year three, the rate for purchases will increase to a variable rate that is currently 23% and is determined by adding a margin of 13 percentage points to the previously-disclosed index. On November 15 of year two, the consumer makes a $300 purchase. On April 1 of year three, § 226.55 permits the card issuer to begin accruing interest using the following rates for any remaining portion of the following balances: the 15% non-variable rate for the $1,000 balance; the variable rate determined using the 10-point margin for the $500 purchase; and the variable rate determined using the 13-point margin for the $300 purchase.◄

55(b)(1) Temporary rate ►, fee, or charge◄ exception.

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2. *Period of six months or longer.* A temporary annual percentage rate ►, fee, or charge◄ must apply [to transactions] for a specified period of six months or longer before a card issuer can increase that rate ►, fee, or charge◄ pursuant to § 226.55(b)(1). The specified period must expire no less than six months after the date on which the ►card issuer◄ [creditor] provides the consumer with the disclosures required by § 226.55(b)(1)(i) or, if later, the date on which the account can be used for transactions to which the temporary rate ►, fee, or charge◄ applies. Section 226.55(b)(1) does not prohibit a card issuer from limiting the application of a temporary annual percentage rate ►, fee, or charge◄ to a particular category of transactions (such as balance transfers or purchases over $100). However, in circumstances where the card issuer limits application of the temporary rate►, fee, or charge◄ to a ►single◄ [particular] transaction, the specified period must expire no less than six months after the date on which that transaction occurred. The following examples illustrate the application of § 226.55(b)(1):

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►vii. Assume that a card issuer discloses at account opening on January 1 of year one that the annual fee for the account is $0 until January 1 of year two, when the fee will increase to $50. On January 1 of year two, the card issuer may impose the $50 annual fee. However, the issuer must also comply with the notice requirements in § 226.9(e).

viii. Assume that a card issuer discloses at account opening on January 1 of year one that the monthly maintenance fee for the account is $0 until July 1 of year one, when the fee will increase to $10. Beginning on July 1 of year one, the card issuer may impose the $10 monthly maintenance fee (to the extent consistent with § 226.52(a)).◄

* * * * *

4. *Contingent or discretionary [rate] increases.* Section § 226.55(b)(1) permits a card issuer to increase a temporary annual percentage rate ►, fee, or charge◄ upon the expiration of a specified period of time. However, § 226.55(b)(1) does not permit a card issuer to apply an increased rate ►, fee, or charge◄ that is contingent on a particular event or occurrence or that may be applied at the card issuer's discretion. The following examples illustrate rate increases that are not permitted by § 226.55:

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►iii. Assume that a card issuer discloses at account opening on January 1 of year one that the annual fee for the account is $10 but may be increased to $50 if a consumer's required minimum periodic payment is received after the payment due date, which is the fifteenth of the month. The payment due on July 15 is not received until July 23. Section 226.55 does not permit the card issuer to impose the $50 annual fee at this time. Furthermore, § 226.55(b)(3) does not permit the card issuer to increase the $10 annual fee during the first year after account opening. However, § 226.55(b)(3) does permit the card issuer to impose the $50 fee (or a different fee) on January 1 of year two if, on or before November 16 of year one, the issuer informs the consumer of the increased fee consistent with § 226.9(c) and the consumer does not reject that increase pursuant to § 226.9(h).

iv. Assume that a card issuer discloses at account opening on January 1 of year one that the annual fee for a credit card account under an open-end (not home-secured) consumer credit plan is $0 but may be increased to $100 if the consumer's balance in a deposit account provided by the card issuer or its affiliate or subsidiary falls below $5,000. On June 1 of year one, the balance on the deposit account is $4,500. Section 226.55 does not permit the card issuer to impose the $100 annual fee at this time. Furthermore, § 226.55(b)(3) does not permit the card issuer to increase the $0 annual fee during the first year after account opening. However, § 226.55(b)(3) does permit the card issuer to impose the $100 fee (or a different fee) on January 1 of year two if, on or before November 16 of year one, the issuer informs the consumer of the increased fee consistent with § 226.9(c) and the consumer does not reject that increase pursuant to § 226.9(h).◄

►5. *Application of increased fees and charges.* Section 226.55(b)(1)(ii) limits the ability of a card issuer to apply an increased fee or charge to certain transactions. However, to the extent consistent with § 226.55(b)(3)(c), and (d), a card issuer generally is not prohibited from increasing a fee or charge that applies to the account as a whole. *See* comments 55(c)(1)–3 and 55(d)–1.◄

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55(b)(6) Servicemembers Civil Relief Act exception.

1. *Rate►, fee, or charge◄ that does not exceed rate that applied before decrease.* ►When a rate or a fee or charge subject to

§ 226.55 has been decreased pursuant to 50 U.S.C. app. 527 or a similar federal or state statute or regulation, § 226.55(b)(6) permits the card issuer to increase the rate, fee, or charge once 50 U.S.C. app. 527 or the similar statute or regulation no longer applies. However, § 226.55(b)(6) prohibits the card issuer from applying to any transactions that occurred prior to the decrease a rate, fee, or charge that exceeds the rate, fee, or charge that applied to those transactions prior to the decrease (except to the extent permitted by one of the other exceptions in § 226.55(b)).◀ ⟦Once 50 U.S.C. app. 527 no longer applies, § 226.55(b)(6) prohibits a card issuer from applying an annual percentage rate to any transactions that occurred prior to a decrease in rate pursuant to 50 U.S.C. app. 527 that exceeds the rate that applied to those transactions prior to the decrease. However, this provision does not prohibit the card issuer from applying an increased annual percentage rate once 50 U.S.C. app. 527 no longer applies, to the extent consistent with any of the other exceptions in § 226.55(b).⟧ For example, if a temporary rate applied prior to ►a decrease in rate pursuant to 50 U.S.C. app. 527◀ ⟦the decrease⟧ and ►the temporary rate◀ ⟦that rate⟧ expired during the period that 50 U.S.C. app. 527 applied to the account, the card issuer may apply an increased rate once 50 U.S.C. app. 527 no longer applies to the extent consistent with § 226.55(b)(1). Similarly, if a variable rate applied prior to ►a decrease in rate pursuant to 50 U.S.C. app. 527◀ ⟦the decrease⟧, the card issuer may apply any increase in that variable rate once 50 U.S.C. app. 527 no longer applies to the extent consistent with § 226.55(b)(2).

►2. *Decreases in rates, fees, and charges to amounts consistent with 50 U.S.C. app. 527 or similar statute or regulation.* If a card issuer deceases all annual percentage rates and all fees and charges subject to § 226.55 to amounts that are consistent with 50 U.S.C. app. 527 or a similar federal or state statute or regulation (including rates, fees, and charges that apply to new transactions), the card issuer may increase those rates, fees, and charges consistent with § 226.55(b)(6).◀

►3.◀ ⟦2.⟧ *Example.* Assume that on December 31 of year one the annual percentage rate that applies to a $5,000 balance on a credit card account is a variable rate that is determined by adding a margin of 10 percentage points to a publicly-available index that is not under the card issuer's control. ►The account is also subject to a monthly maintenance fee of $10.◀ On January 1 of year two, the card issuer reduces the rate that applies to the $5,000 balance to a non-variable rate of 6% ►and ceases to impose the $10 monthly maintenance fee and other fees (including late payment fees)◀ pursuant to 50 U.S.C. app. 527. ►The card issuer also decreases the rate that applies to new transactions to 6%. During year two, the consumer uses the account for $1,000 in new transactions.◀ On January 1 of year three, 50 U.S.C. app. 527 ceases to apply and the card issuer provides a notice pursuant to § 226.9(c) informing the consumer that on February 15 of year three the variable rate determined using the 10-point margin will apply to any remaining portion of the $5,000 balance ►and to any remaining portion of the $1,000 balance. The notice also states that the $10 monthly maintenance fee and other fees (including late payment fees) will resume on February 15 of year three. Consistent with § 226.9(c)(2)(iv)(B), the card issuer is not required to provide a right to reject in these circumstances◀. On February 15 of year three, § 226.55(b)(6) permits the card issuer to begin accruing interest on any remaining portion of the $5,000 ►and $1,000◀ balance►s◀ at the variable rate determined using the 10-point margin ►and to resume imposing the $10 monthly maintenance fee and other fees (including late payment fees)◀.

55(c) Treatment of protected balances.

55(c)(1) Definition of protected balance.

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3. *Increased fees and charges.* ►Except as provided in § 226.55(b)(3)(iii)◀ [Once an account has been open for more than one year], § 226.55(b)(3) permits a card issuer to increase a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) after complying with the applicable notice requirements in § 226.9(b) or (c), provided that the increased fee or charge is not applied to a protected balance. ►To the extent consistent with § 226.55(b)(3)(iii), a◀ ⟦A⟧ card issuer is not prohibited from increasing a fee or charge that applies to the account as a whole or to balances other than the protected balance. For example, after the first year following account opening, a card issuer may add ►or increase an◀ ⟦a new⟧ annual or a monthly maintenance fee ►for an active account after complying with the notice requirements in § 226.9(c), including notifying the consumer of the right to reject the new or increased fee under § 226.9(h)◀ ⟦to an account or increase such a fee so long as the fee is not based solely on the protected balance⟧. ►However, except as otherwise provided in § 226.55(b), an increased fee or charge cannot be applied to an account while the account is closed or while the card issuer does not permit the consumer to use the account for new transactions. *See* § 226.55(b)(3)(iii); see also §§ 226.52(b)(2)(i)(B)(*3*) and 226.55(d)(1). Furthermore◀ ⟦However⟧, if the consumer rejects an increase in a fee or charge pursuant to § 226.9(h), the card issuer is prohibited from applying the increased fee or charge to the account and from imposing any other fee or charge solely as a result of the rejection. See § 226.9(h)(2)(i) and (ii); comment 9(h)(2)(ii)–2.

►4. *Changing balance computation method.* Nothing in § 226.55 prohibits a card issuer from changing the balance computation method that applies to new transactions as well as protected balances.◀

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►*55(e) Promotional waivers or rebates of interest, fees, and other charges.*

1. *Generally.* Nothing in § 226.55 prohibits a card issuer from waiving or rebating finance charges due to a periodic interest rate or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii). However, if a card issuer promotes and applies the waiver or rebate to an account, the card issuer cannot cease or terminate the waiver or rebate unless permitted by one of the exceptions in § 226.55(b). For example:

i. A card issuer applies an annual percentage rate of 15% to balance transfers but promotes a program under which all of the interest accrued on transferred balances will be waived or rebated for one year. If, prior to the commencement of the one-year period, the card issuer discloses the length of the period and the annual percentage rate that will apply to transferred balances after expiration of that period consistent with § 226.55(b)(1)(i), § 226.55(b)(1) permits the card issuer to begin imposing interest charges on transferred balances after one year. Furthermore, if, during the one-year period, a required minimum periodic payment is not received within 60 days of the payment due date, § 226.55(b)(4) permits the card issuer to begin imposing interest charges on transferred balances (after providing a notice consistent with § 226.9(g) and § 226.55(b)(4)(i)). However, if a required minimum periodic payment is not more than 60 days delinquent or if the consumer otherwise violates the terms or other requirements of the account, § 226.55 does not permit the card issuer to begin imposing interest charges on transferred balances until the expiration of the one-year period.

ii. A card issuer imposes a monthly maintenance fee of $10 but promotes a program under which the fee will be waived or rebated for the six months following account opening. If, prior to account opening, the card issuer discloses the length of the period and the monthly maintenance fee that will be imposed after expiration of that period consistent with § 226.55(b)(1)(i), § 226.55(b)(1) permits the card issuer to begin imposing the monthly maintenance fee six months after account opening. Furthermore, if, during the six-month period, a required minimum periodic payment is not received within 60 days of the payment due date, § 226.55(b)(4) permits the card issuer to begin imposing the monthly maintenance fee (after providing a notice consistent with § 226.9(c) and § 226.55(b)(4)(i)). However, if a required minimum periodic payment is not more than 60 days delinquent or if the consumer otherwise violates the terms or other requirements of the account, § 226.55 does not permit the card issuer to begin imposing the monthly maintenance fee until the expiration of the six-month period.

2. *Promotion of waiver or rebate.* For purposes of § 226.55(e), a card issuer promotes a waiver or rebate if the card issuer discloses the waiver or rebate in an advertisement (as defined in § 226.2(a)(2)). See comment 2(a)(2)–1. In addition, a card issuer promotes a waiver or rebate for purposes of § 226.55(e) if the card issuer discloses the waiver or rebate in communications regarding existing accounts (such as communications regarding a promotion that encourages additional or different uses of an existing account), unless the communication relates to an inquiry or dispute about a specific charge or occurs after the card issuer has waived or rebated the interest, fees, or other charges.

i. The following are examples of circumstances in which a card issuer is

promoting a waiver or rebate for purposes of § 226.55(e):

A. A card issuer discloses the waiver or rebate in a newspaper, magazine, leaflet, promotional flyer, catalog, sign, or point-of-sale display.

B. A card issuer discloses the waiver or rebate on radio or television or through electronic advertisements (such as on the Internet).

C. A card issuer discloses a waiver or rebate to individual consumers, such as by telephone, letter, or electronic communication, through direct mail literature, or on or with account statements. To the extent that a card issuer provides such disclosures to its current accountholders, the issuer is promoting a waiver or rebate for purposes of § 226.55(e) if the disclosure is provided before the issuer has waived or rebated the interest, fees, or other charges subject to § 226.55 (unless the disclosure relates to an inquiry or dispute about a specific charge).

ii. The following are examples of circumstances in which a card issuer is not promoting a waiver or rebate for purposes of § 226.55(e):

A. After a card issuer has waived or rebated interest, fees, or other charges subject to § 226.55 with respect to an account, the issuer discloses the waiver or rebate to the accountholder on the periodic statement or by telephone, letter, or electronic communication. However, if the card issuer also discloses prospective waivers or rebates in the same communication, the issuer is promoting a waiver or rebate for purposes of § 226.55(e).

B. A card issuer communicates with a consumer about a waiver or rebate of interest, fees, or other charges subject to § 226.55 in relation to an inquiry or dispute about a specific charge, including a dispute under § 226.12 or § 226.13.

C. A card issuer waives or rebates interest, fees, or other charges subject to § 226.55 in order to comply with a legal requirement (such as the limitations in § 226.52(a)).

D. A card issuer discloses a grace period consistent with § 226.5a, § 226.6, or § 226.7.

E. A card issuer provides an undisclosed period after the payment due date during which interest, fees, or other charges subject to § 226.55 are waived or rebated even if a payment has not been received.

F. A card issuer provides benefits (such as rewards points or cash back on purchases or finance charges) that can be applied to the account as credits, provided that the benefits are not promoted as reducing interest, fees, or other charges subject to § 226.55.

3. *Relationship of § 226.55(e) to grace period.* Section 226.55(e) does not apply to the waiver of finance charges due to a periodic rate consistent with a grace period, as defined in § 226.5(b)(2)(ii)(*3*).◄

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Section 226.58—Internet Posting of Credit Card Agreements

58(b) Definitions.

58(b)(1) Agreement.

1. *Inclusion of pricing information.* For purposes of this section, a credit card agreement is deemed to include certain information, such as annual percentage rates and fees, even if the issuer does not otherwise include this information in the basic credit contract. This information is listed under the defined term "pricing information" in [§ 226.58(b)(6)]►§ 226.58(b)(7)◄. For example, the basic credit contract may not specify rates, fees and other information that constitutes pricing information as defined in [§ 226.58(b)(6)]►§ 226.58(b)(7)◄; instead, such information may be provided to the cardholder in a separate document sent along with the card. However, this information nevertheless constitutes part of the agreement for purposes of § 226.58.

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58(b)(2) Amends.

1. *Substantive changes.* A change to an agreement is substantive, and therefore is deemed an amendment of the agreement, if it alters the rights or obligations of the parties. Section 226.58(b)(2) provides that any change in the pricing information, as defined in [§ 226.58(b)(6)]►§ 226.58(b)(7)◄, is deemed to be substantive. Examples of other changes that generally would be considered substantive include: (i) Addition or deletion of a provision giving the issuer or consumer a right under the agreement, such as a clause that allows an issuer to unilaterally change the terms of an agreement; (ii) addition or deletion of a provision giving the issuer or consumer an obligation under the agreement, such as a clause requiring the consumer to pay an additional fee; (iii) changes that may affect the cost of credit to the consumer, such as changes in a provision describing how the minimum payment will be calculated; (iv) changes that may affect how the terms of the agreement are construed or applied, such as changes in a choice-of-law provision; and (v) changes that may affect the parties to whom the agreement may apply, such as provisions regarding authorized users or assignment of the agreement.

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►*58(b)(4) Card issuer.*

1. *Card issuer clarified.* Section 226.58(b)(4) provides that, for purposes of § 226.58, card issuer or issuer means the entity to which a consumer is legally obligated, or would be legally obligated, under the terms of a credit card agreement. For example, Bank X and Bank Y work together to issue credit cards. A consumer that obtains a credit card issued pursuant to this arrangement between Bank X and Bank Y is subject to an agreement that states "This is an agreement between you, the consumer, and Bank X that governs the terms of your Bank Y Credit Card." The card issuer in this example is Bank X, because the agreement creates a legally enforceable obligation between the consumer and Bank X. Bank X is the issuer even if the consumer applied for the card through a link on Bank Y's Web site and the cards prominently feature the Bank Y logo on the front of the card. ◄

[*58(b)(4)*]►*58(b)(5)*◄ *Offers.*

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[*58(b)(5)*]►*58(b)(6)*◄ *Open account.*

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[58(b)(7)]►58(b)(8)◄ Private label credit card account and private label credit card plan.

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2. *Co-branded credit cards.* The term private label credit card account does not include accounts with so-called co-branded credit cards. Credit cards that display the name, mark, or logo of a merchant or affiliated group of merchants as well as the mark, logo, or brand of payment network are generally referred to as co-branded cards. While these credit cards may display the brand of the merchant or affiliated group of merchants as the dominant brand on the card, such credit cards are usable at any merchant that participates in the payment network. Because these credit cards can be used at multiple unaffiliated merchants, accounts with such credit cards are not considered private label credit card accounts under [§ 226.58(b)(7)]►§ 226.58(b)(8)◄.

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4. *Private label credit card plan.* Which credit card accounts issued by a particular issuer constitute a private label credit card plan is determined by where the credit cards can be used. All of the private label credit card accounts issued by a particular card issuer with credit cards usable at the same merchant or affiliated group of merchants constitute a single private label credit card plan, regardless of whether the rates, fees, or other terms applicable to the individual credit card accounts differ. For example, a card issuer has 3,000 open private label credit card accounts with credit cards usable only at Merchant A and 5,000 open private label credit card accounts with credit cards usable only at Merchant B and its affiliates. The card issuer has two separate private label credit card plans, as defined by [§ 226.58(b)(7)]►§ 226.58(b)(8)◄—one plan consisting of 3,000 open accounts with credit cards usable only at Merchant A and another plan consisting of 5,000 open accounts with credit cards usable only at Merchant B and its affiliates.

The example above remains the same regardless of whether (or the extent to which) the terms applicable to the individual open accounts differ. For example, assume that, with respect to the card issuer's 3,000 open accounts with credit cards usable only at Merchant A in the example above, 1,000 of the open accounts have a purchase APR of 12 percent, 1,000 of the open accounts have a purchase APR of 15 percent, and 1,000 of the open accounts have a purchase APR of 18 percent. All of the 5,000 open accounts with credit cards usable only at Merchant B and Merchant B's affiliates have the same 15 percent purchase APR. The card issuer still has only two separate private label credit card plans, as defined by [§ 226.58(b)(7)]►§ 226.58(b)(8)◄. The open accounts with credit cards usable only at Merchant A do not constitute three separate private label credit card plans under [§ 226.58(b)(7)]►§ 226.58(b)(8)◄, even though the accounts are subject to different terms.

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58(c) Submission of agreements to Board.

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58(c)(3) Amended agreements.

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2. *Submission of amended agreements.* ►If a card issuer amends a credit card agreement previously submitted to the Board, § 226.58(c)(3) requires the card issuer to submit the entire amended agreement to the Board. The issuer must submit the amended agreement to the Board by the first quarterly submission deadline after the last day of the calendar quarter in which the change became effective. However, the issuer is required to submit the amended agreement to the Board only if the issuer offered the amended agreement to the public as of the last business day of the calendar quarter in which the change became effective. For example, a card issuer submits an agreement to the Board on October 31. On November 15, the issuer changes the balance computation method used under the agreement. Because an element of the pricing information has changed, the agreement has been amended for purposes of § 226.58(c)(3). On December 31, the last business day of the calendar quarter in which the change in the balance computation method became effective, the issuer still offers the agreement to the public as amended on November 15. The issuer must submit the entire amended agreement to the Board no later than January 31.◄ [If a card issuer amends a credit card agreement previously submitted to the Board, § 226.58(c)(3) requires the card issuer to submit the entire amended agreement to the Board by the first quarterly submission deadline after the last day of the calendar quarter in which the change became effective. For example, a card issuer submits an agreement to the Board on October 31. On November 15, the issuer changes the balance computation method used under the agreement. Because an element of the pricing information has changed, the agreement has been amended and the card issuer must submit the entire amended agreement to the Board no later than January 31.]

►3. *Agreements amended but no longer offered to the public.* A card issuer should submit an amended agreement to the Board under § 226.58(c)(3) only if the issuer offered the amended agreement to the public as of the last business day of the calendar quarter in which the amendment became effective. Agreements that are not offered to the public as of the last day of the calendar quarter should not be submitted to the Board. For example, on December 31 a card issuer offers two agreements, Agreement A and Agreement B. The issuer submits these agreements to the Board by January 31 as required by § 226.58. On February 15, the issuer amends both Agreement A and Agreement B. On February 28, the issuer stops offering Agreement A to the public. On March 15, the issuer amends Agreement B a second time. As a result, on March 31, the last business day of the calendar quarter, the issuer offers to the public one agreement—Agreement B as amended on March 15. By the April 30 quarterly submission deadline, the issuer must: (1) Notify the Board that it is withdrawing Agreement A because Agreement A is no longer offered to the public; and (2) submit to the Board Agreement B as amended on March 15. The issuer should not submit to the Board either Agreement A as amended on February 15 or the earlier version of Agreement B (as amended on February 15), as neither was offered to the public on March 31, the last business day of the calendar quarter.◄

[3.]►4.◄ *Change-in-terms notices not permissible.* * * *

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58(e) Agreements for all open accounts.

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3. *Issuers without interactive Web sites.* Section 226.58(e)(2) provides that a card issuer that does not maintain a Web site from which cardholders can access specific information about their individual accounts is not required to provide a cardholder with the ability to request a copy of the agreement by using the card issuer's Web site. A card issuer without a Web site of any kind could comply by disclosing the telephone number on each periodic statement; a card issuer with a non-interactive Web site could comply in the same way, or alternatively could comply by displaying the telephone number on the card issuer's Web site. ►An issuer is considered to maintain an interactive Web site for purposes of the § 226.58(e)(2) special rule if the issuer provide cardholders with access to specific information about their individual accounts, such as balance information or copies of statements, through a third-party interactive Web site. Such a Web site is deemed to be maintained by the issuer for purposes of § 226.58(e)(2) even where, for example, an unaffiliated entity designs the Web site and owns and maintains the information technology infrastructure that supports the Web site, cardholders with credit cards from multiple issuers can access individual account information through the same Web site, and the Web site is not labeled, branded, or otherwise held out to the public as belonging to the issuer. An issuer that provides cardholders with access to specific information about their individual accounts through such a Web site is not permitted to comply with the special rule in § 226.58(e)(2). Instead, such an issuer must comply with § 226.58(e)(1).◄

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Section 226.59—Reevaluation of Rate Increases

59(a) General rule.

59(a)(1) Evaluation of increased rate.

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►3. *Change in type of rate.* i. *Generally.* A change from a variable rate to a non-variable rate or from a non-variable rate to a variable rate is not a rate increase for purposes of § 226.59, if the rate in effect immediately prior to the change in type of rate is equal to or greater than the rate in effect immediately after the change. For example, a change from a variable rate of 15.99% to a non-variable rate of 15.99% is not a rate increase for purposes of § 226.59 at the time of the change. See § 226.55 for limitations on the permissibility of changing from a non-variable rate to a variable rate.

ii. *Change from non-variable rate to variable rate.* A change from a non-variable to a variable rate constitutes a rate increase for purposes of § 226.59 if the variable rate exceeds the non-variable rate that would have applied if the change in type of rate had not occurred. For example, assume a new credit card account under an open-end (not home-secured) consumer credit plan is opened on January 1 of year 1 and that a non-variable annual percentage rate of 12% applies to all transactions on the account. On January 1 of year 2, upon 45 days' advance notice pursuant to § 226.9(c)(2), the rate on all new transactions is changed to a variable rate that is currently 12% and is determined by adding a margin of 10 percentage points to a publicly-available index not under the card issuer's control. The change from the 12% non-variable rate to the 12% variable rate on January 1 of year 2 is not a rate increase for purposes of § 226.59(a). On April 1 of year 2, the value of the variable rate increases to 12.5%. The increase in the variable rate from 12% to 12.5% is a rate increase for purposes of § 226.59, and the card issuer must begin periodically conducting reviews of the account pursuant to § 226.59.

iii. *Change from variable rate to non-variable rate.* A change from a variable to a non-variable rate constitutes a rate increase for purposes of § 226.59 if the non-variable rate exceeds the variable rate that would have applied if the change in type of rate had not occurred. For example, assume a new credit card account under an open-end (not home-secured) consumer credit plan is opened on January 1 of year 1 and that a variable annual percentage rate that is currently 15% and is determined by adding a margin of 10 percentage points to a publicly-available index not under the card issuer's control applies to all transactions on the account. On January 1 of year 2, upon 45 days' advance notice pursuant to § 226.9(c)(2), the rate on all existing balances and new transactions is changed to a non-variable rate that is currently 15%. The change from the 15% variable rate to the 15% non-variable rate on January 1 of year 2 is not a rate increase for purposes of § 226.59(a). On April 1 of year 2, the value of the variable rate that would have applied to the account decreases to 12.5%. Accordingly, on April 1 of year 2, the non-variable rate of 15% exceeds the 12.5% variable rate that would have applied but for the change in type of rate. At this time, the change to the non-variable rate of 15% constitutes a rate increase for purposes of § 226.59, and the card issuer must begin periodically conducting reviews of the account pursuant to § 226.59.◄

[3.] ►4.◄ *Rate increases prior to effective date of rule.* For increases in annual percentage rates made on or after January 1, 2009 and prior to August 22, 2010, § 226.59(a) requires the card issuer to review the factors described in § 226.59(d) and reduce the rate, as appropriate, if the rate increase is of a type for which 45 days' advance notice would currently be required under § 226.9(c)(2) or (g). For example, 45 days' notice is not required under § 226.9(c)(2) if the rate increase results from the increase in the index by which a properly-disclosed variable rate is determined in accordance with § 226.9(c)(2)(v)(C) or if the increase occurs upon expiration of a specified period of time

and disclosures complying with § 226.9(c)(2)(v)(B) have been provided. The requirements of § 226.59 do not apply to such rate increases.

[4.] ►5.◄ *Amount of rate decrease.* Even in circumstances where a rate reduction is required, § 226.59 does not require that a card issuer decrease the rate that applies to a credit card account to the rate that was in effect prior to the rate increase subject to § 226.59(a). The amount of the rate decrease that is required must be determined based upon the card issuer's reasonable policies and procedures under § 226.59(b) for consideration of factors described in § 226.59(a) and (d). For example, assume a consumer's rate on new purchases is increased from a variable rate of 15.99% to a variable rate of 23.99% based on the consumer's making a required minimum periodic payment five days late. The consumer makes all of the payments required on the account on time for the six months following the rate increase. Assume that the card issuer evaluates the account by reviewing the factors on which the increase in an annual percentage rate was originally based, in accordance with § 226.59(d)(1)(i). The card issuer is not required to decrease the consumer's rate to the 15.99% that applied prior to the rate increase. However, the card issuer's policies and procedures for performing the review required by § 226.59(a) must be reasonable, as required by § 226.59(b), and must take into account any reduction in the consumer's credit risk based upon the consumer's timely payments.

* * * * *

59(d) Factors.

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►6. *Multiple rate increases between January 1, 2009 and February 21, 2010.* i. *General.* Section 226.59(d)(2) applies if an issuer increased the rate applicable to a credit card account under an open-end (not home-secured) consumer credit plan between January 1, 2009 and February 21, 2010, and the increase was not based solely upon factors specific to the consumer. In some cases, a credit card account may have been subject to multiple rate increases during the period from January 1, 2009 to February 21, 2010. Some such rate increases may have been based solely upon factors specific to the consumer, while others may have been based on factors not specific to the consumer, such as the issuer's cost of funds or market conditions. In such circumstances, when conducting the first two reviews required under § 226.59, the card issuer may separately review: (A) Rate increases imposed based on factors not specific to the consumer, using the factors described in § 226.59(d)(1)(ii) (as required by § 226.59(d)(2)); and (B) rate increases imposed based on consumer-specific factors, using the factors described in § 226.59(d)(1)(i). If the review of factors described in § 226.59(d)(1)(i) indicates that it is appropriate to continue to apply a penalty rate to the account as a result of the consumer's payment history or other behavior on the account, § 226.59 permits the card issuer to continue to impose the penalty rate, even if the review of the factors described in § 226.59(d)(1)(ii) would otherwise require a rate decrease.

ii. *Example.* Assume a credit card account was subject to a rate of 15% on all transactions as of January 1, 2009. On May 1, 2009, the issuer increased the rate on existing balances and new transactions to 18%, based upon market conditions or other factors not specific to the consumer or the consumer's account. Subsequently, on September 1, 2009, based on a payment that was received five days after the due date, the issuer increased the applicable rate on existing balances and new transactions from 18% to a penalty rate of 25%. When conducting the first review required under § 226.59, the card issuer reviews the rate increase from 15% to 18% using the factors described in § 226.59(d)(1)(ii) (as required by § 226.59(d)(2)), and separately but concurrently reviews the rate increase from 18% to 25% using the factors described in paragraph § 226.59(d)(1)(i). The review of the rate increase from 15% to 18% based upon the factors described in § 226.59(d)(1)(ii) indicates that a similarly situated new consumer would receive a rate of 17%. The review of the rate increase from 18% to 25% based upon the factors described in § 226.59(d)(1)(i) indicates that it is appropriate to continue to apply the 25% penalty rate based upon the consumer's late payment. Section 226.59 permits the rate on the account to remain at 25%.◄

* * * * *

59(f) Termination of obligation to review factors.

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►2. *Example—relationship to § 226.59(a).* Assume that on January 1, 2011, a consumer opens a new credit card account under an open-end (not home-secured) consumer credit plan. The annual percentage rate applicable to purchases is 15%. Upon providing 45 days' advance notice and to the extent permitted under § 226.55, the card issuer increases the rate applicable to new purchases to 18%, effective on September 1, 2012. The card issuer conducts reviews of the increased rate in accordance with § 226.59 on January 1, 2013 and July 1, 2013, based on the factors described in § 226.59(d)(1)(ii). Based on the January 1, 2013 review, the rate applicable to purchases remains at 18%. In the review conducted on July 1, 2013, the card issuer determines that, based on the relevant factors, the rate it would offer on a comparable new account would be 14%. Consistent with § 226.59(f), § 226.59(a) requires that the card issuer reduce the rate on the existing account to the 15% rate that was in effect prior to the September 1, 2012 rate increase.◄

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By order of the Board of Governors of the Federal Reserve System, October 18, 2010.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2010–26515 Filed 11–1–10; 8:45 am]

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Federal Register

Tuesday,
November 2, 2010

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Georgia Pigtoe Mussel, Interrupted Rocksnail, and Rough Hornsnail and Designation of Critical Habitat; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2008–0104; MO 92210–0–0008–B2]

RIN 1018–AU88

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Georgia Pigtoe Mussel, Interrupted Rocksnail, and Rough Hornsnail and Designation of Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), list the Georgia pigtoe mussel (*Pleurobema hanleyianum*), interrupted rocksnail (*Leptoxis foremani*), and rough hornsnail (*Pleurocera foremani*) as endangered under the Endangered Species Act of 1973, as amended (Act). We also designate approximately 258 kilometers (km) (160 miles (mi)) of stream and river channels as critical habitat for the three species, in Cherokee, Clay, Coosa, Elmore, and Shelby Counties, Alabama; Gordon, Floyd, Murray, and Whitfield Counties, Georgia; and Bradley and Polk Counties, Tennessee.

DATES: This rule becomes effective on December 2, 2010.

ADDRESSES: This final rule and final economic analysis are available on the Internet at *http://www.regulations.gov.* Comments and materials received, as well as supporting documentation used in preparing this final rule are available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Jackson Ecological Services Field Office, 6578 Dogwood View Parkway, Suite A, Jackson, MS 39213 (telephone 601–321–1122; facsimile 601–965–4340).

FOR FURTHER INFORMATION CONTACT: Stephen Ricks, Field Supervisor, U.S. Fish and Wildlife Service, Jackson Ecological Services Field Office *(see* **ADDRESSES** section). If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION: This document consists of: (1) A final rule to list as endangered the Georgia pigtoe mussel (*Pleurobema hanleyianum*), interrupted rocksnail (*Leptoxis foremani*), and rough hornsnail (*Pleurocera foremani*); and (2) a final rule to designate critical habitat for each of these three species.

Previous Federal Action

Federal actions for these species prior to June 29, 2009 are outlined in our proposed rule for these actions (74 FR 31113). Publication of the proposed rule opened a 60-day comment period, which closed on August 28, 2009. We reopened the comment period from February 10, 2010, through March 12, 2010, in order to announce the availability of and receive comments on a draft economic analysis (DEA), and to extend the comment period on the proposed listing and designation to accommodate a public hearing (75 FR 6613).

Public Comments

We received comments from the public on the proposed listing action and proposed critical habitat designation, and, in this rule, we respond to these issues in a single comments section. Below, we present the listing analysis first, followed by the analysis for designation of critical habitat.

Background

It is our intent to discuss only those topics directly relevant to the listing and designation of critical habitat for the Georgia pigtoe mussel (*Pleurobema hanleyianum*), interrupted rocksnail (*Leptoxis foremani*), and rough hornsnail (*Pleurocera foremani*). For information on our proposed determination, refer to the proposed rule published in the **Federal Register** on June 29, 2009 (74 FR 31113).

Georgia Pigtoe Mussel

The Georgia pigtoe (*Pleurobema hanleyianum*) is a freshwater mussel in the family Unionidae. It was described in 1852 by Lea as *Unio hanleyianum* from the Coosawattee River in Georgia. The species was placed in the genus *Pleurobema* by Simpson in 1900. The uniqueness of the Georgia pigtoe has been verified both morphologically (Williams *et al.* 2008, p. 533) and genetically (Campbell *et al.* 2008, pp. 719–721).

The shell of the Georgia pigtoe reaches about 50 to 65 millimeters (mm) (2 to 2.5 inches (in)) in length. It is oval to elliptical and somewhat inflated. The posterior ridge is low and evenly rounded, when evident. The anterior end is rounded, while the posterior margin is bluntly pointed below. Dorsal and ventral margins are curved, and the beaks rise slightly above the hinge line. The periostracum (membrane on the surface of the shell) is yellowish-tan to reddish-brown and may have concentric green rings. The beak cavity is shallow, and the shell interior is white to dull bluish-white (Parmalee and Bogan 1998, p. 185; Williams *et al.* 2008, p. 533).

Little is known about the habitat requirements or life history of the Georgia pigtoe; however, it is found in shallow runs and riffles with strong to moderate current and coarse sand-gravel-cobble bottoms. Unionid mussels, such as the Georgia pigtoe, filter-feed on algae, detritus, and bacteria from the water column. The larvae of most unionid mussels are parasitic, requiring a period of encystment on a fish host before they can develop into juvenile mussels. The fish hosts for glochidia (parasitic larvae) of Georgia pigtoe are currently unknown.

The Georgia pigtoe was historically found in large creeks and rivers of the Coosa River drainage of Alabama, Georgia, and Tennessee (Johnson and Evans 2000, p. 106; Williams *et al.,* 2008, p. 534). There are historical reports or museum records of the Georgia pigtoe from Tennessee (Conasauga River in Polk and Bradley Counties), Georgia (Conasauga River in Murray and Whitfield Counties, Chatooga River in Chatooga County, Coosa River in Floyd County, and Etowah River in Floyd County), and Alabama (Coosa River in Cherokee County, Terrapin Creek in Cherokee County, Little Canoe and Shoal Creeks in St. Clair County, Morgan Creek in Shelby County, and Hatchet Creek in Coosa County) (Florida Museum of Natural History Malacology Database (FLMNH) in litt. 2006; Gangloff 2003, p. 45). Based on these historical records, the range of the Georgia pigtoe included more than 480 km (300 mi) of river and stream channels. Additional historical Coosa River tributary records credited to Hurd (1974, p. 64) (for example, Big Wills, Little Wills, Big Canoe, Oothcalooga, Holly Creeks) have been found to be misidentifications of other species (Gangloff in litt. 2006).

In 1990, the Service initiated a status survey and reviewed the molluscan fauna of the Mobile River Basin (Hartfield 1991, p. 1). This led to extensive mollusk surveys and collections throughout the Coosa River drainage (Bogan and Pierson 1993a, pp. 1–27; Hartfield in litt. 1990–2001). At all localities surveyed in the Coosa River drainage, the freshwater mussel fauna had declined from historical levels, and at all but a few localized areas, the fauna proved to be completely eliminated or severely reduced due to a variety of impacts, including point and nonpoint source pollution, and channel modifications such as impoundment.

Following a review of these efforts and observations, the Service reported 14 species of mussels in the genus *Pleurobema,* including the Georgia pigtoe, as presumed extinct, based on their absence from collection records, technical reports, or museum collections for a period of 20 years or more (Hartfield 1994, p. 1).

The Service and others continued to conduct surveys in the Coosa River drainage for mollusks (Hartfield in litt. 2004; Williams and Hughes 1998, pp. 2–6; Johnson and Evans 2000, p. 106; Herod *et al.* 2001, pp. i–ii; Gangloff 2003, pp. 11–12; McGregor and Garner 2004, pp. 1–18; Johnson *et al.* 2005, p. 1). Several freshly dead and live individuals of the Georgia pigtoe were collected during these mussel surveys in the Upper Conasauga River, Murray and Whitfield Counties, Georgia (Williams and Hughes 1998, p. 10; Johnson and Evans 2000, p. 106). Gangloff (2003, pp. 11–12, 45) conducted mussel surveys of Coosa River tributaries in Alabama, including all known historical collection sites for the Georgia pigtoe, without relocating the species. McGregor and Garner (2004, p. 8) surveyed the Coosa River dam tailraces for mollusks without encountering the Georgia pigtoe.

The Georgia pigtoe is currently known from a few isolated shoals in the Upper Conasauga River in Murray and Whitfield Counties, Georgia, and in Polk County, Tennessee (Johnson and Evans 2000, p. 106; Evans 2001, pp. 33–34). All recent collection sites occur within a 43-km (27-mi) reach of the river. Within this reach, the Georgia pigtoe is very rare (Johnson and Evans 2000, p. 106), and no population estimates are available.

Interrupted Rocksnail

The interrupted rocksnail (*Leptoxis foremani*) is a small-to-medium-sized freshwater snail that historically occurred in the Coosa River drainage of Alabama and Georgia. The shell grows to approximately 22 mm (1 in) in length and may be ornamented by partial costae (folds in the surface). The shell is subglobose (not quite spherical); thick, dark brown to olive in color; occasionally spotted; and generally covered with fine striae (longitudinal ridges). The spire (apex) of the shell is very low, and the aperture (opening) is large and subrotund (not quite round).

The interrupted rocksnail, a member of the aquatic snail family Pleuroceridae, was described from the Coosa River, Alabama, by Lea in 1843. Goodrich (1922, p. 13) placed the species in the "*Anculosa* (=*Leptoxis*) *picta* (Conrad 1834) group," which also included the Georgia rocksnail (*Leptoxis downei* (Lea 1868)). *L. foremani* was considered to inhabit the Lower Coosa River, with L. *downei* inhabiting the Upper Coosa drainage (Goodrich 1922, pp. 18–19, 21–23). When a rocksnail population was rediscovered surviving in the Oostanaula River, Georgia, in 1997, it was initially identified as *L. downei* (Williams and Hughes 1998, p. 9; Johnson and Evans 2000, pp. 45–46); however, Burch (1989, p. 155) had previously placed *L. downei* within *L. foremani* as an ecological variant. Therefore, *L. downei* is currently considered an upstream phenotype of the interrupted rocksnail, and *L. foremani* is recognized as the valid name for the interrupted rocksnail (Turgeon *et al.* 1998, p. 67; Johnson 2004, p. 116).

Rocksnails live in shoals, riffles, and reefs (bedrock outcrops) of small to large rivers. Their habitats are generally subject to moderate currents during low flows and strong currents during high flows. These snails live attached to bedrocks, boulders, cobbles, and gravel and tend to move little, except in response to changes in water level. They lay their adhesive eggs within the same habitat (Johnson 2004, p. 116). In a hatchery setting, mean clutch size for 2-year-old interrupted rocksnails is around 8.83 (3 to 18 eggs per clutch), and clutch size of females greater than 3 years is 13.63 (2 to 21 eggs per clutch) (Johnson in litt. 2009). Interrupted rocksnails are currently found in shoal habitats with sand-boulder substrate, at water depths less than 50 centimeters (cm) (20 in), and in water currents less than 40 cm/second (sec) (16 in/sec) (Johnson 2004, p. 116). We know little of the life history of pleurocerid snails; however, they generally feed by ingesting periphyton (algae attached to hard surfaces) and biofilm detritus scraped off of the substrate by the snail's radula (a horny band with minute teeth used to pull food into the mouth) (Morales and Ward 2000, p. 1). Interrupted rocksnails have been observed grazing on silt-free gravel, cobble, and boulders (Johnson 2004, p. 116). They have survived as long as 5 years in captivity (Johnson in litt. 2006b).

The interrupted rocksnail was historically found in colonies on reefs and shoals of the Coosa River and several of its tributaries in Alabama and Georgia. The range of the rocksnail formerly encompassed more than 800 km (500 mi) of river and stream channels, including the Coosa River (Coosa, Calhoun, Cherokee, Elmore, Etowah, Shelby, St. Clair, and Talladega Counties), Lower Big Canoe Creek (St. Clair County), and Terrapin Creek (Cherokee County) in Alabama; and the Coosa and Lower Etowah Rivers (Floyd County), the Oostanaula River (Floyd and Gordon Counties), the Coosawattee River (Gordon County), and the Conasauga River (Gordon, Whitfield, and Murray Counties) in Georgia (Goodrich 1922, pp. 19, 21; Johnson 2004, p. 116; FLMNH in litt. 2006).

Snail surveys conducted within the historical range of the interrupted rocksnail (Bogan and Pierson 1993a, pp. 1–27; Williams and Hughes 1998, pp. 1–21) resulted in the collection of only a single live specimen from the Oostanaula River, Floyd County, Georgia, during 1997 (Williams and Hughes 1998, p. 9). Intensive surveys of the Oostanaula, Coosa, Coosawattee, Etowah, and Conasauga Rivers since 1999 have located the species in about 12 km (7.5 mi) of the Oostanaula River upstream of the Gordon and Floyd County line (Johnson and Evans 2000, pp. 45–46; Johnson and Evans 2001, pp. 2, 25). A captive colony was maintained at the Tennessee Aquarium Research Institute (TNARI) from 2000 through 2005 for study and propagation. In coordination with TNARI and the Service, the Alabama Department of Conservation and Natural Resources (ADCNR) developed a plan and strategy to reintroduce interrupted rocksnails from the TNARI colony into the Coosa River above Wetumpka, Elmore County, Alabama (ADCNR 2003, pp. 1–4). In 2003, 2004, and 2005, approximately 3,200, 1,200, and 3,000 juvenile snails, respectively, from the TNARI culture were released into the Lower Coosa River (ADCNR 2004, p. 33; Johnson in litt. 2005a). In 2005, ADCNR established the Alabama Aquatic Biodiversity Center (AABC) at the Marion State Fish Hatchery for the culture of imperiled mollusk species, and the interrupted rocksnail TNARI colony was transferred to that facility.

Following its rediscovery, the interrupted rocksnail population size on shoals in the Oostanaula River declined from a high of 10 to 45 snails per square meter (m^2) (1.2 square yards (yd^2)) in 1999 (Johnson and Evans 2001, p. 22) to only 20 snails found during 6 search-hours in 2004 (Johnson in litt. 2003, 2004). The cause of decline was suspected to be some form of water contamination (Johnson in litt. 2003, 2004; Hartfield in litt. 2006). A July 2006 search for adults to use as hatchery stock failed to locate any rocksnails in more than 2 search-hours (Hartfield in litt. 2006). However, a subsequent search in August 2006 under lower flow conditions resulted in the location of 89 snails in 4 search-hours at one shoal,

and 2 rocksnails in 4 search-hours at another shoal (Johnson in litt. 2007a).

Since their reintroduction into the Lower Coosa River of Alabama, a few of the 2003 hatchery-cultured interrupted rocksnails were observed in the vicinity of the release site in 2004 (Johnson in litt. 2005c). An alternative site was selected for release in August 2005, and 18 snails were located 3 months following release (Pierson in litt. 2005). During a 40-minute search of this release area in 2006, two interrupted rocksnails were found (Johnson in litt. 2007b). Observations of only small numbers of reintroduced snails may be due to habitat size and dispersal, low fecundity of the species, predation, reproductive failure due to dispersal, or habitat disturbance (Johnson in litt. 2005b).

Rough Hornsnail

The rough hornsnail's (*Pleurocera foremani*) shell is elongated, pyramidal, and thick. Growing to about 33 mm (1.3 in.) in length, the shell has as many as nine yellowish-brown whorls. The aperture is elongated, angular, channeled at the base, and usually white inside. The presence of a double row of prominent nodules or tubercles on the lower whorls above the aperture is the most distinctive feature that separates it from other hornsnails (Tryon 1873, p. 53). These tubercles, along with the size and shape of the shell, distinguish the species from all other pleurocerid snails (*Elimia* spp., *Leptoxis* spp., *Pleurocera* spp.) in the Mobile River Basin. In a hatchery setting, however, the distinctive double row of tubercules do not appear until the second year of life (5 to 7 mm shell width) (Johnson in litt. 2009).

The rough hornsnail is a member of the aquatic snail family of Pleuroceridae. The species was described in 1843 by Lea as *Melania foremanii* (=*foremani*) (Tryon 1873, p. 52). It was later placed in the genus *Pleurocera* by Tryon (1873, p. 52), who noted that *P. foremani* closely resembled species of that genus. Goodrich (1935, p. 3) reported a variation of a species of *Pleurocera* in the Cahaba River that resembled *foremani,* but later identified that variant as a "mutation" or form of brook hornsnail (*P. vestitum*) (Goodrich 1941, p. 12). This variant, however, is no longer extant in the Cahaba River (Bogan and Pierson 1993b, p. 12; Sides 2005, pp. 21–22, 28). Goodrich (1944, p. 43) considered that the Coosa River *P. foremani* might also be eventually found to be simply a variant of smooth hornsnail (*P. prasinatum*), another more widely distributed species in the Coosa River.

In a recent dissertation on the systematics of the Mobile River Basin *Pleurocera,* the rough hornsnail was found to be both morphologically and genetically distinct from other species in the genus (Sides 2005, pp. 26, 127). This analysis also found that the rough hornsnail was genetically more closely allied to a co-occurring species in the genus *Elimia,* and concluded that it should be recognized as *Elimia foremani* (Sides 2005, pp. 26–27). Although the Sides (2005, pp. 26–27) study provides some evidence that this species should be placed in the genus *Elimia,* this taxonomic change has not been formally peer-reviewed and published. Therefore, for the purposes of this action, we will continue to use currently recognized nomenclature for the rough hornsnail (*Pleurocera foremani*).

Rough hornsnails are primarily found on gravel, cobble, bedrock, and mud in moderate currents. They have been collected at depths of 1 m (3.3 ft) to 3 m (9.8 ft) (Hartfield 2004, p. 132). The species appears to tolerate low-to-moderate levels of silt deposition (Sides 2005, p. 127). Little is known regarding the life-history characteristics of this species. Snails in the genus *Pleurocera* generally lay their eggs in a spiral arrangement on smooth surfaces (Sides 2005, pp. 26–27), whereas *Elimia* snails generally lay eggs in short strings (P. Johnson pers. comm. 2006). Although some attempts to induce rough hornsnails to lay eggs in captivity have been unsuccessful (Sides 2005, p. 27), others have observed females laying eggs individually or in short "strips" (3 to 10 eggs) during late April into July (Johnson in litt. 2009). Cultured rough hornsnails have become reproductively active in their second year (Johnson in litt. 2009). Some adult individuals collected from the wild have survived in captivity for 3 years, suggesting a life span of 4 to 5 years (Garner in litt. 2009, Johnson in litt. 2009).

The rough hornsnail is endemic to the Coosa River system in Alabama. Goodrich (1944, p. 43) described the historical range as the Coosa River downstream of the Etowah River and at the mouths of a few tributaries. The Etowah River enters the Coosa River in Floyd County, Georgia; however, there are no known museum or site-specific records of the rough hornsnail that validate its range into the State of Georgia (Johnson in litt. 2006a). Historical museum records of the rough hornsnail in the Coosa River (FLMNH in litt. 2006, and elsewhere) indicate that they occurred from Etowah, St. Clair, Shelby, Talladega, and Elmore Counties, Alabama, a historical range of approximately 322 river km (200 river mi). There are also historical museum records of this species from nine Coosa River tributaries in Alabama, including Big Wills Creek in Etowah County; Kelly, Big Canoe, and Beaver Creeks in St. Clair County; Ohatchee Creek in Calhoun County; Choccolocco and Peckerwood Creeks in Talladega County; Yellowleaf Creek in Shelby County; and Yellow Leaf Creek in Chilton County (FLMNH in litt. 2006).

The rough hornsnail is currently known to occur at two locations: Lower Yellowleaf Creek in Shelby County, Alabama; and the Lower Coosa River below Wetumpka Shoals in Elmore County, Alabama (Sides 2005, p. 40). There are also museum records of the species from Wetumka Shoals in the early 1990s (FLMNH in litt. 2006); however, the species has not been collected from this shoal reach in recent surveys (Johnson 2002, pp. 5–9). Yellowleaf Creek is a moderately sized stream where rough hornsnails were, until recently, only known from about a 50-m (55-yd) length of the stream. At this location, rough hornsnails occur at densities of 8 to 32 per m^2 (1.2 per yd^2) (Pierson in litt. 2006). Following publication of the proposed rule (74 FR 31113, June 29, 2009), an intensive survey of Yellowleaf Creek extended the range of rough hornsnails in this stream to about 1.6 km (1 mi) above and below the previously known site (Powell in litt. 2009). The Lower Coosa River is a large river channel where rough hornsnails have recently been found in two discrete areas (Hartfield pers. obsv. 2001, Crow in litt. 2008). No quantitative estimates have been made at these sites; however, at one site, rough hornsnail numbers were estimated at 300 to 400 individuals (Crow in litt. 2008). Searches of unimpounded reaches of the Coosa River and the lower portions of tributaries to the Coosa River have failed to locate the species elsewhere (Bogan and Pierson 1993a, pp. 1–27; Garner, pers. comm. 2005; Hartfield in litt. 2006). The two known surviving populations are separated by three impoundments and about 113 km (70 mi) of unsuitable, impounded channel habitat.

Summary of Comments and Recommendations

During the open comment periods for the proposed rule (74 FR 31113), draft economic analysis, and public hearing (75 FR 6613), we requested all interested parties submit comments or information concerning the proposed

listing and designation of critical habitat for the three mollusks. We contacted all appropriate State and Federal agencies, county governments, elected officials, scientific organizations, and other interested parties and invited them to comment. We also published newspaper notices inviting public comment in the following newspapers: Cherokee County Herald, Centre, AL; Daily Home, Talladega, AL; The Wetumpka Herald, Wetumpka, AL; Chatsworth Times, Chatsworth, GA; Rome News Tribune, Rome, GA; The Daily Citizen, Dalton, GA; The Calhoun Times, Calhoun, GA; Cleveland Daily Banner, Cleveland, TN; and Polk County News, Benton, TN.

We directly notified and requested comments from all affected States. The State of Alabama provided additional records of one species. None of the States expressed a position on the actions. During the comment periods, we received a total of 16 comments from one State agency, two Federal agencies, eight groups, and three individuals. At the public hearing, we received three oral comments. A transcript of the hearing is available for inspection at the Jackson, Mississippi Ecological Services Field Office (*see* **ADDRESSES** section).

Peer Review

In accordance with our peer review policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we requested the expert opinions of four knowledgeable individuals with expertise on freshwater mollusks, the Mobile River Basin, and conservation biology principles. The purpose of such review is to ensure that the designation is based on scientifically sound data, assumptions, and analyses, including input of appropriate experts and specialists.

We received written responses from three of the peer reviewers. All peer reviewers stated that the proposal included a thorough and accurate review of the available scientific and commercial data on these mollusks and their habitats. One peer reviewer provided additional details and minor corrections on the shell descriptions of the interrupted rocksnail and rough hornsnail. Two reviewers provided information on clutch size and life span of rough hornsnail. One reviewer noted the collection of rough hornsnail on mud bottoms, and recommended including this in the discussion of the physical and biological features that are essential to the conservation of that species (primary constituent elements (PCEs)). This information provided by the reviewers has been incorporated into the appropriate sections of this final rule. One peer reviewer suggested additional stream reaches that could be designated as critical habitat for each of the three species. These suggestions are discussed below.

We reviewed all comments received for substantive issues and new data regarding the three mollusks, their critical habitats, and the draft economic analysis. Written comments and oral statements presented at the public hearing and received during the comment periods are addressed in the following summary. For readers' convenience, we have combined similar comments into single comments and responses.

Peer Reviewer Comments

(1) Comment: The Georgia pigtoe survives in only 3 to 5 miles (4.8 to 8 kilometers) of the Conasauga River, and has been extirpated from more than 99.9 percent of its historic range.

Our response: Over the past 20 years, the Georgia pigtoe has been collected from two localized collection sites on the Conasauga River, one at each extreme of a 43-km (27-mi) reach of the river. We have considered this entire reach as occupied because of the similarity of habitat within this reach, and the potential of the species to occur within any portion of the reach.

(2) Comment: Big Canoe, Choccolocco, and Weogufka Creeks should be designated as critical habitat for Georgia pigtoe.

Our response: While Big Canoe, Choccolocco, and Weogufka Creeks are within the geographical range of the Georgia pigtoe and appear to be suitable for the species, we are unaware of any verified historical records of the species from these three tributaries. Although we have not included these areas as critical habitat in this final rule, they are within the geographical range of the species and may prove to be important in the future to the conservation of the species.

(3) Comment: Choccolocco, Hatchet, and Terrapin Creeks should be designated as critical habitat for the interrupted rocksnail.

Our response: Choccolocco, Hatchet, and Terrapin Creeks are within the geographical area historically occupied by the interrupted rocksnail. Most museum specimens and historical records of interrupted rocksnail were from the mainstem Coosa River and larger tributaries (Oostanaula, Coosawhattee, Conasauga, and Etowah Rivers), and we were able to document records of interrupted rocksnail from the lower reach of Terrapin Creek. It is also likely that some populations extended into the lower reaches of some other tributaries. However, this species requires moderate to high stream flow, and the lower reaches of Choccolocco and Hatchet Creeks have little flow, due to embayment by Coosa River reservoirs. As a result, we did not include these areas as critical habitat in this final rule. Lower Terrapin Creek continues to experience natural flow, and will be available to colonization if the species is successfully reintroduced into Unit IR 1.

(4) Comment: Recent sampling has extended the range of the rough hornsnail in Yellowleaf Creek.

Our response: Following publication of the proposed rule and closure of the first comment period, a snail survey of lower Yellowleaf Creek was conducted by biologists from the Service, ADCNR, and Alabama Power Company. The rough hornsnail was found at several sites within the upper and lower limits of the proposed critical habitat. The information that the rough hornsnail currently inhabits all of the area within Unit RH 2, Yellowleaf Creek, has been incorporated into the Background and Critical Habitat sections of this final rule.

(5) Comment: Choccolocco Creek, Kelly Creek, and the Coosa River below Logan Martin Dam in the vicinity of the confluence of Kelly Creek should be included as critical habitat for the rough hornsnail.

Our response: We identified two areas with greatest conservation potential for the rough hornsnail, Lower Coosa River (Unit IR 1) and Yellowleaf Creek (Unit IR 2), as both of these units contain unoccupied habitat adjacent to occupied areas, with the potential of natural dispersal and recolonization. Lower Choccolocco Creek was considered to have minimal conservation potential for the species at this time because it is embayed by Logan Martin Lake, and is on the Alabama 303(d) list of impaired waters. Kelly Creek, and the short associated reach of the Coosa River, is remote from currently occupied areas. Although this area was not included in the critical habitat designation for rough hornsnail, it may become important for the conservation of the species at some point in the future.

Comments from States

(6) Comment: There are records of Georgia pigtoe from Kelly, Big Canoe, and Choccolocco Creeks that were not acknowledged in the historical distribution.

Our response: It is probable that any large Coosa River tributary may have supported historical populations of the Georgia pigtoe at some time in the past. We have relied on published records and museum specimens to confirm the species' historical presence for purposes

of this critical habitat designation. Some historical Coosa River tributary records, however, have been found to be misidentifications of other closely related species, and we were unable to document any historical records of Georgia pigtoe from Kelly, Big Canoe, and Choccolocco Creeks.

Public Comments

(7) Comment: The conclusions supporting the proposed designation of the critical habitat units are not supported by data or sound science. The Act requires the Service to refrain from designating critical habitat when the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat (citing *Cape Hatteras Access Preserv. Alliance* v. *U.S. Dept. Int.,* 344 F. Supp. 2nd 108, 123 (D.D.C. 2004)).

Our response: We determined that, based on the best available scientific and commercial data, sufficient information is available to identify physical and biological features essential to the conservation of the species and specific areas that meet the definition of critical habitat (*see* Primary Constituent Elements (PCEs) section).

In the case cited by the commenter, the Service had not identified any features essential to the conservation of the species (primary constituent elements (PCEs)) within some portions of a broad critical habitat designation for piping plover, but argued that designation was proper because PCEs would likely be found in the future. The court found that this was "beyond the pale of the [Act]." In contrast, in both the proposed and this final rule, we identified PCEs within the designated habitat (*see* Criteria Used To Identify Critical Habitat, and Critical Habitat Designation sections). Therefore, we have complied with the requirements of the Act.

(8) Comment: The Service exceeded the statutory basis for proposing to designate Units GP2 and IR1 as unoccupied critical habitat by including the potential for minimum flows as baseline criteria for the establishment of the units. The Act does not provide for special management or operational considerations for proposed units that are presently unoccupied by target species (citing *Cape Hatteras Access Preserv. Alliance* v. *U.S. Dept. Int.,* 344 F. Supp. 2nd 108, 123 (D.D.C. 2004)).

Our response: In the case cited by the commenter, the Service included areas that clearly did not contain PCEs within a broad critical habitat designation for piping plover. The Court determined that the Service must show that PCEs, which may in the future require special consideration or management, are found on the areas it designated as critical habitat.

In this designation, when considering areas as critical habitat, we assessed whether the areas contained features that are essential to the conservation of the species (PCEs) and whether those features may require special management considerations or protections. The presence of one or more PCE was documented (*see* Critical Habitat Designation section) in all of the stream reaches designated as unoccupied critical habitat for the Georgia pigtoe, interrupted rocksnail, and rough hornsnail. We use the language "* * * one or more * * *" in recognition that all areas essential to the conservation of a species may not contain all PCEs, based on the biology of the species. For example, a species may require one area for feeding and growing, another for reproduction or roosting, and still other areas for passage between feeding and growing areas. So while all areas may not contain the same constituent elements, they may be important at some life stage or during some time of the year and collectively they are essential to the conservation of the species.

Unit GP 2 for the Georgia pigtoe includes the lower reach of Terrapin Creek, downstream to its confluence with the Coosa River, and the Coosa River from Weiss Dam downstream to a point below the confluence of Terrapin Creek in Cherokee County, Alabama (*see* Critical Habitat Designation, Unit GP 2, below). All five PCEs identified for Georgia pigtoe are present in Terrapin Creek and in the Coosa River portion of Unit GP 2 below the confluence of Terrapin Creek. Unit IR 1 for the interrupted rocksnail includes the Coosa River channel between Weiss Dam to a point below the confluence of Terrapin Creek (*see* Critical Habitat Designation, Unit IR 1, below). All four PCEs identified for the interrupted rocksnail are present in the Coosa River portion of the Unit below Terrapin Creek. Two of the five PCEs for Georgia pigtoe, and two of the four PCEs for interrupted rocksnail, are currently present in the Coosa River portion of the units between Weiss Dam and the confluence of Terrapin Creek. Minimum flows are projected to be released from Weiss Dam as part of a Federal Energy Regulatory Commission relicensing agreement in the near future that will restore the remaining PCEs for both of these species in this portion of the reach, but that was not the sole basis for this designation.

(9) Comment: It is unreasonable to designate unoccupied areas adjacent to current populations as critical habitat in light of the Service's lack of knowledge of specific habitat requirements.

Our response: All recent records of the Georgia pigtoe, interrupted rocksnail, and rough hornsnail are extremely localized. Because rare aquatic snails and mussels can be difficult to locate, where more than one occurrence record of a particular species was found within a stream reach, we considered the entire reach between the uppermost and lowermost locations as occupied habitat. We then considered the adequacy of occupied habitat for conservation of the species, and determined that designating only occupied habitat would not be sufficient to conserve each of these species (*see* Criteria Used To Identify Critical Habitat section). For identification of unoccupied areas essential to the conservation of the species, we established six criteria for their consideration (*see Stream Reaches Not Currently Occupied* section), including the presence of PCEs. One of these criteria prioritized stream reaches adjacent to currently occupied areas. These reaches are similar in stream size, geology, and water quality to adjacent occupied areas, and we believe that it is reasonable and cost effective to protect areas available for natural dispersal and reoccupation.

(10) Comment: Critical habitat designation of currently uninhabited areas remote from occupied areas (Units GP 2, GP 3, IR 1, IR 3) is not supported by the record, and would be arbitrary and capricious because there is no analysis, data, or discussion whether released, captive-bred stock can become self-sustaining.

Our response: Many endangered aquatic mollusks are so rare that relocations are not an option (National Native Mussel Conservation Committee 1997, p. 8). However, freshwater mussels, including endangered and threatened species, have been relocated with some success from areas of disturbance into new habitats (Cope and Waller 1995, p. 147; U.S. Fish and Wildlife Service 2004, p. 4). Attempts to relocate imperiled mollusks from areas of natural abundance into historical habitats have also been successful (*e.g.,* Ahlstedt 1991, p. 141). Aquatic mollusk hatchery husbandry is a relatively new science. However, much progress has been made over the past 2 decades and hatchery propagation of aquatic mollusks is now a viable conservation tool (*e.g.,* Freshwater Mollusk Conservation Society 2006, p. 1–13). Reintroduction with hatchery propagules is recognized as a primary recovery task for rare aquatic species in the Mobile River Basin Aquatic

Ecosystem Recovery Plan (U.S. Fish and Wildlife Service 2000, p. 30). As noted in the Background, above, the interrupted rocksnail has been successfully propagated and produced in sufficient numbers for limited releases. Another closely related snail, the plicate rocksnail, has been propagated, and attempts to reintroduce the species into historical habitat in Alabama have shown success in terms of survival and natural recruitment in the reintroduced population (Johnson in litt. 2008). The available information indicates that the Georgia pigtoe and interrupted rocksnail cannot be conserved without extending the species' range into historically occupied areas (*see* Criteria Used To Identify Critical Habitat section). Reintroduction using hatchery reared offspring is currently the only option to achieve this conservation benchmark.

(11) Comment: The Act and its application in designating critical habitat is unconstitutional in light of the clear limitations on the use of Federal power in the property clause of the Constitution's Fifth Amendment ("* * * private property [shall not] be taken for public use, without just compensation").

Our response: The designation of critical habitat, in and of itself, has no legal effect on property rights or constitute a physical or regulatory "taking" of real estate property. Critical habitat does not preclude property use; rather, it only affects Federal authorization or funding of projects that may adversely modify critical habitat. In the event such a finding is made in a section 7 consultation with the Federal funding or authorizing agency, the Service is required to identify reasonable and prudent project alternatives. Exemption procedures under the Act provide sufficient opportunity to accomplish the Service's statutory mandates without precluding compatible use of private property. Therefore, critical habitat designation, by itself, does not affect a taking of private property.

(12) Comment: FWS should conduct an analysis under the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) prior to listing and designating critical habitat.

Our response: Environmental assessments and environmental impact statements, as defined under NEPA, are not required for regulations enacted under section 4 of the Act (*see* 48 FR 49244, October 25, 1983). The FWS has determined that, outside of the jurisdiction of the United States Court of Appeals for the Tenth Circuit, a NEPA analysis is not required for critical habitat designation.

(13) Comment: Interrupted rocksnails in Alabama (Unit IR 3) that are covered by the proposal are not wild, naturally occurring species. The reintroduced colony is not reproducing and is not viable.

Our response: Any interrupted rocksnails currently surviving in Unit IR 3 are surviving individuals from releases made by ADCNR in 2003 through 2005, or their offspring. While there is currently no evidence that natural recruitment of rocksnails has occurred on the shoal since the release, we are unable to confirm their extirpation from the site. Including this single shoal in the designation alerts Federal action agencies to the species' potential presence.

(14) Comment: The determination that reintroduction of interrupted rocksnail into Units IR 1 and IR 3 is essential to its conservation is not supported by the record and is arbitrary and capricious.

Our response: Under the Summary of Factors Affecting the Species section, below, we note that the surviving populations of each species are small, extremely localized, isolated, and vulnerable to habitat modification, toxic spills, progressive degradation from land surface runoff, and catastrophic changes to their habitats from flood scour and drought. Under the Criteria Used To Identify Critical Habitat section, we discuss areas currently occupied by the species, the species' limited extent, their vulnerability to random events, and the inability of these species to naturally recolonize historically occupied areas that might now support them. This information was used to determine that the designation of unoccupied critical habitat is essential to the conservation of the species. Also under the Criteria Used To Identify Critical Habitat section, we discuss our process for assessing the potential of historically occupied stream reaches as unoccupied critical habitat, the criteria we used to determine if they were essential to the conservation of the species, and the PCEs currently present in each stream reach considered for designation as critical habitat. Our reasons for designating Units IR 1 and IR 3 as critical habitat for the interrupted rocksnail are discussed in some detail in the Critical Habitat sections, below. These include the presence of PCEs in both units, the presence of species in both units that are closely related to the interrupted rocksnail and require similar PCEs, improvements in water quality and quantity over the past 2 decades, and the potential of these two stream reaches for reoccupation by the interrupted rocksnail through reintroduction efforts. Based on this analysis, and our review of the best available scientific information, all unoccupied stream reaches included in the critical habitat designations for each of these three species, including Units IR 1 and IR 3, are essential to their conservation. Units IR 1 and IR 3, however, are remote and separated by one (Unit IR 1) or more (Unit IR 3) impoundments from the only surviving population of the interrupted rocksnail in the Oostanaula River. Therefore, conservation of the interrupted rocksnail will require reintroduction of the species into Unit IR 1, and appropriate areas in Unit IR 3.

(15) Comment: Smaller and more protected tributaries should be considered for reintroductions of the interrupted rocksnail.

Our response: While smaller and more protected tributaries are within the historical geographical range of the interrupted rocksnail, and may become important to its conservation, we relied on documented historically occupied areas for the purposes of preparing this critical habitat designation for the reasons discussed above (*see* our response to Comment 6, above).

(16) Comment: There are no rough hornsnails in the habitat proposed to be designated as critical habitat.

Our response: Rough hornsnails were documented from Unit RH 1, Coosa River above the Fall Line during the 1990s (FLMNH in litt. 2006), and have most recently been documented from two locations below the Fall Line (Hartfield in litt. 2001, Crow in litt. 2008). In Unit RH 2, Yellowleaf Creek, rough hornsnails occur throughout the designated reach (*see* Background section).

(17) Comment: The Service appears to be proposing to designate critical habitat on the chance a particular species might move into it at some point in the future. What happens to unoccupied critical habitat if a species does not naturally repopulate the area?

Our response: With appropriate management, we hope to conserve the Georgia pigtoe, interrupted rocksnail, and rough hornsnail within currently occupied areas and promote natural dispersal into unoccupied areas adjacent to occupied reaches. We recognize that there is little chance of natural dispersal of the Georgia pigtoe and interrupted rocksnail into the designated unoccupied areas that are remote from surviving populations due to the presence of multiple dams and large areas of impounded (and thus unsuitable) channels. However, newly

developed information and technology are promising for successful reintroductions of hatchery-reared individuals into these areas.

(18) Comment: What happens to critical habitat if a species becomes definitively extinct?

Our response: The Act requires us to conduct 5-year reviews on the status of listed species. If a species is determined to be extinct, it can be removed from the List of Endangered and Threatened Wildlife through the formal rulemaking process. If a species is removed from the List due to extinction, areas that have been designated as critical habitat for that species will no longer be subject to the section 7 consultation requirements of the Act.

(19) Comment: The Service did not consider whether the reintroduced population of interrupted rocksnail present in Unit IR 3 should be designated as experimental under section 10(j) of the Act. Listing and designating critical habitat for reintroduced species is bad public policy, and is an attempt to circumvent the purposes of section 10(j) of the Act.

Our response: Under section 10(j), the Secretary of the Department of the Interior can designate reintroduced populations established outside the species' current range, but within its historical range, as "experimental." Based on the best available information, we must determine whether an experimental population is "essential" or "nonessential" to the continued existence of the species. Experimental populations that are essential to the continued existence of the species are treated as a threatened species, and the Secretary may promulgate regulations under section 4(d) of the Act. Experimental populations that are not essential to the continued existence of the species are treated as species proposed for listing. Section 10(j)(C)(ii) prohibits designation of critical habitat only for experimental populations that are not essential to the continued existence of the species.

Within this rule, we reviewed the status of the interrupted rocksnail, its historical and current range, the threats affecting the conservation of the species, and the areas available for its conservation. We used this information to identify Unit IR 3 as an area essential for the conservation of the interrupted rocksnail, and we are designating it as critical habitat (*see Unit IR3: Lower Coosa River, Elmore County, Alabama,* below).

(20) Comment: The reintroduction of the interrupted rocksnail into Alabama prior to the proposed listing did not allow for consideration of the Act's reintroduction provisions, or alert the public to the Service's consideration of experimental status.

Our response: As noted in our response to Comment 13, above, the reintroduction of the interrupted rocksnail into the lower Coosa River, Alabama, was a State action conducted under State regulations. The public was notified by the State through a press release and publication of the reintroduction in public media.

(21) Comment: The Service recognizes (in the 2003 draft, Freshwater Mussels and Snails of the Mobile River Basin: Plan for the Controlled Propagation, Augmentation, and Reintroduction) that reintroductions of hatchery mollusk propagules is experimental in nature. Therefore, they should be designated as experimental populations under section 10(j) of the Act.

Our response: The 2003 draft plan for controlled propagation was addressed to scientists, institutions, and agencies contemplating propagation of mollusks as a management strategy. In 2003, mollusk propagation was an emerging science and technology. This was the first propagation plan developed for mollusk species, and sought to alert the intended audience *(i.e.,* scientists and State and Federal agencies contemplating propagation of mollusks) of the need for rigorous documentation and monitoring. The use of the term "experimental" in this document has no direct connection to the term's use under section 10(j) of the Act, where it is a term used to identify reintroduced populations of listed species outside of their geographical range that may receive specific exemptions from section 9 of the Act.

(22) Comment: The lack of experimental population designation for interrupted rocksnails (in IR 3) may cause serious negative impacts to landowners, businesses, and users of the Coosa River, through limiting landowners' ability to manage properties and creating uncertainty for landowners and waterway users.

Our response: Unit IR 3 is occupied by the federally protected tulotoma snail and fine-lined pocketbook, which are currently subject to the section 7 consultation provisions, as well as the section 9 prohibitions, of the Act. Apart from limited hydropower flow modifications to reduce take of tulotoma snail by the Alabama Power Company, we are unaware of any negative impacts to landowners, businesses, or users of this reach of the Coosa River due to the presence of mollusk species currently protected under the Act. It is not anticipated that this listing and the reintroduction of interrupted rocksnails will impair legal activities in the unit by landowners and waterway users.

(23) Comment: The proposed critical habitat designation of unoccupied habitat for the interrupted rocksnail should be withdrawn.

Our response: We are required by section 4(a) of the Act to designate critical habitat at the time a species is listed, and to designate unoccupied areas as critical habitat when we determine that the best available scientific data demonstrate that the designation of that area is essential to the conservation needs of the species (*see* Critical Habitat section). We determined that Unit IR 1 and unoccupied portions of Units IR 2 and IR 3 are essential to the conservation of the interrupted rocksnail (*see* Criteria Used to Identify Critical Habitat section).

(24) Comment: The data in the proposed rule relative to released captive interrupted rocksnails are not consistent with ADCNR records. The proposed rule states that approximately 7,400 interrupted rocksnails were released into the Coosa River by the State of Alabama 2003–2005, while information from ADCNR indicates that 10,476 rocksnails were released during this same period.

Our response: The numbers reported in the proposed rule were a typographical error. Records provided to us by TNARI and the State of Alabama document the release of 7,513 interrupted rocksnails into the Coosa River 2003–2005. We intended to state that approximately 7,500 snails were released. TNARI records indicate around 10,476 snails were produced at its hatchery during 2003–2005. These production numbers may have been erroneously reported as released snails in a presentation by Dr. Paul Johnson (Johnson in litt. 2010).

(25) Comment: The Service should develop a programmatic safe harbor agreement (SHA) to cover future releases of listed aquatic mollusks in Alabama.

Our response: SHAs have been developed as tools to encourage private landowners and entities to implement conservation measures that maintain existing populations, encourage colonization by listed species, or expand existing populations. Programmatic SHAs have been developed to envelop multiple landowners under a single agreement, encouraging cooperative implementation and greatly reducing paperwork. SHAs and programmatic SHAs can be important conservation tools in recovering listed species, particularly in situations where the

cessation of voluntary conservation actions may result in take of listed species, and return their numbers to a pre-agreement baseline. We are willing to enter into SHAs, where appropriate, and where they would result in conservation benefits to the species.

(26) Comment: Due to the lack of specific information on the biology of these species, the U.S. Army Corps of Engineers (Corps) could face operational restrictions (at Carters Reservoir) that have no relation to the conservation of the species.

Our response: Under section 7 of the Act, the Corps will need to consult with us should their activities adversely affect the species or adversely modify their critical habitats. We have broadly defined activities that may destroy or adversely modify critical habitat below (see *Application of the "Adverse Modification" Standard,* below), and will work with the Corps to ensure that the best available information is used when they consult with us. Carters Reservoir is remote from any of the areas designated as critical habitat by this rule. The Coosawattee River below Carters Reservoir was designated as critical habitat for several mussel species in 2004 (*see* 69 FR 40084, July 1, 2004). Our final economic analysis (Industrial Economics, Inc. 2010, pp. 3–6—3–10) found that there would only be incremental administrative costs associated with this listing and critical habitat designation and operations at Carters Reservoir.

(27) Comment: What is the present need for designation of critical habitat and its related administrative costs at a time of severe economic difficulty?

Our response: We are required by the Act to designate critical habitat, when prudent and determinable, at the time of listing. However, our economic analysis identified relatively small incremental costs that will occur due to this critical habitat designation (Industrial Economics, Inc. 2010). Specifically, incremental costs are anticipated to result entirely from the added administrative requirements of forecast section 7 consultations, and are estimated to be approximately $44,000 annually, assuming a 7 percent discount rate. These administrative costs are unlikely to have a significant effect on regional or national economic conditions.

(28) Comment: The Service should avoid interference with barge transportation in the Alabama-Coosa-Tallapoosa (ACT) River system.

Our response: The critical habitat designations in this rule are outside of or peripheral to areas used for barge transportation in the ACT River system. The economic analysis does not anticipate economic effects to barge transportation in the ACT River system as a result of this designation.

(29) Comment: Speculation on future environmental flow releases at Carters Reservoir is pre-decisional, as the Corps' Water Control Manual update is not complete.

Our response: The economic analysis draws on publically available information, as well as insights from professionals involved in water management in the ACT basin, to arrive at reasonable estimates of the future economic impacts of species conservation efforts on hydropower and other water management activities. The final economic analysis includes additional caveats with regard to impacts associated with potential environmental flow releases related to Corps facilities (Industrial Economics, Inc. 2010, pp. 3–6—3–10).

(30) Comment: Critical habitat designation could impact power production, increase costs, and potentially have significant impacts to municipalities and cooperatives that benefit from hydropower.

Our response: The potential effects of this designation on power production were considered in the economic analysis. The economic analysis finds that water managers at four hydroelectric production facilities in the ACT Basin are likely to undertake conservation efforts for listed species that will benefit the three mollusks, at an estimated cost of $8.8 million annually. Specifically, three facilities (Carters, Weiss, Jordan) are expected to modify operations to provide additional flows for the benefit of downstream aquatic species. However, these modifications related to conserving the Georgia pigtoe, interrupted rocksnail, and rough hornsnail are expected to occur absent these critical habitat designations, because the areas affected have been previously designated as critical habitat for, and are occupied by, other listed mollusk species with similar PCEs and habitat needs. Incremental economic impacts resulting from these critical habitat designations are expected to arise from expected administrative requirements of forecast section 7 consultations between Federal regulatory agencies and the Service (see our response to Comment 27, above).

(31) Comment: The listing of the interrupted rocksnail and its critical habitat could have serious negative impacts on landowners, businesses, and users of the Coosa River system because it will require take avoidance and section 7 consultations for an activity that may affect the population or its critical habitat.

Our response: The Act does not require analysis of the costs of designating species as endangered or threatened. The potential economic impacts associated with critical habitat designation for the interrupted rocksnail, as well as costs of protective measures for the species already expected to occur without proposed critical habitat designation, are presented in the economic analysis as baseline costs. Specifically, incremental costs are anticipated to result entirely from the added administrative requirements of forecast section 7 consultations, and are estimated to be approximately $44,000 annually, assuming a 7 percent discount rate. Costs associated with future conservation efforts that may benefit the three mollusks in critical habitat areas are estimated to be $8.97 million to $9.16 million annually, assuming a 7 percent discount rate. Most (96 percent) of baseline costs quantified are conservation efforts related to potential lost hydropower production value at three facilities.

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533), and implementing regulations at 50 CFR part 424, set forth procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a) of the Act, we may list a species on the basis of any of five factors, as follows: (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.

The following analysis examines all five factors currently affecting or that are likely to affect Georgia pigtoe, interrupted rocksnail, and rough hornsnail snail. The five factors listed under section 4(a)(1) of the Act and their application to the Georgia pigtoe mussel (*Pleurobema hanleyianum*), interrupted rocksnail (*Leptoxis foremani*), and rough hornsnail (*Pleurocera foremani*) are as follows:

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

All three species have experienced significant curtailment of their occupied habitats (*see* Background section). The Georgia pigtoe has been eliminated from

more than 90 percent of its historical range of 480 river km (298 river mi). It now inhabits only 43 river km (27 river mi). Interrupted rocksnail has been eliminated from 99 percent of its historical range of 800 river km (497 river mi), and is now known from 12 river km (7 river mi). The rough hornsnail has disappeared from more than 99 percent of its historical range of 321 river km (199 river mi), and now occurs in less than 1 river km (0.6 river mi). The primary cause of range curtailment for all three species has been modification and destruction of river and stream habitats, primarily by the construction of large hydropower dams on the Coosa River. This habitat loss was compounded by fragmentation and isolation of the remaining free-flowing portions of the Coosa River and its tributaries, as well as the species' increased vulnerability to local historical events of water quality and habitat degradation.

Dams and Impoundments

Dams eliminate or reduce river flow within impounded areas, trap silts and cause sediment deposition, alter water temperature and dissolved oxygen levels, change downstream water flow and quality, affect normal flood patterns, and block upstream and downstream movement of species (Watters 1999, pp. 261–264; McAllister *et al.* 2000, p. iii; Marcinek *et al.* 2005, pp. 20–21). Within impounded waters, decline of freshwater mollusks has been attributed to sedimentation, decreased dissolved oxygen, and alteration in resident fish populations (Neves *et al.* 1997, pp. 63–64; Watters 1999, pp. 261–264; Marcinek *et al.* 2005, pp. 9–10). Below dams, mollusk declines are associated with changes and fluctuation in flow regime, scouring and erosion, reduced dissolved oxygen levels and water temperatures, and changes in resident fish assemblages (Williams *et al.* 1992b, p. 7; Neves *et al.* 1997, pp. 63–64; Watters 1999, pp. 261–264; Marcinek *et al.* 2005, pp. 20–21). The decline and extinction of freshwater snails and mussels in the Mobile River Basin has been directly attributed to construction of numerous large impoundments in the major river systems (Williams *et al.* 1992b, pp. 1–8; Bogan *et al.* 1995, pp. 250–251; Lydeard and Mayden 1995, pp. 803–804; Neves *et al.* 1997, pp. 62, 64; Marcinek *et al.* 2005, p. 9).

The Georgia pigtoe, interrupted rocksnail, and rough hornsnail are all endemic to the Coosa River system. The Coosa River was impounded by six major dams constructed between 1928 and 1966. Today, more than 60 percent of the Coosa River and its 19 largest tributaries are inundated or affected by flow regulation (Marcinek *et al.* 2005, pp. 12–16).

Dam construction on the Coosa River had a secondary effect of fragmenting the ranges of aquatic mollusk species, such as the Georgia pigtoe, interrupted rocksnail, and rough hornsnail, leaving relict habitats and populations isolated by the structures as well as by extensive areas of uninhabitable, impounded waters. Isolated populations were left more vulnerable to, and affected by, natural events (such as droughts), runoff from common land-use practices (such as agriculture, mining, urbanization), discharges (such as municipal and industrial wastes), and accidents (such as chemical spills) that reduced population levels or eliminated habitat (Neves *et al.* 1997, pp. 64–71; U.S. Fish and Wildlife Service 2000, pp. 14–15). As a result, many relict populations became locally extirpated, and many mollusk species were driven to extinction (Bogan *et al.* 1995, pp. 250–251; Lydeard and Mayden 1995, pp. 803–804; Neves *et al.* 1997, pp. 54, 62; U.S. Fish and Wildlife Service 2000, pp. 6–9). If conditions subsequently improved, the surviving mollusk species were unable to naturally recolonize suitable areas, due to impediments created by the dams and impounded waters.

The only known natural population of the interrupted rocksnail occurs in the free-flowing Oostanaula River (Williams and Hughes 1998, p. 9; Johnson and Evans 2001, p. 25). The Oostanaula River is formed by the confluence of the Conasauga and Coosawatee Rivers. The Upper Coosawatee is impounded by Carters Dam, a hydropower dam which discharges into Carters Re-regulation Dam and from there into the Coosawatee River. Hydropower discharges from Carters Dam are believed to be implicated in the disappearance of the interrupted rocksnail from the Coosawattee River (Johnson and Evans 2001, p. 26). The effects of power generation discharges from Carters Dam, including cold water temperatures are evident downstream (Williams and Hughes 1998, p. 11), even to the shoals on the Oostanaula River where the interrupted rocksnail is found (Johnson and Evans 2001, p. 26; Marcinek *et al.* 2005, p. 15). A Federal Energy Regulatory Commission (FERC) license was issued to construct a hydroelectric facility on the Carters Re-regulation Dam (FERC 2001, pp. 1–2). A notice of probable termination of license has been issued due to failure to commence construction in a timely manner (FERC 2005a, pp. 1–2). The applicant appealed the termination order (FERC 2005b, p. 1), but was denied (FERC 2006a, pp. 1–3). However, the applicant has since applied for a preliminary permit to proceed with the hydroelectric facility and issued a Notice of Intent and related documents to file for a license application at Carters Re-Regulation Dam (Fall Line Hydro Company, Inc. 2009).

Rough hornsnails currently survive in Lower Yellowleaf Creek, at the transitional area between the flowing stream and the embayment created by Lay Dam, and in a small area of the Coosa River below the shoals along the Fall Line near Wetumpka, Alabama. Known from the main channel of the Coosa River and the mouths of some of the larger tributaries, all historical habitats, including the two where the rough hornsnail currently survives, are affected to some degree by impounded waters and hydropower releases.

The Georgia pigtoe historically occurred in the Coosa River and many of its major tributaries. As noted above, the Coosa is impounded throughout most of its length by major hydropower dams. In addition, all historically occupied tributaries are isolated from each other by one or more of these dams and extensive reaches of impounded waters. The species is currently known to survive only in the Upper Conasauga River, far above the influence of the Coosa River impoundments.

Water and Habitat Quality

The disappearance of shoal populations of rough hornsnail, interrupted rocksnail, and Georgia pigtoe from unimpounded relict habitats in the Coosa River drainage is likely due to historical pollution problems. Pleurocerid snails and freshwater mussels are highly sensitive to water and habitat quality (Havlik and Marking 1987, pp. 1–15; Neves *et al.* 1997, pp. 64–69). Historical causes of water and habitat degradation in the Coosa River and its tributaries included drainage from gold mining activities, industrial and municipal pollution events, and construction and agricultural runoff (for example, Hurd 1974, pp. 38–40; Lydeard and Mayden 1995, pp. 803–804; Freeman *et al.* 2005, pp. 560–562).

Prior to the passage of the Federal Clean Water Act (33 U.S.C. 1251 *et seq.*, 1972) and the adoption of State water quality regulations and criteria, water pollution was a significant factor in the disappearance of mollusks from unimpounded river and stream channels in the Mobile River Basin (Baldwin 1973, p. 23; Hurd 1974, pp. 38–40, 144–151). Hurd (1974, pp. 147–149), for example, noted the extirpation

of freshwater mussel communities from the Conasauga River below Dalton, Georgia, apparently as a result of textile and carpet mill waste discharges. He also attributed the disappearance of the mussel fauna from the Etowah River and other tributaries of the Coosa River to organic pollution and siltation. Baldwin (1973, p. 23) documented the loss of mussel diversity in the Cahaba River and identified the primary causes as pollution from coalfields and industrial and urban wastes.

Although Federal and State water quality laws and regulations have generally reduced the impacts of point source discharges, nonpoint source pollution continues to affect and possibly threaten the remaining populations of each of these mollusk species. Nonpoint source pollution has been identified as a concern in the Yellowleaf Creek and Lower Coosa River watersheds (Alabama Clean Water Partnership (ACWP) 2005 Chapter 12). These drainages encompass historical habitat for the interrupted rocksnail and Georgia pigtoe, currently occupied habitat for the rough hornsnail, and a recent reintroduction of the interrupted rocksnail. Both Yellowleaf Creek and the eastern watershed of the Lower Coosa River have been designated as High Priority Watersheds by the ACWP (2005 Chap. 12), due to the high potential of nonpoint source pollution associated with expanding human population growth rates and urbanization. The headwaters of Yellowleaf Creek are about 5 km (3 mi) southeast of the greater metropolitan area surrounding Birmingham, and the watershed is highly dissected by county roads. The Lower Coosa River is about 16 km (10 mi) north of the Montgomery greater metropolitan area and is accessible by a four lane highway. Both general areas are experiencing growth due to their proximity to major metropolitan areas.

Nonpoint source pollution and habitat deterioration are also problems in the Upper Coosa River Basin, including the Conasauga and Oostanaula rivers (Georgia Department of Natural Resources (GDNR) 1998, pp. 4.27–4.42). In the reaches of the Conasauga River where the Georgia pigtoe continues to survive, overall molluscan abundance and diversity have experienced a general decline over the past 2 decades that has been primarily attributed to water or sediment toxicity and channel instability (Johnson and Evans 2000, pp. 171–173; Sharpe and Nichols 2005, pp. 81–88). Sedimentation has been identified as a potential limiting factor for the interrupted rocksnails in the Oostanaula River (Johnson and Evans 2001, p. 26). Following its rediscovery, the interrupted rocksnail population size in the Oostanaula River has declined from a high of 10 to 45 snails per square meter (10.7 sq ft) in 1999 (Johnson and Evans 2001, p. 22) to only 20 snails found during 6 search-hours in 2004 (Johnson in litt. 2003, 2004). The cause of decline is suspected to be some form of water contamination (Johnson in litt. 2003, 2004; Hartfield in litt. 2006).

Nonpoint source pollution from land surface runoff originates from virtually all land use activities and includes sediments; fertilizer, herbicide, and pesticide residues; animal or human wastes; septic tank leakage and gray water discharge; and oils and greases (GDNR 1998, pp. 4.27–4.42; ACWP 2005, Chap. 9). Nonpoint source pollution can cause excess sedimentation, nutrification, decreased dissolved oxygen concentration, increased acidity and conductivity, and other changes in water chemistry that can seriously impact aquatic mollusks. Land use types around the Georgia pigtoe, interrupted rocksnail, and rough hornsnail populations include pastures, row crops, timber, and urban and rural communities.

Excessive sediments are believed to impact riverine mollusks requiring clean, stable streams (Ellis 1936, pp. 39–40; Brim Box and Mossa 1999, p. 99). Impacts resulting from sediments have been noted for many components of aquatic communities. For example, sediments have been shown to abrade or suffocate periphyton (organisms attached to underwater surfaces, upon which snails may feed); affect respiration, growth, reproductive success, and behavior of aquatic insects and mussels; and affect fish growth, survival, and reproduction (Waters 1995, pp. 173–175). Potential sediment sources within a watershed include virtually all activities that disturb the land surface, and all localities currently occupied by these mollusks are affected to varying degrees by sedimentation.

Land surface runoff also contributes nutrients to rivers and streams. Excessive nutrient input (for example, nitrogen and phosphorus from fertilizers, sewage, and animal manure) can result in effects that are detrimental to aquatic species. High levels of nutrients in surface runoff can promote excessive filamentous algal growth. Dense algal growth covers gravel, cobble, or bedrock substrates and interstices (spaces between bottom particles), and can seriously reduce dissolved oxygen in waters during dark hours due to algal respiration (Shepard *et al.* 1994, pp. 61–64), which affects feeding, reproduction, and respiration in adult and juvenile mussels and snails, and limits access to substrate interstices important to juvenile and adult mussels. Algal mats also provide cover for invertebrate predators of juvenile mollusks (such as flatworms, hydra, and chironomids) and increase their vulnerability to such predators. Filamentous algae may also displace certain species of fish, or otherwise affect fish–mussel interactions essential to recruitment (for example, Hartfield and Hartfield 1996, p. 373). In hatcheries, filamentous algal growth reduces juvenile mussel survival by reducing flow, increasing sedimentation, and causing competition with and reduction of the unicellular algal community on which the mussels feed (Neves Pers. comm. 2002). Nutrient and sediment pollution may have synergistic effects (when the toxic effect of two or more pollutants operating together is greater than the sum of the effects of the pollutants operating individually) on freshwater mollusks, as has been suggested for aquatic insects (Waters 1995, p. 67).

Land surface runoff contributes the majority of human-induced sediments and nutrients to water bodies throughout the United States. The human population is expanding within the areas currently occupied by the Georgia pigtoe, interrupted rocksnail, and rough hornsnail, increasing the sediment and nutrient input to their riverine habitats, and leaving these mollusks vulnerable to progressive water and habitat degradation from land surface runoff.

Accidental spills that may affect water or habitat quality also threaten surviving populations of each species. For example, on September 12, 2006, a train derailment spilled four tank cars of soybeans into a tributary of Yellowleaf Creek (Birmingham News in litt. 2006). A large rain event flushed the decomposing soybeans into Yellowleaf Creek, resulting in a serious decline in dissolved oxygen in the stream, killing fishes, mussels (including two endangered species, southern pigtoe (*Fusconaia cerina*) and triangular kidneyshell (*Ptychobranchus greenii*)), and snails (including the endangered cylindrical lioplax (*Lioplax cyclostomaformis*)) (Johnson 2006). Fortunately, the location of the largest surviving population of rough hornsnail is in the lowest reaches of Yellowleaf Creek, remote from the spill, and no mortality was observed in this population as a result of the spill (Johnson 2006).

In summary, the historical loss of habitat and range is currently, and projected to continue to be, a significant

threat to the rough hornsnail, interrupted rocksnail, and Georgia pigtoe. Curtailment of habitat and range also amplifies threats from nonpoint source water and habitat quality degradation, accidental spills, or violation of permitted discharges. Due to the extremely limited extent of habitat currently occupied by each species, and the severity and magnitude of this threat, we have determined that the present or threatened destruction, modification, or curtailment of habitat and range represents an ongoing and significant threat to the rough hornsnail, interrupted rocksnail, and Georgia pigtoe.

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

The Georgia pigtoe, interrupted rocksnail, and rough hornsnail are not commercially utilized. Each species has been taken for scientific and private collections in the past, yet collecting is not considered a factor in the decline of these species. While collection is not considered a current threat, the desirability of these species in scientific and commercial collections may increase as their existence and rarity becomes known, and their localized distributions and small population sizes leaves them vulnerable to overzealous recreational or scientific collecting.

C. Disease or Predation

Diseases of freshwater mollusks are poorly known and are not currently considered to be a threat to the Georgia pigtoe, interrupted rocksnail, or rough hornsnail, nor a factor in their decline. Aquatic snails and mussels are consumed by various vertebrate predators, including fishes, mammals, and possibly birds. Although predation by naturally occurring predators is a normal aspect of the population dynamics of a species and is not known to be a threat to any of these species, changes in water flows, depths, temperatures, and other environmental factors within some portions of their ranges may have led to increased numbers of native mollusk-eating fish, such as freshwater drum (Johnson in litt. 2005b). In addition, the potential now exists for the black carp (*Mylopharyngodon piceus*), a mollusk-eating Asian fish recently introduced into the waters of the United States (U.S. Fish and Wildlife Service 2002, p. 49280), to eventually enter and disperse through the Mobile River Basin via the Tennessee-Tombigbee Waterway, or by their accidental release from catfish farms or other aquaculture facilities.

In summary, disease in freshwater mollusks is poorly known and is not currently considered a threat to the Georgia pigtoe, interrupted rocksnail, or rough hornsnail. Although there is no direct evidence at this time that predation is detrimentally affecting the Georgia pigtoe, interrupted rocksnail, or rough hornsnail, their small populations and limited ranges leaves them vulnerable to threats of predation from natural or introduced predators. Therefore, we have concluded that predation currently represents a threat of low magnitude, but it could potentially become a significant future threat to the Georgia pigtoe, interrupted rocksnail, or rough hornsnail due to their small population sizes.

D. The Inadequacy of Existing Regulatory Mechanisms

The Alabama Department of Conservation and Natural Resources currently recognizes the rough hornsnail as a "Priority 1" species (Highest Conservation Concern) (Mirarchi *et al.* 2004, p. 117; ADCNR 2005, p. 302). The interrupted rocksnail is considered "Extirpated (in Alabama)—Conservation Action Underway" (Mirarchi *et al.* 2004, p. 114), and the Georgia pigtoe is listed as "extinct" (Mirarchi *et al.* 2004, p. 13). While these classifications identify the status of imperiled species in the State of Alabama, they convey no legal protection. Interrupted rocksnail and Georgia pigtoe currently lack any official status recognition by the State of Georgia, but they have been nominated for inclusion on the State Protected Species List. The Georgia pigtoe is identified as a species of the Greatest Conservation Need by the State of Tennessee. NatureServe (2010) identifies the Georgia pigtoe, interrupted rocksnail, and rough hornsnail as G1 critically imperiled species; however, no State or Federal protection is conveyed by these classifications. Without State or Federal protection, these three species are not currently given any specific special consideration under environmental laws when project impacts are reviewed, other than those provided for water quality.

The mollusk fauna (including the Georgia pigtoe) of the Conasauga River and the interrupted rocksnail in the Oostanaula River have experienced significant declines in recent years, apparently due to water quality or sediment toxicity (Evans 2001, p. 3; Johnson in litt. 2004; Sharpe and Nichols 2005, pp. 1–4; Konwick *et al.* 2008, pp. 2016–2017). There is no specific scientific information on the sensitivity of the Georgia pigtoe, interrupted rocksnail, and rough hornsnail or their host fish species to common industrial and municipal pollutants, and little information on other freshwater mollusks. Current State and Federal regulations regarding pollutants are assumed to be protective of freshwater mollusks; however, these species may be more susceptible to some pollutants than test organisms commonly used in bioassays. For example, several recent studies suggest that U.S. Environmental Protection Agency's (EPA) criteria for ammonia may not be protective of freshwater mussels (Augspurger *et al.* 2003, p. 2571; Augspurger *et al.* 2007, p. 2026; Newton *et al.* 2003, pp. 2559–2560; Newton and Bartsch 2007, p. 2057; Ward *et al.* 2007, p. 2075).

In a review of the effects of eutrophication on mussels, Patzner and Muller (2001, p. 329) noted that stenoecious (narrowly tolerant) species disappear as waters become more eutrophic. They also refer to studies that associate increased levels of nitrate with the decline and absence of juvenile mussels (Patzner and Muller 2001, pp. 330–333). Other studies also suggest that early life stages of mussels are more sensitive to metals and such inorganic chemicals as chlorine and ammonia than are common bioassay test organisms (Keller and Zam 1991, pp. 543–545; Goudreau *et al.* 1993, p. 221; Naimo 1995, pp. 354–355). Therefore, it appears that inadequate research and data prevent existing regulations, such as the Clean Water Act (administered by the EPA and the Corps), from being fully utilized or effective in the management and protection of these species.

Rough hornsnails currently survive at localized sites in Yellowleaf Creek and in the Lower Coosa River below Wetumpka Shoals in Alabama. In addition, the interrupted rocksnail was recently reintroduced into Wetumpka Shoals. The Alabama Department of Environmental Management (ADEM) has designated the water use classification for some portions of Yellowleaf Creek as "Swimming" (S) and others as "Fish and Wildlife" (F&W). The F&W designation establishes minimum water quality standards that are believed to protect existing species and water uses (for example, fishing, recreation, irrigation) within the designated area, while the S classification establishes higher water quality standards that are protective of human contact with the water. The Lower Coosa River below Wetumpka is currently designated as F&W by ADEM, and adjacent tributaries are classified as S. Both water bodies are currently believed to support their designated

uses. However, Yellowleaf Creek and the eastern watershed of the Lower Coosa have been designated as High Priority Watersheds by the ACWP (2005, Chap. 12), due to a lack of monitoring data and the high potential of nonpoint source pollution in these drainages associated with expanding human population growth rates and urbanization.

The reach of the Conasauga River at and below the Tennessee–Georgia State Line supports the only known surviving population of the Georgia pigtoe. This river reach is identified on Georgia's 303(d) list of impaired waters as partially supporting its designated use of Fishing–Drinking Water (GDNR 2006, p. 35). The Georgia 303(d) list identifies high levels of fecal coliform bacteria and polychlorinated biphenyls (PCBs) as the reasons for this river reach's inclusion on the list; nonpoint pollution is identified as the source of pollutants (GDNR 2006, p. 35). Recent studies also implicate sediment and water toxicity in the decline of mollusks in the Conasauga River (Sharpe and Nichols 2005, pp. 81–88; Konwick *et al.* 2008, pp. 2016–2017).

States maintain water-use classifications through issuance of National Pollutant Discharge Elimination System (NPDES) permits to industries, municipalities, and others that set maximum limits on certain pollutants or pollutant parameters. For water bodies on the 303(d) list, States are required under the Clean Water Act to establish a total maximum daily load (TMDL) for the pollutants of concern that will bring water quality into the applicable standard. The Georgia Department of Natural Resources has identified TMDLs for the Oostanaula River to address existing problems of PCBs and fecal coliform loads from nonpoint source and urban runoff sources.

In summary, recent declines in mollusk communities within the ranges of each of these species has been attributed to poor water or sediment quality. Although regulatory mechanisms are in place to protect aquatic species, a lack of specific information on the sensitivity of the Georgia pigtoe, interrupted rocksnail, and rough hornsnail and their host fish to common industrial and municipal pollutants limits their application. Water and sediment quality is believed to currently affect (and is expected to continue to affect) the Georgia pigtoe and interrupted rocksnail and has been identified as a concern for the rough hornsnail in Yellowleaf Creek. Therefore, we determine that inadequate existing regulatory mechanisms are an imminent threat of high magnitude to the Georgia pigtoe, interrupted rocksnail, and rough hornsnail.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

As noted under Factor A, above, the Georgia pigtoe, interrupted rocksnail, and rough hornsnail have been eliminated from 90 percent or more of their historical ranges. Surviving populations of each species are small, extremely localized, isolated, and vulnerable to habitat modification, toxic spills, and progressive degradation from land surface runoff (nonpoint source runoff) (*see* Factor A: Dams and Impoundments, Water and Habitat Quality; and Factor D: The inadequacy of existing regulatory mechanisms). These conditions also leave each species vulnerable to catastrophic changes to their habitats that may result from natural events such as flood scour or drought.

There is a growing concern that climate change may lead to increased frequency of severe storms and droughts (for example, Golladay *et al.* 2004, p. 504; McLaughlin *et al.* 2002, p. 6074; Cook *et al.* 2004, p. 1015). During 2007 and 2008, a severe drought affected the Coosa River watershed in Alabama and Georgia. Streamflow for the Conasauga River at Tilton, Georgia, during September 2007, was the lowest recorded for any month in 69 years (U.S. Geological Survey 2007, pp. 1–2). Although the effects of the drought on the Georgia pigtoe, interrupted rocksnail, and rough hornsnail have not been quantified, mollusk declines as a direct result of drought have been documented (for example, Golladay *et al.* 2004, p. 494; Haag and Warren 2008, p. 1165). Reduction in local water supplies due to drought is also compounded by increased human demand and competition for surface and ground water resources for power production, irrigation, and consumption (Golladay *et al.* 2004, p. 504).

Freshwater mussels and snails are capable of moving only short distances. As noted previously (see discussion under Factor A: Dams and Impoundments), there are numerous obstacles in the Coosa River drainage preventing long distance movement of snails, mussels, or the fish hosts of mussels between relict patches of historically occupied and potentially suitable riverine habitats. Therefore, even if habitat conditions improve for the survival of the Georgia pigtoe, interrupted rocksnail, and rough hornsnail in historically occupied stream and river habitats, they will be unable to recolonize those areas without human assistance. Low numbers of individuals within these isolated populations also increase the risks and consequences of inbreeding and reduced genetic diversity (Lynch 1996, pp. 493–494).

The Georgia pigtoe may be adversely affected by the loss or reduction in numbers of the fish host(s) essential to its parasitic glochidial stage. The specific fish host(s) for the glochidia of the Georgia pigtoe is unknown; therefore, specific impacts on this aspect of the mussels' life cycle cannot be evaluated. However, other species of mussels in the genus *Pleurobema* are known to parasitize various species of chubs, minnows, stonerollers, and other stream fish species.

In summary, a variety of natural or manmade factors, such as droughts, storms, and toxic spills, threaten surviving populations of the Georgia pigtoe, interrupted rocksnail, and rough hornsnail due to the highly restricted and fragmented nature of their habitats and their small population sizes. Other factors, such as inbreeding, reduced genetic diversity, and loss or reduction of fish hosts for the Georgia pigtoe, may threaten each of the three species; however, the severity and magnitude of these threats are not currently known. However, we have determined that natural and manmade factors, such as accidental spills, floods, and droughts, currently pose an imminent and high degree of threat to the Georgia pigtoe, interrupted rocksnail, and rough hornsnail, and the levels of these threats are projected to continue or increase in the future.

Conclusion and Determination

We carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the Georgia pigtoe, interrupted rocksnail, and rough hornsnail. Section 3(6) of the Act defines an endangered species as "any species which is in danger of extinction throughout all or a significant portion of its range." We find that each of these three species is presently in danger of extinction throughout its entire range, based on the immediacy and magnitude of the threats described above. Based on our analysis, we have no reason to believe that population trends for any of the three species addressed in this final rule will improve, nor will the effects of current threats acting on the species be ameliorated in the foreseeable future. Therefore, on the basis of the best available scientific and commercial information, we are listing the Georgia pigtoe, interrupted rocksnail, and rough hornsnail as endangered under the Act.

Without the protection of the Act, these species are in danger of extinction throughout all of their ranges. This could occur within a few years, given recurring drought conditions, accidents, or other existing threats. Furthermore, because of their curtailed ranges, and immediate and ongoing significant threats to each species throughout their entire respective ranges, as described above in the five-factor analysis, we find that it is unnecessary to analyze whether there are any significant portions of ranges for each species that may warrant a different determination of status.

Summary of Critical Habitat Changes From Proposed Rule

We have considered all comments and information received during the open comment period for the proposed rule to designate critical habitat for the Georgia pigtoe mussel, interrupted rocksnail, and rough hornsnail. We have included mud as a substrate utilized by the rough hornsnail based upon information provided by a peer reviewer, and added this descriptor into PCE 4 for the rough hornsnail *(see Peer Review,* above, and rough hornsnail PCE 4, below). We have also modified PCE 3 for all three species to reflect information under Factors A and D, above, that some parameters identified under current water quality life criteria established under the Clean Water Act (33 U.S.C. 1251–1387) are not adequate to sustain normal behavior, growth, and viability of all life stages of mollusks. We have also defined the upstream and downstream limits of the critical habitat units by Universal Transverse Mercator (UTM) zone 16, coordinates in the Regulation Promulgation, below. No other changes have been made to the proposed designation, including the number, extent, and location of the individual units designated as critical habitat.

Critical Habitat

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

(1) 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

(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 a 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 any endangered species or threatened species to the point at which measures provided under the Act are no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against Federal agencies carrying out, funding, or authorizing the destruction or adverse modification of critical habitat. Section 7(a)(2) of the Act requires consultation on Federal actions that may affect 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 private 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) may apply. However, even in the event of a destruction or adverse modification finding, the Federal action agency's and the applicant's obligation is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

To be included in a critical habitat designation, the habitat within the geographic area occupied by the species must first have the physical and biological features that are essential to the conservation of the species. The Service must identify, to the extent known using the best scientific data available, habitat areas that provide essential life cycle needs of the species (*i.e.,* areas on which are found the Primary Constituent Elements (PCEs), as defined at 50 CFR 424.12(b)). Second, to be included in the designation, the features at issue must also be ones that may require special management considerations or protection. Under the Act, we can designate unoccupied areas as critical habitat only when we determine that the best available scientific data demonstrate that the designation of that area is essential to the conservation needs of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Furthermore, 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 represent the best scientific data available.

When determining which areas we should propose as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that we may eventually determine, based on scientific data not now available to the Service, are necessary for the recovery of the species. For these reasons, a critical habitat designation should not be interpreted as meaning that habitat outside the designated area is unimportant or may not be required for recovery of the species in question.

Areas that support populations, but are outside the critical habitat designation, will continue to be subject to conservation actions we implement under section 7(a)(1) of the Act. They are also subject to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available scientific information at the time of the agency action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. 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 to these planning efforts calls for a different outcome.

Methods

As required by section 4(b)(2) of the Act, we use the best scientific data available in determining occupied areas

that contain the features that are essential to the conservation of the Georgia pigtoe, interrupted rocksnail, and rough hornsnail, and unoccupied areas that are essential to the conservation of the Georgia pigtoe, interrupted rocksnail, and rough hornsnail.

We have reviewed the available information pertaining to historical and current distributions, life histories, and habitat requirements of these species. Our sources included: peer reviewed scientific publications; unpublished survey reports; unpublished field observations by the Service, State, and other experienced biologists; and notes and communications from qualified biologists or experts.

Primary Constituent Elements (PCEs)

In accordance with sections 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied at the time of listing are critical habitat, we identify the specific PCEs required for the Georgia pigtoe, interrupted rocksnail, and rough hornsnail based on their biological needs. We consider the physical and biological features that are essential to the conservation of each species to be the PCEs laid out in the appropriate quantity and spatial arrangement for the conservation of the Georgia pigtoe, interrupted rocksnail, and rough hornsnail. 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, and rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distribution of a species.

The PCEs required for the Georgia pigtoe, interrupted rocksnail, and rough hornsnail are derived from biological needs of the species as described in the Background section of this rule. Unfortunately, little is known of the specific habitat requirements of any of these mollusk species other than all three require flowing water, stable stream or river channels, and adequate water quality. Georgia pigtoe mussel larvae also require a currently unknown fish host for development to juvenile mussels. To identify the physical and biological needs of the species, we have relied on current conditions at locations where each of the species survive, the limited information available on these three species and their close relatives, and factors associated with the decline and extirpation of these and other aquatic mollusks from extensive portions of the Mobile River Basin.

Space for Individual and Population Growth and for Normal Behavior

The Georgia pigtoe, interrupted rocksnail, and rough hornsnail were all historically associated with stream and river shoals of the Coosa River drainage (Goodrich 1922, p. 5; Johnson and Evans 2001, p. 21; Williams *et al.* 2008). The decline of the aquatic mollusk fauna of the Mobile River Basin is directly associated with the loss of shoal habitats, primarily due to inundation by impounded waters (Bogan *et al.* 1995, pp. 250–251; Lydeard and Mayden 1995, pp. 803–804; Neves *et al.* 1997, pp. 63–64; Marcinek *et al.* 2005, pp. 7–10, 20–21). Shoals are defined as discrete areas that are of lower depth, greater slope, higher velocity flows, and coarser bed materials relative to other channel segments. Shoals include areas that are also referred to as riffles, gravel bars, and reefs. Shoals generally have substrates composed of bedrock, cobble, boulder, and gravel interspersed with sands, and sufficient current velocities to remove finer sediments and maintain interstitial habitats (Marcinek *et al.* 2005, p. 4). The interrupted rocksnail and rough hornsnail are found clinging to gravel, cobble, and boulders in moderate to strong currents in shoals, while Georgia pigtoe mussels are found imbedded in sand–gravel substrates within shoals. Rough hornsnails are also found in pools with mud or silt bottoms below shoals. Shoals and associated pools not only provide space for these three mollusks, but also provide cover and shelter and sites for breeding, reproduction, and growth of offspring.

Shoal–pool habitats are formed and maintained by water quantity, channel slope, and sediment input to the system. Changes in one or more of these parameters can result in channel degradation or channel aggradation, with serious effects to mollusks. Therefore, we believe that stream channel stability is essential to the conservation of the Georgia pigtoe, interrupted rocksnail, and rough hornsnail.

Food

The interrupted rocksnail and rough hornsnail generally feed by ingesting periphyton and biofilm detritus scraped off the substrate by the snail's radula (Morales and Ward 2000, p. 1). Unionid mussels, such as the Georgia pigtoe, filter algae, detritus, and bacteria from the water column (Williams *et al.* 2008, p. 67). Food availability and quality for the Georgia pigtoe, interrupted rocksnail, and rough hornsnail in shoal habitats are affected by habitat stability, water flow, and water quality.

Water

The Georgia pigtoe, interrupted rocksnail, and rough hornsnail are riverine-adapted species that depend upon adequate water flow (Williams *et al.* 2008, p. 534; Goodrich 1922, p. 5) and are not found in ponds or lakes. Continuously flowing water is a habitat feature associated with all surviving populations of the three species. Flowing water maintains the stream bottom and shoal habitats where these species are found, transports food items to the sedentary juvenile and adult life stages of the Georgia pigtoe, supports the periphyton and biofilm ingested by the interrupted rocksnail and rough hornsnail, removes wastes, and provides oxygen for respiration for each of the three species.

The ranges of standard physical and chemical water quality parameters (such as temperature, dissolved oxygen, pH, conductivity) that define suitable habitat conditions for the Georgia pigtoe, interrupted rocksnail, and rough hornsnail have not been investigated. However, as relatively sedentary animals, aquatic snails and mussels must tolerate the full range of such parameters that occur naturally within the streams where they persist. Both the amount (flow) and the physical and chemical conditions (water quality) where each of the three species currently exist vary widely according to season, precipitation events, and seasonal human activities within the watershed. Conditions across their historical ranges vary even more due to watershed size, geology, geography, and differences in human population densities and land uses. In general, each of the species survives in areas where the magnitude, frequency, duration, and seasonality of water flow are adequate to maintain stable shoal habitats (for example, sufficient flow to remove fine particles and sediments without causing degradation), and where water quality is adequate for year-round survival (for example, moderate to high levels of dissolved oxygen, low to moderate input of nutrients, and relatively unpolluted water and sediments). Therefore, adequate water flow and water quality (as defined below) are essential to the conservation of the Georgia pigtoe, interrupted rocksnail, and rough hornsnail. We currently believe that most numeric standards for pollutants and water quality parameters

(for example, dissolved oxygen, pH, heavy metals) that have been adopted by the States under the Clean Water Act represent levels that are essential to the conservation of each of these three mollusks. However, some States' standards may not adequately protect mollusks, or are not being appropriately measured, monitored, or achieved in some reaches (see Factor A: The present or threatened destruction, modification, or curtailment of its habitat or range, Water and Habitat Quality; and Factor D: Inadequacy of existing regulatory mechanisms, above). The Service is currently in consultation with the EPA to evaluate the protectiveness of criteria approved in EPA's water quality standards for endangered and threatened species and their critical habitats as described in the Memorandum of Agreement that our agencies signed in 2001 (66 FR 11201, February 22, 2001). Other factors that can potentially alter water quality are droughts and periods of low flow, nonpoint source runoff from adjacent land surfaces (for example, excessive amounts of nutrients, pesticides, and sediment), and random spills or unregulated discharge events. This could be particularly harmful during drought conditions when flows are depressed and pollutants are more concentrated. Therefore, adequate water quality is essential for normal behavior, growth, and viability during all life stages of the Georgia pigtoe, interrupted rocksnail, and rough hornsnail.

Sites for Breeding, Reproduction, or Rearing

Pleurocerid snails require clean hard surfaces, such as gravel, cobble, boulder, or bedrock, for laying eggs and for survival of juveniles (Bogan *et al.* 1995, p. 251). Excessive fine sediments or dense growth of filamentous algae can restrict or eliminate spawning sites and expose juveniles to entrainment (being swept away) or predation. Geomorphic instability may result in entrainment and loss of eggs by scouring currents or burial of eggs by excessive deposition. Therefore, stable shoals with low amounts of filamentous algae are essential to the conservation of the interrupted rocksnail and rough hornsnail.

Freshwater mussels require a host fish for transformation of larval mussels (glochidia) to juvenile mussels (Williams *et al.* 2008, p. 68), and presence of the appropriate host fish is essential to the conservation of the Georgia pigtoe. The specific fish host(s) for the Georgia pigtoe is currently unknown. However, other species of mussels in the genus *Pleurobema* are known to parasitize various species of chubs, minnows, stonerollers, and other stream-adapted fish species (Haag and Warren 2003, p. 85).

Juvenile Georgia pigtoe mussels require interstitial shoal habitats for growth and survival. Excessive sediments or dense growth of filamentous algae can expose juvenile mussels to entrainment or predation and be detrimental to the survival of juvenile mussels (Hartfield and Hartfield 1996, p. 373). Geomorphic instability can result in the loss of interstitial habitats and juvenile mussels due to scouring or deposition (e.g., Hartfield 1993, pp. 132–139). Therefore, stable shoals with low to moderate amounts of filamentous algae growth are essential to the conservation of the Georgia pigtoe.

PCEs for the Georgia pigtoe, Interrupted Rocksnail, and Rough Hornsnail

Based on the above needs and our current knowledge of the life history, biology, and ecology of the species, we have determined that the Georgia pigtoe's PCEs are:

(1) Geomorphically stable stream and river channels and banks (channels that maintain lateral dimensions, longitudinal profiles, and sinuosity patterns over time without an aggrading or degrading bed elevation).

(2) A hydrologic flow regime (the magnitude, frequency, duration, and seasonality of discharge over time) necessary to maintain benthic habitats where the species is found. Unless other information becomes available, existing conditions at locations where the species occurs will be considered as minimal flow requirements for survival.

(3) Water quality, including temperature, pH, hardness, turbidity, oxygen content, and chemical characteristics necessary for normal behavior, growth, and viability of all life stages.

(4) Sand, gravel, cobble, boulder, or bedrock substrates with low to moderate amounts of fine sediment and attached filamentous algae.

(5) The presence of fish host(s) for the Georgia pigtoe (currently unknown). Diverse assemblages of native chubs, minnows, stonerollers, and other stream-adapted fish species will serve as a potential indication of presence of host fish.

The PCEs required for the interrupted rocksnail are:

(1) Geomorphically stable stream and river channels and banks (channels that maintain lateral dimensions, longitudinal profiles, and sinuosity patterns over time without an aggrading or degrading bed elevation).

(2) A hydrologic flow regime (the magnitude, frequency, duration, and seasonality of discharge over time) necessary to maintain benthic habitats where the species is found. Unless other information becomes available, existing conditions at locations where the species occurs will be considered as minimal flow requirements for survival.

(3) Water quality, including temperature, pH, hardness, turbidity, oxygen content, and chemical characteristics necessary for normal behavior, growth, and viability of all life stages.

(4) Sand, gravel, cobble, boulder, or bedrock substrates with low to moderate amounts of fine sediment and attached filamentous algae.

The PCEs required for the rough hornsnail are:

(1) Geomorphically stable stream and river channels and banks (channels that maintain lateral dimensions, longitudinal profiles, and sinuosity patterns over time without an aggrading or degrading bed elevation).

(2) A hydrologic flow regime (the magnitude, frequency, duration, and seasonality of discharge over time) necessary to maintain benthic habitats where the species are found. Unless other information becomes available, existing conditions at locations where the species occur will be considered as minimal flow requirements for survival.

(3) Water quality, including temperature, pH, hardness, turbidity, oxygen content, and chemical characteristics necessary for normal behavior, growth, and viability of all life stages.

(4) Sand, gravel, cobble, boulder, bedrock, or mud substrates with low to moderate amounts of fine sediment and attached filamentous algae.

This critical habitat designation is designed for the conservation of the physical and biological features essential to the life-history functions that were the basis for the determination of endangered status and the areas containing those features (that is, the PCEs in the appropriate spatial arrangement and quantity). Because not all life history functions require all the PCEs, not all PCEs may be present throughout the critical habitat units.

Units are designated based on sufficient PCEs being present to support at least one of the species' life history functions. Some areas contain all PCEs and support multiple life processes, while some areas may contain only a portion of the PCEs necessary to support the species' particular use of that habitat.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the areas within the geographical area occupied by the species at the time of listing contain features that are essential to the conservation of the species and whether those features may require special management considerations or protections. All of the critical habitat units identified for these three species below, with the exception of a portion of Unit RH 1, have been designated as critical habitat for other mollusk species that are already listed under the Act. None of the areas are presently under special management or protection provided by a legally operative management plan or agreement for the conservation of the interrupted rocksnail, rough hornsnail, or Georgia pigtoe. Various activities in or adjacent to each of the critical habitat units described below may affect one or more of the PCEs. Some of these activities include, but are not limited to, those discussed in the Summary of Factors Affecting the Species, above. For example, three of the units described below (Units IR 1, IR 2, and RH 1 (which includes IR 3)) may require special management considerations due to detrimental effects of hydropower generation or lack of minimum flow releases from dams (*see* Factor A: Dams and Impoundments, above). Features in all of the critical habitat units may require special management due to threats posed by land-use runoff and point- and nonpoint-source water pollution (*see* Factor A: Water and Habitat Quality, and Factor D: Inadequacy of existing regulatory mechanisms, above). Other activities that may affect PCEs in the critical habitat units include those listed in the Effects of Critical Habitat Designation section as Federal Activities that may affect critical habitat and require consultation, below.

Criteria Used To Identify Critical Habitat

We are designating as critical habitat all stream channels that are currently occupied by the species, as well as some specific areas not currently occupied but that were historically occupied, because we have determined that these additional areas are essential for the conservation of the Georgia pigtoe, interrupted rocksnail, and rough hornsnail, and that designating only occupied habitat is not sufficient to conserve each of these species.

When identifying critical habitat boundaries, we make every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands usually lack PCEs for endangered or threatened species. Areas identified as critical habitat for the Georgia pigtoe, interrupted rocksnail, and rough hornsnail, below, include only stream channels within the ordinary high water line and do not contain any developed areas or structures.

Occupied Stream Reaches Designated as Critical Habitat

We have defined occupied habitat as those stream reaches known to be currently occupied by the Georgia pigtoe, interrupted rocksnail, or rough hornsnail. We used information from surveys and reports prepared by the U.S. Geological Survey, the Alabama Department of Conservation and Natural Resources, the Tennessee Aquarium, Alabama Geological Survey, Auburn University, University of Alabama, and Service field records to identify the specific locations occupied by the Georgia pigtoe, interrupted rocksnail, or rough hornsnail.

Currently, occupied habitat for each of the three species is extremely limited and isolated. The Georgia pigtoe persists only in a restricted series of shoals in the Conasauga River (Johnson and Evans 2000, p. 106). The interrupted rocksnail naturally survives in a short reach of the Oostanaula River in Gordon and Floyd Counties, Georgia, and population reintroductions have been attempted into a shoal of the Lower Coosa River, Elmore County, Alabama (ADCNR 2004, p. 33). The rough hornsnail is known from two small, localized, and isolated populations: Yellowleaf Creek, Shelby County, Alabama, and a short reach of the Lower Coosa River, Elmore County, Alabama (Sides 2005, p. 40). We believe that all currently occupied areas contain features essential to the conservation of these species. With such limited distribution, each of these species is at a high risk of extinction and highly susceptible to stochastic events.

Unoccupied Stream Reaches Designated as Critical Habitat

The streams not currently occupied that we are designating as critical habitat were all historically occupied. We believe that the designation of additional areas not known to be currently occupied by the Georgia pigtoe, interrupted rocksnail, or rough hornsnail is essential for their conservation because:

(1) The range of each species has been severely curtailed, occupied habitats are limited and isolated, and population sizes are extremely small for each species. While occupied units provide habitat for current populations, they are at high risk of extirpation and extinction from stochastic events, whether periodic natural events or existing or potential human-induced events (*see* Summary of Factors Affecting the Species). The inclusion of essential unoccupied areas will provide habitat for population reintroduction and will decrease the risk of extinction for each species.

(2) The essential unoccupied areas may offer habitat that is superior to that in the occupied units (the potential viability of the mollusks in unoccupied units may be higher) because the essential unoccupied areas may be faced with fewer and more easily treated threats than the occupied units (see discussion under Factor A: Dams and Impoundments).

(3) The protection of PCEs in currently occupied areas is directly related to conditions in adjacent unoccupied stream reaches (such as the Oostanaula and Lower Coosa Rivers).

Based on the best scientific data available, we believe that areas that are not currently occupied by the Georgia pigtoe, interrupted rocksnail, or rough hornsnail are essential for their conservation.

Length of Occupied Stream Reaches

Following the identification of occupied stream reaches, the next step was to delineate the length of upstream and downstream reaches of known occupied areas to determine the length of stream reaches that are needed for the conservation of the populations for each species. All known occurrences for each species are extremely localized, and rare aquatic snails and mussels can be difficult to locate. In addition, creek and river habitats are highly dependent upon upstream and downstream channel habitat conditions for their maintenance. Therefore, where more than one occurrence record of a particular species was found within a stream reach, we considered the entire reach between the uppermost and lowermost locations as occupied habitat, as discussed below.

Georgia pigtoe

The Georgia pigtoe is currently known to survive only in a 52-km (32-mi) reach of the Upper Conasauga River extending from Polk County, Tennessee, downstream into Murray and Whitfield Counties, Georgia (Johnson and Evans 2000, p. 106; Evans 2001, pp. 33–34). The Georgia pigtoe has been recently collected from three shoals within this reach: one located at each end of the reach, and one additional site in the lower third of the reach. Other shoals

within the reach continue to be inhabited by a diverse mussel community, including the federally endangered triangular kidneyshell and southern pigtoe and the threatened fine-lined pocketbook. These species historically co-occurred in the same shoal habitats with the Georgia pigtoe, and their persistence indicates the presence of PCEs for the pigtoe throughout the reach. Therefore, we consider the entire 52-km (32-mi) reach between the uppermost and lowermost recent collection sites for the Georgia pigtoe as occupied habitat. In the area identified as critical habitat below, boundaries extend from the nearest downstream landmark at both ends of the reach.

Interrupted rocksnail

The interrupted rocksnail is known to survive in several shoals along a 12-km (7.4-mi) reach of the Oostanaula River between Ship Island and the confluence of Armuchee Creek, Gordon and Floyd counties, Georgia (Johnson and Evans 2000, pp. 45–46; Johnson and Evans 2001, pp. 2, 25). Although rocksnails live attached to the stream bottom, they are small and often difficult to locate when their population numbers are low. Therefore, we consider the reach of the Oostanaula River between Ship Island and the confluence of Armuchee Creek as habitat occupied by interrupted rocksnail. Attempts to reintroduce the species into the Lower Coosa River, Elmore County, Alabama, have also been made by the ADCNR. ADCNR attempted to reintroduce the interrupted rocksnail into Gray Island Shoals in the Lower Coosa River, about 3.2 km (2 mi) below Jordan Dam, Elmore County, Alabama. Although we do not yet know if this reintroduced population is viable, it is within the historical range of the interrupted rocksnail, and we are considering the 1-km (0.6-mi) reach encompassing Gray Island Shoals in the Lower Coosa River as occupied habitat.

Rough hornsnail

The rough hornsnail is known to survive at only two locations, Yellowleaf Creek and the Lower Coosa River. At the time we proposed these areas as critical habitat (74 FR 31113) for the rough hornsnail, we considered only a 3.2-km (2-mi) reach of Yellowleaf Creek, Shelby County, Alabama, as occupied by the species. A snail survey conducted by a Service biologist and others (Powell in litt. 2009) has since found the species throughout the designated area. Therefore, we consider the entire designated 6.4-km (4-mi) reach of Yellowleaf Creek as occupied by the rough hornsnail.

Collections during the 1990s from the Lower Coosa River, Elmore County, Alabama, show the rough hornsnail extended from the shoals below Jordan Dam, downstream to just below the Fall Line at Wetumpka, Alabama (FLMNH in litt. 2006). Therefore, we consider this 14-km (8-mi) reach as habitat occupied by the rough hornsnail.

Stream Reaches Not Currently Occupied

In identifying unoccupied stream reaches that are essential to the conservation of each species (Georgia pigtoe, interrupted rocksnail, and rough hornsnail), we first considered the availability of potential habitat throughout their historical ranges that may be suitable for the survival and persistence of each species. A large proportion of the streams that formerly supported each species have been modified by dams and their impounded waters, and we eliminated these areas from consideration, because none of these species can survive under the modified conditions (*see* Primary Constituent Elements (PCEs) section, above). We also eliminated from consideration free-flowing streams without any historical records of occurrence. We eliminated from consideration other streams with historical occurrence records because of limited habitat availability, isolation, degraded habitat, or low management value or potential (such as Coosawattee River and Etowah River).

All of the areas identified as critical habitat that are currently not known to be occupied meet one or more of the following criteria:

(1) The stream habitat contains sufficient PCEs (for example, such characteristics as geomorphically stable channels, perennial water flows, adequate water quality, and appropriate benthic substrates) to support life-history functions of the mollusks (all unoccupied critical habitat units);

(2) The stream supports diverse aquatic molluscan communities, including the presence of closely related species requiring PCEs similar to the Georgia pigtoe, interrupted rocksnail, and rough hornsnail (all unoccupied critical habitat units);

(3) The stream reaches are adjacent to currently occupied areas where there is potential for natural dispersal and reoccupation by the Georgia pigtoe, interrupted rocksnail, or rough hornsnail (Oostanaula River, Lower Coosa River, and Yellowleaf Creek);

(4) The stream reaches lack major anthropogenic disturbance (Hatchet Creek);

(5) Areas are remote from currently occupied areas and have experienced improvements in water quality or quantity during the past decades due to implementation of minimum flows below dams, changes in adjacent land uses, or implementation of the Clean Water Act (Coosa River below Weiss Dam and Jordan Dam, Terrapin Creek, and Hatchet Creek); and

(6) The stream reaches have potential for reoccupation by the species through future reintroduction efforts (all unoccupied critical habitat units).

Based on the above factors, all unoccupied stream reaches included in the critical habitat designations for each of these three species are essential to their conservation.

Georgia Pigtoe

We identified 101 km (63 mi) of habitat in two stream reaches that are currently unoccupied by the Georgia pigtoe and that meet several of the criteria for designation as critical habitat. Historical records of Georgia pigtoe occur from the Coosa River near the present location of Weiss Dam and from Terrapin Creek, from its confluence with the Coosa River upstream to the vicinity of Alabama Highway 9. Terrapin Creek flows into the Coosa River approximately 11 km (7 mi) below Weiss Dam in Cherokee County, Alabama. Together these two confluent stream reaches encompass 35 km (22 mi) of stream habitat that meet Criteria 1, 2, 5, and 6 listed above in this section. Terrapin Creek and this short reach of the Coosa River support diverse mollusk and fish communities. Water quality in Terrapin Creek meets current State criteria for Fish and Wildlife. The Mobile River Basin Mollusk Restoration Committee (2009, p. 22) recognizes this reach of the Coosa River and Terrapin Creek as an appropriate reintroduction site for the Georgia pigtoe. Based on the information we have to date, which does not necessarily suggest there is an increased probability of Georgia pigtoe conservation in specific areas within the reach, we are designating the entire reach of Terrapin Creek and the Coosa River as critical habitat.

Historical records of Georgia pigtoe occur from an approximately 66-km (41-mi) reach of Hatchet Creek between Clay County Road 4 downstream to the confluence with Swamp Creek in Coosa County, Alabama. This stream reach meets Criteria 1, 2, 4, 5, and 6 listed above in this section and has been identified by the Mobile River Basin Mollusk Restoration Committee (2008, p. 40) as having high conservation potential for the reintroduction of imperiled mollusks. Hatchet Creek supports diverse mollusk and fish communities and has been designated

as an Outstanding Alabama Water, the highest protective classification assigned by the State. Based on the information we have to date, which does not necessarily suggest there is an increased probability of Georgia pigtoe conservation in specific areas within the reach, we are designating the entire reach of Hatchet Creek as critical habitat.

Interrupted Rocksnail

We identified 88 km (55 mi) of habitat in three stream reaches that are currently unoccupied by the interrupted rocksnail and that meet several of the criteria for designation as unoccupied habitat. The Coosa River from Weiss Dam to just below the confluence of Terrapin Creek (11 km (7 mi)) is within the historical range of the interrupted rocksnail, and meets Criteria 1, 2, 5, and 6 listed above in this section. Several mollusk species requiring similar PCEs currently inhabit a portion of the reach. Projected minimum flows (Weiss Bypass Working Group 2005, pp. 6–8) will improve PCEs in the remainder of the reach, and reservoir-stored water will provide protection from nonpoint source pollution and reduce the potential of stochastic threats. The Mobile River Basin Mollusk Restoration Committee (2008, p. 53) recognizes this reach of the Coosa River as an appropriate reintroduction site for interrupted rocksnail.

The interrupted rocksnail is currently known to inhabit shoals along a 12-km (7.4-mi) reach of the Oostanaula River between Ship Island and the Confluence of Armuchee Creek, Gordon and Floyd Counties, Georgia. However, appropriate habitat extends approximately 49 km (30 mi) above Ship Island to the Conasuaga-Coosawattee confluence in Gordon County, Georgia, and approximately 16 km (10 mi) below the confluence of Armuchee Creek to the Georgia Highway 1 Loop in Floyd County, Georgia. This unoccupied area encompasses an additional 65 km (40 mi) of river habitat that meets Criteria 1, 2, 3, and 6 listed above in this section. The unoccupied upstream and downstream reaches of the Oostanaula River contain one or more of the PCEs required by the species, including geomorphically stable channels and natural flows. They are adjacent to areas currently occupied by interrupted rocksnail, and there is potential for natural dispersal and re-occupation by the interrupted rocksnail. These areas are also currently occupied by other mollusk species with similar habitat requirements.

The Lower Coosa River below Jordan Dam is within the historical range of the interrupted rocksnail, and a small population of the species has been reintroduced into a shoal there (ADCNR, p. 33). Apparently suitable habitat extends approximately 13 km (8 mi) from the tailwaters of Jordan Dam to Alabama Highway 111 in Elmore County, Alabama. This reach meets Criteria 1, 2, 3, 5, and 6 listed above in this section. The steep river gradient below the dam to the Fall Line at Alabama Highway 111 in Wetumpka results in the presence of numerous high-quality and stable shoals and pools characteristic of habitats formerly inhabited by the interrupted rocksnail. The reach is occupied by other species of pleurocerid snails, as well as a diverse mussel fauna, indicating the presence of PCEs in this reach. Minimum flows that have been established from Jordan Dam have eliminated historical threats, such as seasonal loss of flow and low dissolved oxygen levels. The Mobile River Basin Mollusk Restoration Committee (2008, p. 53) recognizes this reach of the Coosa River as an appropriate reintroduction site for interrupted rocksnail, and the ADCNR has initiated attempts to reintroduce the species to the reach.

Rough Hornsnail

We identified 7 km (4 mi) of habitat that is unoccupied by the rough hornsnail and that meets Criteria 1, 2, 3, and 6 listed above in this section. The species inhabits a 14-km (8-mi) reach of the Lower Coosa River below Jordan Dam; however, appropriate habitat extends an additional 7 km (4 mi) downstream of currently occupied areas. This stream reach is available for natural recolonization and contains one or more of the PCEs required by the rough hornsnail, including a geomorphically stable channel and adequate water quality and substrate, as indicated by the presence of closely related pleurocerids and other mollusk species with similar habitat requirements.

Critical Habitat Designation

We are designating three units as critical habitat for the Georgia pigtoe (GP 1, GP 2, and GP 3), three units for interrupted rocksnail (IR 1, IR 2, and IR 3), and two units for rough hornsnail (RH 1 and RH 2). The critical habitat areas described below constitute our best assessment of areas that currently meet the definition of critical habitat for the Georgia pigtoe, interrupted rocksnail, and rough hornsnail. Table 1 identifies the units for each species; shows the occupancy of the units, the approximate extent designated as critical habitat for the Georgia pigtoe (GP), interrupted rocksnail (IR), and rough hornsnail (RH); and provides information on the ownership of lands within the designated units. Critical habitat includes only the stream channel within the ordinary high water line. In Alabama and Georgia, the State owns navigable stream bottoms within the ordinary high water line, and all designated units in Alabama and Georgia are considered navigable. In Tennessee, the riparian landowner owns the stream bottom to the middle of the channel.

TABLE 1—OCCUPANCY AND OWNERSHIP OF CRITICAL HABITAT UNITS FOR GEORGIA PIGTOE (GP), INTERRUPTED ROCKSNAIL (IR), AND ROUGH HORNSNAIL (RH)

Unit	Location	Occupancy	Private ownership river kilometers (miles)	State ownership river kilometers (miles)
GP 1	Conasauga River	Occupied	5 (3)	47 (29)
GP 2	Terrapin Creek and Coosa River	Unoccupied	0	[1] 35 (22)
GP 3	Hatchet Creek	Unoccupied	0	66 (41)
Total			5 (3)	148 (92)
IR 1	Coosa River	Unoccupied	0	[1] 11 (7)
IR 2	Oostanaula River	Occupied	0	12 (7.4)
		Unoccupied	0	65 (40.6)

TABLE 1—OCCUPANCY AND OWNERSHIP OF CRITICAL HABITAT UNITS FOR GEORGIA PIGTOE (GP), INTERRUPTED ROCKSNAIL (IR), AND ROUGH HORNSNAIL (RH)—Continued

Unit	Location	Occupancy	Private ownership river kilometers (miles)	State ownership river kilometers (miles)
IR 3	Lower Coosa River	Occupied	0	[2]1 (0.6)
		Unoccupied	0	[2]12 (7.4)
Total			0	101 (63)
RH 1 ..	Lower Coosa River	Occupied	0	[2]14 (9)
		Unoccupied	0	7 (4)
RH 2 ..	Yellowleaf Creek	Occupied	0	6.4 (4)
		Unoccupied	0	0
Total			0	27.4 (17)

[1] IR 1 overlaps in part with GP 2.
[2] IR 3 overlaps in part with RH 1. See Unit descriptions, below.

We present brief descriptions of all units and reasons why they meet the definition of critical habitat for each species below. The critical habitat units include the creek and river channels within the ordinary high water line. For this purpose, we applied the ordinary high water line definition found at 33 CFR 329.11, which is defined for nontidal rivers to be the line on the shore established by the fluctuations of water and indicated by physical characteristics, such as a clear, natural line impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas. For each stream reach identified as a critical habitat unit, the upstream and downstream boundaries are described generally below; more precise estimates are provided in the Regulation Promulgation section at the end of this final rule.

Unit GP 1: Conasauga River, Bradley and Polk Counties, Tennessee, and Murray and Whitfield Counties, Georgia

Unit 1 for the Georgia pigtoe includes 52 km (32 mi) of the Upper Conasauga River from the confluence of Minnewaga Creek near Willis Springs, Polk County, Tennessee, downstream to U.S. Highway 76 in Murray and Whitfield Counties, Georgia. Critical habitat includes the stream channel within the ordinary high water line only. In Tennessee, the riparian landowner owns the stream bottom to the middle of the channel. Therefore, 5 km (3 mi) of GP 1 in Tennessee is privately owned. In Georgia, the State owns navigable stream bottoms within the ordinary high water line, and the Conasauga River is considered navigable. Therefore, the State of Georgia owns 47 km (29 mi) of Unit GP 1.

The Georgia pigtoe has been collected from three shoals within the reach of the Conasauga River identified as GP 1, one located at each end of the reach and one site in between (Johnson and Evans 2000, p. 106; Evans 2001, pp. 33–34). Therefore, we consider the entire reach of the Conasauga River that composes GP 1 as occupied. Other shoals within the reach continue to be inhabited by a diverse mussel community, including the endangered triangular kidneyshell and southern pigtoe and the threatened fine-lined pocketbook. These species historically co-occurred in the same shoal habitats with the Georgia pigtoe, they have similar habitat requirements, and their persistence indicates the presence of PCEs 1, 2, 3, and 4 for the Georgia pigtoe. The persistence of the Georgia pigtoe within three shoals of this reach also indicates the presence of an appropriate fish host (PCE 5). This small population of Georgia pigtoe is at a high risk of extinction due to changes in flow, habitat or water quality, and stochastic events such as drought. Threats to the Georgia pigtoe and its habitat that may require special management of the PCEs include the potential of anthropogenic activities (such as channelization, impoundment, and channel excavation) that could cause aggradation or degradation of the channel bed elevation or significant bank erosion; the potential of significant changes in the existing flow regime due to such activities as impoundment, water diversion, or water withdrawal; the potential of significant alteration of water chemistry or water quality; and the potential of significant changes in stream bed material composition and quality by activities such as construction projects, livestock grazing, timber harvesting, off-road vehicle use, and other watershed and floodplain disturbances that release sediments or nutrients into the water.

Unit GP 2: Terrapin Creek and Coosa River, Cherokee County, Alabama

Unit 2 for the Georgia pigtoe includes 24 km (15 mi) of Terrapin Creek from Alabama Highway 9 downstream to its confluence with the Coosa River, and 11 km (7 mi) of the Coosa River from Weiss Dam downstream to approximately 1.6 km (1 mi) below the confluence of Terrapin Creek in Cherokee County, Alabama. The State of Alabama owns navigable stream bottoms within the ordinary high water line, and both Lower Terrapin Creek and the Coosa River are considered navigable streams.

The Georgia pigtoe is not currently known to occur in Terrapin Creek or the Coosa River. However, Unit 2 is essential to the conservation of the Georgia pigtoe due to the high potential for stochastic events in the Conasauga River (the only extant population of Georgia pigtoe), and the need to re-establish the species within other portions of its historical range in order to reduce threats from stochastic events.

Lower Terrapin Creek and the Coosa River are within the species' historical range, and we consider them to be essential to the conservation of the Georgia pigtoe. Terrapin Creek flows into the Coosa River below Weiss Dam. Terrapin Creek continues to support a diverse mollusk assemblage, including the endangered southern pigtoe, a closely related species that co-occurs with the Georgia pigtoe in the Conasauga River, indicating the presence of PCEs 1, 2, 3, and 4. The

endangered southern clubshell, the threatened fine-lined pocketbook, and other mussel and snail species requiring PCEs 1, 2, 3, and 4 similar to the Georgia pigtoe continue to survive in the Coosa River just below the confluence of Terrapin Creek. Additionally, a diverse fish fauna, including potential fish hosts for the Georgia pigtoe (PCE 5), is known from Terrapin Creek and Coosa River.

Minimum flows from Weiss Dam into the Coosa River will be implemented upon completion of the Alabama Power Company Coosa River hydropower relicensing process with FERC (Weiss Bypass Working Group 2005, pp. 6–8), which is currently in progress. These minimum flows will improve the PCEs necessary for the survival of the Georgia pigtoe in the Coosa River, particularly above the confluence with Terrapin Creek. Because the minimum flows will originate from the large reservoir impounded by Weiss Dam, there is little threat of nonpoint source pollution and reduced potential of stochastic threats, such as drought and spills. ADCNR recognizes this reach of the Coosa River as having high conservation potential for imperiled mollusks in Alabama and is planning to reintroduce imperiled mollusks, including the Georgia pigtoe, following implementation of minimum flows. Over the past few decades, changes in land uses, use of best management practices for agriculture and forestry activities in the watershed, and implementation of State water quality standards resulted in improved water quality and shoal habitats in Terrapin Creek. The Mobile River Basin Mollusk Restoration Committee (2008, p. 40) recognizes Terrapin Creek as an appropriate reintroduction opportunity for the Georgia pigtoe.

Unit GP 3: Hatchet Creek, Coosa and Clay Counties, Alabama

Unit 3 for the Georgia pigtoe includes approximately 66 km (41 mi) of Hatchet Creek, extending from Clay County Road 4, Clay County, downstream to the confluence of Swamp Creek at Coosa County Road 29, Coosa County, Alabama. The State of Alabama owns navigable stream bottoms within the ordinary high water line, and Hatchet Creek is considered navigable.

The Georgia pigtoe does not currently occupy Hatchet Creek. However, historical records of the species show its presence in this stream from the stream's confluence with the Coosa River, Coosa County, upstream into Clay County, Alabama. An extensive reach of Hatchet Creek is occupied by the threatened fine-lined pocketbook, along with other mollusk species that currently or historically co-occur with Georgia pigtoe, indicating the presence of PCEs 1, 2, 3, and 4. A diverse fish fauna, including several potential fish hosts for the pigtoe (PCE 5), is also known to inhabit Hatchet Creek. Water quality and shoal habitats in this stream have improved relative to past historical conditions due to changes in land uses, implementation of best management practices in agriculture and forestry activities in the watershed, and implementation of State water quality standards. Due to these improvements, Hatchet Creek has been designated as an Outstanding Alabama Water, which also provides for increased water quality protections. The Mobile River Basin Mollusk Restoration Committee (2008, p. 40) recognizes Hatchet Creek as having high conservation potential for reintroduction of the Georgia pigtoe.

Re-establishing Georgia pigtoe in Hatchet Creek will significantly reduce the level of stochastic threats to the species' survival and is essential to the conservation of the species. We do not know which specific shoals or reaches of Hatchet Creek may be capable of supporting the Georgia pigtoe. Therefore, we have designated all apparently suitable habitat within the historical range of the species in Hatchet Creek as critical habitat essential to the conservation of Georgia pigtoe.

Unit IR 1: Coosa River, Cherokee County, Alabama (overlaps in part with GP 2, described above)

Unit 1 for the interrupted rocksnail includes approximately 11 km (7 mi) of the Coosa River extending from Weiss Dam downstream to about 1.6 km (1 mi) below the confluence of Terrapin Creek, Cherokee County, Alabama. The State of Alabama owns navigable stream bottoms within the ordinary high water line, and the Coosa River is considered navigable.

The interrupted rocksnail historically inhabited the Coosa River in Cherokee County. Although the species does not currently occupy the area, Unit 1 is essential to the conservation of the interrupted rocksnail due to the high degree of stochastic threats to the single surviving population in the Ostanaula River and the need to re-establish the species within other portions of its historical range. The presence of the endangered southern clubshell, the threatened fine-lined pocketbook, and other mussel and snail species in the Coosa River at and below the confluence of Terrapin Creek indicates the presence of PCEs 1, 2, 3, and 4 for the interrupted rocksnail.

Minimum flows from Weiss Dam into the Coosa River will be implemented upon completion of the Alabama Power Company Coosa River hydropower relicensing process with FERC (Weiss Bypass Working Group 2005, pp. 6–8) currently in progress. These minimum flows will improve the PCEs necessary for the survival of the interrupted rocksnail in about 11 km (7 mi) of the Coosa River, between Weiss Dam downstream to the confluence with Terrapin Creek. Implementation of minimum flows from Weiss Dam (Weiss Bypass Working Group 2005, pp. 6–8) will improve PCEs necessary for the survival of the interrupted rocksnail. The majority of flow into the reach above the confluence of Terrapin Creek originates from Weiss Dam. Therefore, there is little threat of nonpoint source pollution, and reduced potential of stochastic threats such as drought and spills. ADCNR recognizes this reach as having high conservation potential for imperiled mollusks in Alabama and is planning to reintroduce imperiled mollusk species, including the interrupted rocksnail, into the reach following initiation of minimum flows. Re-establishing the interrupted rocksnail into the Coosa River will significantly reduce stochastic threats to the survival of the species and is essential to its conservation.

Unit IR 2: Oostanaula River, Gordon and Floyd Counties, Georgia

Unit 2 for the interrupted rocksnail includes approximately 77 km (48 mi) of the Oostanaula River from the Conasauga–Coosawattee confluence in Gordon County, downstream to Georgia Highway 1 loop in Floyd County, Georgia. The State of Georgia owns navigable stream bottoms within the ordinary high water line, and the Oostanaula River is considered navigable.

The interrupted rocksnail occupies shoals along a 12-km (7.4-mi) reach of the Oostanaula River, extending from the confluence of Johns Creek in Gordon and Floyd Counties, downstream to the confluence of Armuchee Creek in Floyd County, Georgia. Threats to the interrupted rocksnail and its habitat in the Oostanaula River that may require special management of the PCEs include the potential of activities (such as channelization, impoundment, and channel excavation) that could cause aggradation or degradation of the channel bed elevation or significant bank erosion; the potential of significant changes in the existing flow regime due to activities such as impoundment, hydropower generation, water diversion, or water withdrawal; the potential of significant alteration of water chemistry or water quality; and the potential of significant changes in

stream bed material composition and quality by activities such as construction projects, livestock grazing, timber harvesting, off-road vehicle use, and other watershed and floodplain disturbances that release sediments or nutrients into the water.

Although there are no recent collections of the species from shoal habitats above and below the currently inhabited reach, these currently unoccupied areas contain three of the PCEs required by the species, including geomorphically stable stream channels, natural flows, and appropriate substrates (PCEs 1, 2, and 4). The presence of other mollusk species with similar habitat requirements as the interrupted rocksnail in this reach, including the endangered triangular kidneyshell, along with more common species of pleurocerid snails, also indicates the potentially suitable presence of appropriate water quality (PCE 3). Shoals within the 65 km (40.6 mi) of currently unoccupied reaches of the Oostanaula River are available to natural recolonization of the species. Expanding the range of the interrupted rocksnail into adjacent shoals in the river would greatly reduce the degree of threat from stochastic events, and is essential to the conservation of the interrupted rocksnail.

Unit IR 3: Lower Coosa River, Elmore County, Alabama

Unit 3 for the interrupted rocksnail includes 13 km (8 mi) of the Lower Coosa River between Jordan Dam and Alabama Highway 111 in Elmore County, Alabama. The State of Alabama owns navigable stream bottoms within the ordinary high water line, and the Coosa River is considered navigable.

The Lower Coosa River is within the historical range of the species, and a small population of the interrupted rocksnail has been reintroduced into a 1-km (0.6-mi) portion of a shoal there (ADCNR 2004, p 33). However, this reintroduced population will likely require augmentations over several years before population size can reach self-sustainable levels. The remaining 12 km (7.4 mi) of this reach, from Jordan Dam downstream to the Fall Line at Wetumpka, contains numerous high-quality shoals and pools characteristic of the large river habitats historically occupied by the species. Several other species of pleurocerid snails, the endangered tulotoma snail, and a diverse mussel fauna are currently found throughout the reach, indicating the presence and suitability of PCEs 1, 2, 3, and 4 for the interrupted rocksnail in this reach. Historical threats, including seasonal loss of flow and low dissolved oxygen, were eliminated in 1990 by implementation of minimum flows from Jordan Dam by the Alabama Power Company. As noted, ADCNR recognizes the Lower Coosa River as an appropriate location for imperiled mollusk reintroductions and has begun efforts to reestablish the interrupted rocksnail into this reach. Due to the extremely limited distribution of the interrupted rocksnail and the high degree of stochastic threats to the single natural population, reestablishing the species in the Lower Coosa River is essential to the conservation of the interrupted rocksnail.

Unit RH 1: Lower Coosa River, Elmore County, Alabama (overlaps in part with IR 3, described above)

Unit 1 for the rough hornsnail includes 21 km (13 mi) of the Lower Coosa River extending from Jordan Dam, downstream to the confluence of the Tallapoosa River in Elmore County, Alabama. The State of Alabama owns navigable stream bottoms within the ordinary high water line, and the Coosa River is considered navigable. We believe PCEs 1, 2, 3, and 4 to be suitable throughout the reach, due to the presence of rough hornsnail colonies or other closely related pleurocerid snail species that are known to co-occur with the hornsnail and have similar habitat requirements.

Early 1990 records of rough hornsnail from the reach of the Coosa River between Jordan Dam and the Fall Line (FLMNH in litt. 2006), and more recent records of the hornsnail extending 2 km (1.2 mi) below the Fall Line (Hartfield pers. obsv. 2001; Crow in litt. 2008), indicate an occupied range of 14 km (9 mi) in the Lower Coosa River. An additional 7-km (4-mi) channel reach extending downstream to the confluence of the Tallapoosa River is not currently occupied. This downstream unoccupied area is available for natural recolonization, and contains PCEs 1, 2, 3, and 4, including a geomorphically stable channel, and adequate flow, water quality, and substrate, as indicated by the presence of closely related pleurocerids and other mollusk species with similar habitat requirements. Expanding the range of rough hornsnail into the currently unoccupied downstream habitat would reduce the level of stochastic threats to the species, and is essential to its conservation.

Threats to the rough hornsnail and its habitat in the Coosa River that may require special management of the PCEs include the potential of activities (such as channelization, impoundment, and channel excavation) that could cause aggradation or degradation of the channel bed elevation or significant bank erosion; the potential of significant changes in the existing flow regime due to such activities as hydropower generation, water diversion, or water withdrawal; the potential of significant alteration of water chemistry or water quality due to discharges or land use activities; and the potential of significant changes in stream bed material composition and quality by activities such as construction projects, livestock grazing, timber harvesting, and other watershed and floodplain disturbances that release sediments or nutrients into the water.

Unit RH 2: Yellowleaf Creek, Shelby County, Alabama

Unit 2 for the rough hornsnail includes approximately 6.4 km (4 mi) of the Yellowleaf Creek channel from the confluence of Morgan Creek, downstream to 1.6 km (1 mi) below the Alabama Highway 25 crossing in Shelby County, Alabama. The State of Alabama owns navigable stream bottoms within the ordinary high water line, and the lower reach of Yellowleaf Creek is considered navigable.

The rough hornsnail has been found to occupy this entire reach (Powell in litt. 2009). This reach of Yellowleaf Creek is characterized by a stable channel, natural flows, and appropriate water quality and substrates (PCEs 1, 2, 3, and 4). Threats to the rough hornsnail and its habitat in Yellowleaf Creek that may require special management of PCEs 1, 2, 3, and 4 include the potential of activities (such as channelization, impoundment, and channel excavation) that could cause aggradation or degradation of the channel bed elevation or significant bank erosion; the potential of significant changes in the existing flow regime due to such activities as water diversion or water withdrawal; the potential of significant alteration of water chemistry or water quality due to discharges or nonpoint source pollution; and the potential of significant changes in stream bed material composition and quality by activities such as construction projects, livestock grazing, timber harvesting, and other watershed and floodplain disturbances that release sediments or nutrients into the water.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical

habitat. Decisions by the courts of appeals for the Fifth and Ninth Circuits have invalidated our definition of "destruction or adverse modification" (50 CFR 402.02) (*see Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F.3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service,* 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 provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the PCEs to be functionally established) to serve its intended conservation role for the species.

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or to destroy or adversely modify its critical habitat. Activities on State, tribal, local, or private lands requiring 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 involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) are subject to the section 7(a)(2) consultation process. Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally funded, authorized, or permitted, do not require section 7(a)(2) consultations.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. As a result of this consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

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

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

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

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

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

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 may sometimes 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, or would retain its current ability for the PCEs to be functionally established. Activities that may destroy or adversely modify critical habitat are those that alter the PCEs to an extent that appreciably reduces the conservation value of critical habitat for each species (the Georgia pigtoe, interrupted rocksnail, and rough hornsnail).

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, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and therefore should result in consultation for each species (Georgia pigtoe, interrupted rocksnail, and rough hornsnail) include, but are not limited to:

(1) Actions that would alter the geomorphology of stream and river habitats. Such activities could include, but are not limited to, instream excavation or dredging, impoundment, channelization, and discharge of fill materials. These activities could cause aggradation or degradation of the channel bed elevation or significant bank erosion and result in entrainment or burial of these mollusks, and could cause other direct or cumulative adverse effects to these species and their life cycles.

(2) Actions that would significantly alter the existing flow regime. Such activities could include, but are not limited to, impoundment, water diversion, water withdrawal, and hydropower generation. These activities could eliminate or reduce the habitat necessary for growth and reproduction of these mollusks.

(3) Actions that would significantly alter water chemistry or water quality (for example, temperature, pH, contaminants, and excess nutrients). Such activities could include, but are not limited to, hydropower discharges, or the release of chemicals, biological pollutants, or heated effluents into surface water or connected groundwater at a point source or by dispersed release (nonpoint source). These activities could alter water conditions that are beyond the tolerances of these mollusks and result in direct or cumulative adverse affects to the species and their life cycles.

(4) Actions that would significantly alter stream bed material composition and quality by increasing sediment deposition or filamentous algal growth. Such activities could include, but are not limited to, construction projects, livestock grazing, timber harvest, off-road vehicle use, and other watershed and floodplain disturbances that release sediments or nutrients into the water. These activities could eliminate or reduce habitats necessary for the growth and reproduction of these mollusks by causing excessive sedimentation and burial of the species or their habitats, or nutrification leading to excessive filamentous algal growth. Excessive

filamentous algal growth can cause reduced nighttime dissolved oxygen levels through respiration, cover the hard substrates required by aquatic snails for egg deposition, and prevent mussel glochidia from settling into stream sediments.

Exemptions and Exclusion

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. 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 geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation."

There are no Department of Defense lands with a completed INRMP within the critical habitat designation for any of the three species. Therefore, there are no specific lands that meet the criteria for being exempted from the designation of critical habitat under section 4(a)(3) of the Act.

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

Section 4(b)(2) of the Act states that the Secretary must designate or revise 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 legislative history is clear that the Secretary has broad discretion regarding which factors to use and how much weight to give to any factor.

Under section 4(b)(2) of the Act, we must consider the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. For example, we consider whether there are lands owned or managed by the Department of Defense (DOD) where a national security impact might exist. We also consider whether landowners have developed any conservation plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion of lands 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 the economic impacts, environmental impacts, and any social impacts that might occur because of the designation.

Under section 4(b)(2) of the Act, in considering whether to exclude a particular area from the designation, we must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and determine whether the benefits of exclusion outweigh the benefits of inclusion. If, based on this analysis, we determine that the benefits of exclusion outweigh the benefits of inclusion, we can exclude the area only if such exclusion would not result in the extinction of the species.

In the proposed rule, we requested information on why any area should or should not be designated as critical habitat as provided by section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether the benefit of designation would outweigh threats to the species caused by designation such that the designation of critical habitat is prudent. In this instance, we have examined all comments submitted with respect to providing adequate protection and management for the Georgia pigtoe, interrupted rocksnail, and rough hornsnail. None of the comments provided sufficient information to satisfy the criteria necessary for exclusion from final critical habitat.

In preparing this final rule, we determined that the lands within the designation of critical habitat for the Georgia pigtoe, interrupted rocksnail, and rough hornsnail are not owned or managed by the Department of Defense; there are currently no conservation partnerships for the Georgia pigtoe, interrupted rocksnail, and rough hornsnail; and the designation does not include any tribal lands or trust resources. Since the critical habitat designation includes only aquatic areas that are generally held in public trust, involves no Tribal lands, and includes no areas presently under special management or protection provided by a legally operative plan or agreement for the conservation of these mussels, we believe that, other than economics, there are no other relevant impacts to evaluate under section 4(b)(2).

Economic Analysis (EA)

We prepared an economic analysis that is consistent with the ruling of the United States Court of Appeals for the Tenth Circuit in *New Mexico Cattle Growers Ass'n* v. *United States Fish and Wildlife Service,* 248 F.3d 1277 (2001), and that was available for public review and comment during the comment period for the proposed rule. The final economic analysis is available on the Internet at *http://www.regulations.gov.* The final EA (Industrial Economics 2009) considers the potential economic effects of actions relating to the conservation of the Georgia pigtoe, interrupted rocksnail, and rough hornsnail, including costs associated with sections 4, 7, and 10 of the Act, and including those attributable to designating critical habitat. It further considers the economic effects of protective measures taken as a result of other Federal, State, and local laws that aid habitat conservation for the Georgia pigtoe, interrupted rocksnail, and rough hornsnail in essential habitat areas. The EA considers both economic efficiency and distributional effects. In the case of habitat conservation, efficiency effects generally reflect the "opportunity costs" associated with the commitment of resources to comply with habitat protection measures (for example, lost economic opportunities associated with restrictions on land use).

The final economic analysis states that costs associated with future conservation efforts that may benefit the three mollusks in critical habitat areas are estimated to be $8.97 million to $9.16 million annually, assuming a 7 percent discount rate. Most (96 percent) of baseline costs quantified in this analysis are conservation efforts related to lost hydropower production value at

three facilities. The remaining 4 percent of potential future baseline costs are related to transportation activities, water quality management activities, and National Forest management activities.

However, extensive actions are already currently planned within most of the critical habitat areas designated for these three species, on behalf of 11 other listed mollusk species for which the areas have been previously designated as critical habitat (69 FR 40083, July 1, 2004). Only 5 river miles (8 river kilometers) of this critical habitat designation do not overlap habitat for the 11 mussels, and no known projects are planned within, or which may affect, critical habitat in those areas. As such, incremental costs are anticipated to result entirely from the added administrative requirements of forecast section 7 consultations, and are estimated to be approximately $44,000 annually, assuming a 7 percent discount rate.

Based on the best available information, including the prepared economic analysis, we believe that all of the eight units are essential for the conservation of these species. Critical habitat aids in the conservation of the species specifically by protecting the primary constituent elements on which the species depends. It can also result in benefits by providing information to the public, local and State governments, Federal agencies, and other entities engaged in activities or long-range planning in areas essential to the conservation of the species. Conservation of the interrupted rocksnail, rough hornsnail, and Georgia pigtoe and essential features of their habitats will require habitat management, protection, and restoration, which will be facilitated by knowledge of habitat locations and the physical and biological features of those habitats. We conclude that these benefits of inclusion outweigh the above-described costs of designation for all areas we are designating as critical habitat in this rule.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies; groups; and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

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

Federal activities that may affect the Georgia pigtoe, interrupted rocksnail, and rough hornsnail include, but are not limited to, the carrying out or the issuance of permits for reservoir construction, stream alterations, discharges, wastewater facility development, water withdrawal projects, pesticide registration, mining, and road and bridge construction. It has been the experience of the Service, however, that nearly all section 7 consultations have been resolved so that the species have been protected and the project objectives have been met.

Listing the Georgia pigtoe, interrupted rocksnail, and rough hornsnail initiates the development and implementation of rangewide recovery plans for each species. These plans will bring together Federal, State, and local agency efforts for the conservation of these species. Recovery plans will establish a framework for agencies to coordinate their recovery efforts. The plans will set recovery priorities and estimate the costs of the tasks necessary to accomplish the priorities. They also will describe the site-specific actions necessary to achieve conservation and survival of each species.

Listing also will require us to review any actions on Federal lands and activities under Federal jurisdiction that may affect the three species; allow State plans to be developed under section 6 of the Act; encourage scientific investigations of efforts to enhance the propagation or survival of the species under section 10(a)(1)(A) of the Act; and promote habitat conservation plans non-Federal lands and activities under section 10(a)(1)(B) of the Act.

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

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are set forth at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities.

Under the Interagency Cooperative Policy for Endangered Species Act Section 9 Prohibitions, published in the **Federal Register** on July 1, 1994 (59 FR 34272), we identify to the maximum extent practicable those activities that would or would not constitute a violation of section 9 of the Act when the Georgia pigtoe, interrupted rocksnail, and rough hornsnail are listed. The intent of this policy is to increase public awareness as to the effects of these listings on future and ongoing activities within a species' range. We believe, based on the best available information, that the following actions will not result in a violation of the provisions of section 9 of the Act, provided these actions are carried out in accordance with existing regulations and permit requirements:

(1) Possession, delivery, or movement, including interstate transport that does not involve commercial activity, of specimens of these species that were legally acquired prior to the addition of these three mollusks to the Federal List of Endangered or Threatened Wildlife;

(2) Discharges into waters supporting the Georgia pigtoe, interrupted rocksnail, and rough hornsnail, provided these activities are carried out in accordance with existing regulations and permit requirements (*e.g.,* activities subject to section 404 of the Clean Water Act and discharges regulated under the National Pollutant Discharge Elimination System (NPDES));

(3) Agricultural and silvicultural activites or development and construction activities designed and

implemented under State and local water quality regulations and implemented using approved best management practices; and

(4) Any actions that may affect the Georgia pigtoe, interrupted rocksnail, and rough hornsnail that are authorized, funded, or carried out by a Federal agency (such as bridge and highway construction, pipeline construction, hydropower licensing), when the action is conducted in accordance with the consultation requirements for listed species under section 7 of the Act.

Potential activities that we believe will likely be considered a violation of section 9 of the Act, include, but are not limited to, the following:

(1) Unauthorized possession, collecting, trapping, capturing, killing, harassing, sale, delivery, or movement, including interstate and foreign commerce, or harming, or attempting any of these actions, of the Georgia pigtoe, interrupted rocksnail, and rough hornsnail;

(2) Unlawful destruction or alteration of their habitats (such as unpermitted instream dredging, impoundment, channelization, or discharge of fill material) that impairs essential behaviors, such as breeding, feeding, or sheltering, or results in killing or injuring any of these species;

(3) Violation of any discharge or water withdrawal permit that results in harm or death to any of these species or that results in degradation of their occupied habitat to an extent that essential behaviors such as breeding, feeding, and sheltering are impaired; and

(4) Unauthorized discharges or dumping of toxic chemicals or other pollutants into waters supporting the Georgia pigtoe, interrupted rocksnail, and rough hornsnail that kills or injures these species, or otherwise impairs essential life-sustaining requirements, such as reproduction, food, or shelter.

Other activities not identified above will be reviewed on a case-by-case basis to determine if a violation of section 9 of the Act may be likely to result from such activity. The Service does not consider these lists to be exhaustive and provides them as information to the public.

If you have questions regarding whether specific activities will likely violate the provisions of section 9 of the Act, contact the Jackson, Ecological Services Field Office (*see* **ADDRESSES**). Requests for copies of regulations regarding listed species and inquiries about prohibitions and permits should be addressed to the U.S. Fish and Wildlife Service, Ecological Services Division, 1875 Century Boulevard, Atlanta, GA 30345 (phone 404–679–7313; fax 404–679–7081).

Required Determinations

Regulatory Planning and Review—Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is not significant under Executive Order 12866 (E.O. 12866). OMB bases its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

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), 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 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 the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended RFA to require Federal agencies to provide a certification statement of factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. In this final rule, we are certifying that the critical habitat designation for the three mollusks will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

According to the Small Business Administration (SBA), small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

To determine if the rule could significantly affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (*e.g.,* housing development, grazing, oil and gas production, timber harvesting). We apply the "substantial number" test individually to each industry to determine if certification is appropriate. However, the SBREFA does not explicitly define "substantial number" or "significant economic impact." Consequently, to assess whether a "substantial number" of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the number of small entities potentially affected, we also consider whether their activities have any Federal involvement.

Designation of critical habitat only affects activities authorized, funded, or carried out by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species are present, Federal agencies already are required to consult with us under section 7 of the Act on activities they authorize, fund, or carry out that may affect the three mollusks. Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat, therefore, could result in an additional economic impact on small entities due to the requirement to reinitiate consultation for ongoing Federal

activities (*see Application of the "Adverse Modification" Standard* section).

In our final economic analysis of the proposed critical habitat designation, we evaluated the potential economic effects on small business entities resulting from conservation actions related to the listing of the three mollusks and the proposed designation of critical habitat. The analysis is based on the estimated impacts associated with the proposed rulemaking as described in Sections 2 through 6 and Appendix B of the analysis and evaluates the potential for economic impacts related to: (1) Water management; (2) water quality; and (3) other activities (dredging, general construction, bridge construction, and natural gas pipeline).

According to the final economic analysis, impacts on small entities due to this rule are expected to be modest because the incremental costs of the rule are estimated to be administrative in nature. The only incremental impacts associated with this rulemaking are administrative costs of consultation under section 7 of the Act, which are expected to be approximately $44,000 annually, using a 7 percent discount rate. The average of such costs to a small business over the next 20 years, discounted at 7 percent, is estimated to range from $0 to $18,300. The annualized incremental impacts, discounted at 7 percent, are expected to be distributed among specific activities as follows: 42 percent transportation/construction, 33 percent water quality, 18 percent National Forest activities, and 7 percent water management.

In summary, we considered whether this designation will result in a significant economic effect on a substantial number of small entities. Based on the above reasoning and currently available information, we concluded that this rule will not result in a significant economic impact on a substantial number of small entities. Therefore, we are certifying that the designation of critical habitat for the three mollusks will not have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

Pursuant to Executive Order No. 13211, "Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use," issued May 18, 2001, Federal agencies must prepare and submit a "Statement of Energy Effects" for all "significant energy actions." The purpose of this requirement is to ensure that all Federal agencies "appropriately weigh and consider the effects of the Federal Government's regulations on the supply, distribution, and use of energy."

The Office of Management and Budget (OMB) has provided guidance for implementing E.O. 13211 that outlines nine outcomes that may constitute "a significant adverse effect" when compared without the regulatory action under consideration. The economic analysis finds that incremental impacts of the designation of critical habitat are the subject of the analysis under Executive Order No. 13211. The potential effects of this designation on power production were considered in the economic analysis. The economic analysis finds that water managers at four hydroelectric production facilities in the ACT Basin are likely to undertake conservation efforts for listed species that will benefit the three mollusks, at an estimated cost of $8.8 million annually. Specifically, three facilities (Carters, Weiss, Jordan) are expected to modify operations to provide additional flows for the benefit of downstream aquatic species. However, these modifications related to conserving the Georgia pigtoe, interrupted rocksnail, and rough hornsnail are expected to occur absent these critical habitat designations, because the areas affected have been previously designated as critical habitat for, and are occupied by, other listed mollusk species with similar PCEs and habitat needs. Incremental impacts incurred from this critical habitat designation are all expected to be administrative in nature, and the designation of critical habitat for the Georgia pigtoe, interrupted rocksnail, and rough hornsnail is not expected to lead to any of the adverse outcomes specified in the OMB guidance. As such, this final designation of critical habitat is not expected to significantly affect energy supplies, distribution, or use, and a Statement of Energy Effects is not required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute or regulation that would impose an enforceable duty upon State, local, 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; AFDC 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 jeopardize the continued existence of the species, or 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 listing these species or designating critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) We have determined that the designation of critical habitat for the Georgia pigtoe, interrupted rocksnail, or

rough hornsnail will significantly or uniquely affect small governments because these mollusk species occur primarily in State-owned river channels, or in remote privately owned stream channels. As such, a Small Government Agency Plan is not required.

Takings

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of designating critical habitat for the Georgia pigtoe, interrupted rocksnail, and rough hornsnail in a takings implications assessment. The takings implications assessment concludes that this designation of critical habitat for the Georgia pigtoe, interrupted rocksnail, and rough hornsnail does not pose significant takings implications.

Federalism—Executive Order 13132

In accordance with Executive Order 13132 (Federalism), the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with DOI and Department of Commerce policy, we requested information from, and coordinated development of this critical habitat designation with, appropriate State resource agencies in Alabama, Georgia, and Tennessee. The critical habitat designation may have some benefit to these governments in that the areas that contain the features essential to the conservation of the species are more clearly defined, and the PCEs of the habitat necessary to the conservation of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting 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) of the Act 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, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have designated critical habitat for the Georgia pigtoe, interrupted rocksnail, and rough hornsnail in accordance with the provisions of the Act. This final rule uses standard property descriptions and identifies the PCEs within the designated areas to assist the public in understanding the habitat needs of the Georgia pigtoe, interrupted rocksnail, and rough hornsnail.

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. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

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

We determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted under section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Also, it is our position that, outside the jurisdiction of the United States Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses as defined by NEPA (42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld by the Circuit Court of the United States for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and the Department of 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, 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. One parcel of land adjacent to Unit RH–1 is owned by the Poarch Creek Band of Indians, and the Creek Indian Enterprises, a small entity, runs a small casino on the site. We contacted the Poarch Creek Band regarding our proposed listing and critical habitat designation, and the draft economic analysis. As of the publication date of this rule, we have not received any concerns from, or been contacted by, the Poarch Creek Band regarding the designation of critical habitat adjacent to their lands.

References Cited

A complete list of all references cited in this rulemaking is available on the Internet at *http://www.regulations.gov* and upon request from the Field Supervisor, Jackson Ecological Services Field Office (*see* **ADDRESSES** section).

Author(s)

The primary author of this package is Paul Hartfield of the Jackson Ecological Services Field Office (*see* **ADDRESSES**).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

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

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.11(h) as follows:
■ a. Add "Pigtoe, Georgia" in alphabetical order under CLAMS; and
■ b. Add "Hornsnail, rough" and "Rocksnail, interrupted" in alphabetical order under SNAILS, to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
CLAMS							
*	*	*	*	*	*		*
Pigtoe, Georgia	*Pleurobema hanleyianum.*	U.S.A. (AL, GA, TN)	NA	E	777	17.95(f)	NA
*	*	*	*	*	*		*
SNAILS							
*	*	*	*	*	*		*
Hornsnail, rough	*Pleurocera foremani*	U.S.A. (AL)	NA	E	777	17.95(f)	NA
*	*	*	*	*	*		*
Rocksnail, interrupted	*Leptoxis foremani*	U.S.A. (AL, GA)	NA	E	777	17.95(f)	NA
*	*	*	*	*	*		*

■ 3. Amend § 17.95(f) by adding entries for "Georgia pigtoe (*Pleurobema hanleyianum*)", "Interrupted Rocksnail (*Leptoxis foremani*)", and "Rough Hornsnail (*Pleurocera foremani*)" at the end of the paragraph to read as set forth below:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(f) *Clams and Snails.*

* * * * *

Georgia Pigtoe (*Pleurobema hanleyianum*)

(1) Critical habitat units are depicted for Cherokee, Coosa, and Clay Counties, Alabama; Murray and Whitfield Counties, Georgia; and Bradley and Polk Counties, Tennessee, on the maps below.

(2) The primary constituent elements (PCEs) of critical habitat for the Georgia pigtoe are the habitat components that provide:

(i) Geomorphically stable stream and river channels and banks (channels that maintain lateral dimensions, longitudinal profiles, and sinuosity patterns over time without an aggrading or degrading bed elevation).

(ii) A hydrologic flow regime (the magnitude, frequency, duration, and seasonality of discharge over time) necessary to maintain benthic habitats where the species is found. Unless other information becomes available, existing conditions at locations where the species occurs will be considered as minimal flow requirements for survival.

(iii) Water quality (including temperature, pH, hardness, turbidity, oxygen content, and chemical constituents) that meets or exceeds the current aquatic life criteria established under the Clean Water Act (33 U.S.C. 1251–1387).

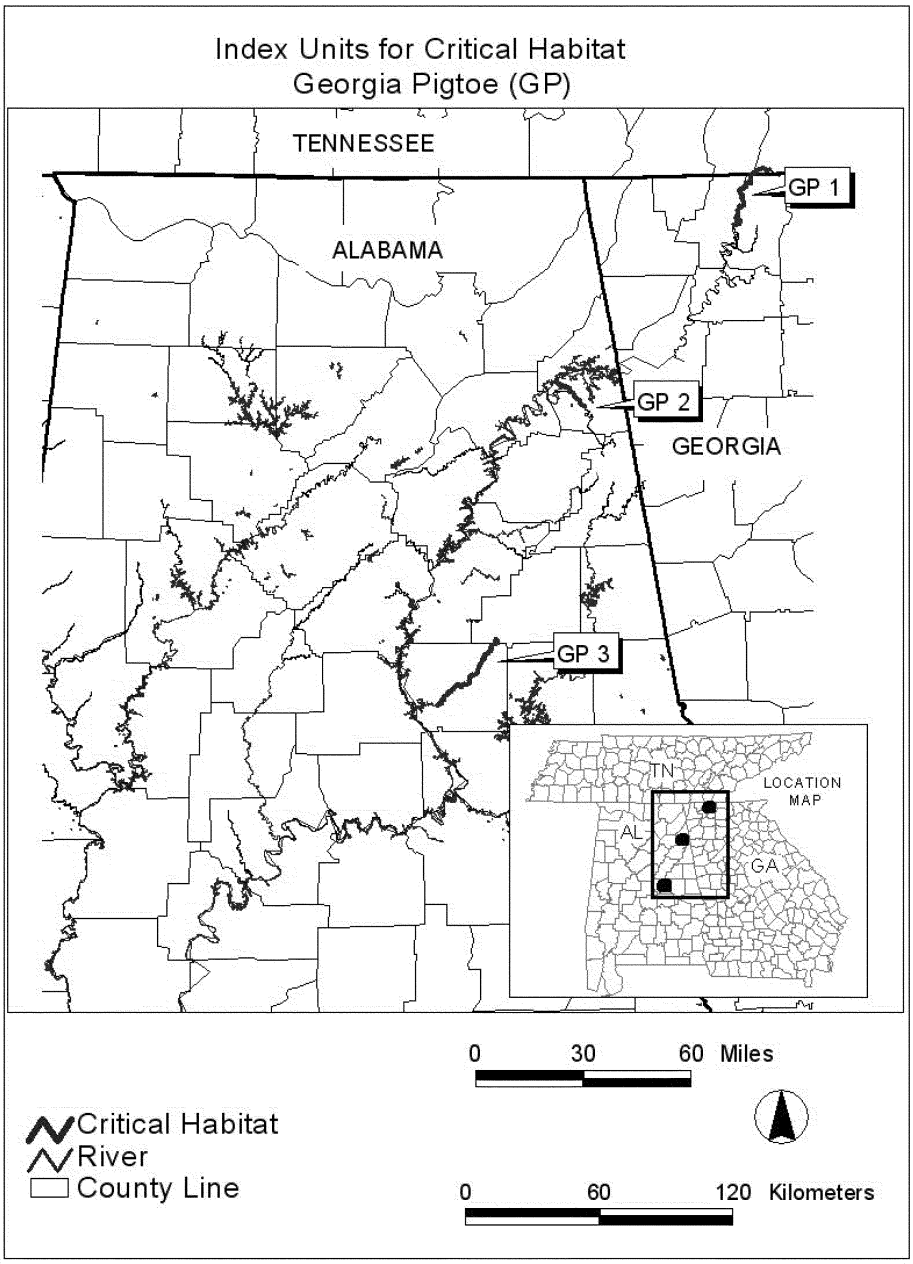
(iv) Sand, gravel, cobble, boulder, or bedrock substrates with low to moderate amounts of fine sediment and attached filamentous algae.

(v) The presence of fish host(s) for the Georgia pigtoe (species currently unknown). Diverse assemblages of native fish will serve as a potential indication of presence of host fish.

(3) Critical habitat does not include manmade structures existing on the effective date of this rule and not containing one or more of the PCEs, such as buildings, bridges, aqueducts, airports, and roads, and the land on which such structures are located.

(4) *Critical habitat unit maps.* Maps were developed from USGS 7.5′ quadrangles. Critical habitat unit upstream and downstream limits were then identified by longitude and latitude using decimal degrees and converted to Universal Transverse Mercator (UTM) zone 16, coordinates.

(5) *Note:* Index map of critical habitat units for the Georgia pigtoe follows:



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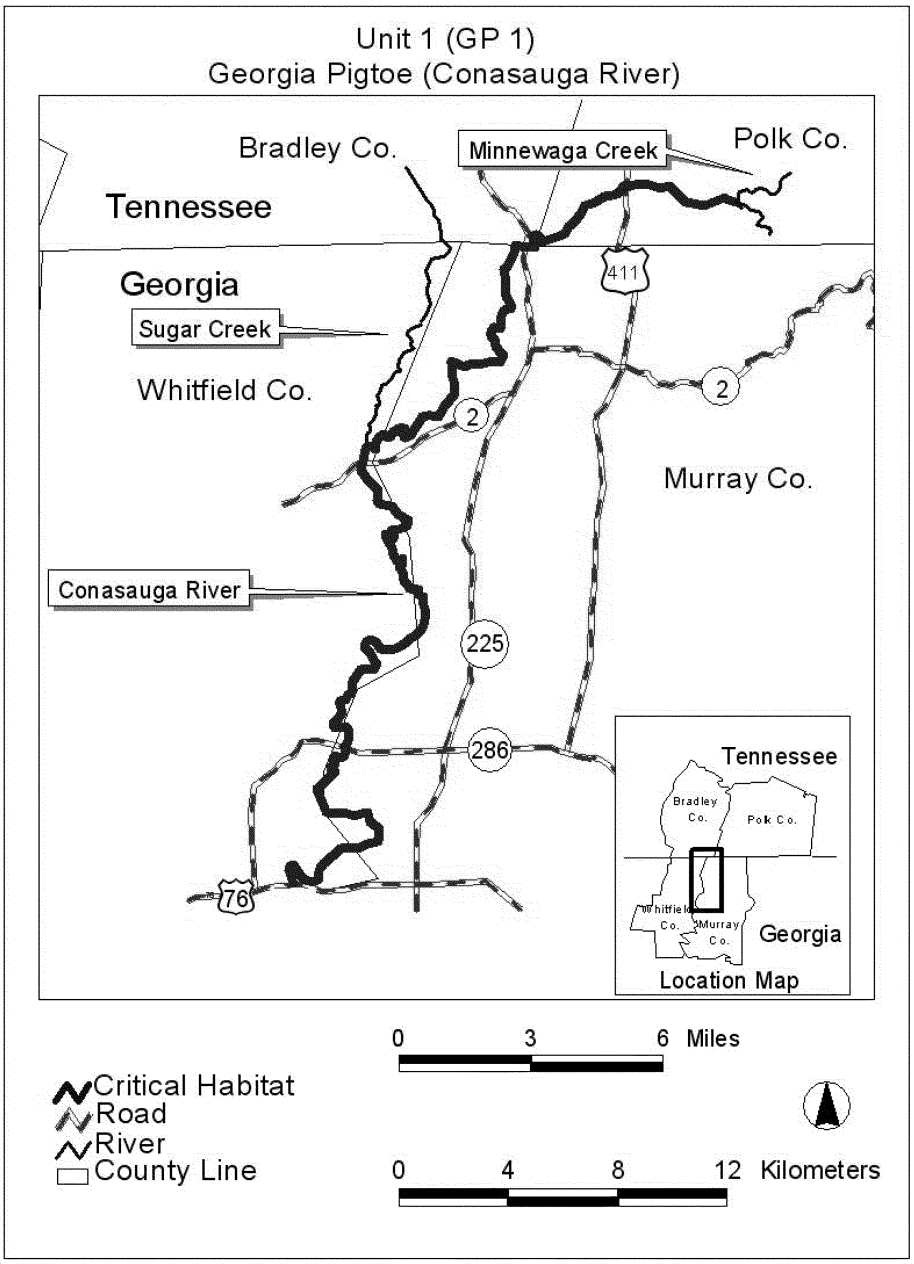
(6) Unit 1 for Georgia pigtoe (GP 1): Conasauga River, Bradley and Polk Counties, Tennessee; Murray and Whitfield Counties, Georgia.

(i) Unit GP 1 includes the channel of the Conasauga River from the confluence of Minnewaga Creek (710752.23E, 3875891.03N), Polk County, Tennessee, downstream to U.S. Highway 76 (694611.06E, 3851057.36N), Murray/Whitfield County, Georgia.

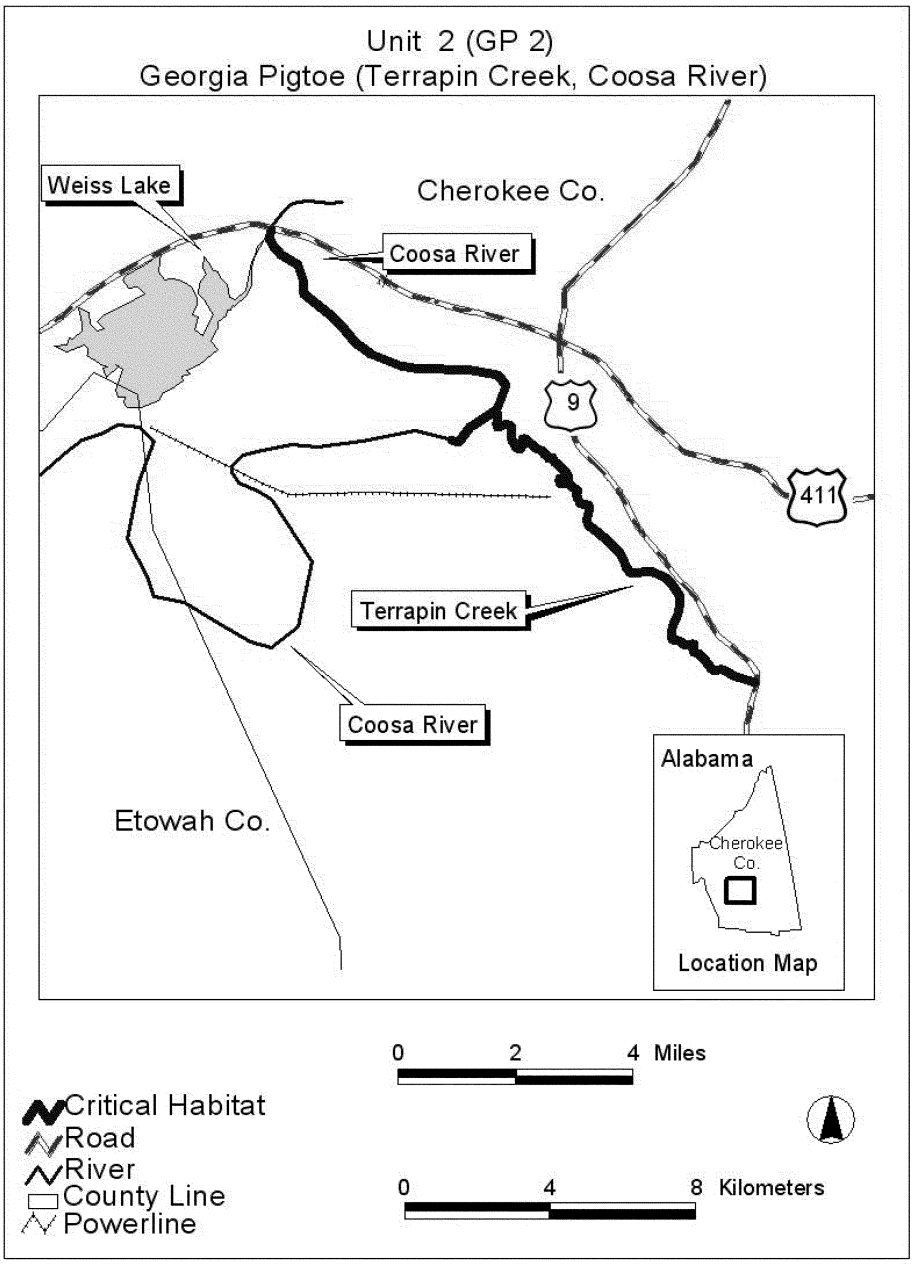
(ii) *Note:* Map of Unit 1 (GP 1) for Georgia pigtoe (Conasauga River) follows:



(7) Unit 2 for Georgia pigtoe (GP 2), Terrapin Creek and Coosa River, Cherokee County, Alabama.

(i) Unit GP 2 includes the channel of Terrapin Creek from Alabama Highway 9 (628065.76E, 3770007.078N), downstream to the confluence with the Coosa River (621001.27E, 3777441.03N), Cherokee County, Alabama; and the Coosa River channel from Weiss Dam (614866.54E, 3781969.16N), downstream to a point 1.6 km (1 mi) below the confluence of Terrapin Creek (619751.69E, 3776654.79N), Cherokee County, Alabama.

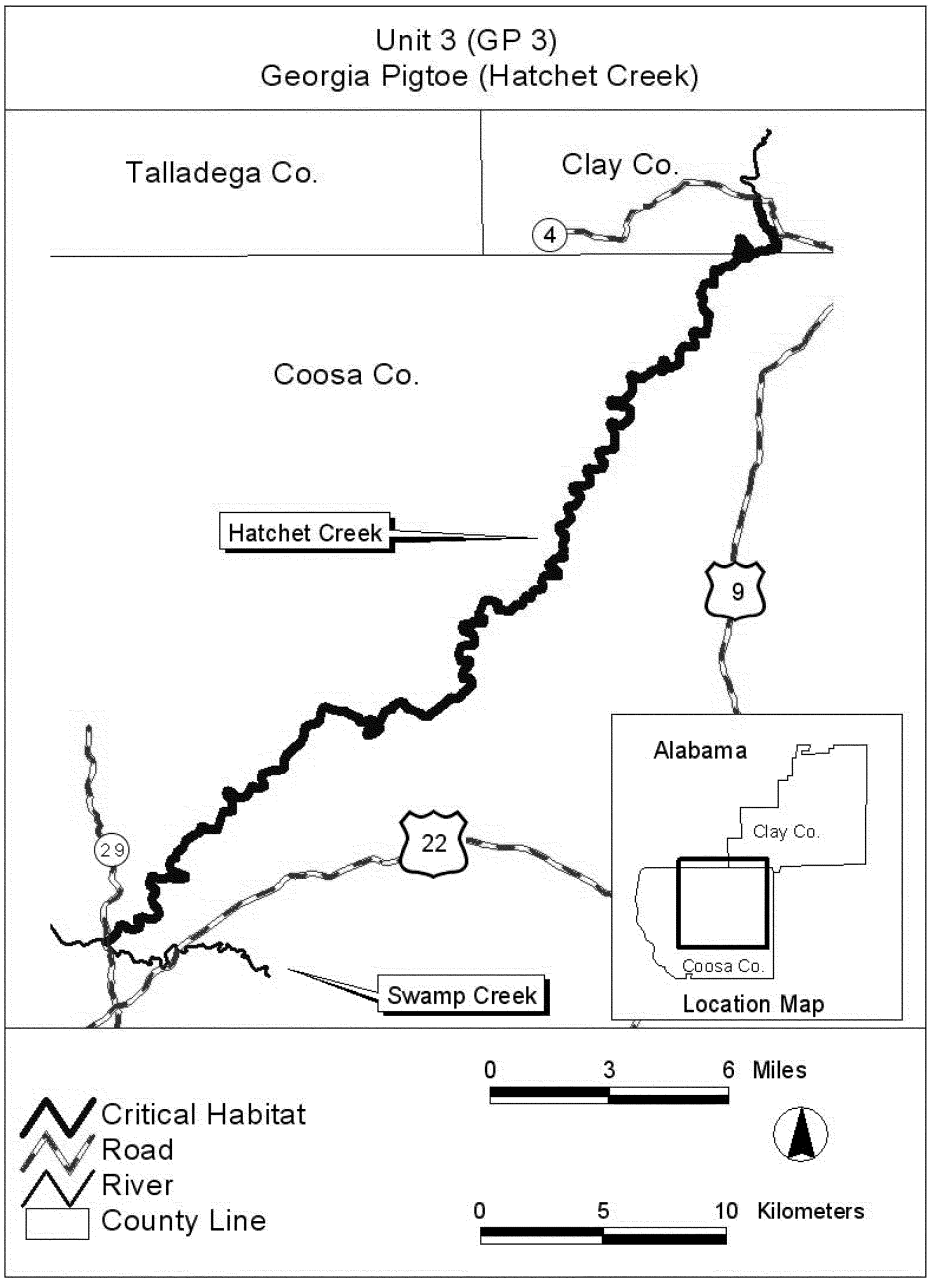
(ii) *Note:* Map of Unit 2 (GP 2) for Georgia pigtoe (Terrapin Creek, Coosa River) follows:



(8) Unit 3 for Georgia pigtoe (GP 3): Hatchet Creek, Coosa and Clay Counties, Alabama.

(i) Unit GP 3 includes the channel of Hatchet Creek from Clay County Road 4 (588215.16E, 3666038.46N), Clay County, downstream to the confluence of Swamp Creek at Coosa County Road 29 (561904.90E, 3636065.37N), Coosa County, Alabama.

(ii) *Note:* Map of Unit 3 (GP 3) for Georgia pigtoe (Hatchet Creek) follows:



Interrupted Rocksnail (*Leptoxis foremani*)

(1) Critical habitat units are depicted for Cherokee and Elmore Counties, Alabama, and Gordon and Floyd Counties, Georgia, on the maps below.

(2) The primary constituent elements (PCEs) of critical habitat for the interrupted rocksnail are the habitat components that provide:

(i) Geomorphically stable stream and river channels and banks (channels that maintain lateral dimensions, longitudinal profiles, and sinuosity patterns over time without an aggrading or degrading bed elevation).

(ii) A hydrologic flow regime (the magnitude, frequency, duration, and seasonality of discharge over time) necessary to maintain benthic habitats where the species is found. Unless other information becomes available, existing conditions at locations where the species occurs will be considered as minimal flow requirements for survival.

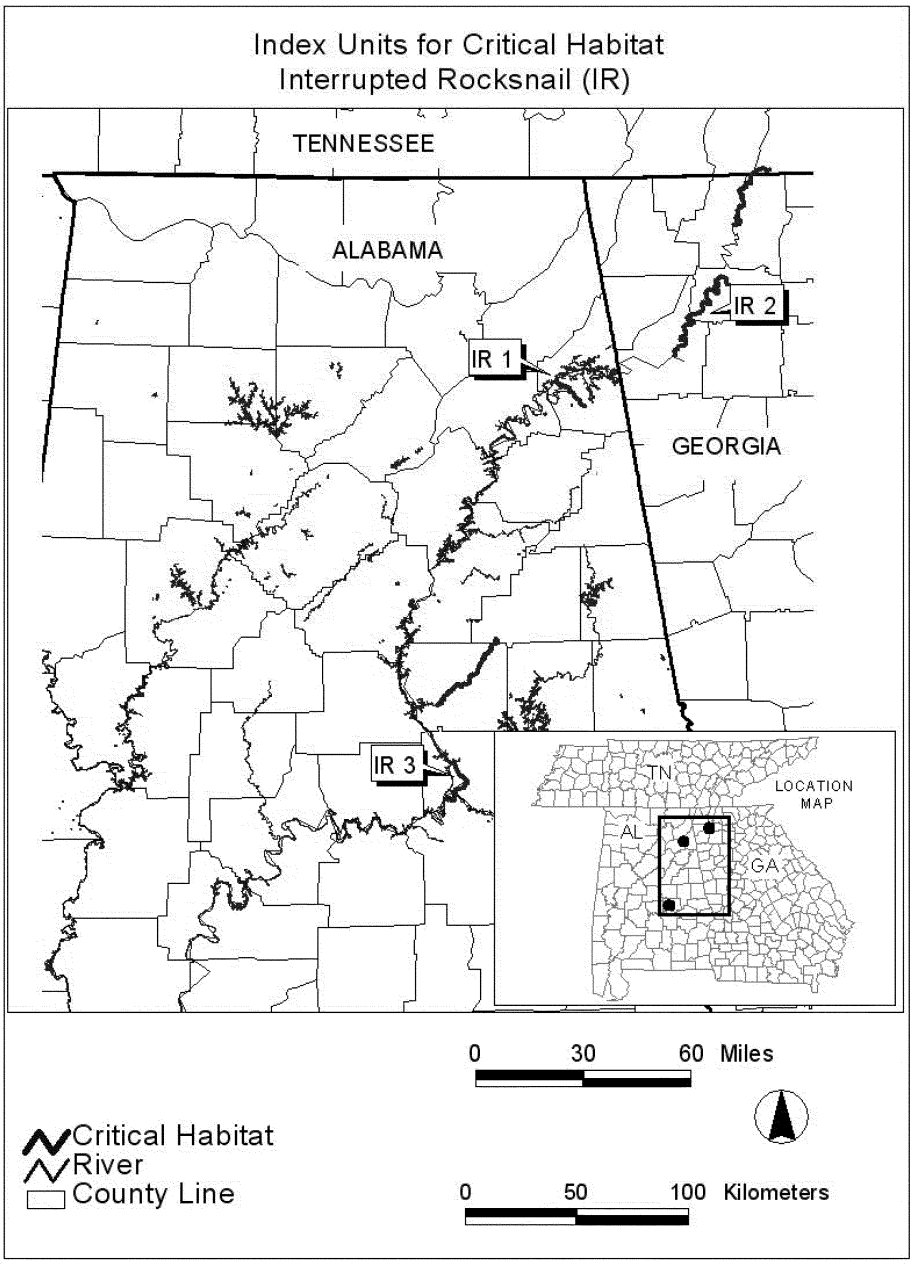
(iii) Water quality (including temperature, pH, hardness, turbidity, oxygen content, and chemical constituents) that meets or exceeds the current aquatic life criteria established under the Clean Water Act (33 U.S.C. 1251–1387).

(iv) Sand, gravel, cobble, boulder, or bedrock substrates with low to moderate amounts of fine sediment and attached filamentous algae.

(3) Critical habitat does not include manmade structures existing on the effective date of this rule and not containing one or more of the PCEs, such as buildings, bridges, aqueducts, airports, and roads, and the land on which such structures are located.

(4) *Critical habitat unit maps.* Maps were developed from USGS 7.5′ quadrangles. Critical habitat unit upstream and downstream limits were then identified by longitude and latitude using decimal degrees and converted to Universal Transverse Mercator (UTM) zone 16, coordinates.

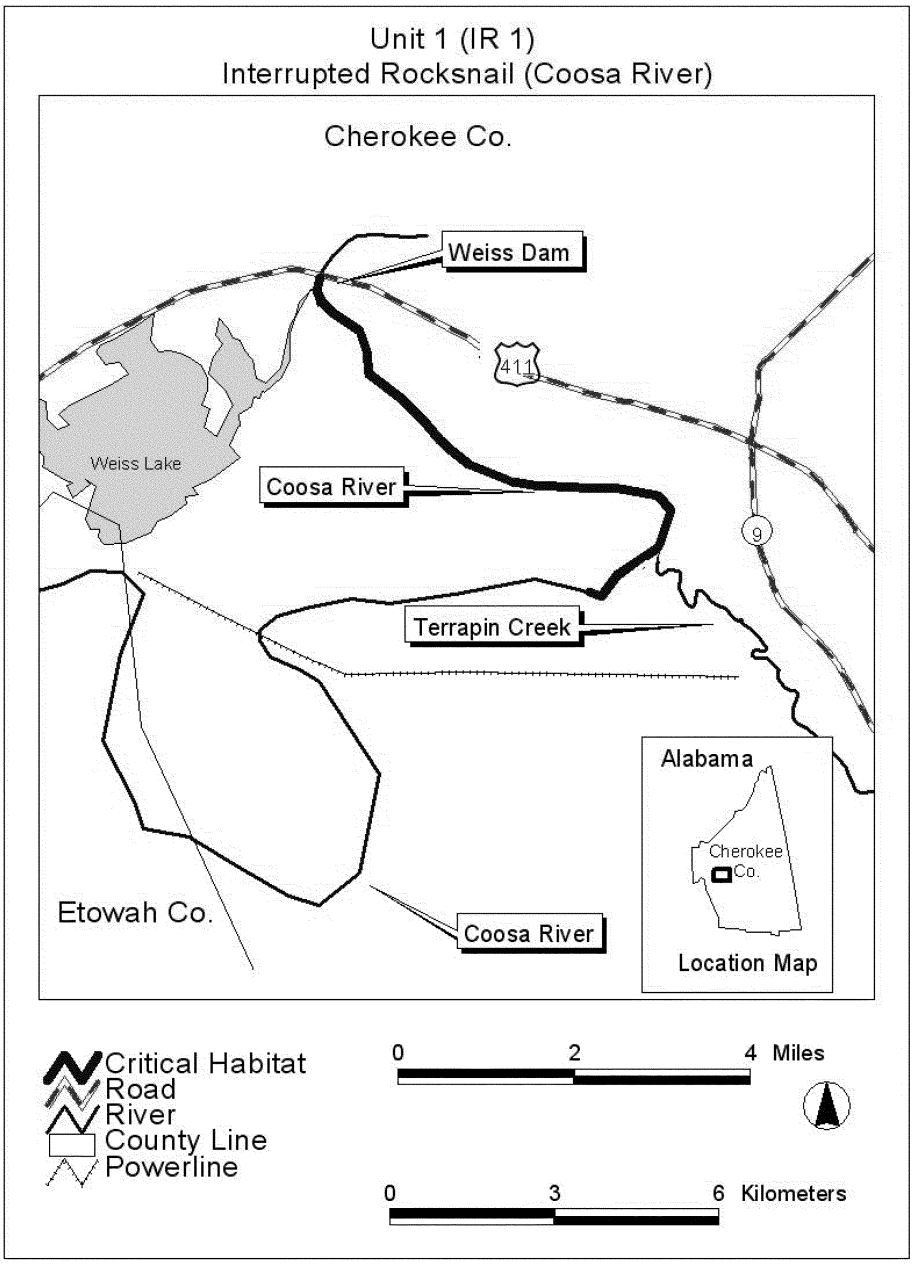
(5) *Note:* Index map of critical habitat units for the interrupted rocksnail follows:



(6) Unit 1 for interrupted rocksnail (IR 1): Coosa River, Cherokee County, Alabama.

(i) Unit IR 1 includes the Coosa River channel from Weiss Dam (614866.53E, 3781969.15N), downstream to a point 1.6 km (1 mi) below the confluence of Terrapin Creek (619751.694E, 3776654.79N), Cherokee County, Alabama.

(ii) *Note:* Map of Unit 1 (IR 1) for interrupted rocksnail (Coosa River) follows:



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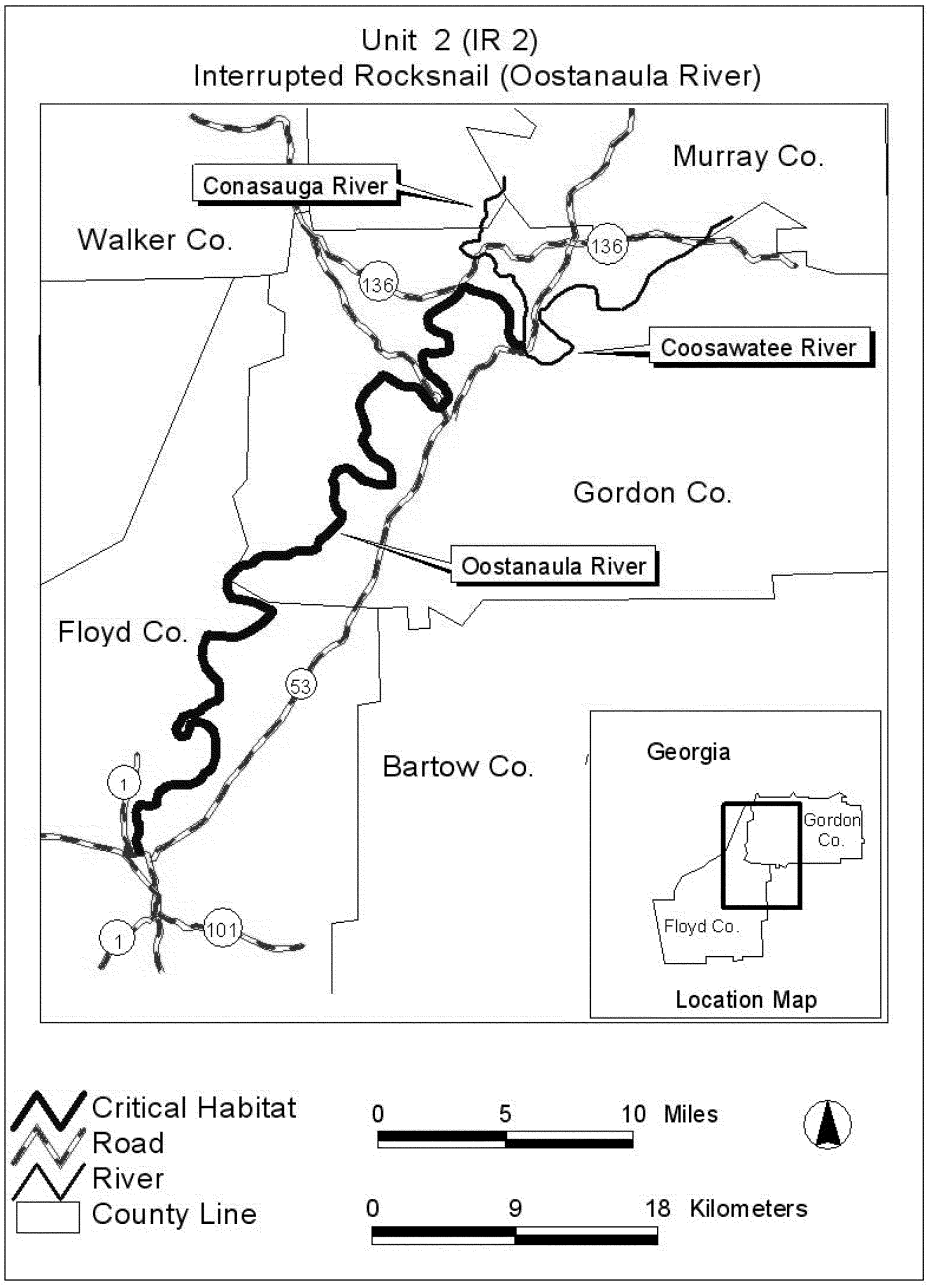
(7) Unit 2 for interrupted rocksnail (IR 2): Oostanaula River, Gordon and Floyd Counties, Georgia.

(i) Unit IR 2 includes the primary channel of the Oostanaula River from the confluence of the Conasauga and Coosawattee Rivers (692275.90E, 3824562.96N), Gordon County, downstream to Georgia Highway 1 Loop (668358.62E, 3792574.63N), Floyd County, Georgia.

(ii) *Note:* Map of Unit 2 (IR 2) for interrupted rocksnail (Oostanaula River) follows:



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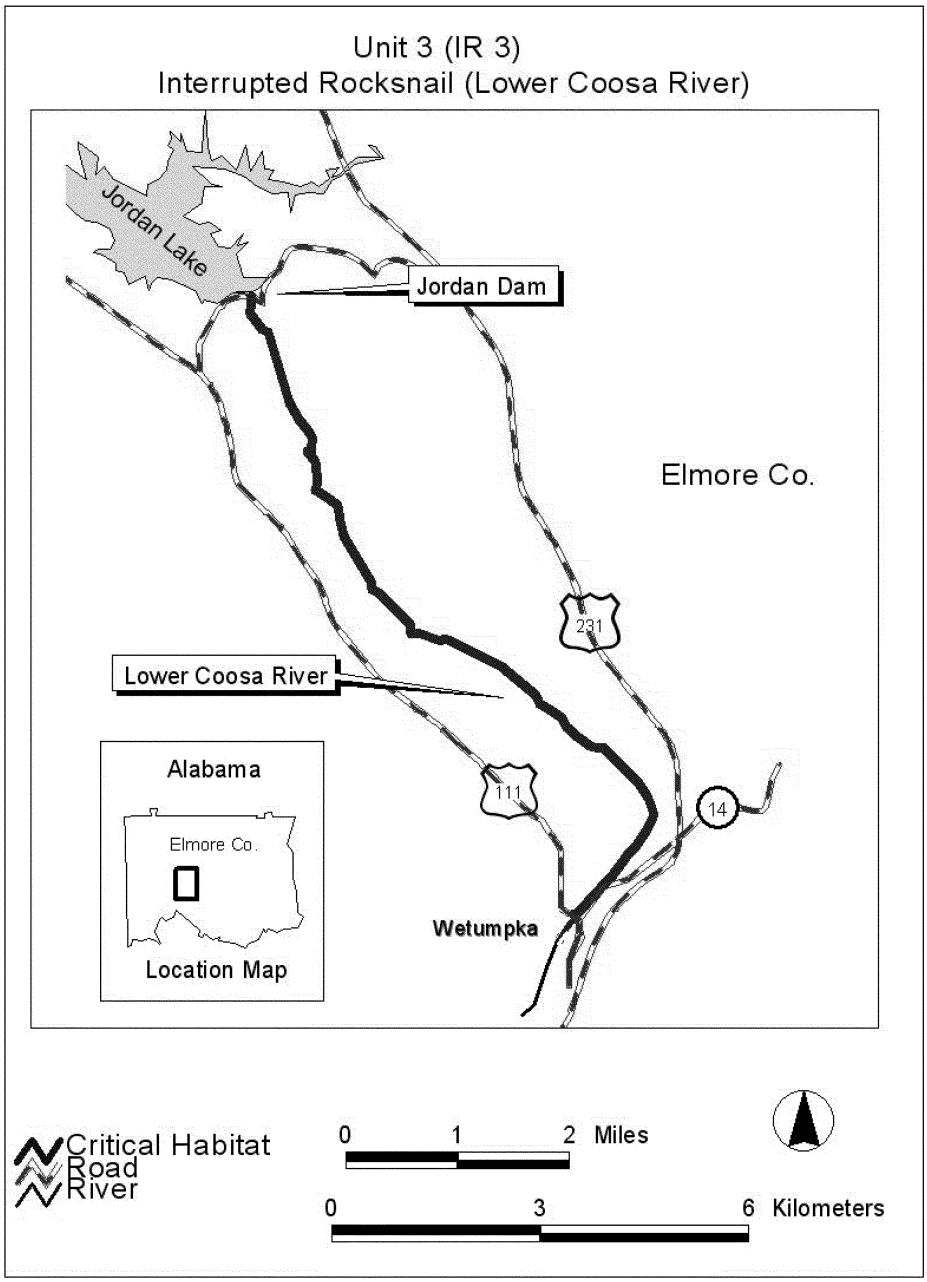
(8) Unit 3 for interrupted rocksnail (IR 3): Lower Coosa River, Elmore County, Alabama.

(i) Unit IR 3 includes the Coosa River channel from Jordan Dam (569930.28E, 3609212.67N), downstream to Alabama Highway 111 Bridge (574324.83E, 3600042.81N), Elmore County, Alabama.

(ii) *Note:* Map of Unit 3 (IR 3) for interrupted rocksnail (Lower Coosa River) follows:



Rough Hornsnail (*Pleurocera foremani*)

(1) Critical habitat units are depicted for Elmore and Shelby Counties, Alabama, on the maps below.

(2) The primary constituent elements (PCEs) of critical habitat for the rough hornsnail are the habitat components that provide:

(i) Geomorphically stable stream and river channels and banks (channels that maintain lateral dimensions, longitudinal profiles, and sinuosity patterns over time without an aggrading or degrading bed elevation).

(ii) A hydrologic flow regime (the magnitude, frequency, duration, and seasonality of discharge over time) necessary to maintain benthic habitats where the species is found. Unless other information becomes available, existing conditions at locations where the species occurs will be considered as minimal flow requirements for survival.

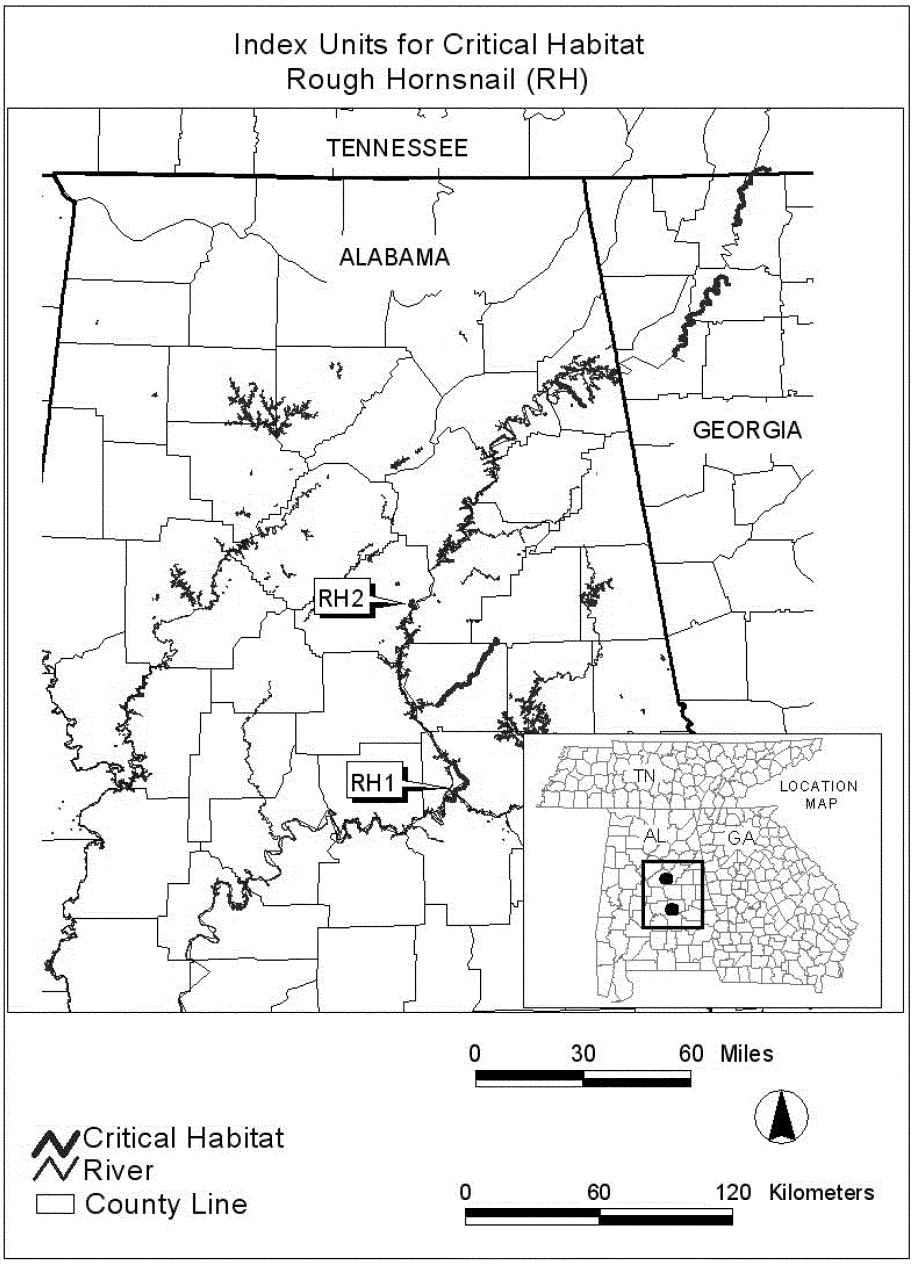
(iii) Water quality (including temperature, pH, hardness, turbidity, oxygen content, and chemical constituents) that meets or exceeds the current aquatic life criteria established under the Clean Water Act (33 U.S.C. 1251–1387).

(iv) Sand, gravel, cobble, boulder, bedrock, or mud substrates with low to moderate amounts of fine sediment and attached filamentous algae.

(3) Critical habitat does not include manmade structures existing on the effective date of this rule and not containing one or more of the primary constituent elements, such as buildings, bridges, aqueducts, airports, and roads, and the land on which such structures are located.

(4) *Critical habitat unit maps.* Maps were developed from USGS 7.5′ quadrangles. Critical habitat unit upstream and downstream limits were then identified by longitude and latitude using decimal degrees and converted to Universal Transverse Mercator (UTM) zone 16, coordinates.

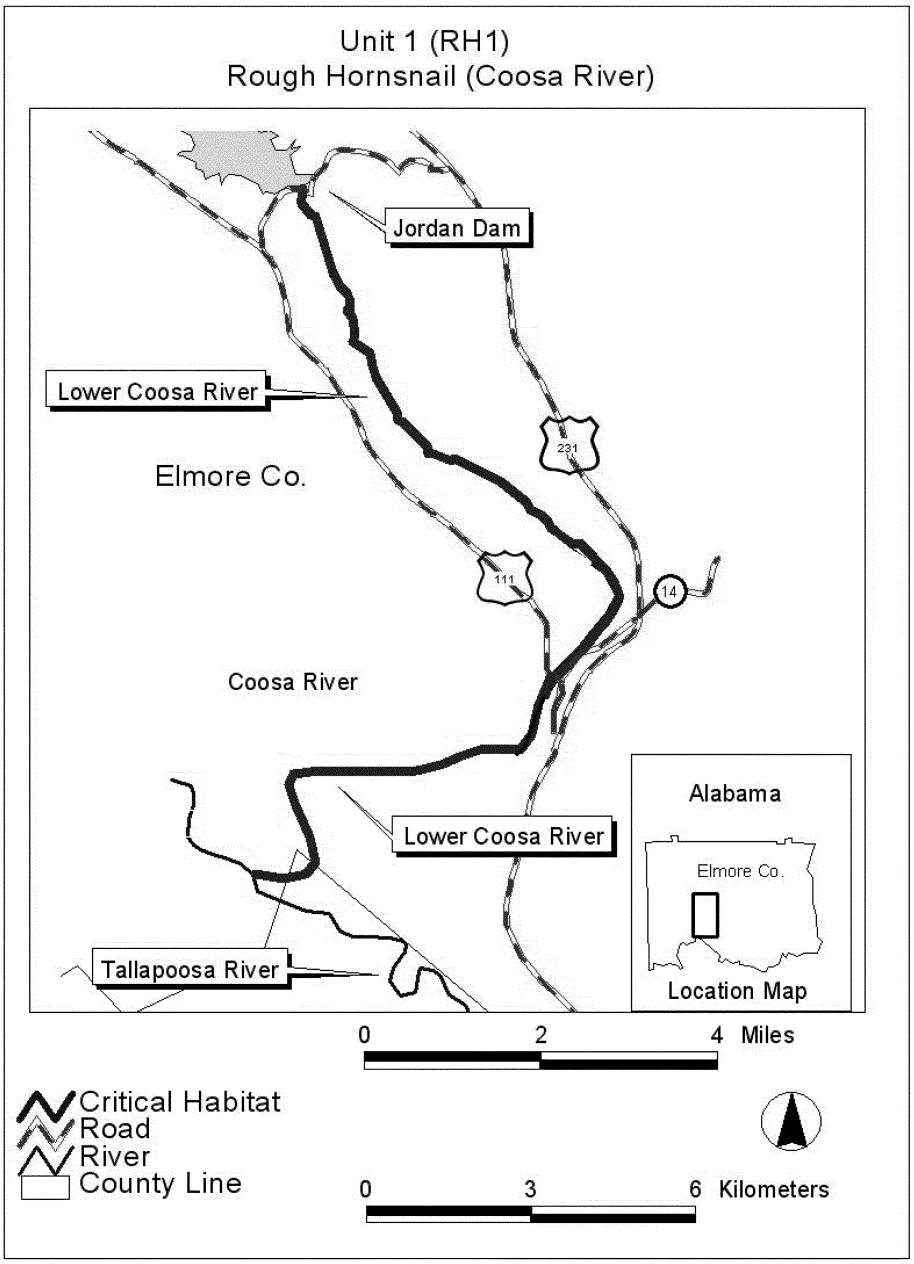
(5) *Note:* Index map of critical habitat units for the rough hornsnail follows:



(6) Unit 1 for rough hornsnail (RH 1): Lower Coosa River, Elmore County, Alabama.

(i) Unit RH 1 includes the Coosa River channel from Jordan Dam (569930.28E, 3609212.67N), downstream to the confluence of the Tallapoosa River (568995.14E, 3597805.93N), Elmore County, Alabama.

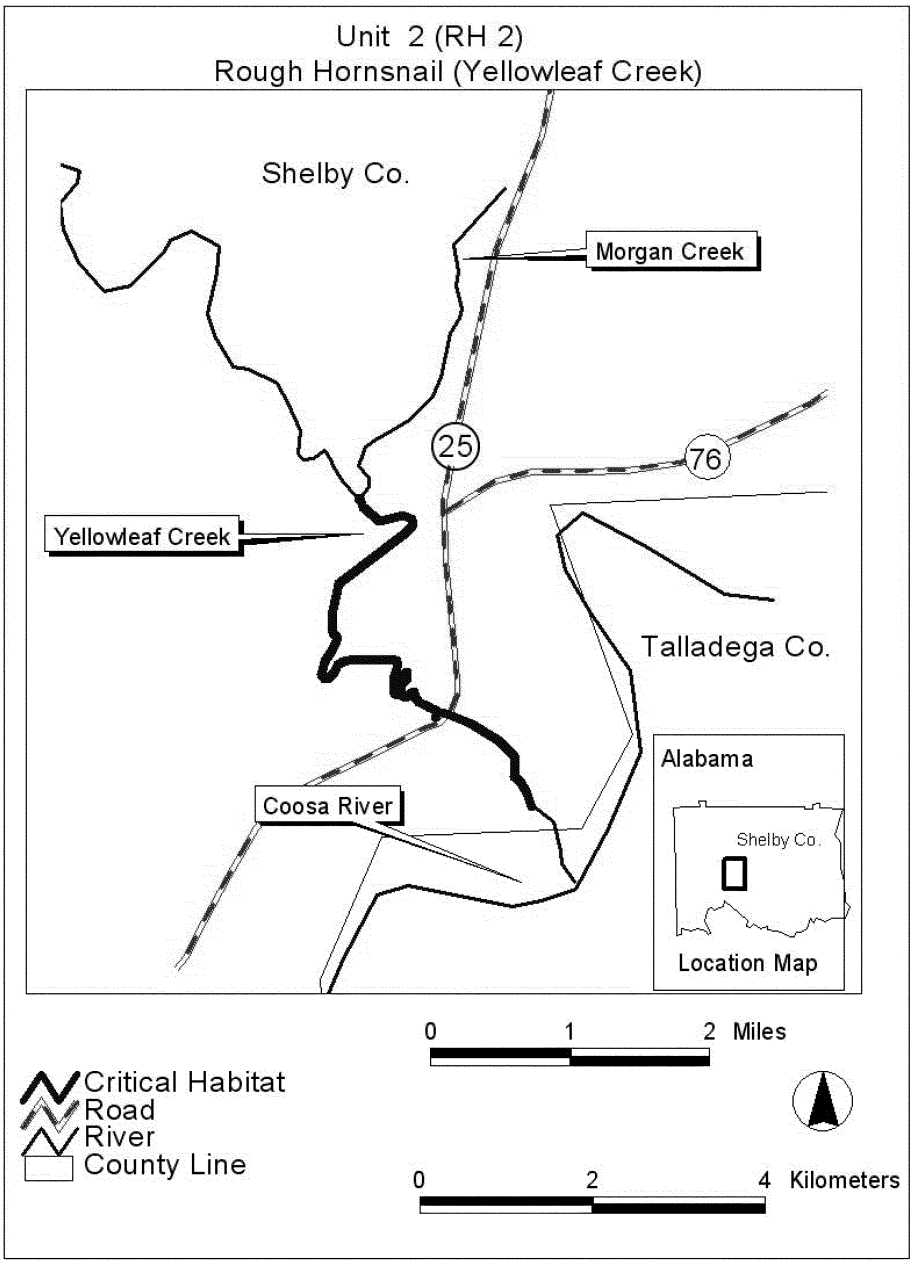
(ii) *Note:* Map of Unit 1 (RH 1) for rough hornsnail (Coosa River) follows:



(7) Unit 2 for rough hornsnail (RH 2): Yellowleaf Creek, Shelby County, Alabama.

(i) Unit RH 2 includes the channel of Yellowleaf Creek from the confluence of Morgan Creek (550285.41E, 3682865.13N), downstream to 1.6 km (1 mi) below Alabama Highway 25 (552296.38E, 3679287.87N), Shelby County, Alabama.

(ii) *Note:* Map of Unit 2 (RH 2) for rough hornsnail (Yellowleaf Creek) follows:



* * * * *

Authority: The authority for this section is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: October 15, 2010.

Thomas L. Strickland,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2010–27417 Filed 11–1–10; 8:45 am]

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Federal Register

Tuesday,
November 2, 2010

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Listing the Rayed Bean and Snuffbox as Endangered; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R3–ES–2010–0019; MO 92210–0–0008–B2]

RIN 1018–AV96

Endangered and Threatened Wildlife and Plants; Listing the Rayed Bean and Snuffbox as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to list the rayed bean (*Villosa fabalis*) and snuffbox (*Epioblasma triquetra*) as endangered throughout their ranges, under Endangered Species Act of 1973, as amended (Act). This proposed rule, if made final, would extend the Act's protection to the rayed bean and the snuffbox. We have determined that designating critical habitat for these species is prudent, but not determinable at this time. The Service seeks data and comments from the public on this proposed listing rule.

DATES: We will consider comments we receive on or before January 3, 2011. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section on or before December 17, 2010.

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

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R3–2010–0019.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–R3–2010–0019; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

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: Angela Boyer at the U.S. Fish and Wildlife Service, Ohio Ecological Services Field Office, 4625 Morse Road, Suite 104, Columbus, OH 43230; telephone 614–416–8993, ext. 22.

SUPPLEMENTARY INFORMATION:

Public Comments

Our intent is to use the best available commercial and scientific data as the foundation for all endangered and threatened species listing determinations. We therefore request comments or suggestions from other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule to list the rayed bean and snuffbox as endangered. We particularly seek comments concerning:

(1) Survey results for the rayed bean or snuffbox, as well as any studies that may show distribution, status, population size, or population trends, including indications of recruitment;

(2) Pertinent aspects of life history, ecology, and habitat use of the rayed bean or snuffbox;

(3) Current and foreseeable threats faced by the rayed bean or snuffbox, or both species, in relation to the five factors (as defined in section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*));

(4) The specific physical and biological features to consider, and specific areas that may meet the definition of critical habitat and that should or should not be considered for a proposed critical habitat designation as provided by section 4 of the Act; and

(5) The data and studies to which this proposal refers.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section. Comments must be submitted to *http://www.regulations.gov* before midnight (Eastern Time) on the date specified in the **DATES** section. Finally, we will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in the **DATES** section.

We will post your entire comment —including your personal identifying information—on *http://www.regulations.gov.* If you provide us personal identifying information such as your street address, phone number, or e-mail address, 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 this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours at the Ohio Ecological Services Field Office (*see* **FOR FURTHER INFORMATION CONTACT**).

Public Hearing

The Act provides for one or more public hearings on this proposal, if requested. We must receive requests by the date listed in the **DATES** section above. Such requests must be made in writing and addressed to the Field Supervisor of the Ohio Ecological Services Field Office (*see* **FOR FURTHER INFORMATION CONTACT**).

Background

Species Descriptions

The rayed bean is a small mussel usually less than 1.5 inches (in) (3.8 centimeters (cm)) in length (Cummings and Mayer 1992, p. 142; Parmalee and Bogan 1998, p. 244; West *et al.* 2000, p. 248). The shell outline is elongate or ovate in males and elliptical in females, and moderately inflated in both sexes, but more so in females (Parmalee and Bogan 1998, p. 244). The valves are thick and solid. The anterior end is rounded in females and bluntly pointed in males (Cummings and Mayer 1992, p. 142). Females are generally smaller than males (Parmalee and Bogan 1998, p. 244). Dorsally, the shell margin is straight, while the ventral margin is straight to slightly curved (Cummings and Mayer 1992, p. 142). The beaks are slightly elevated above the hingeline (West *et al.* 2000, p. 248), with sculpture consisting of double loops with some nodules (Parmalee and Bogan 1998, p. 244). No posterior ridge is evident. Surface texture is smooth and sub-shiny, and green, yellowish-green, or brown in color, with numerous wavy, dark-green rays of various widths (sometimes obscure in older, blackened specimens) (Cummings and Mayer 1992, p. 142; West *et al.* 2000, p. 248). Internally, the left valve has two pseudocardinal teeth (tooth-like structures along the hinge line of the internal portion of the shell) that are triangular, relatively heavy, and large, and two short, heavy lateral teeth (Cummings and Mayer 1992, p. 142). The right valve has a low, triangular pseudocardinal tooth, with possibly smaller secondary teeth anteriorly and posteriorly, and a short, heavy, and somewhat elevated lateral tooth (Parmalee and Bogan 1998, p. 244). The color of the nacre (mother-of-pearl) is silvery white or bluish and iridescent posteriorly. Key characters useful for distinguishing the rayed bean from other mussels is its small size, thick valves, unusually heavy teeth for a small mussel, and color pattern (Cummings and Mayer 1992, p. 142).

The snuffbox is a small- to medium-sized mussel with males reaching up to 2.8 in. (7.0 cm) in length (Cummings

and Mayer 1992, p. 162; Parmalee and Bogan 1998, p. 108). The maximum length of females is about 1.8 in (4.5 cm) (Parmalee and Bogan 1998, p. 108). The shape of the shell is somewhat triangular (females), oblong, or ovate (males) with the valves solid, thick, and very inflated. The beaks are located somewhat anterior of the middle, swollen, turned forward and inward, and extended above the hingeline (Cummings and Mayer 1992, p. 162). Beak sculpture consists of three or four faint, double-looped bars (Cummings and Mayer 1992, p. 162; Parmalee and Bogan 1998, p. 108). The anterior end of the shell is rounded, and the posterior end is truncated, highly so in females. The posterior ridge is prominent, being high and rounded, while the posterior slope is widely flattened. The posterior ridge and slope in females is covered with fine ridges and grooves, and the posterioventral shell edge is finely toothed (Cummings and Mayer 1992, p. 162). When females are viewed from a dorsal or ventral perspective, the convergence of the two valves on the posterior slope is nearly straight due to being highly inflated. This gives the female snuffbox a unique broadly lanceolate or cordate perspective when viewed at the substrate and water column interface (Ortmann 1919, p. 329; van der Schalie 1932, p. 104). The ventral margin is slightly rounded in males and nearly straight in females. Females have recurved denticles on the posterior shell margin that aid in holding host fish (Barnhart 2008, p. 1). The periostracum (external shell surface) is generally smooth and yellowish or yellowish-green in young individuals, becoming darker with age. Green squarish, triangular, or chevron-shaped marks cover the umbone (the inflated area of the shell along the dorsal margin) but become poorly delineated stripes with age. Internally, the left valve has two high, thin, triangular, emarginate pseudocardinal teeth (the front tooth being thinner than the back tooth) and two short, strong, slightly curved, and finely striated lateral teeth. The right valve has a high, triangular pseudocardinal tooth with a single short, erect, and heavy lateral tooth. The interdentum (a flattened area between the pseudocardinal and lateral teeth) is absent, and the beak cavity is wide and deep. The color of the nacre is white, often with a silvery luster, and a gray-blue or gray-green tinge in the beak cavity. The soft anatomy was described by Oesch (1984, pp. 233–234), and Williams *et al.* (2008, p. 282). Key characters useful for distinguishing the snuffbox from other species include its unique color pattern, shape (especially in females), and high degree of inflation.

Taxonomy

The rayed bean is a member of the freshwater mussel family Unionidae and was originally described as *Unio fabalis* by Lea in 1831. The type locality is the Ohio River (Parmalee and Bogan 1998, p. 244), probably in the vicinity of Cincinnati, Ohio. Over the years, the rayed bean has been placed in the genera *Unio, Margarita, Margaron, Eurynia, Micromya,* and *Lemiox.* It was ultimately placed in the genus *Villosa* by Stein (1963, p. 19), where it remains today (Turgeon *et al.* 1998, p. 33). We recognize *Unio capillus, U. lapillus,* and *U. donacopsis* as synonyms of *Villosa fabalis.*

The snuffbox is a member of the freshwater mussel family Unionidae and was described as *Truncilla triqueter* (Rafinesque 1820, p. 300). The species name was later changed to *triquetra* (Simpson 1900, p. 517), from the Latin *triquetrous* meaning "having three acute angles," a reference to the general shape of the female. The type locality is the Falls of the Ohio (Ohio River, Louisville, Kentucky) (Parmalee and Bogan 1998, p. 108). The synonymy of the snuffbox was summarized by Johnson (1978, pp. 248–249), Parmalee and Bogan (1998, p. 108), and Roe (no date, p. 3). This species has also been considered a member of the genera *Unio, Dysnomia, Plagiola, Mya, Margarita, Margaron,* and *Epioblasma* at various times since its description. The monotypic subgenus *Truncillopsis* was created for this species (Ortmann and Walker 1922, p. 65). The genus *Epioblasma* was not in common usage until the 1970s (Stansbery 1973, p. 22; Stansbery 1976, p. 48; *contra* Johnson 1978, p. 248), where it currently remains (Turgeon *et al.* 1998, p. 34). *Unio triqueter, U. triangularis, U. triangularis longisculus, U. triangularis pergibosus, U. cuneatus,* and *U. formosus* are recognized as synonyms of *E. triquetra.* Tricorn pearly mussel is another common name for this species (Clarke 1981a, p. 354).

Life History

The general biology of the rayed bean and the snuffbox are similar to other bivalved mollusks belonging to the family Unionidae. Adults are suspension-feeders, spending their entire lives partially or completely buried within the substrate (Murray and Leonard 1962, p. 27). Adults feed on algae, bacteria, detritus, microscopic animals, and dissolved organic material (Silverman *et al.* 1997, p. 1859; Nichols and Garling 2000, p. 873; Christian *et al.* 2004, pp. 108–109; Strayer *et al.* 2004, pp. 430–431). Recent evidence suggests that adult mussels may also deposit-feed on particles in the sediment (Raikow and Hamilton 2001, p. 520). For their first several months, juvenile mussels employ foot (pedal) feeding, consuming settled algae and detritus (Yeager *et al.* 1994, p. 221). Unionids have an unusual mode of reproduction. Their life cycle includes a brief, obligatory parasitic stage on fish. Eggs develop into microscopic larvae called glochidia within special gill chambers of the female. The female expels the mature glochidia, which must attach to the gills or the fins of an appropriate fish host to complete development. Host fish specificity varies among unionids. Some species appear to use a single host, while others can transform on several host species. Following successful infestation, glochidia encyst (enclose in a cyst-like structure) and drop off as newly transformed juveniles. For further information on freshwater mussels, see Gordon and Layzer (1989, pp. 1–17).

Mussel biologists know relatively little about the specific life-history requirements of the rayed bean and the snuffbox. Most mussels, including the rayed bean and snuffbox, have separate sexes. The age at sexual maturity, which is unknown for the rayed bean and snuffbox, is highly variable among and within species (0–9 years) (Haag and Staton 2003, pp. 2122–2123), and may be sex dependent (Smith 1979, p. 382). Both species are thought to be long-term brooders; rayed bean females brood glochidia from May through October (Parmalee and Bogan 1998, p. 108; Ecological Specialists, Inc. (ESI) 2000, p. 5; Woolnough 2002, p. 23), and snuffbox brood glochidia from September to May (Ortmann 1912, p. 355; 1919, p. 327). The only published research identifies the Tippecanoe darter (*Etheostoma tippecanoe*) as a host fish for the rayed bean (White *et al.* 1996, p. 191). Other rayed bean hosts are thought to include the greenside darter (*E. blennioides*), rainbow darter (*E. caeruleum*), mottled sculpin (*Cottus bairdi*), and largemouth bass (*Micropterus salmoides*) (Woolnough 2002, p. 51). Based on inference of closely related species, additional hosts may be suitable, including other darter and sculpin species (Jones 2002, pers. comm.). Juvenile snuffbox have successfully transformed on logperch (*Percina caprodes*), blackside darter (*P. maculata*), rainbow darter, Iowa darter (*E. exile*), blackspotted topminnow (*Fundulus olivaceous*), mottled sculpin, banded sculpin (*C. carolinae*), Ozark sculpin (*C. hypselurus*), largemouth

bass, and brook stickleback (*Culaea inconstans*) in laboratory tests (Sherman 1994, p. 17; Yeager and Saylor 1995, p. 3; Hillegass and Hove 1997, p. 25; Barnhart *et al.* 1998, p. 34; Hove *et al.* 2000, p. 30; Sherman Mulcrone 2004, pp. 100–103).

Habitat Characteristics

The rayed bean is generally known from smaller, headwater creeks, but occurrence records exist from larger rivers (Cummings and Mayer 1992, p. 142; Parmalee and Bogan 1998, pp. 244). They are usually found in or near shoal or riffle areas, and in the shallow, wave-washed areas of glacial lakes, including Lake Erie (West *et al.* 2000, p. 253). In Lake Erie, the species is generally associated with islands in the western portion of the lake. Preferred substrates typically include gravel and sand. The rayed bean is oftentimes found among vegetation (water willow (*Justicia americana*) and water milfoil (Myriophyllum *sp.*)) in and adjacent to riffles and shoals (Watters 1988b, p. 15; West *et al.* 2000, p. 253). Specimens are typically buried among the roots of the vegetation (Parmalee and Bogan 1998, pp. 245). Adults and juveniles appear to produce byssal threads (thin, protein-based fibers) (Woolnough 2002, pp. 99–100), apparently to attach themselves to substrate particles.

The snuffbox is found in small to medium-sized creeks to larger rivers and in lakes (Cummings and Mayer 1992, p. 162; Parmalee and Bogan 1998, p. 108). The species occurs in swift currents of riffles and shoals and wave-washed shores of lakes over gravel and sand with occasional cobble and boulders. Individuals generally burrow deep into the substrate except when spawning or attempting to attract a host (Parmalee and Bogan 1998, p. 108).

Strayer (1999a, pp. 471–472) demonstrated in field trials that mussels in streams occur chiefly in flow refuges, or relatively stable areas that displayed little movement of particles during flood events. Flow refuges conceivably allow relatively immobile mussels to remain in the same general location throughout their entire lives. He thought that features commonly used in the past to explain the spatial patchiness of mussels (water depth, current speed, sediment grain size) were poor predictors of where mussels actually occur in streams.

Rayed Bean Historical Distribution

The rayed bean historically occurred in 112 streams, lakes, and some human-made canals in 10 States: Illinois, Indiana, Kentucky, Michigan, New York, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia; and Ontario, Canada. The mussel occurred in parts of the upper (Lake Michigan drainage) and lower Great Lakes systems, and throughout most of the Ohio and Tennessee River systems. During historical times, the rayed bean was fairly widespread and locally common in many Ohio River system streams based on collections made over a several-decade period. The species was once fairly common in the Belle, South Branch Thames, Detroit, Scioto, Wabash, and Duck Rivers; several tributaries in the Scioto system (Olentangy River, and Big Darby and Alum Creeks); and Tippecanoe Lake based on literature and museum records (Call 1900; Watters 1994, p. 105; West *et al.* 2000, p. 251; Badra 2002, pers. comm.). The rayed bean was last reported from some streams several decades ago (North Branch Clinton, Auglaize, Ohio, West Fork, Beaver, Shenango, Mahoning, Mohican, Scioto, Green, Barren, Salamonie, White, Big Blue, Tennessee, Holston, South Fork Holston, Nolichucky, Clinch, North Fork Clinch, and Powell Rivers; Wolf, Conewango, Oil, Crooked, Pymatuning, Mill, Alum, Whetstone, Deer, Lick, and Richland Creeks; and Buckeye, Tippecanoe, Winona, and Pike Lakes). The rayed bean population in Lake Erie was once considerable (Ohio State University Museum of Biological Diversity (OSUM) collections), but has been eliminated by the zebra mussel.

Rayed Bean Current Distribution

Extant populations of the rayed bean are known from 28 streams and 1 lake in six States and one Canadian province: Indiana (St. Joseph River (stream) (Fish Creek (tributary)), Tippecanoe River (Lake Maxinkuckee, Sugar Creek)), Michigan (Black River (Mill Creek), Pine River, Belle River, Clinton River), New York (Allegheny River (Olean Creek, Cassadaga Creek, French Creek)), Ohio (Swan Creek, Fish Creek, Blanchard River, Tymochtee Creek, Walhonding River, Mill Creek, Big Darby Creek, Scioto Brush Creek), (Great Miami River, Little Miami River (East Fork Little Miami River), Stillwater River), Pennsylvania (Allegheny River (French Creek (Cussewago Creek))), and West Virginia (Elk River); and Ontario, Canada (Sydenham River, Thames River).

Rayed Bean Population Estimates and Status

Based on historical and current data, the rayed bean has declined significantly rangewide and is now known from only 28 streams and 1 lake (down from 112), a 74 percent decline (Table 1). This species has also been eliminated from long reaches of former habitat in hundreds of miles of the Maumee, Ohio, Wabash, and Tennessee Rivers and from numerous stream reaches and their tributaries. In addition, this species is no longer known from the States of Illinois, Kentucky, Tennessee, and Virginia. The rayed bean was also extirpated in West Virginia until the 2006 reintroduction into the Elk River (Clayton 2007, pers. comm.).

In this proposed rule, mussel shell collection records have been classified according to the condition of shell material. Fresh dead (FD) shells still have flesh attached to the valves, they may or may not retain a luster to their nacre, and their periostracum is non-peeling, all indicating relatively recent death (generally less than 1 year) (Buchanan 1980, p. 4). Relic (R) shells have lost the luster to their nacre, have peeling or absent periostracum, may be brittle or worn, and likely have been dead more than a year (Buchanan 1980, pp. 4–5; Zanatta *et al.* 2002, p. 482). Generally, FD shells indicate the continued presence of the species at a site (Metcalf 1980, p. 4). The presence of R shells only, along with repeated failure to find live (L) animals or FD shells, likely signifies that a population is extirpated (Watters and Dunn 1993–94, pp. 253–254). Shells labeled R may originally have been reported by collectors as either weathered dead (or weathered dry) or subfossil. If no details on shell condition were provided for a record, the shell is simply referred to as dead. In this document, a population is considered viable if it is reproducing and has enough individuals to sustain the population at its current level for the foreseeable future.

TABLE 1—RAYED BEAN STATUS AT HISTORICAL LOCATIONS

River basin	Stream	Last observed (R = relic)	Current status	Comments
Upper Great Lakes Sub-basin.	Pigeon River	1996 (R)	Extirpated	
Lower Great Lakes Sub-basin.	Black River	2001	Unknown	Small and of questionable viability.
	Mill Creek	2002	Unknown	Unknown.
	Pine River	2002	Declining	Recruiting.
	Belle River	2003	Unknown	
	Clinton River	1992	Unknown	Recruiting.
	North Fork Clinton River	1933	Extirpated	
	Sydenham River (Canada)	2003	Stable	Recruiting.
	Thames River	2008	Unknown	Unknown.
	Detroit River	1983	Extirpated	
	Rouge River	<1914	Extirpated.	
	Huron River	1931–32	Extirpated.	
	Raisin River	1941	Extirpated.	
	Macon Creek	1976–78 (R)	Extirpated.	
	Maumee River	1913	Extirpated.	
	Swan Creek	2009	Stable	Recruiting.
	St. Joseph River	1998	Declining	Probably not recruiting.
	West Branch St. Joseph River	1997 (R)	Extirpated.	
	Fish Creek	2009	Declining	Unknown.
	Cedar Creek	1985	Extirpated.	
	Feeder Canal to St. Joseph River	1988 (R)	Extirpated.	
	Auglaize River	1964	Extirpated.	
	Ottawa River	1998 (R)	Extirpated.	
	Blanchard River	2009	Unknown	Recruiting.
	Sandusky River	1978	Extirpated.	
	Tymochtee Creek	1996	Unknown	Unknown.
	Wolf Creek	1971 (R)	Extirpated.	
	Lake Erie	1977–87	Extirpated.	
Ohio River system	Ohio River mainstem	<1960	Extirpated.	
	Allegheny River	2007	Stable	Recruiting.
	Chautauqua Lake outlet	<1919	Extirpated.	
	Chautauqua Lake	<1919	Extirpated.	
	Olean Creek	2000	Unknown	Recruiting.
	Cassadaga Creek	1994	Unknown	Recruiting.
	Conewango Creek	~1908	Extirpated.	
	Oil Creek	<1970	Extirpated.	
	French Creek	2005	Stable	Recruiting.
	Cussewago Creek	1991	Unknown.	
	Crooked Creek	~1908	Extirpated.	
	West Fork River	<1913	Extirpated.	
	Beaver River	~1910	Extirpated.	
	Shenango River	~1908	Extirpated.	
	Pymatuning Creek	~1908	Extirpated.	
	Mahoning River	<1921	Extirpated.	
	Middle Island Creek	1980 (R)	Extirpated.	
	Muskingum River	1980 (R)	Extirpated.	
	Tuscarawas River	?	Extirpated.	
	Walhonding River	1991–95	Declining	Probably not recruiting.
	Mohican River	1969	Extirpated.	
	Elk River	2008	Reintroduced in 2006.	
	Scioto River	1964	Extirpated.	
	Mill Creek	2007	Unknown.	
	Alum Creek	1970	Extirpated.	
	Blacklick Creek	?	Extirpated.	
	Olentangy River	1962	Extirpated.	
	Whetstone Creek	1961	Extirpated.	
	Big Walnut Creek	1961	Extirpated.	
	Walnut Creek	1994 (R)	Extirpated.	
	Big Darby Creek	2008	Declining	Unknown.
	Little Darby Creek	1990 (R) or 1986 (R)	Extirpated.	
	Deer Creek	1981	Extirpated.	
	Sugar Creek	<1900	Extirpated.	
	Scioto Brush Creek	1987	Unknown	Probably not recruiting.
	Cedar Creek	?	Extirpated.	
	Buckeye Lake	?	Extirpated.	
	Ohio and Erie Canal	?	Extirpated	
	Great Miami River	2009	Unknown	Unknown.
	Little Miami River	1990–91	Unknown	Probably not recruiting.
	East Fork Little Miami River	1990–91	Unknown.	

TABLE 1—RAYED BEAN STATUS AT HISTORICAL LOCATIONS—Continued

River basin	Stream	Last observed (R = relic)	Current status	Comments
	Stillwater River	1987	Unknown	Probably not recruiting.
	South Fork Licking River	1982 (R)	Extirpated.	
	North Fork Elkhorn Creek	1982 (R)	Extirpated.	
	Eagle Creek	1981 (R)	Extirpated.	
	Brashears Creek	1983 (R)	Extirpated.	
	Green River	1964	Extirpated.	
	Nolin River	1983 (R)	Extirpated.	
	Barren River	<1900, ?	Extirpated.	
	Wabash River	1962 (R)	Extirpated.	
	Salamonie River	1971	Extirpated.	
	Mississinewa River	1994 (R)	Extirpated.	
	Tippecanoe River	1995	Declining	Possibly recruiting.
	Tippecanoe Lake	<1920	Extirpated.	
	Winona Lake	1934	Extirpated.	
	Pike Lake	1906	Extirpated.	
	Lake Maxinkuckee	1997	Declining	Unknown.
	Vermilion River	1999 (R)	Extirpated.	
	Salt Fork Vermilion River	1956–57	Extirpated.	
	Middle Fork Vermilion River	1991	Extirpated.	
	North Fork Vermilion River	1995 (R)	Extirpated.	
	Embarras River	1956	Extirpated.	
	Sugar Creek	1998	Unknown	Unknown.
	White River	<1903	Extirpated.	
	West Fork White River	1989–91 (R)	Extirpated.	
	East Fork White River	?	Extirpated.	
	Big Blue River	1944	Extirpated.	
	Walnut Creek	1992 (R)	Extirpated.	
	Mill Creek	1992 (R)	Extirpated.	
	Fall Creek	?	Extirpated.	
	Sugar Creek	1950	Extirpated.	
Tennessee River system.	Tennessee River mainstem	<1939	Extirpated.	
	Holston River	1914–15	Extirpated.	
	North Fork Holston River	1913	Extirpated.	
	South Fork Holston River	1914	Extirpated.	
	Nolichucky River	1968	Extirpated.	
	Lick Creek	1967 (R)	Extirpated.	
	First Creek	?	Extirpated.	
	Clinch River	1965	Extirpated.	
	North Fork Clinch River	<1921	Extirpated.	
	Powell River	1913–15	Extirpated.	
	Elk River	1965	Extirpated.	
	Richland Creek	1892	Extirpated.	
	Duck River	1982	Extirpated.	

Upper Great Lakes Sub-Basin

The rayed bean was not known from the upper Great Lakes sub-basin until 1996, when relic specimens were documented from a tributary to the St. Joseph River, a tributary to Lake Michigan. No extant populations of the rayed bean are currently known from this system.

Lower Great Lakes Sub-Basin

Of the 112 water bodies from which the rayed bean was historically recorded, 27 are in the lower Great Lakes system. The species is thought to be extant in 12 streams, which are discussed below, but historically significant populations have been eliminated from Lake Erie and the Detroit River.

Black River—A tributary of the St. Clair River, linking Lakes Huron and St. Clair, the Black River is located in southeastern Michigan. Hoeh and Trdan (1985, p. 115) surveyed 17 sites in the Black River system, including 12 mainstem sites, but failed to find the rayed bean. The rayed bean was not discovered there until the summer of 2001 when a single live (L) individual was found in the lower river in the Port Huron State Game Area (PHSGA) (Badra 2002, pers. comm.). A survey in 2003 failed to find any rayed bean, and two surveys in 2005 found only two valves (Badra 2008, pers. comm.). An additional survey was performed in 2005 at six sites, but no rayed bean were found (Badra 2008, pers. comm.). The status of this population cannot be accurately assessed at this time, but would appear to be small and of questionable viability (Butler 2002, p. 8).

Mill Creek—Mill Creek is a tributary of the Black River, St. Clair County, in southeastern Michigan. The rayed bean was discovered in Mill Creek in August 2002. Five dead specimens were found approximately 0.5 miles (mi) (0.8 kilometers (km)) above its confluence with the Black River in the PHSGA (Badra 2002, pers. comm.). A Mill Creek site 0.25 mi (0.4 km) from the confluence of the Black River was surveyed in 2003 and 2004 with one rayed bean shell found during each survey (Badra 2008, pers. comm.). Similar to the population in the Black River, the status of this newly discovered population cannot be accurately assessed at this time.

Pine River—Another tributary of the St. Clair River, the Pine River is located in southeastern Michigan. The rayed bean was apparently not collected in the Pine River until 1982 when specimens were found at three sites (Hoeh and Trdan 1985, p. 116). These collections included 5 L individuals and 23 FD specimens (Badra 2002, pers. comm.). Hoeh and Trdan (1985, p. 116) considered it to be "rare," semi-quantitatively defined as occurring at a rate of less than one specimen per person-hour sampling effort. In 1997, two L individuals were found. The last survey in the Pine River occurred in 2002 (Badra 2008, pers. comm.), and one L rayed bean was documented (Badra and Goforth 2003, p. 6). The species may have declined significantly since the 1980s, but is probably still viable in the Pine River.

Belle River—The Belle River is a third tributary of the St. Clair River harboring an extant population of the rayed bean. This species was first collected from the Belle River in 1965, when 17 FD specimens were collected (OSUM 1965:0106). The same site was revisited in 1978, but only one FD shell is represented in OSUM 1978:0013. Since that time, L individuals or FD specimens have been found in 1983 and 1992, while only R shells were found in 1994 (Badra 2008, pers. comm.). During summer 2002 sampling, single L specimens were found at two new sites, with an additional four and two FD specimens, respectively, also found from these sites (Badra 2008, pers. comm.). The status of the population is still not well known, but appears to be small.

Clinton River—The rayed bean was first recorded from the Clinton River in 1933 (Badra 2008, pers. comm.). The mussel fauna in the entire mainstem of the Clinton River downstream of Pontiac, Michigan, was apparently wiped out by pollution between 1933 and 1977 (Strayer 1980, p. 147). In 1992, Trdan and Hoeh (1993, p. 102) found 26 L individuals using a suction dredge from a bridge site slated for widening where Strayer (1980, p. 146) found only R shells. The rayed bean represented 1.2 percent relative abundance of the 10 species collected at the site. The population is probably viable but currently restricted to about 3 mi (4.8 km) of stream in the western suburbs of Pontiac. Its long-term status appears to be highly precarious.

Sydenham River—The rayed bean in the Sydenham River represents one of the largest rayed bean populations remaining. West *et al.* (2000, pp. 252–253) presented a highly detailed collection history of the rayed bean in the Sydenham River. The rayed bean is currently thought to exist in an approximately 75-mi (120-km) reach of the middle Sydenham, from the general vicinity of Napier, Ontario, downstream to Dawn Mills. The species appears to be most abundant in the lower half of this river reach. Although the range has remained relatively consistent over time, abundance data at repeatedly sampled sites from the 1960s to the late 1990s indicate a general decline of the rayed bean. Based on the range of sizes and roughly equal number of specimens in various size classes of the L and FD material they gathered, West *et al.* (2000, p. 256) considered the population to be "healthy" and "reproducing" (recruiting). Data from sampling in 2001 shows evidence of recruitment and variable size classes for both sexes from most of the sites (Woolnough 2002, p. 50). Based on this data, the rayed bean population in the Sydenham River is doing considerably better than West *et al.* (2000, pp. 252–253) suggested. Woolnough and Morris (2009, p. 19) estimates that there are 1.5 million mature rayed bean in the Sydenham River living in the 38-mile (61-km) stretch between Napier Road near Alvinston, Ontario, and Dawn Mills, Ontario.

Thames River—The Thames River flows west through southwestern Ontario. The rayed bean was historically known from only the south branch until 2008, when it was discovered in the north branch. In July 2008, six gravid (full of eggs) females were collected at two north branch sites (Woolnough 2008, pers. comm.). In September 2008, four L females and two L males were collected at two different north branch sites (Woolnough 2008, pers. comm.). All of these individuals were collected within a 4.5-mi (7.2-km) reach of the river (Woolnough 2008, pers. comm.). Woolnough and Morris (2009, p. 19) estimates that there are 4,300 mature rayed bean in the Thames River.

Maumee River System—The Maumee River system, which flows into the western end of Lake Erie, was once a major center of distribution of the rayed bean. The species was historically known from eight streams in the system in addition to the mainstem Maumee. Further, an additional population was discovered in the system in 2005 in Swan Creek.

Swan Creek—Swan Creek is a tributary of the lower Maumee River in northwestern Ohio. This population was discovered in 2005. Surveys conducted in 2006 and 2007 found that the Swan Creek population is limited to about 3 river mi (5 river km) between river mile (RM) 18.3 and 15.3 (Grabarkiewicz 2008, p. 11). The rayed bean was the fourth most abundant unionid present within the 2006–2008 sample area, reaching densities of eight individuals per square meter in some areas and comprising about 14.1 percent of the total mussel community (Grabarkiewicz 2008, p. 10). The rayed bean population in Swan Creek is viable and, although limited to a short reach, may be one of the most robust remaining populations.

St. Joseph River—The St. Joseph River is one of the two major headwater tributaries to the Maumee, with a drainage area in southeastern Michigan, northwestern Ohio, and northeastern Indiana. The mainstem flows in a southwesterly direction to its confluence with the St. Mary's River to form the Maumee in Ft. Wayne, Indiana. The rayed bean was historically known from numerous sites on the river, but now apparently persists only at a couple of sites in the lower St. Joseph River in Allen and DeKalb Counties, Indiana (Watters 1988b, p. 15; 1998, Appendix C); a few FD specimens were found in both studies, but no live individuals were found. Grabarkiewicz and Crail (2008, p. 13) surveyed six sites on the West Branch St. Joseph River in 2007, but did not encounter any rayed bean.

Fish Creek—A tributary of the St. Joseph River that begins in Ohio, Fish Creek flows west then south through Indiana, then eventually east into Ohio before joining the St. Joseph River at Edgerton. The rayed bean persists in Williams County, Ohio, and possibly DeKalb County, Indiana. Based on the appearance of 2 L individuals and FD shells, it inhabits the lower 10 mi (16.1 km) or less of the stream (Watters 1988b, p. 18; Grabarkiewicz 2009, pers. comm.). Watters (1988b, p. ii) considered Fish Creek to be "the most pristine tributary of the St. Joseph system." A major diesel fuel spill from a ruptured pipeline in DeKalb County in 1993 resulted in a mussel kill in the lower portion of the stream (Sparks *et al.* 1999, p. 12). It is not known if the rayed bean was affected by the spill. Surveys in 2004 (at 64 qualitative sites) and 2005 (at 11 quantitative sites) failed to detect the species (Brady *et al.* 2004, p. 2; 2005, p. 3). However, Grabarkiewicz (2009, pers. comm.) reported finding two L and three FD rayed bean in 2005 at the County Road 3 bridge in Ohio. In 2009, two FD rayed bean were found in lower Fish Creek in Ohio (personal observation). The viability and status of this population is uncertain (Fisher 2008, pers. comm.).

Blanchard River—The Blanchard River is a tributary of the Auglaize River in the Maumee River system, in northwestern Ohio. First discovered in

1946, this population is one of the largest of the rayed bean rangewide. The rayed bean in the Blanchard River is restricted to 25–30 river mi (40–48 river km) in the upper portion of the stream in Hardin and Hancock Counties upstream of Findley (Hoggarth *et al.* 2000, p. 22). Hoggarth *et al.* (2000, p. 23) reported the rayed bean to be the fourth most common species in the drainage. The population is considered to be viable.

Tymochtee Creek—Tymochtee Creek is a tributary to the upper Sandusky River in north-central Ohio, which flows into the southwestern portion of Lake Erie. The rayed bean is known from three sites in a reach of stream in Wyandot County and was first collected in 1970. All collections of the rayed bean have been small, with not more than five FD shells found in any one collection effort. The last record is for 1996, when a pair and three unpaired valves were collected. The condition of at least one of the valves indicated that the rayed bean is probably still extant in the stream, although no L individuals were observed (Athearn 2002, pers. comm.). The rayed bean status in Tymochtee Creek is therefore currently unknown.

Ohio River System

The rayed bean was historically known from the Ohio River in the vicinity of Cincinnati, Ohio, downstream to the Illinois portion of the river. It undoubtedly occurred elsewhere in the upper mainstem. Few historical records are known (mostly circa 1900), and no recent collections have been made, indicating that it became extirpated there decades ago. It was historically known from 71 streams, canals, and lakes in the system, representing roughly two-thirds of its total range. Ortmann (1925, p. 354) considered the rayed bean to be "abundant in small streams" in the Ohio River system. Currently, only 16 streams and a lake are thought to have extant rayed bean populations in the system.

Allegheny River System—Nine streams and Chautauqua Lake historically harbored rayed bean populations in the Allegheny River system. Currently, the rayed bean is found in half of these water bodies, but in good numbers in two streams (Allegheny River and French Creek) in this drainage.

Allegheny River—The Allegheny River drains northwestern Pennsylvania and western New York joining the Monongahela River at Pittsburgh, Pennsylvania, to form the Ohio River. Ortmann (1909a, p. 179; 1919, p. 262) was the first to report the rayed bean from the Allegheny. The population once stretched from Cataraugus County, New York, to Armstrong County, Pennsylvania. Based on historical collections, it appears that the rayed bean is more abundant now than it was historically in the Allegheny River. This may indicate that the rayed bean population in the Allegheny has expanded in the past 100 years. Many streams in western Pennsylvania have improved water quality since Ortmann's time, when he reported on the wholesale destruction of mussels in several streams (Ortmann 1909b, pp. 11–12). It currently occurs in Pennsylvania downstream of Allegheny (Kinzua) Reservoir in Warren County to the pool of Lock and Dam 8 in northern Armstrong County, a distance of over 100 river mi (161 river km) (Villella Bumgardner 2008, pers. comm.). The Allegheny population is viable and one of the most important remaining rangewide today.

Olean Creek—Olean Creek is a tributary of the Allegheny River in western New York. A small population of the rayed bean is known from the lower portions of the stream. Strayer *et al.* (1991, p. 67) reported the rayed bean from three sites during 1987–90 sampling, although just one L individual was located with R shells from the other two sites. Only R shells were found in Olean Creek in 1994, but three L individuals were found in 2000, at the proposed construction site of the City of Olean Water Treatment Plant (ESI 2000, p. 8). Collected only during their quantitative sampling effort, the rayed bean represented a relative abundance of 11.5 percent of the seven L species sampled. The rayed bean age distribution of these specimens also indicates recent recruitment into the population (ESI 2000, p. 9). Relic specimens are now known from an 8-mi (13-km) reach of stream, with L individuals known from less than 1.5 mi (2.4 km) of the lower creek. The Olean Creek population appears viable, but is small and tenuous (Butler 2008, pers. comm.)

Cassadaga Creek—Cassadaga Creek is a tributary of Conewango Creek in the Allegheny River system, in western New York. A small population of the rayed bean is known from a single riffle (Ross Mills) in the lower creek north of Jamestown. Four L specimens were found in 1994 (Strayer 1995). Muskrat middens collected during the winter of 2002 produced 38 FD specimens with a size range of 0.8–1.7 in (2.0–4.3 cm) (Clapsadl 2002, pers. comm.). Although the rayed bean is not known from other sites in the stream, it appears to be viable at this site. The highly restricted extent of the population combined with its proximity to roads and retail development, including a gas station close to the flood zone upstream, makes it extremely susceptible to a stochastic event (such as a toxic chemical spill).

French Creek—French Creek is a major tributary of the middle Allegheny River, in western New York and northwestern Pennsylvania. One of the largest rayed bean populations known is found in much of the lower portions of the stream in four Pennsylvania counties (the species is not known from the New York portion of stream). Ortmann (1909a, p. 188; 1919, p. 264) reported the species from two counties, Crawford and Vanango. Not until circa 1970 did the population become more thoroughly known, with museum lot sizes indicating sizable populations at several sites, particularly in the lower reaches of the stream. Recent collections indicate that population levels remain high with the rayed bean occurring throughout the mainstem (Villella Bumgardner 2002, pers. comm.; Smith and Crabtree 2005, pp. 15–17; Enviroscience 2006, p. 5).

Cussewago Creek—Cussewago Creek is a tributary of lower French Creek, with its confluence at Meadville, Crawford County, Pennsylvania. A small population was reported in 1991 from Cussewago Creek (Proch 2001, pers. comm.). The rayed bean is thought to persist in the stream, but its current status is unknown.

Walhonding River—The Walhonding River is a tributary of the upper Muskingum River system, in central Ohio, forming the latter River at its confluence with the Tuscarawas River at Coschocton. Small numbers of rayed bean shells are represented in OSUM collections from the 1960s and 1970s. During 1991–93, Hoggarth (1995–96, p. 161) discovered one L individual and one FD specimen at one site, while four R specimens were found at three other sites. A small rayed bean population is thought to remain in the Walhonding River; its status is unknown, but is deemed highly tenuous given the small population size. The population is probably nearing extirpation (Hoggarth 2008a, pers. comm.).

Elk River—The Elk River is a major 181-river-mi (291-river-km) tributary in the lower Kanawha River system draining central West Virginia and flowing west to the Kanawaha River at Charleston. The rayed bean was extirpated in the Elk River sometime in the 1990s. In 2006 and 2007, approximately 600 adults were reintroduced into the Elk River above Clendenin. In 2008, an effort was made to monitor the reintroduction. A 30-

minute search yielded two L individuals, but efforts were discontinued due to high water and excessive habitat disturbance caused by the search effort (Clayton 2008, pers. comm.). The translocated adults are thought to persist in the stream, but it is unknown if this new population is reproducing.

Scioto River system—The Scioto River system, in central and south-central Ohio, is a major northern tributary of the Ohio River. A historically large meta-population of the rayed bean occupied at least 11 streams, the Ohio and Erie Canal, and Buckeye Lake. Sizable populations were noted in at least the Olentangy River, and Alum and Big Darby Creeks, based on OSUM collections primarily from the 1960s. A series of system reservoirs mostly north of Columbus reduced habitat and contributed to the elimination of some populations in several streams (Alum, Big Walnut, and Deer Creeks; Olentangy and Scioto Rivers). The location of the Columbus Metropolitan Area in the heart of the watershed has also taken a major toll on the species. The historical Scioto rayed bean meta-population has since been decimated by anthropogenic factors. Currently, remnant populations are known only from Mill Creek, Big Darby Creek, and Scioto Brush Creek.

Mill Creek—Mill Creek is a tributary of the Scioto River in central Ohio that joins the Scioto River at the O'Shaughnessy Reservoir northwest of the City of Columbus. In 2004, seven FD specimens were found during a survey in the City of Marysville (Hoggarth 2005, p. 7). In 2007, Hoggarth (2007a, pp. 5–6) found two L rayed bean at the same site and one L individual at an additional site. No other information is available on the status of this population.

Big Darby Creek—Big Darby Creek is one of the major tributaries draining the northwestern portion of the Scioto River system in central Ohio. A sizable rayed bean population was noted in Big Darby Creek from OSUM collections primarily from the 1960s. Watters (1994, p. 105) reported finding a few FD specimens in 1986, but none in 1990, and indicated that the rayed bean was probably extirpated from Big Darby Creek. In 2006, one L individual was found at the U.S. Highway 42 bridge replacement project site (Hoggarth 2006, p. 6). This individual was relocated to a site upstream out of the impact zone of the bridge project, and nine additional L individuals were subsequently found at the relocation site (Hoggarth 2006, p. 6). In 2007, three L rayed bean were found at the relocation site (Hoggarth 2007b, p. 9). Hoggarth (2008b, pers. comm.) visited the same relocation site in 2008, and reported finding "numerous living specimens" of the rayed bean. The status of this population cannot be accurately assessed at this time, but would appear to be small and of questionable viability.

Scioto Brush Creek— Scioto Brush Creek is a small western tributary of the lower Scioto River in Scioto County, south-central Ohio. Watters (1988a, p. 45) discovered the rayed bean in this stream in 1987, reporting two FD and two R specimens from a site, and a R specimen from a second site among the 20 sites he collected. This population's current status is uncertain.

Great Miami River—The Great Miami River is a major northern tributary of the Ohio River in southwestern Ohio that originates from Indian Lake in west-central Ohio and flows into the Ohio River west of Cincinnati. The occurrence of the rayed bean in the Great Miami River was discovered in August 2009, during a mussel survey for a bridge project in Logan County, Ohio. Only one individual was documented, a male approximately 7 to 8 years of age (Hoggarth 2009, pers. comm.). The status of this newly discovered population is not known.

Little Miami River—The Little Miami River is a northern tributary of the Ohio River in southwestern Ohio, flowing into the latter at the eastern fringe of the Cincinnati metropolitan area. Hoggarth (1992, p. 248) surveyed over 100 sites in the entire system. He found one L individual at a site in Warren County and possibly a subfossil shell at another site, although there is contradictory data in his paper (Butler 2002, p. 17). The latter site may have been the same as that reported for a pre-1863 record (Hoggarth 1992, p. 265). The rayed bean appears to be very rare in the Little Miami, having been found extant at only 1 of 46 mainstem sites. Hoggarth (1992, p. 267) highlighted the "fragile nature" of the extant mussel community in the system, while noting that localized reaches of the Little Miami were "severely impacted." The species status in the river is uncertain, but apparently very tenuous and probably headed toward extirpation (Butler 2002, p. 17).

East Fork Little Miami River—The East Fork Little Miami River is an eastern tributary of the lower Little Miami River, with its confluence at the eastern fringe of the Cincinnati metropolitan area. According to OSUM records, eight FD specimens were reported from a site in eastern Clermont County in 1973. Hoggarth (1992, p. 265) reported one L, three FD, and one R rayed bean from three sites in a 7-river-mi (11-river-km) stretch of the stream in western Clermont and adjacent Brown County (including the 1973 site). Harsha Reservoir on the East Fork destroyed several miles of potential stream habitat for the rayed bean a few miles downstream of the extant population. The status of the rayed bean in the river is uncertain but probably of doubtful persistence (Butler 2002, p. 17).

Stillwater River—The Stillwater River is a western tributary of the middle Great Miami River in southwestern Ohio. The rayed bean is known from two specimens, one FD and one R, collected in 1987 at two sites spanning the Miami–Montgomery County line (OSUM records). Both sites occur in the footprint of Englewood Reservoir (constructed circa 1920), which serves as a retarding basin (a constructed empty lake used to absorb and contain flooding in periods of high rain) that is normally a free-flowing river except in times of flood, therefore continuing to provide riverine habitat that is normally destroyed by permanently impounded reservoirs. The rayed bean in the Stillwater River may be extant, but its status is currently unknown and considered highly imperiled.

Tippecanoe River—The Tippecanoe River is a large northern tributary of the middle Wabash River in north-central Indiana. The first records for the rayed bean date to circa 1900 (Daniels 1903, p. 646). Historically, this species was known from numerous sites in six counties in the Tippecanoe River. A total of 12 FD specimens from 5 of 30 sites were found when sampled in 1992. The rayed bean "is apparently on the decline" in the river (ESI 1993, p. 87). The Tippecanoe rayed bean population was thought to be recruiting by Fisher (2008, pers. comm.), but appears tenuous and its long-term viability is questionable.

Lake Maxinkuckee—Lake Maxinkuckee is a glacial lake in the headwaters of the Tippecanoe River in north-central Indiana. The rayed bean has been known from the lake for more than a century (Blatchley 1901). A 1997 OSUM record included seven FD specimens collected at its outlet to the Tippecanoe River. Fisher (2002, pers. comm.), who made the 1997 OSUM collection, noted that many native mussels had zebra mussels attached to their valves and were apparently contributing to their mortality. The status of the rayed bean in Lake Maxinkuckee is therefore highly tenuous, and its long-term persistence questionable.

Sugar Creek—Sugar Creek is a tributary of the East Fork White River, in the lower Wabash River system in south-central Indiana. A rayed bean population was first reported there in

1930. Harmon (1992, p. 33) sampled 27 mainstem and 16 tributary sites finding FD specimens at 3 mainstem sites and R specimens from 2 other sites. The sites with FD material were found in the lowermost 6 mi (9.7 km) of stream. The status and viability of this tenuous population is uncertain (Fisher 2008, pers. comm.).

Tennessee River System

Historically, the rayed bean was known from the Tennessee River and 12 of its tributary streams. Ortmann (1924, p. 55) reported that the rayed bean had a "rather irregular distribution"; however, museum lots show that it was fairly common in some streams (North Fork Clinch, Duck Rivers). The last L rayed bean records from the system, with the exception of the Duck River, were from the 1960s or earlier. The species held on in the Duck until the early 1980s. Recent intensive sampling in the Duck watershed has failed to locate even a R shell of the rayed bean (Ahlstedt *et al.* 2004, p. 29). Tributaries in this system have been extensively sampled over the past 25 years. It is highly probable that this species is extirpated from the entire Tennessee River system.

A project was initiated in 2008 to reintroduce rayed bean into the Duck River by translocating over 1,000 adults from the Allegheny River system. Although the rayed bean was extirpated from the Duck River about 25 years ago, major improvements in water quality and physical habitat conditions have occurred in the past 15 years. In response to these improvements, recruitment of nearly all extant mussel species has been documented and suggests that reintroduction of the rayed bean might be successful (Anderson 2008, pers. comm.). The reintroduction has not yet occurred.

The information presented in this document indicates that the rayed bean has experienced a significant reduction in range and most of its populations are disjunct, isolated, and with few exceptions, appear to be declining (West *et al.* 2000, p. 251). The extirpation of this species from over 80 streams and other water bodies within its historical range indicates that substantial population losses have occurred. Relatively few streams are thought to harbor sizable viable populations (Sydenham, Swan, Blanchard, and Allegheny Rivers, and French Creek). Small population size and restricted stream reaches of current occurrence are a real threat to the rayed bean due to the negative genetic aspects associated with small, geographically isolated populations. This can be especially true for a species, like rayed bean, that was historically widespread and had population connectivity among mainstem rivers and multiple tributaries. The current distribution, abundance, and trend information illustrates that the rayed bean is imperiled.

Snuffbox Historical Distribution

The snuffbox historically occurred in 208 streams and lakes in 18 States and 1 Canadian province: Alabama, Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Mississippi, Missouri, New York, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia, and Wisconsin; and Ontario. The major watersheds of historical streams and lakes of occurrence include the upper Great Lakes sub-basin (Lake Michigan drainage), lower Great Lakes sub-basin (Lakes Huron, Erie, and Ontario drainages), upper Mississippi River sub-basin, lower Missouri River system, Ohio River system, Cumberland River system, Tennessee River system, lower Mississippi River sub-basin, and White River system.

Snuffbox Current Distribution

Extant populations of the snuffbox are known from 74 streams in 14 States and 1 Canadian province: Alabama (Tennessee River, Paint Rock River, and Elk River), Arkansas (Buffalo River, Spring River, and Strawberry River), Illinois (Kankakee River and Embarras River), Indiana (Pigeon River, Salamonie River, Tippecanoe River, Sugar Creek, Buck Creek, Muscatatuck River, and Graham Creek), Kentucky (Tygarts Creek, Kinniconick Creek, Licking River, Slate Creek, Middle Fork Kentucky River, Red Bird River, Red River, Rolling Fork Salt River, Green River, and Buck Creek), Michigan (Grand River, Maple River, Pine River, Belle River, Clinton River, Huron River, Davis Creek, South Ore Creek, and Portage River), Minnesota (St. Croix River), Missouri (Meramec River, Bourbeuse River, St. Francis River, and Black River), Ohio (Grand River, Ohio River, Muskingum River, Walhonding River, Killbuck Creek, Olentangy River, Big Darby Creek, Little Darby Creek, Salt Creek, Scioto Brush Creek, South Fork Scioto Brush Creek, Little Miami River, and Stillwater River), Pennsylvania (Allegheny River, French Creek, West Branch French Creek, Le Boeuf Creek, Muddy Creek, Conneaut Outlet, Little Mahoning Creek, Dunkard Creek, Shenango River, and Little Shenango River), Tennessee (Clinch River, Powell River, Elk River, and Duck River), Virginia (Clinch River and Powell River), West Virginia (Ohio River, Dunkard Creek, Middle Island Creek, North Fork Hughes River, and Elk River), Wisconsin (St. Croix River, Wolf River, Embarrass River, Little Wolf River, and Willow Creek), and Ontario (Ausable River and Sydenham River). It is probable that the species persists in some of the 134 streams or lakes where it is now considered extirpated (Butler 2007, p. 16); however, if extant, these populations are likely to be small and not viable.

Snuffbox Population Estimates and Status

Based on historical and current data, the snuffbox has declined significantly rangewide and is now known from only 74 streams (down from 208 historically), representing a 65 percent decline in occupied streams (Table 2). Since multiple streams may comprise a single snuffbox population (French Creek system), the actual number of extant populations is less than 74. Extant populations, with few exceptions, are highly fragmented and restricted to short reaches. Available records indicate that 24 of 74, or 33 percent, of streams considered to harbor extant populations of the snuffbox are represented by only one or two recent L or FD individuals (Embarrass, Little Wolf, Maple, Pigeon, Kankakee, Meramec, Ohio, Muskingum, Olentangy, Stillwater, Green, Powell, Duck, and Black Rivers; and Little Mahoning, Middle Island, Big Darby, Little Darby, Salt, South Fork Scioto Brush, Slate, and Buck (Indiana), Graham, Buck (Kentucky) Creeks.

Butler (2007, pp. 70–71) categorized the extant populations into three groups based on population size, general distribution, evidence of recent recruitment, and assessment of current viability. Stronghold populations were described as having sizable populations generally distributed over a significant and more or less contiguous length of stream (30 or more river mi (48 or more river km)), with ample evidence of recent recruitment, and currently considered viable. Significant populations were defined as small, generally restricted populations with limited recent recruitment and viability. Many significant populations are susceptible to extirpation, but this category has a broad range of quality. The third category, marginal populations, are defined as those which are very small and highly restricted with no evidence of recent recruitment, of questionable viability, and that may be on the verge of extirpation in the immediate future. Following this criteria, there are 6 stronghold populations, 23 significant populations,

and 45 marginal populations of snuffbox.

A population is considered extant if L individuals or FD specimens have been located since approximately 1985. A population is considered to be recruiting if there was recent (within approximately 10 years) evidence of subadults (generally, individuals less than or equal to 1.5 in (3.8 cm) long or less than or equal to 4 years).

TABLE 2—SNUFFBOX EXTANT STREAM POPULATION SUMMARY BY STREAM OF OCCURRENCE

Stream (state)	Last observed	Recruiting	Potential viability	Population size	Population trend	Status category
Wolf River (WI)	2006	Yes	High	Large	Declining	Stronghold.
Embarrass River (WI).	1995	?	?	Small	?	Marginal.
Little Wolf River (WI).	1999	?	?	Small	?	Marginal.
Willow Creek (WI)	2001	?	?	Small	?	Marginal.
Grand River (MI)	2002	Yes	High	Medium	?	Significant.
Maple River (MI)	2001	?	?	Small	?	Marginal.
Pine River (MI)	2002	?	Low	Small	Stable	Marginal.
Belle River (MI)	2002	Yes	High	Small	?	Significant.
Clinton River (MI)	2003	Yes	High	Large	Declining	Significant.
Huron River (MI)	2001	?	Low	Medium	?	Significant.
Davis Creek (MI)	2005	Yes	High	Medium	?	Significant.
South Ore Creek (MI).	1999	Yes	High	Small	?	Significant.
Portage River (MI)	1998	Yes	High	Medium	?	Significant.
Grand River (OH)	2006	Yes	High	Medium	?	Significant.
St. Croix River (MN and WI).	2004	Yes	High	Large	Declining	Significant.
Kankakee River (IL)	1991	?	?	Small	?	Marginal.
Meramec River (MO).	1997	?	?	Small	Declining	Marginal.
Bourbeuse River (MO).	2006	Yes	High	Large	Improving	Stronghold.
Ohio River (OH)	2001	?	Low	Small	?	Marginal.
Muskingum River (OH).	2005	?	?	Small	?	Marginal.
Walhonding River (OH).	1991	?	?	Small	Declining	Significant.
Killbuck Creek (OH)	2009	?	?	Small	Declining	Marginal.
Olentangy River (OH).	1989	?	?	Small	Declining	Marginal.
Big Darby Creek (OH).	2008	?	?	Small	Declining	Marginal.
Little Darby Creek (OH).	1999	?	?	Small	Declining	Marginal.
Salt Creek (OH)	1987	?	?	Small	?	Marginal.
Scioto Brush Creek (OH).	1987	?	?	Small	?	Marginal.
South Fork Scioto Brush Creek (OH).	1987	?	?	Small	?	Marginal.
Little Miami River (OH).	1991	?	?	Small	?	Marginal.
Stillwater River (OH).	1987	?	?	Small	?	Marginal.
Pigeon River (IN)	1998	?	?	Small	?	Marginal.
Salamonie River (IN).	2004	Yes	Low	Small	?	Significant.
Tippecanoe River (IN).	2003	?	?	Small	Declining	Marginal.
Embarras River (IL)	2008	Yes	Low	Small	Declining	Significant.
Sugar Creek (IN)	1990	?	?	Small	Declining	Marginal.
Buck Creek (IN)	1990	?	?	Small	?	Marginal.
Muscatatuck River (IN).	1988	?	?	Small	?	Marginal.
Graham Creek (IN)	1990	?	?	Small	Declining	Marginal.
St. Francis River (MO).	2006	Yes	High	Medium	Stable	Significant.
Black River (MO)	2002	Yes	Low	Small	?	Significant.
Tygarts Creek (KY)	1995	?	?	Small	Declining	Marginal.
Kinniconick Creek (KY).	2005	?	Low	Small	Declining	Marginal.
Licking River (KY)	2006	?	Low	Small	?	Marginal.
Slate Creek (KY)	1992	?	?	Small	Declining	Marginal.
Middle Fork Kentucky River (KY).	1997	?	?	Small	?	Marginal.

TABLE 2—SNUFFBOX EXTANT STREAM POPULATION SUMMARY BY STREAM OF OCCURRENCE—Continued

Stream (state)	Last observed	Recruiting	Potential viability	Population size	Population trend	Status category
Red Bird River (KY)	1995	?	?	Small	?	Marginal.
Red River (KY)	~2002	?	?	Small	?	Significant.
Rolling Fork Salt River (KY).	~2005	?	?	Small	?	Marginal.
Green River (KY)	1989	?	?	Small	Declining	Marginal.
Buck Creek (KY)	1987–90	?	?	Small	Declining	Marginal.
Clinch River (TN and VA).	2006	Yes	High	Large	Stable or Declining	Stronghold.
Powell River (TN and VA).	2008	?	?	Small	Declining	Marginal.
Tennessee River (AL).	2006	?	?	Small	?	Marginal.
Paint Rock River (AL).	2008	Yes	High	Large	Improving	Stronghold.
Elk River (TN and AL).	2007	Yes	Low	Small	Stable	Significant.
Duck River (TN)	2001	?	?	Small	?	Marginal.
Buffalo River (AR)	2006	?	?	Small	?	Marginal.
Spring River (AR)	2005	?	Low	Medium	?	Significant.
Strawberry River (AR).	1997	?	?	Small	?	Marginal.
Allegheny River (PA).	2001	?	?	Small	?	Marginal.
French Creek (PA)	2008	Yes	High	Large	Stable	Stronghold.
West Branch French Creek (PA).	2008	?	?	Small	?	Marginal.
Le Boeuf Creek (PA).	2006	Yes	Low	Small	?	Marginal.
Muddy Creek (PA)	2008	Yes	Low	Medium	?	Significant.
Conneaut Outlet (PA).	1997	?	?	Small	?	Marginal.
Little Mahoning Creek (PA).	1991	?	?	Small	?	Marginal.
Dunkard Creek (PA and WV).	2009	?	?	Small	Declining	Significant.
Shenango River (PA).	2002	?	?	Small	?	Marginal.
Little Shenango River (PA).	2002	?	?	Small	?	Significant.
Middle Island Creek (WV).	2001	?	?	Small	Declining	Marginal.
North Fork Hughes River (WV).	2001	?	Low	Small	Declining	Significant.
Elk River (WV)	2004	?	Low	Medium	Improving	Significant.
Ausable River (ON)	2006	Yes	High	Medium	Declining	Significant.
Sydenham River (ON).	2002	Yes	High	Large	?	Stronghold.

Upper Great Lakes Sub-Basin

The snuffbox was formerly known from 15 streams and lakes in the upper Great Lakes sub-basin. The Fox River system in Wisconsin, particularly its major tributary the Wolf River (and its tributaries), had a widespread and locally abundant population. The species is thought to be extant in seven sub-basin streams; however, all but the Wolf and Grand Rivers have populations that are considered marginal.

Wolf River—The Wolf River is the major tributary of the Fox River draining a large portion of northeastern Wisconsin and flowing southward to join the Fox River at Lake Butte Des Morts, near Oshkosh. Snuffbox records are known from Shawano, Waupaca, and Outagamie Counties. The snuffbox is known from a 30-river-mi (48-river-km) reach of the Wolf River (Butler 2007, p. 21). It is one of the few stronghold populations, but appears to exhibit a low level of recruitment. Only 4 of 257 individuals collected in the mid-1990s were less than 6 years old (Butler 2007, p. 21). A bridge replacement project on the south side of Shawano, scheduled to begin in 2010, may adversely impact the large snuffbox bed located just downstream (ESI 2006, p. 10). The zebra mussel occurs in this river, with a 0.7 percent infestation rate on unionids sampled in 2006 (ESI 2006, p. 6). This large population continues to be viable but appears to be in decline (Butler 2008, pers. comm.).

Embarrass River—A western tributary of the lower Wolf River, the Embarrass River parallels the western bank of the Wolf River before joining it at New London, Wisconsin. A population of the snuffbox is located in the headwaters below a small dam at Pella, Wisconsin. Records exist for three L individuals and two dead specimens during 1987–1988 and a single D specimen in 1995 (Butler 2007, p. 22). Its current status is unknown.

Little Wolf River—The Little Wolf River is a western tributary of the lower

Wolf River in Waupaca County, Wisconsin. The snuffbox is known from a single L individual collected in 1988 at RM 14 below the Mill Pond dam at Manawa (Butler 2007, p. 22). Five D specimens were found during 1999 at RM 2, where shells were abundant in a muskrat midden (Butler 2007, p. 22). Nothing else is known regarding this population.

Willow Creek—Willow Creek flows eastward into Lake Poygan, a large flow-through lake of the Wolf River system, in Waushara County, Wisconsin. The snuffbox is known from a single observation of two L females in 2001 (Butler 2007, p. 22). No other information is available on the status of this population.

Grand River—The Grand River, a major Lake Michigan tributary, represents the largest lotic (moving water) watershed in Michigan and is located in the southwestern portion of the State. The snuffbox is sporadically distributed in approximately 25 river mi (40 river km) of the middle Grand River, approximately between the confluences of the Flat and Maple Rivers. The medium-sized population appears to have a low level of viability, with recruitment noted in 1999 (Badra 2008, pers. comm.).

Maple River—The Maple River is a northeastern tributary of the Grand River draining south-central Michigan. A single snuffbox record (one L individual) is known from 2001 in southern Gratiot County, approximately 20 river mi (32 river km) upstream of the Grand River (Badra 2008, pers. comm.). Portions of the Maple River and several tributaries have been channelized, but the suitability of these channelized areas for the snuffbox is unknown (Badra 2010, pers. comm.). The current status of this small population is unknown.

Pigeon River—The Pigeon River is a headwater tributary of the St. Joseph River system of Lake Michigan, flowing westward across northern-most Indiana, crossing the State border to its confluence in southwestern Michigan. One very large FD specimen was found in 1998, among thousands of shells in LaGrange County, Indiana (Butler 2007, p. 24). The same site was sampled in 1996 without evidence of this species, and R shells were found at three of nine sites sampled in 2004 (Butler 2007, p. 24). The snuffbox occupied reach historically covered more than 10 river mi (16.1 river km) in north-central LaGrange County. The species is very rare in this river, and its viability is unknown.

Lower Great Lakes Sub-Basin

Of all the water bodies from which the snuffbox was historically recorded, 32 are in the lower Great Lakes sub-basin, including several chains-of-lakes, springs, and channels in some systems (Clinton, Huron Rivers). Historically sizable populations occurred in some streams (Lake Erie; Belle, Clinton, Huron, Portage, and Niagara Rivers), but the species had become "characteristically uncommon" by the 1970s (Strayer 1980, p. 147). A pre-zebra mussel decline of unionids in Lake Erie was noted (Mackie *et al.* 1980, p. 101), and the snuffbox appeared extirpated there by the late 1960s. The Lake St. Clair population of snuffbox persisted until around 1983 (Nalepa and Gauvin 1988, p. 414; Nalepa 1994, p. 2231; Nalepa *et al.* 1996, p. 361), which was the year the zebra mussel is thought to have invaded (Schloesser *et al.* 1998, p. 70). Observations of L and FD snuffbox from the Detroit River were made until 1994, but the mussel fauna has since been devastated by zebra mussels, and the snuffbox is now considered to be extirpated (Schloesser *et al.* 1998 p. 69; Butler 2007, p. 25). Other snuffbox populations in the sub-basin may also have suffered from zebra mussel invasions, but not those in the Ausable and Sydenham Rivers in Ontario. The lack of impounded area on these streams has likely prevented the introduction or the establishment of zebra mussels (Ausable River Recovery Team 2005, p. 12; Dextrase *et al.* 2000, p. 10). The snuffbox is considered extant in 10 streams of the lower Great Lakes sub-basin, including a stronghold population in the Sydenham River and sizable but reach-limited populations in the Clinton River and Davis Creek. A single FD valve was reported in 1998 from among 24 sites sampled in the Thames River, but no evidence of the snuffbox was found at 16 Thames sites in 2004 (McGoldrick 2005, pers. comm.). Currently, the species is considered extant in Canada only in the Ausable and Sydenham Rivers (Morris and Burridge 2006, p. 9). Both of these populations are viable.

Ausable River—The Ausable River is a southeastern tributary of Lake Huron, draining southwestern Ontario, Canada. A survey conducted in 2006 found that a sizable population of snuffbox occurs in the lower portion of the stream in over 23 river mi (37 river km) (McGoldrick 2007, pers. comm.). The size range of individuals found in the 2006 survey indicates recent recruitment in the viable population (McGoldrick 2007, pers. comm.; Staton 2007, pers. comm.).

Pine River—A tributary of the St. Clair River, the Pine River flows south and is located in St. Clair County, in southeastern Michigan. Although apparently stable, the snuffbox population is small, very restricted in range, and has a low potential for viability (Badra 2002, pers. comm.; Badra and Goforth 2003, p. 23).

Belle River—The Belle River is another tributary of the St. Clair River in St. Clair County, flowing in a southeasterly direction. Records for the snuffbox date to the early 1960s, but all L and FD records over the past 40 years have been from the same lower mainstem site. Historically, a sizable population was found in the Belle (65 specimens, 1965). The Belle is located in a primarily agricultural watershed (Hoeh and Trdan 1985, p. 115), and is impacted by sedimentation and runoff. The population has declined to the point of being small, but shows evidence of recruitment and viability (Badra 2002, pers. comm.; Badra and Goforth 2003, p. 24; Sherman 2005, pers. comm.).

Clinton River—The Clinton River is an eastward flowing chain-of-lakes tributary of Lake St. Clair in southeastern Michigan. The snuffbox population in the Clinton River is limited to around 10 river mi (16.2 river km) and lakeshore in the western suburbs of Pontiac primarily between Cass and Loon Lakes. This population appears to be recruiting (Sherman Mulcrone 2004, p. 64) and viable, although apparently in decline since the early 1990s (Badra 2002, pers. comm.; Butler 2007, p. 27).

Sydenham River—The Sydenham River is a large, southeasterly flowing, eastern tributary of Lake St. Clair in extreme southwestern Ontario. The snuffbox was reported in the mid-1960s and early 1970s but was overlooked during surveys in 1985 (except D shells) and 1991 (Butler 2007, p. 28). During the 1997–99 sampling, a total of 10 L and FD individuals were found from 4 of 12 sites, including the 3 1960s sites (Metcalfe-Smith *et al.* 2003, p. 41). The snuffbox was recorded at a rate of 0.22 per hour of effort during 1997–98 (Metcalfe-Smith *et al.* 2000, p. 728). More recent sampling found 57 L and FD individuals from 21 collection events (some individuals may have been counted multiple times) at six sites during 2000–02. The increase in numbers relative to historical collections may be attributed to more intensive sampling methods rather than to improving population size (Metcalfe-Smith *et al.* 2003, p. 46), thus making population trend assessments difficult (Morris and Burridge 2006, p. 12). This

stronghold population is recruiting (Butler 2007, p. 28), viable, and is currently known from approximately 30 river miles (48 km) of the middle Sydenham.

Huron River—The Huron River is a major tributary of western Lake Erie draining a significant portion of southeastern Michigan. It is a complex system of flow-through chains-of-lakes and tributaries. The snuffbox is considered extant in two disjunct upper mainstem reaches. Individuals in the middle Huron River reach and in Davis Creek are considered a single population segment (Marangelo 2005a, pers. comm.).

Zebra mussels invaded the Huron River system in the early 1990s. Zebra mussel densities on individual mussels increased from less than 1 in spring 1995 to 245 in winter 1998 (Nichols *et al.* 2000, p. 72). Despite the increasing presence of zebra mussels, the Huron population is probably recruiting and viable (Butler 2007, p. 29).

Davis Creek—Davis Creek is a chain-of-lakes in the upper Huron River system, primarily in southeastern Livingston County, Michigan. The snuffbox appears to be limited to the lower 3 river mi (4.8 river km), comprising a single population with one of the extant Huron River population segments in this area. This viable population appears to be sizable and is experiencing recent recruitment (Marangelo 2005a, pers. comm.; Zanatta 2005, pers. comm.).

South Ore Creek—South Ore Creek is a northern tributary of the Huron River, forming a southward flowing chain-of-lakes draining southeastern Livingston County, Michigan. The snuffbox was discovered in 1999, just upstream of Ore Lake, which is near the Huron River confluence (Butler 2007, p. 31). Three subadult snuffbox (two age 2, one age 3–4) were recorded. Despite the lack of additional information, the small population appears to be viable based on recent recruitment.

Portage River—The Portage River is a chain-of-lakes in the northwestern portion of the Huron River system. Two University of Michigan Museum of Zoology (UMMZ) records suggest historical abundance (Badra 2002, pers. comm.). The species was reported as "rare" in the lower river during 1976–78 (Strayer 1979, p. 94). At least 22 L, young (age 4 and younger) individuals were identified in 1998 at one of three sites upstream of Little Portage Lake and Portage Lake (Butler 2007, p. 31). The localized population appears to be medium-sized and viable.

Grand River—The Grand River is a 99-river-mi (159-river-km) tributary of Lake Erie, flowing north then west to its confluence northeast of Cleveland, Ohio. Several museum snuffbox records date back to the 1800s. Dozens of FD snuffbox were found washed up on the banks in the vicinity of the Interstate 90 crossing in Lake County, Ohio, following a major flood in 2006 (Butler 2007, p. 32). The species is known from approximately 12 river mi (19.3 river km) downstream of Harpersfield Dam (Huehner *et al.* 2005, p. 59; Zimmerman 2008a, pers. comm.). The sizable population was considered recruiting based on the 1995 Huehner *et al.* (2005, p. 59) survey.

Upper Mississippi River Sub-basin

The snuffbox was historically known from 17 streams in the upper Mississippi River sub-basin. Records exist for Mississippi River Pools (MRPs) 3–4, 5a–6, and 14–16 (Kelner no date, p. 6), with early surveys summarized by van der Schalie and van der Schalie (1950, p. 456). The species was reported L in the upper river in the 1920s (Grier 1922, p. 15; Grier 1926, p. 119) but not from subsequent surveys (254 sites upstream of the Ohio River during 1930–1931 (UMMZ, Ellis 1931, pp. 1–10), MRPs 5–7 and 9 in 1965 (Finke 1966, Table 2; Thiel 1981, p. 16), MRPs 3–11 during 1977–79 (Thiel 1981, p. 16)) and is now extirpated from the mainstem of the Mississippi River (Havlik and Sauer 2000, p. 4). Only 4 of 17 historical populations remain, but they include two of the largest rangewide (St. Croix and Bourbeuse Rivers). Three populations, including the St. Croix, appear to be declining.

St. Croix River—The St. Croix River is a major south-flowing tributary of the upper Mississippi River and forms the border between southeastern Minnesota and northwestern Wisconsin. Densities of juvenile snuffbox declined at eight sites between 1992 and 2002 (Hornbach *et al.* 2003, p. 344). Snuffbox density at Interstate Park declined significantly between 1988 and 2004 (WIDNR 2004). A flood in 2001 may have contributed to these declines in mussel density, but post-flood recruitment was also surprisingly low (WIDNR 2004). The St. Croix snuffbox population occurs from the Northern States Power Dam (NSPD) at RM 54.2 to RM 36.8 (Heath 2005, pers. comm.), represents the species' northernmost occurrence, and despite recent observed declines, remains one of the six stronghold populations rangewide.

Kankakee River—The Kankakee River is a major, westward-flowing, upper Illinois River tributary with its headwaters in northwest Indiana and northeast Illinois. The snuffbox was reported over a century ago (Baker 1906, p. 63), but surveys in 1911 (43 sites; Wilson and Clark 1913, pp. 41–50), 1978 (13 sites; Suloway 1981, p. 236), 1975–2000 (18 samples from an unknown number of Will County, Illinois, sites; Sietman *et al.* 2001, p. 279), and 1999 (4 sites, Stinson *et al.* 2000, Appendix C) failed to find it. It was considered extirpated from the Kankakee by Cummings *et al.* (1988, p. 16), but single FD specimens in Illinois (Will County in 1988, Kankakee County in 1991) were subsequently found. Only R shells have been found since 1991. The Kankakee River population, if extant, appears small, localized, and of doubtful viability.

Meramec River—The Meramec River is a 236-mi (380-km) tributary that flows northeasterly into the Mississippi River downstream of St. Louis and drains the northeastern slope of the Ozark Plateaus in east-central Missouri. Early species lists failed to report the snuffbox (Grier 1916, p. 518; Utterback 1917, p. 28). Buchanan (1980, p. 63) found FD specimens at three sites and R shells at two other sites sampled in 1977–78. Roberts and Bruenderman (2000, p. 85) sampled 42 sites in 1997, including 26 of Buchanan's (1980, p. 5) sites, and found FD specimens at RM 33.5, 48.8, and 59.8; and one L individual at RM 39.8. The L individual (2.4 in (6.1 cm), approximately 6 years old) was reported from a reach where a die-off, perhaps attributable to disease, was reported in 1978 (Buchanan 1986, p. 44). There was an obvious decline of mussels in the system based on catch-per-unit-effort data over the 20-year period (Roberts and Bruenderman 2000, p. 8). The Meramec snuffbox population is rare, sporadically distributed over approximately 26 river mi (41.8 river km), and of unknown viability.

Bourbeuse River—The Bourbeuse River is a 149-mi (240-km), northeasterly flowing, northern tributary of the Meramec River, joining it at RM 68. The snuffbox is currently distributed over about 60 river mi (96.6 river km) upstream of RM 16, plus a disjunct site at the mouth of the river. Although it was considered to have "greatly declined" by the late 1990s (Roberts and Bruenderman 2000, p. 15), post-2000 sampling indicates that the population is recruiting, viable, and improving (McMurray 2006, pers. comm.). The Bourbeuse, one of the few stronghold snuffbox populations rangewide, has been augmented with laboratory propagated juveniles since 2002 (McMurray 2006, pers. comm.).

Lower Missouri River System

The snuffbox was historically known from four streams in this system. The highly disjunct occurrences suggest that it was more widespread historically. All populations in the system are considered extirpated (Butler 2007, p. 36).

Ohio River System

Half of the water body occurrences for the snuffbox rangewide are known from the Ohio River system, which collectively represented the largest block of available habitat for this species. Sizable populations historically occurred in at least a dozen streams in the system. Today, only French Creek is considered to have a stronghold population, although nine others are also significant. Currently, the species is known from 40 of the 107 streams of historical occurrence.

Ohio River—The Ohio River is the largest eastern tributary of the Mississippi, with its confluence marking the divide between the upper and lower portions of the latter system. Numerous historical records are known from throughout the River. Recently, single FD and L specimens have been reported from just below Belleville Lock and Dam, Ohio and West Virginia, in 1995 and 2001, respectively (ESI 2002, p. 27). Having persisted in this highly modified river may indicate that the small population exhibits a low level of viability.

Allegheny River—The 325-mi (523-km) Allegheny River drains northwestern Pennsylvania and a small portion of adjacent New York flowing south before joining the Monongahela River at Pittsburgh to form the Ohio River. Snuffbox collections are sporadically known since around 1900 in Pennsylvania from Forest County downstream to Armstrong County. The snuffbox is currently known from three disjunct sites over a 42-river-mi (67.6-river-km) reach centered in Venango County (Butler 2007, p. 37). Its occurrence in the lower Allegheny River and lower French Creek could be considered a single population segment. The viability status of the small population is unknown.

French Creek—French Creek is a major tributary of the middle Allegheny River with its headwaters in western New York and flowing south into northwestern Pennsylvania. The snuffbox is known from the length of the stream in Pennsylvania in Erie, Crawford, Mercer, and Venango Counties. Most records date since approximately 1970 (Dennis 1971, p. 97). Snuffbox collections made during 2002–2004 were summarized by Smith (2005, pp. 3–9). Live and FD specimens were found at 19 sites throughout the stream. The size of the L individuals indicated that multiple year classes were represented, including subadults. The species stretches for approximately 80 river mi (128.7 river km) from around RM 10, upstream. The population encompasses several of its tributary population segments as well, making it relatively more secure when compared to most of the other stronghold populations that are linearly distributed and, thus, more susceptible to stochastic events (Sydenham, Bourbeuse, and Clinch Rivers). The French Creek snuffbox population is considered large and viable (Evans 2003a, pers. comm.; Zimmerman 2008c, pers. comm.), appears stable, and may represent the best stronghold population rangewide.

West Branch French Creek—West Branch of French Creek follows a southerly course to its parent stream in Erie County, Pennsylvania. The only record for the snuffbox dates from 1993, but the number of specimens and shell condition are unknown (Evans 2003b, pers. comm.). Union City Lake isolates the upper French Creek and West Branch French Creek population segment from the main French Creek population. The snuffbox was not found at three sites sampled in 2006 (Smith 2006, pers. comm.). Zimmerman (2008c, pers. comm.) documented 38 L individuals at a site near Wattsburg, Pennsylvania. This population appears to be small and of unknown viability.

Le Boeuf Creek—Le Boeuf Creek is a small western tributary of upper French Creek flowing in a southerly direction just west of West Branch French Creek in Erie County. The first snuffbox collections in this creek were made 100 years ago (Ortmann 1909a, p. 188). Two FD and 6 R shells were reported in 1988 (Evans 2003b, pers. comm.), and 1 L, 16 FD, and 8 R specimens were found in 1991 (Butler 2007, p. 40). Three L individuals were found at a site in 2006 (Smith 2006, pers. comm.). The snuffbox population has recently recruited and exhibits some level of viability, but appears to be very limited in extent.

Muddy Creek—Muddy Creek is an eastern tributary of upper French Creek in Crawford County, Pennsylvania. The snuffbox was not discovered until the summer of 2003. Forty-two L individuals were reported from 11 of 20 lower river sites (Morrison 2005, pers. comm.). Low numbers were found at most sites, but 18 L individuals were collected from a site near the mouth. This occurrence is considered to be part of the more extensive French Creek snuffbox population. Zimmerman (2008c, pers. comm.) documented one L female in 2008. The population is medium-sized, occurs along 8 river mi (12.9 river km) of the lower mainstem, and is recruiting, as recent juveniles were recorded (Morrison 2005, pers. comm.).

Conneaut Outlet—This stream forms the outlet to Conneaut Lake, flowing in a southeasterly direction until its confluence with middle French Creek, Crawford County. The snuffbox was first reported by Ortmann (1909a, p. 188), and was rediscovered L in 1997, but without collection details (Butler 2007, p. 40). No specimens were found at a site sampled in 2006 (Smith 2006, pers. comm.). The snuffbox is considered rare in this stream and its viability is unknown.

Little Mahoning Creek—Little Mahoning Creek is a tributary of Mahoning Creek, a lower eastern tributary of the Allegheny River northeast of Pittsburgh. The snuffbox was discovered in 1991, when sampling produced two FD and one R specimen at 1 of 12 sites in the system (Butler 2007, p. 41). The lower 10 miles of Little Mahoning Creek is subject to periodic inundation by a reservoir on Mahoning Creek (Butler 2010, pers. comm.). However, the impact of this periodic flooding on the snuffbox is not known. Viability is unknown.

Dunkard Creek—Dunkard Creek is an easterly flowing, western tributary of the middle Monongahela River, straddling the Pennsylvania and West Virginia State lines. Snuffbox records occur in both States from several museum collections from 1969–74. Small numbers of specimens, of undocumented condition, were found at four sites during 1993–94 sampling in Pennsylvania (Bogan 1993, p. 8; Evans 2003b, pers. comm.). Eight specimens, of undocumented condition, were collected at a West Virginia site in 1997. On September 1, 2009, a fish kill was reported in Dunkard Creek due to an unknown cause (Clayton 2009, pers. comm.). The Upper Monongahela River Association (2009) reported that 161 aquatic species including fish, mussels, and plants died along Dunkard Creek due to this toxic event. According to Clayton (2009, pers. comm.), the event may have killed 100 percent of the mussel fauna in the entire stream. The status of this population is not known at this time, but the snuffbox may now be extirpated from Dunkard Creek.

Shenango River—The Shenango River is a large tributary in the Beaver River system, a northern tributary of the upper Ohio River in west-central Pennsylvania. The snuffbox was

reported from four sites on the Shenango in 1908 (Ortmann 1919, p. 328). Six L individuals were collected from three sites sampled in 2001–02 between Jamestown and New Hamburg (about 25 river mi (40.2 river km)). The upper reach is considered the best habitat in the Shenango River. The population is small and has declined, although some recent reproduction is evident (Zimmerman 2008b, pers. comm.).

Little Shenango River—The Little Shenango River is a small tributary of the upper Shenango River, Mercer County, Pennsylvania. This population was not located during limited surveys (Dennis 1971, p. 97; Bursey 1987, p. 42), but a single FD museum record from 1991 exists. The species was reported to be relatively abundant and reproducing in the lower portion in 2002 (Zimmerman 2008b, pers. comm.). Viability of the small population is unknown.

Middle Island Creek—Middle Island Creek is a small tributary of the Ohio River in northwestern West Virginia. The first snuffbox records were made at six sites in 1969, when the species was locally common in Doddridge, Tyler, and Pleasants Counties (Taylor and Spurlock 1981, p. 157). The snuffbox was later found at two sites in Tyler County in 1980, and the overall mussel population was considered to be "thriving" (Taylor and Spurlock 1981, p. 157). The most recent record was for a single L individual collected in Tyler County in 2001 (Zimmerman 2008b, pers. comm.). This snuffbox population has declined, is currently rare, and its viability is questionable (Zimmerman 2008b, pers. comm.).

Muskingum River—The Muskingum River is a large, southerly flowing, northern tributary of the upper Ohio River draining a significant portion of east-central Ohio. The snuffbox, which has a long collection history dating to the early 1800s, occurred along the entire mainstem and was locally abundant. Two L individuals and two FD shells were found in 1979, but no L or FD snuffbox were found in surveys conducted in 1979–81 (Stansbery and King 1983) and in 1992–93 (Watters and Dunn 1993–94, p. 241). A single L specimen was located during sampling for a construction project in 2005 near Dresden (Taylor 2006, pers. comm.). Viability of this population is unknown.

Walhonding River—The Walhonding River is a short (23.3 river mi (37.5 river km)), east flowing tributary of the Muskingum River in central Ohio, forming the latter river at its confluence with the Tuscarawas River, and formed by the confluence of the Mohican and Kokosing Rivers. The snuffbox historically occurred throughout the river. The extant snuffbox reach (RM 1.8–6.8) is downstream from Killbuck Creek. The population had apparently declined in range and size by the early 1990s and possibly further since. A once productive site about 0.25 mi (0.40 km) downstream of the Killbuck Creek confluence yielded only a few mussels of very common species in 2006, but no snuffbox (Butler 2007, p. 44). The Walhonding River population is considered small and of unknown viability.

Killbuck Creek—Killbuck Creek is a large tributary of the lower Walhonding River, flowing south from southern Medina County to Coshocton County and entering the latter at approximately RM 7. Live and FD snuffbox were found by Hoggarth (1997, p. 33) at eight sites from RM 15 to the mouth. Its occurrence has become more sporadic in the last 10 years. In spring 2006, 4 L adults were found at 2 sites approximately 3 river mi (4.8 river km) apart, while 9 large L individuals and a single FD specimen were collected near RM 13 during fall 2006 (Ahlstedt 2007, pers. comm.; Butler 2007, p. 45). A shrinking distribution, declining population size, and lack of evidence of recent recruitment suggest that the population may be losing viability and trending towards extirpation.

North Fork Hughes River—The North Fork Hughes River is a westerly flowing tributary of the Hughes River in the lower Little Kanawha River system in northwestern West Virginia. The snuffbox was found at one of six North Fork sites sampled during a 1981–82 survey of the Little Kanawha River system (Schmidt *et al.* 1983). A total of 41 L adult individuals (23 reported as gravid) were reported at 5 sites located over a 1.5-mi (2.4-km) reach in North Fork State Park, Richie County, in 1993 (Butler 2007, p. 46). At least 10 L individuals were found at a site in the park in 1997 (Butler 2007, p. 46), and a single FD specimen was collected at an additional site downstream in 2001 (Butler 2007, p. 46). This small snuffbox population is declining and currently restricted to less than 4 river mi (6.4 river km), but may be viable.

Elk River—The Elk River is a major, 181-mi (291-km) tributary in the lower Kanawha River system draining central West Virginia flowing west to the Kanawha at Charleston. The snuffbox went undetected in a 1920s survey (Butler 2007, p. 46). Ten L individuals were collected during 1991–1995, the smallest being about 5 years old (Butler 2007, pp. 46–47). Collectively, 16 L individuals were identified at 8 sites in a 13-river-mi (20.9-river-km) reach in Kanawha County in 2002, and 4 L individuals were found at 4 sites in 2004 over a 16.8-river-mi (27-river-km) reach further upstream (Douglas 2005, pers. comm.). This medium-sized population extends over 30 river mi (48.3 river km), is viable, and may have improved since the 1970s.

Tygarts Creek—Tygarts Creek is a small, north-flowing, southern tributary of the Ohio River in northeastern Kentucky. Thirteen snuffbox were reported from one of five sites sampled in 1977 (Taylor 1980, p. 90). FD specimens are also known from 1981 and 1987 (Cicerello 2003, pers. comm.). Nine L (Butler 2007, p. 47) and 36 FD specimens were found at 2 sites, respectively, in 1988, while 1 L and 2 FD were reported from at least 2 sites in 1995 (Cicerello 2003, pers. comm.). The overall mussel population appeared "healthy" in 1977 (Taylor 1980), but the small snuffbox population has recently declined, and its viability is unknown.

Scioto River System—The Scioto River system in central and south-central Ohio is a major northern tributary of the upper Ohio River. The system was one of the most routinely sampled watersheds for mussels (mostly OSUM records), and historically harbored a large and thoroughly dispersed snuffbox population in the mainstem and 16 tributaries. The system was either exceptional for its snuffbox population, or it provided a general historical perspective of what researchers may have found if other systems had been as thoroughly sampled. Sizable populations were noted in at least the Olentangy River, Big Darby Creek, and Big Walnut Creek. Development associated with the Columbus metropolitan area has taken a major toll on the aquatic fauna. Pollutants from the 1800s included wastes from sawmills, breweries, and slaughterhouses (Butler 2007, p. 48). Only a few fish species were found in the Scioto River 100 years ago (Trautman 1981, p. 33). Currently, 90 to 95 percent of the normal summer-fall flow in the river consists of wastewater treatment plant (WWTP) discharges (Yoder *et al.* 2005, p. 410). Museum records indicate that the snuffbox had completely disappeared from the mainstem by the 1970s. A series of reservoirs around Columbus fragmented habitat and eliminated or reduced populations (Olentangy and Scioto Rivers; Alum, Big Walnut and Deer Creeks). Currently, remnant populations remain in six streams, making the snuffbox precariously close to extirpation throughout this once rich system.

Olentangy River—The Olentangy River is a major headwater tributary of the Scioto River, draining central Ohio and flowing south to its confluence in Franklin County. OSUM snuffbox records date to the 1870s, although most are from the 1950s and 1960s. The snuffbox was reported from 15 of 31 mainstem sites collected during a 1960–61 survey, when it appeared "fairly common" in the lower river (Stein 1963, p. 138). A single L individual in southern Delaware County and two FD specimens in eastern Marion County were found among 30 sites in 1989, with R shells at 7 other sites (Hoggarth 1990, pp. 20–27). The small population has declined (Hoggarth 1990, p. 14), and viability is unknown.

Big Darby Creek—Big Darby Creek is one of the major tributaries draining the northwestern portion of the Scioto River system in central Ohio. Dozens of large OSUM lots of snuffbox date to the late 1950s; six Pickaway County collections in 1962 alone had 250 L and FD specimens. Watters (1990, p. 4; 1994, p. 100) surveyed 42 mainstem sites in 1986 and 49 sites in 1990. Combining the data from both years, 80 L and FD snuffbox were collected at 22 sites (Watters 1994, p. 101). The population in 1990 occurred in a reach from approximately RM 11.5 to RM 42.5. The snuffbox was recruiting (Watters 1994, p. 101); four individuals during both 1986 and 1990 were 2 to 5 years of age. The overall population trend over the past 40 years has been downward. Between 1986 and 1990, the number of L and FD specimens was reduced from 54 to 16 and its distribution declined from 17 to 8 sites. Two FD specimens were found at sites in Franklin (1996) and Pickaway (2000) Counties, and three other sites produced only R specimens (OSUM records). This historically large snuffbox population has declined to marginal status and its viability is questionable.

Little Darby Creek—Little Darby Creek is the major tributary in the Big Darby Creek system, flowing in a southeasterly direction to its confluence in southwestern Franklin County, Ohio. The 25 OSUM lots for this species are small (fewer than five specimens per lot), date to the early 1960s, and represent lower mainstem sites in Madison County. Single FD and R specimens were collected in 1999 from a Union County site (OSUM 66740), where L individuals were collected in 1964 (Stein 1966, p. 23). This site yielded only R specimens in 1990 (Watters 1990, Appendix A.11; 1994, p. 102). Overall, the snuffbox was historically known from 35 river mi (56 river km). The well documented OSUM collection history illustrates the steady decline of a snuffbox population nearing extirpation.

Salt Creek—Salt Creek is an eastern tributary in the Scioto River system, south-central Ohio. All records (OSUM) were collected in the lower mainstem (Ross County) beginning in 1958. A single L individual from 1987 represents the last known record. The mussels in this system "have been heavily impacted, apparently by the towns of Adelphi and Laurelville" (Watters 1992, p. 78). The current status of this snuffbox population is unknown.

Scioto Brush Creek—Scioto Bush Creek is a small, western tributary of the lower Scioto River in Scioto County, south-central Ohio. The snuffbox was discovered here in the 1960s (Watters 1988a, p. 45). Three L and FD specimens from 2 sites and R shells from 2 other sites were collected during a 1987 survey covering 11 sites (Watters 1988a, pp. 210–220). The snuffbox population, collectively known from five fragmented sites along the lower two-thirds of stream, is small, and its viability is unknown.

South Fork Scioto Brush Creek—South Fork Scioto Brush Creek is a small tributary of Scioto Brush Creek, in the lower Scioto River system. A single snuffbox was found during a survey of five sites in 1987 (Watters 1988a, pp. 210–220). The South Fork and Scioto Brush Creek populations can be considered a single population unit, the viability of this unit is uncertain.

Kinniconick Creek—Kinniconick Creek is a small, southern tributary of the Ohio River in northeastern Kentucky. Snuffbox was reported L from 4 of 15 sites sampled in 1982 with R shells from an additional 2 sites (Warren *et al.* 1984, pp. 48–49). Single FD and L snuffbox were collected in 2001 and 2004, respectively, from sampling efforts at several sites (Butler 2007, p. 51), and a single FD specimen was found while resurveying four sites in 2005 (Butler 2007, p. 51). The snuffbox declined in the past few decades, is considered rare, and its viability is uncertain.

Little Miami River—The Little Miami River is a northern tributary of the Ohio River in southwestern Ohio, flowing south into the latter at the eastern fringe of the Cincinnati metropolitan area. Snuffbox records from the Little Miami date to the mid-1800s, but most collections are from the past several decades. Seven FD specimens were found at 4 of 46 mainstem sites surveyed during 1990–91, with 10 R shells at 6 other sites (Hoggarth 1992, p. 265). The FD specimens were found in approximately 20 river mi (32.2 river km), mostly in Warren County. Current viability of this small population is unknown.

Licking River—The Licking River is a southern tributary of the Ohio River in northeastern Kentucky, flowing in a northwesterly direction to its confluence across from Cincinnati. The snuffbox occurred at 13 of 60 historical mainstem sites below Cave Run Reservoir (Laudermilk 1993, p. 45) and a preimpoundment site in the reservoir footprint (Clinger 1974, p. 52). The population extended approximately 50 river mi (80.5 river km). All collections of snuffbox are small in number (Butler 2007, p. 52). A single L individual and a FD specimen were found at 2 sites and R shells were reported from 7 other sites among 49 sites sampled in 1991 (Laudermilk 1993, p. 45). Single L and FD snuffbox were collected in 1999 (Cicerello 2003, pers. comm.), and a single L individual was found in 2006 (Butler 2007, p. 53). The snuffbox has become very rare, sporadic in occurrence, and its viability is questionable.

Slate Creek—Slate Creek is a southern tributary of the Licking River below Cave Run Dam in east-central Kentucky. Historically, the snuffbox was considered "extremely abundant throughout the stream" (Taylor and Spurlock 1983) and collectively known from six sites (Laudermilk 1993, p. 45). Seventeen D specimens were recorded from a site in 1987 (Cicerello 2003, pers. comm.). A single FD and seven R specimens were found at three sites sampled in 1991 (Butler 2007, p. 53), when it was considered "occasional" in distribution (Laudermilk 1993, p. 45). Twelve L individuals were found in 1992 (Cicerello 2003, pers. comm.). Subsequent sampling has produced no additional snuffbox; two sites and four sites yielded only R specimens in 2001 and 2002, respectively (Cicerello 2005, pers. comm.). If extant, the population is marginal at best, with unlikely viability.

Stillwater River—The Stillwater River is a 67-mi (108-km), western tributary of the Great Miami River draining southwestern Ohio. The species was collectively known from eight sites throughout the River (Watters 1988a, pp. 59–71; OSUM records). One FD specimen below Englewood Dam in Montgomery County was found among 18 sites surveyed in 1987, with R shells from 5 other sites (Watters 1988a, pp. 59–71). No other information on the small population is available, and its viability is unknown.

Middle Fork Kentucky River—The Middle Fork is one of three headwater

tributaries (with the North and South Forks) forming the Kentucky River, flowing in a northerly then westerly direction and draining a portion of southeastern Kentucky. The snuffbox was first reported in 1966. Three L individuals and a R shell were found at three sites in 1996, and a single L individual was collected from another site in 1997 (Cicerello 2003, pers. comm.). All sites occur within a 10-river-mi (16-river-km) reach above Buckhorn Reservoir in Leslie County. This small population has unknown viability.

Red Bird River—The Red Bird River is a north-flowing headwater tributary of the South Fork Kentucky River in Clay County, southeastern Kentucky, forming the latter at its confluence with Goose Creek. Ten FD specimens were recorded from two sites in 1988, and three L and one FD snuffbox were collected from four sites in 1995 (Cicerello 2003, pers. comm.). This small population occurs sporadically in the lower 20 river mi (32 river km), and viability is unknown (Cicerello 2003, pers. comm.; 2006, pers. comm.).

Red River—The Red (or North Fork Red) River is a westerly flowing tributary of the upper Kentucky River in eastern Kentucky. No L snuffbox were found in surveys of the 9-river-mi (15-river-km) reach of the Wild River section during surveys of 1980, 1986, and 1991 (Houp 1980, p. 56; 1993, p. 96), but two FD and one L snuffbox were found at three sites in 1988, while five L individuals were found in 1996 (Cicerello 2006, pers. comm.). Mostly males have been found since 2002, and they are being held in captivity for future culture efforts (Butler 2007, p. 55). A small population persists over a 10-river-mi (16-river-km) reach in the lower section of the Red River Gorge Geological Area of the Daniel Boone National Forest in Menifee, Wolfe, and Powell Counties (Cicerello 2006, pers. comm.). Viability of this population is unknown.

Rolling Fork Salt River—The Rolling Fork is a major southern tributary of the Salt River in central Kentucky, flowing in a northwesterly direction to join the Salt near its mouth. The snuffbox was first reported in 1958 (Rosewater 1959, p. 62). Seven FD specimens and a single L subadult were collected in 1988 from four sites in Larue, Marion, and Nelson Counties (Cicerello 2003, pers. comm.; Haag 2006, pers. comm.). A survey of 12 mainstem and 30 tributary sites in the Rolling Fork system in 1998–99 yielded no evidence of the snuffbox, prompting an investigator to consider it extirpated (Akers 2000, p. 13), but occasional specimens may still be found (Butler 2007, p. 55). The species is sporadically distributed over 40 river miles of the upper river (Cicerello 2006, pers. comm.). If it is still extant, the viability of this small population is unknown.

Green River—A major southern tributary of the lower Ohio River, the Green River flows in a westerly direction and drains west-central Kentucky. Ortmann (1926, p. 182) considered the snuffbox to be well distributed over the system, but not abundant. Large museum collections of snuffbox were taken from Munfordville during 1961–66, but only six R shells were reported there in 1967. The snuffbox has been rare since. Five L and FD snuffbox were collected at 4 of 42 sites during 1987–89 sampling in Mammoth Cave National Park (Cicerello and Hannan 1990, pp. 16–17). Three L and six FD snuffbox were reported in the upper Green River from 1984–90 (Cicerello 2003, pers. comm.). A single L individual was collected in Taylor County in 1989 (Layzer 2009, pers. comm.), but no evidence of the snuffbox was reported at numerous other sites in 1999, 2000, 2001, and 2003 (Cicerello 2006, pers. comm.). Once abundant and occurring over 200 river mi (322 river km), the species has become exceedingly rare since the 1960s. Current snuffbox viability is unknown, and it may be nearing extirpation from the entire Green River system, where it was formerly known from eight tributaries.

Wabash River System—The Wabash River is the second largest sub-basin within the Ohio River system, the watershed of the 350-mi (563-km) river encompassing much of Indiana, west-central Ohio, and southeastern Illinois. The mainstem and at least 27 streams had one of the largest snuffbox population clusters. The species persists today as seven small populations in the system; the viability of these populations is unknown (Butler 2007, p. 57).

Salamonie River—The Salamonie River is a southern tributary of the upper Wabash River, flowing in a northwesterly direction and draining east-central Indiana. Two historical museum records were found. Nine sites were surveyed during 1993–94 without finding any evidence of the snuffbox (ESI 1995, p. 19). The snuffbox was rediscovered in 2004 above Salamonie Reservoir, where two L individuals at one site and FD shells, including a very small juvenile, were found at another site 2 mi (3 km) away (Fisher 2005, pers. comm.). The small population is considered to be recruiting and viable at some level.

Tippecanoe River—The largest tributary of the upper Wabash River system, the Tippecanoe River drains north-central Indiana and flows westerly then southerly before joining the Wabash near Lafayette. Nearly all records of the snuffbox were made in the past 20 years. Two weathered shells were found in the lower mainstem among 16 sites sampled in 1987 (Cummings *et al.* 1987, p. 25; Cummings and Berlocher 1990, p. 93) and 30 sites in 1991–92 (ESI 1993, p. 68). One L individual and over 32 FD specimens were found at a site at the upper end of Freeman Reservoir during a 1993 drawdown that may have contributed to their demise (Fisher 2003, pers. comm.). A single FD specimen was found below Shafer Reservoir among 13 sites sampled in 2003 (ESI 2003, p. 9). The viability of this declining population is unknown, but it appears close to extirpation (Fisher 2003, pers. comm.).

Embarras River—The Embarras River is a southerly flowing, western tributary of the lower Wabash River in southeastern Illinois. Museum lots represent collections dating to 1956 and contain snuffbox from nine mainstem and two tributary sites. A total of 9 L and 15 FD specimens were collected at four sites in 1986 in Coles and Douglas Counties (Cummings *et al.* 1988, p. 8). Although overall mussel abundance at the 21 sites sampled in both 1956 and 1986 dropped 86 percent, the snuffbox was one of only five species that showed relatively stable population size over the 30-year period (Cummings *et al.* 1988, p. 9). Additional L and FD snuffbox from museum collections were recorded from single sites in 1988. Three L and eight FD snuffbox were found at two sites in 1992, and one L and three FD were found at three of six sites surveyed during 2001–2002. Since 1986, the small snuffbox population has occurred sporadically at six sites over 50 river mi (80 river km) of the upper river. The species was reported as significant and viable by Butler (2007 pers. comm.), but has declined to some extent. Recent surveys, however, documented only one L individual in 2005 and one L and one FD in 2008, indicating that the Embarras River population may be closer to a marginal population than a significant one (Tiemann 2009, pers. comm.).

Sugar Creek—Sugar Creek is a tributary in the upper East Fork White River system, draining central Indiana east and south of Indianapolis. A single L individual from one site, FD specimens from seven sites, and R shells from an additional eight sites were reported in 1990 (Harmon 1992, pp. 40–41 1998). The snuffbox population

occurred sporadically over 35 river mi (56 km) to near the mouth. Only R shells were found while resampling some historical sites in 1995, 1998, and 2001 (Butler 2007, p.59). It is questionable whether the population remains extant.

Buck Creek—Buck Creek is a southerly flowing, western tributary of Sugar Creek in the upper East Fork White River system east of Indianapolis. A FD snuffbox was found near the mouth and R specimens at an upstream site in 1990 (Harmon 1992, p. 41. Similar to the parent stream population in Sugar Creek, the snuffbox may already be extirpated in Buck Creek (Fisher 2003, pers. comm.).

Muscatatuck River—The Muscatatuck River is a large, westerly flowing tributary of the upper East Fork White River in southeastern Indiana. The snuffbox was first reported from the stream by Daniels (1903, p. 646). FD specimens (unknown number) were recorded at a site downstream from Graham Creek that was sampled in 1988 (Harmon 1989, p. 118). Status and viability of snuffbox in the Muscatatuck River are unknown.

Graham Creek—Graham Creek flows southwesterly to join Big Creek in forming the Muscatatuck River in the East Fork White River system in southeastern Indiana. The species was found FD (numbers unknown) at six sites over 10 river mi (16 river km) of the lower stream in Jennings County in 1988 (Harmon 1989, p. 117), and a single FD specimen was found in 1990 (Harmon 1998). Viability of these small population is unknown.

Cumberland River System—Snuffbox populations are known from the mainstem Cumberland River and 6 of its tributaries. With few exceptions, most mainstem records were made prior to the 1920s when the species was locally common (Wilson and Clark 1914, p. 45). The snuffbox is considered extirpated from the mainstem. Currently, a single tributary population may be extant, but is considered not viable. The species is likely to become extirpated from the entire river system in the foreseeable future.

Buck Creek—Buck Creek is a southerly flowing, northern tributary of the upper Cumberland River below Cumberland Falls in southeastern Kentucky. One D valve was found at a site in 1981 (Clarke 1981b, Appendix), and two L and one FD snuffbox were reported from three sites during 1983–84 (Schuster *et al.* 1989, p. 82). The species was also reported L from a lower mainstem site among seven sites sampled from 1987–90 (Layzer and Anderson 1992, p. 16). A recent survey found only R shells at 3 of 23 sites (Hagman 2000, p. 21). If extant, the declining snuffbox population in Buck Creek is likely to become extirpated in the foreseeable future.

Tennessee River System

The Tennessee River is the largest tributary of the Ohio River, draining seven southeastern States and joining the Ohio near its mouth in western Kentucky. The snuffbox originally was known from throughout all but the lower section of river and 17 of its tributaries. Hundreds of miles of large river habitat on the mainstem have been lost under nine reservoirs, with additional dams on several tributaries (Clinch, Holston, and Elk Rivers) (Tennessee Valley Authority (TVA) 1971, p. 4). The loss of mussel resources has been substantial (Watters 2000, p. 262). Muscle Shoals, the 53-river-mi (85-river-km) reach in northwestern Alabama, historically harbored 69 mussel species, the most diverse mussel fauna ever known (Garner and McGregor 2001, p. 155). The construction of three dams (Wilson in 1925, Wheeler in 1930, and Pickwick Landing in 1940) inundated most of the mussel beds. No L snuffbox have been reported at Muscle Shoals for around 100 years (Garner and McGregor 2001, p. 162). The snuffbox may persist in the mainstem at a very low density and in only five tributaries. The Clinch River maintains a stronghold population, but highly restricted populations persist in the other streams.

Clinch River—The 350-mi (563-km) Clinch River is a major tributary of the upper Tennessee River originating in southwestern Virginia, and flowing in a southwesterly direction to its confluence near Knoxville in northeastern Tennessee. No other river in North America has extant populations of more federally endangered (15) and candidate (4) species of mussels than does the upper Clinch River above Norris Reservoir. The snuffbox was reported from nine sites by Ortmann (1918, pp. 601–606). Museum records from Hancock County, Tennessee, during 1965–71 documented a very large population of snuffbox. The snuffbox is generally distributed from RM 170 to RM 195 in Hancock County, but is sporadic in Virginia (RM 213–235), where it has recently declined (Butler 2007, p. 62). The snuffbox population is recruiting, viable, and currently stable, although decreased in size and range from 40 years ago. The Clinch River ranks among the six stronghold snuffbox populations rangewide.

Powell River—The Powell River is the major tributary of the upper Clinch River flowing in a southwesterly direction parallel to and northwest of the Clinch River in southwestern Virginia and northeastern Tennessee. The snuffbox was reported at three sites by Ortmann (1918, pp. 597–598), five sites during 1973–78 by Dennis (1981, p. 3), four sites from 1975–78 by Ahlstedt and Brown (1979, p. 42), and four Virginia sites in 1988–89 by Wolcott and Neves (1994, p. 7). Large collections attest to its former abundance. The species was found L and FD in the Powell River, Tennessee, during 1989–90 (Hubbs *et al.* 1991, Appendix A). Johnson (2008) collected two L individuals at RM 95. The population has declined, viability is questionable, and its extirpation may be imminent (Butler 2007, p. 63).

Tennessee River—The snuffbox originally was known from all but the lower section of the river. Butler (2007, p. 61) reported the snuffbox as "believed to be extirpated from the entire Tennesssee River." However, Yokley (2002, p. 1) collected a single FD male in 2002 at the U.S. 231 Bridge, Madison and Morgan Counties. In 2006, one L female was found at the same location, though it was the only snuffbox out of 8,978 mussels collected at the site (Yokley 2006, p. 1). Nothing further is known about the status of the snuffbox in the Tennessee River mainstem.

Paint Rock River—The Paint Rock River is a southerly flowing, northern tributary of the southern bend of the Tennessee River in northeastern Alabama and adjacent Tennessee. The snuffbox was first reported from one of six mainstem sites by Ortmann (1925, p. 359). No evidence of snuffbox was found in two surveys during 1965–67 (Isom and Yokley 1973, p. 444) and a 1980 survey (Butler 2007, p. 64). Twelve L and FD snuffbox were found at four sites between RMs 13 and 21 (Ahlstedt 1995–96, p. 70). The species was again absent from 10 upper mainstem sites surveyed in 2002 (Godwin 2002, p. 9). Four FD specimens of varying sizes were found at lower river sites in 2002 (Fraley 2003, pers. comm.; Smith 2005, pers. comm.) and 2003–2006 (Freeman 2006, pers. comm.). One L and 11 FD specimens were found at RM 21 in 2005, and 2 L and 16 FD were collected at RM 31 in 2007 (Gangloff 2007, pers. comm.). In July 2008, Freeman (2008, pers. comm.) observed multiple age classes (sizes) of FD snuffbox in middens between RM 34.7 and 32.5. Fobian *et al.* (2008, p. 14) collected 21 L snuffbox at 7 sites and FD specimens at 8 sites between RM 46.7 and 13.1. The stronghold snuffbox population exists between RMs 13 and 44, and is

recruiting, viable, and has clearly improved since 1980.

Elk River—The Elk River is a large, northern tributary flowing 200 river mi (322 river km) in a southwesterly direction in the southern bend of the Tennessee River in south-central Tennessee and north-central Alabama. Snuffbox collections have been sporadic. The species was found at 2 sites in the mid-1960s (Isom *et al.* 1973, p. 440), and a single L individual was found among 108 sites sampled in 1980 (Ahlstedt 1983, p. 47). Single specimens were also reported from 4 sites sampled in the lower river in 1997 (Madison and Layzer 1998, Table 6) and 16 sites sampled in 1999 (Service 1999, p. 3). A very large FD specimen was found at RM 51 among 4 sites sampled in 2001 (Hubbs 2002, p. 5; Butler 2007, p. 65). A single L and a FD snuffbox were found at a site in Giles County during qualitative sampling events at five sites in 2005 (Ahlstedt *et al.* 2006). Ford (2008, pers. comm.) reported collecting FD specimens at Stairstep Shoals in Giles County, Tennessee, in July 2007. The small snuffbox population has recently recruited, exhibits some level of viability, and its numbers appear relatively stable in recent history.

Duck River—The Duck River is the downstream-most large tributary of the Tennessee River draining south-central Tennessee and flowing 285 river miles (459 river km) west to its confluence near the head of Kentucky Reservoir. The snuffbox historically occurred throughout the Duck River and, based on museum records, was locally common 40 to 50 years ago, but was absent in surveys from RM 180 downstream in the mid-1970s (Ahlstedt 1981, p. 62; Dennis 1984, p. 38). Two L individuals were collected from 2 of 99 sites surveyed in 1979 (Butler 2007, p. 66). A single L individual was discovered in Maury County among 72 sites sampled during 2000–03 (Ahlstedt *et al.* 2004, p. 119), but none were found at 11 lower sites surveyed in 2000 (Schilling and Williams 2002, p. 409). The snuffbox is very rare, and its viability is uncertain.

Lower Mississippi River Sub-Basin

The Lower Mississippi River Sub-basin includes 954 miles of the Mississippi River from its confluence with the Ohio River at Cairo, Illinois, to its mouth in the Gulf of Mexico. The snuffbox is known from a single stream in this sub-basin, outside of the White River system.

St. Francis River—The St. Francis River is a major tributary of the lower Mississippi with its headwaters in southeastern Missouri, and flowing south into northeastern Arkansas. The only Arkansas records available for this 450-mi (724-km) river are from 1964, located approximately 1 mi southwest of Parkin in Cross County (Bates and Dennis 1983, p. 63; Harris *et al.* 2007, p. 10). Snuffbox records exist for Butler, Wayne, and Stoddard Counties, Missouri, where it was considered "locally abundant" (Oesch 1984, p. 235). The species is known from above Wappapello Reservoir, but was absent from Missouri surveys conducted below Wappapello Dam in 1983 (Bates and Dennis 1983, p. 63) and 1986 (Ahlstedt and Jenkinson 1991, p. 240). Twelve L snuffbox were sampled at sites in 2002 (Hutson and Barnhart 2004, pp. 84–85). Live individuals were found during collections at RM 172.1 in 2005 and 2006 (Butler 2007, p. 67). The snuffbox is restricted to a 10-mi (16-km) reach (RM 172.1–182.0) on the northeastern edge of the Ozark Plateaus in the vicinity of Sam A. Baker State Park, Wayne County (Hutson and Barnhart 2004, p. 85). This medium-sized snuffbox population appears to be stable and viable, but restricted in distribution.

White River System—The 690-mi (1,110-km) White River is a large tributary system of the western bank of the Mississippi River. A snuffbox population once occurred in the mainstem and six of its larger tributaries. The last record from the mainstem in Arkansas is pre-1921 (Harris *et al.* 2007, p. 10). Highly restricted populations persist in four streams.

Buffalo River—The Buffalo River is a large, eastward-flowing tributary of the middle White River in north-central Arkansas. The snuffbox was not found during surveys in 1910 (26 sites; Meek and Clark 1912, p. 13) and 1995 (40 sites; Harris 1996, p. 9), but two L individuals were found at a single site among 60 sites surveyed in 2006 (Matthews 2007, pers. comm.). The small population occurs in the lower river in Marion County, and its viability is unknown.

Black River—The Black River is the largest tributary in the White River system, draining much of southeastern Missouri and northeastern Arkansas before flowing in a southerly direction into the White River near Newport, Arkansas. A long but sporadic collection history for the snuffbox appears in the 300-mi (483-km) Black River. A single, approximately 4-year-old L male was collected at RM 65.5, Wayne County, among 51 Missouri sites sampled in 2002 (Hutson and Barnhart 2004, p. 154). The species has become extirpated from the lower river on the Mississippi Embayment, including Arkansas. The snuffbox appears rare but viable at some level.

Spring River—The Spring River is a large tributary of the Black River that drains the eastern Ozark Plateaus in south-central Missouri and northeastern Arkansas. Based on pre-1986 records, the snuffbox was known in low numbers from at least four sites in approximately 20 river mi (34 river km) of the lowermost mainstem in Arkansas (Harris and Gordon 1987, p. 53). A single L adult male was found in Lawrence County in 2005, and represents the first L specimen found in Arkansas in more than 20 years (Butler 2007, p. 69). Further, 53 FD snuffbox were collected in four large muskrat middens (Harris *et al.* 2007, p. 15). The extent of the population is not known, but it is probably limited to relatively few miles in the lower mainstem in Lawrence and Randolph Counties. This population appears small, and its status and viability are unknown.

Strawberry River—The Strawberry River is a western tributary of the Black River draining a portion of the southeastern Ozark Plateaus in northeastern Arkansas. The only snuffbox records were from around 1983 and 1997 in the middle mainstem in Sharp County (Butler 2007, p. 69). No other details on these collections or the status of the population are known. Considering the dearth of records, the snuffbox appears to be very rare in the Strawberry River, and of unknown viability.

Summary of Snuffbox Population Estimates and Status

The snuffbox has declined rangewide and appears to be extant in 74 of 208 streams and lakes of historical occurrence, a 65 percent decline in occupied streams. Realistically, much more than 65 percent of the habitat historically available for this species no longer supports its populations. Habitat losses measured in the thousands of miles have occurred rangewide. Since multiple streams may comprise single snuffbox population segments (for example, the French Creek system), the actual number of extant populations is somewhat less. Extant populations, with few exceptions, are highly fragmented and restricted to short reaches. The elimination of this species from scores of streams and thousands of miles of stream reaches indicates catastrophic population losses and a precipitous decline in overall abundance. It is reasonable to estimate that total range reduction and overall population losses for the snuffbox each approximate, if not exceed, 90 percent.

Previous Federal Action

We identified the rayed bean as a Category 2 species in a notice of review published in the **Federal Register** on May 22, 1984 (49 FR 21664). The rayed bean remained a Category 2 species in subsequent notices including January 6, 1989 (54 FR 554), November 21, 1991 (56 FR 58804), and November 15, 1994 (59 FR 58982). Prior to 1996, a Category 2 species was one that we were considering for possible addition to the Federal List of Endangered and Threatened Wildlife but for which conclusive data on biological vulnerability and threats were not available to support a proposed rule. We stopped designating Category 2 species in the February 28, 1996, Notice of Review (61 FR 7596). We now define a candidate species as a species for which we have on file sufficient information to propose it for protection under the Act. We designated the rayed bean as a candidate species on May 4, 2004 (69 FR 24876).

We identified the snuffbox as a Category 2 species in the notice of review published in the **Federal Register** on November 21, 1991 (56 FR 58804). The snuffbox remained a Category 2 in the subsequent notice on November 15, 1994 (59 FR 58982) but was dropped from the list in the February 28, 1996, Notice of Review (61 FR 7596), when we stopped designating Category 2 species. The snuffbox is not currently listed as a candidate species for listing.

Summary of Information Pertaining to the Five Factors

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 determine a species to be endangered or threatened due to one or more of the following five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination. Each of these factors is discussed below.

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

Both species have experienced significant curtailment of their occupied habitats (*see* Background, above). The rayed bean has been eliminated from about 74 percent of the streams it historically occurred in. This species has also been eliminated from long reaches of former habitat in hundreds of miles of the Maumee, Ohio, Wabash, and Tennessee Rivers and from numerous stream reaches in their tributaries. The snuffbox has been eliminated from about 65 percent of the streams in which it historically occurred. Furthermore, extant populations, with few exceptions, are highly fragmented and restricted to short reaches. Available records indicate that 33 percent of streams considered to harbor extant populations of the snuffbox are represented by only one or two recent L or FD individuals. The primary cause of range curtailment for both species has been modification and destruction of river and stream habitats, primarily by the construction of impoundments.

Impoundment—Impoundments result in the dramatic modification of riffle and shoal habitats and a resulting loss of mussel resources, especially in larger rivers. Neves *et al.* (1997, pp. 63–64) and Watters (2000, pp. 261–262) reviewed the specific effects of impoundments on freshwater mollusks. Dams interrupt a river's ecological processes by modifying flood pulses; controlling impounded water elevations; altering water flow, sediments, nutrients, and energy inputs and outputs; increasing depth; decreasing habitat heterogeneity; decreasing stability due to subsequent sedimentation; blocking host fish passage; and isolating mussel populations from fish hosts. Even small, low-head dams can have some of these effects on mussels.

The reproductive process of riverine mussels is generally disrupted by impoundments, making the rayed bean and snuffbox unable to successfully reproduce and recruit under reservoir conditions. Population losses due to impoundments have likely contributed more to the decline and imperilment of the rayed bean and snuffbox than has any other single factor. Neither species occurs in reservoirs lacking riverine characteristics, and only the snuffbox persists in large rivers with dams (Ohio River), and then only in sections retaining riverine characteristics (generally tailwaters). Both species, however, historically occurred in the wave-washed shallows of several glacial lakes, an environment very different from that found in impoundments.

Stream habitat throughout major portions of the range of both species has been impounded. The majority of the Tennessee and Cumberland River mainstems and many of their largest tributaries are now impounded. There are 36 major dams located in the Tennessee River system, and about 90 percent of the Cumberland River downstream of Cumberland Falls is either directly impounded by U.S. Army Corps of Engineers (Corps) structures or otherwise impacted by cold tailwater released from dams. Watters (2000, pp. 262–263) summarizes the tremendous loss of mussel species from various portions of the Tennessee and Cumberland River systems. The rayed bean has been eliminated from the Tennessee River system and the snuffbox, once widespread throughout both systems, now persists in only five Tennessee River tributaries and one Cumberland River tributary.

This impoundment scenario is similar in many other parts of the range of the rayed bean and snuffbox, and includes numerous navigational locks and dams (Ohio, Allegheny, Muskingum and Green Rivers), major dams (Shenango, Elk, Walhonding, Scioto, Little Miami, Green, Nolin, Barren, Tippecanoe, Wabash, Mississinewa, Salamonie, and Duck Rivers), and low-head dams (Pine, Belle, Clinton, Huron, Maumee, Auglaize, Sandusky, Mahoning, Tuscarawas, Walhonding, Scioto, Olentangy, Wabash, Mississinewa, East Fork White, West Fork White, and Duck Rivers; and Middle Island, Big Walnut, Alum, Big Darby, Little Darby, Sugar, and Richland Creeks) that have contributed to the loss of the species' habitat. Sediment accumulations behind dams of all sizes generally preclude the occurrence of the rayed bean and snuffbox.

Dredging and Channelization—Dredging and channelization activities have profoundly altered riverine habitats nationwide. Hartfield (1993, pp. 131–141), Neves *et al.* (1997, pp. 71–72), and Watters (2000, pp. 268–269) reviewed the specific effects of channelization on freshwater mollusks. Channelization impacts a stream's physical (accelerated erosion, reduced depth, decreased habitat diversity, geomorphic instability, and riparian canopy loss) and biological (decreased fish and mussel diversity, changed species composition and abundance, decreased biomass, and reduced growth rates) characteristics (Hartfield 1993, p. 131; Hubbard *et al.* 1993, pp. 136–145). Channel construction for navigation has

been shown to increase flood heights (Belt 1975, p. 189). This is partially attributed to a decrease in stream length and increase in gradient (Hubbard *et al.* 1993, p. 137). Flood events may thus be exacerbated, conveying into streams large quantities of sediment, potentially with adsorbed contaminants. Channel maintenance may result in profound impacts downstream (Stansbery 1970, p. 10), such as increases in turbidity and sedimentation, which may smother benthic (bottom-dwelling) organisms such as the rayed bean and snuffbox.

The only known rayed bean populations that remain in navigation channels are in the upper two navigation pools of the Allegheny River. Activities associated with navigation channels may have contributed to the elimination of the rayed bean from the Ohio, lower Allegheny, and Muskingum Rivers, and potentially others. Channel maintenance operations for barge navigation have impacted habitat for the snuffbox in several large rivers. Impacts associated with barge traffic, which include construction of fleeting areas, mooring cells, docking facilities, and propeller wash, also disrupt habitat. Navigation maintenance activities may continue to adversely affect this species in the upper Ohio River. Hundreds of miles of rayed bean (Olentangy, Salamonie, Mississinewa, Vermilion, North Fork Vermilion, Embarras Rivers) and snuffbox (Grand, Kankakee, Sangamon, Kaskaskia, Olentangy, Salamonie, Mississinewa, Eel, Vermilion, and North Fork Vermilion, Embarras, Paint Rock, and St. Francis Rivers; and Tonawanda, Killbuck, Chickamauga, and Bear Creeks) streams were dredged and channelized decades ago, and some populations have been eliminated from these streams. The entire length of the Kankakee River in Indiana was channelized by 1917. In addition, hundreds of drains (formed from ditching low-gradient creeks and swales) were created around 100 years ago in Illinois, Michigan, and other midwestern States. Stream channelizations were attempts to reduce flooding, drain low-lying areas, and "improve" storm flow runoff.

Chemical Contaminants—Chemical contaminants are ubiquitous throughout the environment and are considered a major threat in the decline of freshwater mussel species (Cope *et al.* 2008, p. 451; Richter *et al.* 1997, p. 1081; Strayer *et al.* 2004, p. 436; Wang *et al.* 2007, p. 2029). Chemicals enter the environment through both point and nonpoint discharges, including spills, industrial sources, municipal effluents, and agricultural runoff. These sources contribute organic compounds, heavy metals, pesticides, and a wide variety of newly emerging contaminants to the aquatic environment. As a result, water and sediment quality can be degraded to the extent that mussel populations are adversely impacted.

Chemical spills can be especially devastating to mussels because they may result in exposure of a relatively immobile species to extremely elevated concentrations that far exceed toxic levels and any water quality standards that might be in effect. Some notable spills that released large quantities of highly concentrated chemicals resulting in mortality to mussels include: massive mussel kills on the Clinch River at Carbo, Virginia, occurred from a power plant alkaline fly ash pond spill in 1967 and a sulfuric acid spill in 1970 (Crossman *et al.* 1973, p. 6); approximately 18,000 mussels of several species including 750 individuals from three endangered mussel species were eliminated from the upper Clinch River near Cedar Bluff, Virginia, in 1998, when an overturned tanker truck released 1,600 gallons (6,056 liters) of a chemical used in rubber manufacturing (Jones *et al.* 2001, p. 20; Schmerfeld 2006, p. 12); and an ongoing release of sodium dimethyl dithiocarbamate, a chemical used to reduce and precipitate hexachrome, starting in 1999 impacted approximately 10 river miles (16 km) of the Ohio River and resulted in an estimated loss of one million mussels, including individuals from two federally listed species (DeVault 2009, pers. comm.; Clayton 2008, pers. comm.). These are not the only instances where chemical spills have resulted in the loss of high numbers of mussels (Brown *et al.* 2005, p. 1457; Neves 1991, p. 252; Jones *et al.* 2001, p. 20; Schmerfeld 2006, pp. 12–13), but are provided as examples of the serious threat chemical spills pose to mussel species. The rayed bean and snuffbox are especially threatened by chemical spills because these spills can occur anywhere there are highways with tanker trucks, industries, or mines and where these overlap with rayed bean and snuffbox distribution.

Exposure of mussels to lower concentrations of contaminants more likely to be found in aquatic environments can also adversely affect mussels and result in the decline of freshwater mussel species. Such concentrations may not be immediately lethal, but over time, can result in mortality, reduced filtration efficiency, reduced growth, decreased reproduction, changes in enzyme activity, and behavioral changes to all mussel life stages. Frequently, procedures which evaluate the "safe" concentration of an environmental contaminant (for example, national water quality criteria) do not have data for freshwater mussel species or exclude data that is available for freshwater mussels (March *et al.* 2007, pp. 2066–2067, 2073).

Current research is now starting to focus on the contaminant sensitivity of freshwater mussel glochidia and newly-released juvenile mussels (Goudreau *et al.* 1993, pp. 219–222; Jacobson *et al.* 1997, p. 2390; Wang, 2007a, pp. 2041–2046; Valenti 2005, pp. 1244–1245; Valenti 2006, pp. 2514–2517; March 2007, pp. 2068–2073) and juveniles (Bartsch *et al.* 2003, p. 2561; Augspurger *et al.* 2003, p. 2569; Mummert *et al.* 2003, p. 2549, Wang, 2007b, pp. 2053–2055, Wang, 2007a, pp. 2041–2046, Valenti 2005, pp. 1244–1245; Valenti 2006, pp. 2514–2517; March 2007, pp. 2068–2073) to such contaminants as ammonia, metals, chlorine, and pesticides. The toxicity information presented in this section focuses on recent water-only laboratory acute (sudden and severe exposure) and chronic (prolonged or repeated exposure) toxicity tests with early life stages of freshwater mussels using the standard testing methodology published by the American Society for Testing and Materials (ASTM) (American Society for Testing and Materials 2008, pp. 1442–1493). Use of this standard testing method generates consistent, reliable toxicity data with acceptable precision and accuracy (Wang *et al.* 2007a, p. 2035) and was used for toxicity tests on ammonia, copper, chlorine, and select pesticides (Augspurger *et al.* 2007, p. 2025; Bringolf *et al.* 2007a, p. 2087; Bringolf *et al.* 2007c, p. 2101; Wang *et al.* 2007a, p. 2029; Wang *et al.* 2007b, p. 2036; Wang *et al.* 2007c, p. 2048). Use of these tests has documented that while mussels are sensitive to some contaminants, they are not universally sensitive to all contaminants (Augspurger *et al.* 2007, pp. 2025–2026).

One chemical that is particularly toxic to early life stages of mussels is ammonia. Sources of ammonia include agricultural sources (animal feedlots and nitrogenous fertilizers), municipal wastewater treatment plants, and industrial waste (Augspurger *et al.* 2007, p. 2026), as well as precipitation and natural processes (decomposition of organic nitrogen) (Goudreau *et al.* 1993, p. 212; Hickey and Martin 1999, p. 44; Augspurger *et al.* 2003, p. 2569; Newton 2003, p. 1243). Therefore, ammonia is considered a limiting factor for survival and recovery of some mussel species due to its ubiquity in aquatic environments, high level of toxicity, and because the highest concentrations

typically occur in mussel microhabitats (Augspurger *et al.* 2003, p. 2574). In addition, studies have shown that ammonia concentrations increase with increasing temperature and low-flow conditions (Cherry *et al.* 2005, p. 378; Cooper *et al.* 2005, p. 381), which may be exacerbated by the effects of climate change, and may cause ammonia to become more problematic for juvenile mussels. The Environmental Protection Agency's established ammonia water quality criteria (EPA 1985, p. 94–99) may not be protective of mussels (Augspurger *et al.* 2003, p. 2572; Sharpe 2005, p. 28) under current and future climate conditions.

Mussels are also affected by metals (Keller and Zam 1991, p. 543), such as cadmium, chromium, copper, mercury, and zinc, which can negatively affect biological processes such as growth, filtration efficiency, enzyme activity, valve closure, and behavior (Naimo 1995, pp. 351–355; Keller and Zam 1991, p. 543; Jacobson *et al.* 1997, p. 2390; Valenti *et al.* 2005, p. 1244). Metals occur in industrial and wastewater effluents and are often a result of atmospheric deposition from industrial processes and incinerators. Glochidia and juvenile freshwater mussels have recently been studied to determine the acute and chronic toxicity of copper to these life stages (Wang 2007a, pp. 2036–2047; Wang 2007b, pp. 2048–2056). The chronic values determined for copper ranged from 8.5 to 9.8 micrograms per liter (ug/L) for survival and from 4.6 to 8.5 ug/L for growth of juveniles. These chronic values are below the EPA's 1996 chronic water quality criterion of 15 ug/L (hardness 170 mg/L) for copper (Wang 2007b, pp. 2052–2055). March (2007, pp. 2066, 2073) identifies that copper water quality criteria and modified State water quality standards may not be protective of mussels.

Mercury is another heavy metal that has the potential to negatively affect mussel populations, and it is receiving attention due to its widespread distribution and potential to adversely impact the environment. Mercury has been detected throughout aquatic environments as a product of municipal and industrial waste and atmospheric deposition from coal burning plants. One recent study evaluated the sensitivity of early life stages of mussels to mercury (Valenti 2005, p. 1242). This study determined that, for the mussel species used (rainbow mussel, *Villosa iris*), glochidia were more sensitive to mercury than were juvenile mussels, with the median lethal concentration value of 14 ug/L compared to 114 ug/L for the juvenile life stage. The chronic toxicity tests conducted determined that juveniles exposed to mercury greater than or equal to 8 ug/L exhibited reduced growth. These observed toxicity values are greater than EPA's Criteria Continuous Concentration and Criteria Maximum Concentration, which are 0.77 ug/L and 1.4 ug/L, respectively. Based on these data we believe that EPA's water quality standards for mercury should be protective of juvenile mussels and glochidia, except in cases of illegal dumping, permit violations, or spills. However, impacts to mussels from mercury toxicity may be occurring in some streams. According to the National Summary Data reported by States to the EPA, 3,770 monitored waters do not meet EPA standards for mercury in the United States (*http://iaspub.epa.gov/waters10/attains_nation_cy.control?p_report_type=T,* accessed 6/28/2010). Acute mercury toxicity was determined to be the cause of extirpation of a diverse mussel fauna for a 70-mile (112-km) portion of the North Fork Holston River (Brown *et al.* 2005, pp. 1455–1457).

In addition to ammonia, agricultural sources of chemical contaminants include two broad categories that have the potential to adversely impact mussel species: Nutrients and pesticides. Nutrients (such as nitrogen and phosphorus) can impact streams when their concentrations reach levels that cannot be assimilated, a condition known as over-enrichment. Nutrient over-enrichment is primarily a result of runoff from livestock farms, feedlots, and heavily fertilized row crops (Peterjohn and Correll 1984, p. 1471). Over-enriched conditions are exacerbated by low-flow conditions, such as those experienced during typical summer-season flows and that might occur with greater frequency and magnitude as a result of climate change. Bauer (1988, p. 244) found that excessive nitrogen concentrations can be detrimental to the adult freshwater pearl mussel (*Margaritifera margaritifera*), as was evident by the positive linear relationship between mortality and nitrate concentration. Also, a study of mussel life span and size (Bauer 1992, p. 425) showed a negative correlation between growth rate and eutrophication, and longevity was reduced, as the concentration of nitrates increased. Nutrient over-enrichment can result in an increase in primary productivity, and the subsequent respiration depletes dissolved oxygen levels. This may be particularly detrimental to juvenile mussels that inhabit the interstitial spaces in the substrate where lower dissolved oxygen concentrations are more likely than on the sediment surface where adults tend to live (Sparks and Strayer 1998, pp. 132–133).

Elevated concentrations of pesticide frequently occur in streams due to pesticide runoff, overspray application to row crops, and lack of adequate riparian buffers. Agricultural pesticide applications often coincide with the reproductive and early life stages of mussels, and thus impacts to mussels due to pesticides may be increased (Bringolf *et al.* 2007a, p. 2094). Little is known regarding the impact of currently used pesticides to freshwater mussels even though some pesticides, such as glyphosate (Roundup), are used globally. Recent studies tested the toxicity of glyphosate, its formulations, and a surfactant (MON 0818) used in several glyphosate formulations, to early life stages of the fatmucket (*Lampsilis siliquoidea*), a native freshwater mussel (Bringolf *et al.* 2007a, p. 2094). Studies conducted with juvenile mussels and glochidia determined that the surfactant (MON 0818) was the most toxic of the compounds tested and that *L. siliquoidea* glochidia were the most sensitive organism tested to date (Bringolf *et al.* 2007a, p. 2094). Roundup, technical grade glyphosate isopropylamine salt, and isopropylamine were also acutely toxic to juveniles and glochidia (Bringolf *et al.* 2007a, p. 2097). The impacts of other pesticides including atrazine, chlorpyrifos, and permethrin on glochidia and juvenile life stages have also recently been studied (Bringolf *et al.* 2007b, p. 2101). This study determined that chlorpyrifos was toxic to both *L. siliquoidea* glochidia and juveniles (Bringolf *et al.* 2007b, p. 2104). The above results indicate the potential toxicity of commonly applied pesticides and the threat to mussel species as a result of the widespread use of these pesticides. All of these pesticides are commonly used throughout the range of the rayed bean and snuffbox.

A potential, but undocumented, threat to freshwater mussel species, including rayed bean and snuffbox, are contaminants referred to as "emerging contaminants" that are being detected in aquatic ecosystems at an increasing rate. Pharmaceuticals, hormones, and other organic contaminants have been detected downstream from urban areas and livestock production (Kolpin *et al.* 2002, p. 1202). A large potential source of these emerging contaminants is wastewater being discharged through both permitted (National Pollutant Discharge Elimination System (NPDES)) and non-permitted sites throughout the country. Permitted discharge sites are

ubiquitous in watersheds with rayed bean and snuffbox populations, providing ample opportunities for contaminants to impact the species (for example, there are more than 250 NPDES sites in the Meramec River, Missouri system, which harbors a declining population of snuffbox; Roberts and Bruenderman 2000, p. 78).

The information presented in this section represents some of the threats from chemical contaminants that have been documented both in the laboratory and field and demonstrates that chemical contaminants pose a substantial threat to the rayed bean and snuffbox. This information indicates the potential for contaminants to contribute to declining rayed bean and snuffbox populations—from spills that are immediately lethal to species to chronic contaminant exposure, which results in death, reduced growth, or reduced reproduction of rayed bean and snuffbox.

Mining—The low pH commonly associated with coal mine runoff can reduce glochidial encystment rates, thus impacting mussel recruitment (Huebner and Pynnönen 1992, p. 2350). Additionally, adverse impacts from heavy metal-rich drainage from coal mining and associated sedimentation has been documented in portions of historical rayed bean and snuffbox habitat in the upper Ohio River system in western Pennsylvania (Ortmann 1909c, p. 97), West Virginia, and southeastern Ohio. Likewise, coal mining has impacted rayed bean habitat in the upper Tennessee River system, Virginia (Kitchel *et al.* 1981, p. 21), and snuffbox habitat in eastern Kentucky (lower Ohio and Mississippi River systems in southeastern Illinois and western Kentucky; upper Cumberland River system in southeastern Kentucky and northeastern Tennessee; and upper Tennessee River system in southwestern Virginia) (Ortmann 1909c, p. 103; Neel and Allen 1964, pp. 428–430; Kitchel *et al.* 1981, p. 21; Anderson *et al.* 1991, pp. 6–7; Gordon 1991, p. 2; Bogan and Davis 1992, p. 2; Layzer and Anderson 1992, pp. 91–94; Ahlstedt and Tuberville 1997, p. 75; Milam *et al.* 2000, p. 53; Warren and Haag 2005, p. 1394). Acid mine drainage was implicated in the mussel die-off in the Little South Fork Cumberland River, Kentucky (Anderson *et al.* 1991, pp. 6–7; Layzer and Anderson, 1992, p. 94; Ahlstedt and Saylor 1995–96, pp. 92–93; Warren and Haag 2005, p. 1394). Tailings pond failures have also impacted aquatic resources (Powell River, Virginia; Butler 2007, p. 83). A decline of the snuffbox and other imperiled mussels in the Powell River was blamed on coal mining impacts (Ahlstedt and Tuberville 1997, p. 75). Increased mining activities in the upper Clinch River system is resulting in "blackwater" events (Jones and Neves 2004, p. 2). Anecdotal evidence suggests that coal fines are increasing in the Clinch River reach that harbors a stronghold snuffbox population (Butler 2007, p. 84). A coal-fired power plant planned for the upper Clinch River in Virginia would further increase mining in the Clinch and Powell watersheds.

Currently, coal mining activities occur only in the Elk River in West Virginia (Douglas 2010, pers. comm.). However, if coal mining activities are reinitiated in western Pennsylvania, they could become a threat to populations of both species in the lower French Creek and the Allegheny River.

Instream and alluvial (clay, silt, sand, or other material deposited by running water) gravel mining has been implicated in the destruction of several mussel populations (Hartfield 1993, pp. 135–136; Brown and Curole 1997, pp. 239–240). Negative impacts associated with gravel mining include stream channel modifications (altered habitat, disrupted flow patterns, sediment transport), water quality modifications (increased turbidity, reduced light penetration, increased temperature), macroinvertebrate population changes (elimination, habitat disruption, increased sedimentation), and changes in fish populations (impacts to spawning and nursery habitat, food web disruptions) (Kanehl and Lyons 1992, pp. 26–27; Roell 1999, p. 5). Gravel mining may continue to be a localized threat to rayed bean and snuffbox populations (Kankakee, Bourbeuse, Walhonding, Elk (Tennessee), and Strawberry Rivers; Big Darby and Buck (Kentucky) Creeks).

Other mining activities that impact snuffbox populations include mining for metals (lead, cadmium, zinc) in Missouri. Mining has been implicated in the decline of mussels from the upper St. Francis River (Hutson and Barnhart 2004, pp. 86–87). Lead and barite mining is common in the Big River, a Meramec River tributary. A tailings-pond blowout discharged 81,000 cubic yards of mine tailings in 1977 that impacted approximately 80 river mi (129 river km) (Buchanan 1980, p. 9; Roberts and Bruenderman 2000, p. 24). As of 2000, high levels of heavy metals were still detected in the system (Roberts and Bruenderman 2000, p. 24) and may continue to hinder stream recovery. Forty-five tailings ponds and numerous tailings piles remain in the watershed (Roberts and Bruenderman 2000, p. 24).

Oil and gas production may have contributed to the decline of the rayed bean and snuffbox in certain drainages (Sangamon River in the upper Mississippi River system; Slippery Rock and Connoquenessing Creeks in the upper Ohio River system; Green, Kentucky, Salamonie, and Mississinewa Rivers in the lower Ohio River system) (Ortmann 1909c, p.104; Schanzle and Cummings 1991, p. 1; ESI 1995, p. 39; Cicerello 1999, p. 11). Pollutants include brines, high levels of potassium, and numerous organic compounds (Imlay 1971, p. 39). An increasing demand for domestic energy resources is expected to accelerate oil and gas exploration in certain rayed bean and snuffbox streams in the foreseeable future.

Siltation—Excessive sedimentation affects an estimated 46 percent of all U.S. streams (Judy *et al.* 1984), including the majority of the streams with extant rayed bean and snuffbox populations. Sedimentation has been implicated in the decline of mussel populations nationwide, and is a threat to rayed bean and snuffbox (Kunz 1898, p. 328; Ellis 1936, pp. 39–40; Marking and Bills 1979, p. 204; Vannote and Minshall 1982, pp. 4105–4106; Dennis 1984, p. 212; Wolcott and Neves 1990, pp. 74–75; Brim Box 1999, p. 79; Fraley and Ahlstedt 2000, p. 194; Poole and Downing 2004, pp. 119–120). Specific biological impacts include reduced feeding and respiratory efficiency from clogged gills, disrupted metabolic processes, reduced growth rates, limited burrowing activity, and physical smothering (Ellis 1936, pp. 39–40; Stansbery 1971, p. 6; Imlay 1972, p. 76; Marking and Bills 1979, p. 210; Vannote and Minshall 1982, p. 4105; Waters 1995, p. 7).

Studies indicate that excessive sediment level impacts are sublethal, with detrimental effects not immediately apparent (Brim Box and Mossa 1999, p. 101). Physical habitat effects include altered suspended and bed material loads, and bed sediment composition associated with increased sediment production and run-off; clogged interstitial habitats and reduced interstitial flow rates and dissolved oxygen levels; changed channels in form, position, and degree of stability; altered depth or width-depth ratio that affects light penetration and flow regime; aggraded (filling) or degraded (scouring) channels; and changed channel positions that dewater mussel beds (Vannote and Minshall 1982, p. 4105; Gordon *et al.* 1992, pp. 296–297; Kanehl and Lyons 1992, pp. 26–27; Brim Box and Mossa 1999, p. 102).

Interstitial spaces in the substrate provide essential habitat for juvenile mussels. When clogged, interstitial flow rates and spaces may become reduced (Brim Box and Mossa 1999, p. 100), thus reducing juvenile habitat availability. The rayed bean burrows deep into interstitial substrates, making it particularly susceptible to degradation of this habitat. Sediment may act as a vector for delivering contaminants such as nutrients and pesticides to streams. Juveniles can readily ingest contaminants adsorbed to silt particles during normal feeding activities. These factors may explain, in part, why so many mussel populations, including those of the rayed bean and snuffbox, appear to be experiencing recruitment failures.

Agricultural activities produce the most significant amount of sediment that enters streams (Waters 1995, pp. 17–18). Neves *et al.* (1997, p. 65) stated that agriculture (including both sediment and chemical run-off) affects 72 percent of the impaired river miles in the country. Unrestricted access by livestock is a significant threat to many streams and their mussel populations (Fraley and Ahlstedt 2000, p. 193). Soil compaction for intensive grazing may reduce infiltration rates and increase run-off, and trampling of riparian vegetation increases the probability of erosion (Armour *et al.* 1991, pp. 8–10; Trimble and Mendel 1995, pp. 238–239; Brim Box and Mossa 1999, p. 103).

The majority of extant rayed bean and snuffbox populations are threatened by some form of agricultural runoff (e.g., nutrients, pesticides, sediment). The Maumee River system, for example, has a drainage area that contains approximately 89 percent agricultural land (Sanders 2002, p. 10.1). The decline of rayed bean and snuffbox in this system may be largely attributed to stream habitat impacts resulting from intensive farming and associated runoff. The rayed bean and snuffbox once occurred in the Maumee River mainstem, as well as in up to nine of its tributaries. Currently, the snuffbox is extirpated from the Maumee River system and the rayed bean is only found in distinct but small reaches of the St. Joseph River, Fish Creek, Swan Creek, and Blanchard River. All of these remaining populations (which comprise about 20 percent of all remaining rayed bean populations rangewide) are currently threatened by ongoing agricultural activities. This scenario is echoed across the remaining extant range of the rayed bean and snuffbox.

Other Activities Affecting Rayed Bean and Snuffbox Habitat—Activities associated with urbanization can be detrimental to stream habitats (Couch and Hamilton 2002, p. 1) and were summarized by Feminella and Walsh (2005, pp. 585–587). Developmental activities may impact streams and their mussel fauna where adequate streamside buffers are not maintained and erosion of impacted land is allowed to enter streams (Brainwood *et al.* 2006, p. 511). Types of development may include highway construction, parking lots, building construction, general infrastructure (utilities, sewer systems), and recreation facilities. Factors impacting rayed bean and snuffbox populations in urban and suburban areas include lawn care chemicals (Conners and Black 2004, pp. 366–367), sedimentation, toxic effluents, domestic sewage, road salts, and general runoff.

Impervious surfaces are detrimental to mussel habitat by altering various hydrological factors, including: Increased volumes of flow, annual flow rates, peak flows and duration, and temperature; decreased base flow; and changes in sediment loadings (Galli 1991, p. 28; EPA 1997, p. 4; DeWalle *et al.* 2000, p. 2655; Myers-Kinzie *et al.* 2002, p. 822). These factors result in flooding, erosion, channel widening, altered streambeds, channel instability, riparian and instream habitat loss, and loss of fish populations (EPA 1997, p. 4). As little as 10 percent of a watershed being impervious can cause channel instability and a host of other stream habitat effects (Booth 1991, p. 98; Booth and Reinelt 1993, p. 549). Impervious surfaces may reduce sediment input into streams but result in channel instability by accelerating stormwater runoff, which increases bank erosion and bed scouring (Brim Box and Mossa 1999, p. 103). Stream channels become highly unstable as they respond to increased flows by eroding a groove in the bottom of the channel (incising), which increases the force of the water against the channel (shear stress) and bed mobilization (Doyle *et al.* 2000, p. 156). Hydrological variability influences the distribution of mussels in streams, with distinct communities associated with hydrologically flashy and hydrologically stable streams (Di Maio and Corkum 1995, p. 669). High shear stress, peak flows, and substrate movement limits mussel communities, reduces abundance (particularly for juveniles), and increasingly dislodges mussels and moves them downstream (Layzer and Madison 1995, p. 337; Myers-Kinzie *et al.* 2002, p. 822; Gangloff and Feminella 2006, p. 70). Recruitment is also significantly reduced in high discharge years (Howard and Cuffey 2006, p. 688). Most rayed bean and snuffbox streams have been impacted by general developmental activities and increased impervious surface levels (Butler 2007, p. 88; Butler 2002, p. 25).

All rayed bean or snuffbox streams are crossed by bridges and roads. Effects from these structures were reviewed by Wheeler *et al.* (2005). Categories of impacts include primary effects (construction), secondary effects (post-construction), and indirect effects (development associated with highway presence) (Angermeier *et al.* 2004, pp. 21–24). Culverts act as barriers to fish passage (Wheeler *et al.* 2005, p. 149), particularly by increasing flow velocity (Warren and Pardew 1998, p. 637). Stream channels become destabilized when culverted or improperly bridged by interrupting the transport of woody debris, substrate, and water (Wheeler *et al.* 2005, p. 152).

Anthropogenic activities can lower water tables, making rayed bean, snuffbox, and other mussel populations susceptible to depressed flow levels. Water withdrawals for irrigation, municipal, and industrial water supplies are an increasing concern. U.S. water consumption doubled from 1960 to 2000 and is likely to increase further (Naiman and Turner 2000, p. 960). Therefore, we anticipate water withdrawals and potential stream dewatering to be a threat to rayed bean and snuffbox in the foreseeable future.

We have identified a number of threats to the habitat of the rayed bean and snuffbox which have operated in the past, are impacting the species now, and will continue to impact the species in the foreseeable future. On the basis of this analysis, we find that the present and threatened destruction, modification, or curtailment of the species' habitats is a threat to the rayed bean and snuffbox throughout all of their range. Based on our analysis of the best available information, we have no reason to believe that the present or threatened destruction, modification, or curtailment of rayed bean or snuffbox habitat will change in the foreseeable future. The decline of the freshwater mussels in the eastern United States is primarily the result the long-lasting effects of habitat alterations such as impoundments, channelization, chemical contaminants, mining, and sedimentation. Although efforts have been made to restore habitat in some areas, the long-term effects of large-scale and wide-ranging habitat modification, destruction, and curtailment will last far into the foreseeable future.

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

The rayed bean and snuffbox are not commercially valuable species. Rare species like the rayed bean and snuffbox may increasingly be sought by lay and experienced collectors. Most stream reaches inhabited by these species are restricted, and their populations are generally small. Although scientific collecting is not thought to represent a significant threat, localized populations could become impacted and possibly extirpated by over-collecting, particularly if this activity is unregulated. Native Americans were known to harvest the rayed bean for food, but because of its size, utilization rates were very low (Bogan 1990, p. 134). Localized declines of snuffbox from use as bait by fishermen has been noted (Cumberland River; Wilson and Clark 1914, p. 45), although it is unlikely that exploitation activities have eliminated any snuffbox populations.

On the basis of this analysis, we find that overutilization for commercial, recreational, scientific, or educational purposes is not now a threat to the rayed bean or snuffbox in any portion of their range or likely to become a significant threat in the foreseeable future.

C. Disease or Predation

Little is known about diseases in freshwater mussels (Grizzle and Brunner 2007). However, mussel die-offs have been documented in rayed bean and snuffbox streams (Neves 1986, p. 9), and some researchers believe that disease may be a factor contributing to the die-offs (Buchanan 1986, p. 53; Neves 1986, p. 11). Mussel parasites include water mites, trematodes, oligochaetes, leeches, copepods, bacteria, and protozoa (Grizzle and Brunner 2007). Generally, parasites are not suspected of being a major limiting factor (Oesch 1984, p. 16), but a recent study provides contrary evidence. Reproductive output and physiological condition were negatively correlated with mite and trematode abundance, respectively (Gangloff and Feminella 2004). Stressors that reduce fitness may make mussels more susceptible to parasites (Butler 2007, p. 90). Furthermore, nonnative mussels may carry diseases and parasites that are potentially devastating to native mussel fauna, including rayed bean and snuffbox (Strayer 1999b, p.88).

The muskrat (*Ondatra zibethicus*) is cited as the most prevalent mussel predator (Kunz 1898, p. 328; Hanson *et al.* 1989, p. 15). Muskrat predation may limit the recovery potential of endangered mussels or contribute to local extirpations of previously stressed populations, according to Neves and Odom (1989, p. 940), but they consider it primarily a seasonal or localized threat. The snuffbox ranked fourth among 12 species in a St. Croix River muskrat midden, being nearly four times more abundant than in quantitative surveys (Tyrrell and Hornbach 1998, p. 304). Numbers were too low to determine selectivity indices or statistics.

Muskrats were not thought to be a threat to the rayed bean by West *et al.* (2000, pp. 255–256), due to their general selection of mussels larger than 1.4–1.6 in (3.6–4.1 cm) long (Convey *et al.* 1989, p. 656; Hanson *et al.* 1989, p. 24). Neves and Odom (1989, pp. 938–939) also noted that muskrats did not select for small mussels. Nevertheless, some muskrat predation on the rayed bean has recently been documented in Cassadaga Creek, New York, but is generally considered insignificant.

Other mammals (raccoon (*Procyon lotor*), mink (*Mustela vison*), river otter (*Lutra Canadensis*), striped skunk (*Mephitis mephitis*), hog (*Sus scrofa*), rat (*Rattus spp.*)), amphibians (hellbender (*Cryptobranchus alleganiensis*)), turtles, aquatic birds, and fishes (freshwater drum (*Aplodinotus grunniens*), redear sunfish (*Lepomis microlophus*)) feed on mussels (Kunz 1898, p. 328; Meek and Clark 1912, p. 6; Neck 1986, p. 64; Tyrrell and Hornbach 1998, p. 301). Hydra, non-biting midge larvae, dragonfly larvae, crayfish, and especially flatworms are invertebrate predators on newly metamorphosed juveniles (Zimmerman and Neves 2003, p. 28; Klocker and Strayer 2004, p. 174). The overall threat posed by these predators on the rayed bean and snuffbox is not considered significant.

Studies indicate that in some localized areas, disease and predation may have a negative impact on mussel populations. However, based on our analysis of the best available information, we do not believe that disease or predation is a significant threat to the overall status of rayed bean or snuffbox, nor do we believe that it is likely to become a significant threat in the foreseeable future.

D. The Inadequacy of Existing Regulatory Mechanisms

Most States with extant rayed bean and snuffbox populations prohibit collection of mussels without a State collecting permit. However, enforcement of this permit requirement is difficult.

Sources of nonpoint source pollution include timber clearcutting, clearing of riparian vegetation, urbanization, road construction, and other practices that allow bare earth to enter streams (The Nature Conservancy 2004, p. 13). Current laws do not adequately protect rayed bean and snuffbox habitat from nonpoint source pollution, as the laws to prevent sediment entering waterways are poorly enforced. Best management practices for sediment and erosion control are often recommended or required by local ordinances for construction projects; however, compliance, monitoring, and enforcement of these recommendations are often poorly implemented. Furthermore, there are currently no requirements within the scope of Federal environmental laws to specifically consider the rayed bean or snuffbox during Federal activities, or to ensure that Federal projects will not jeopardize their continued existence.

Point source discharges within the range of the rayed bean and snuffbox have been reduced since the inception of the Clean Water Act (33 U.S.C. 1251 *et seq.*), but this may not provide adequate protection for filter-feeding organisms that can be impacted by extremely low levels of contaminants (*see* Chemical Contaminants discussion under Factor A). There is no specific information on the sensitivity of the rayed bean and snuffbox to common industrial and municipal pollutants, and very little information on other freshwater mussels. Therefore, it appears that a lack of adequate research and data prevents existing regulations, such as the Clean Water Act (administered by the EPA and the U.S. Army Corps of Engineers), from being fully used or effective.

Despite these existing regulatory mechanisms, the rayed bean and snuffbox continue to decline due to the effects of habitat destruction, poor water quality, contaminants, and other factors. We find that these regulatory measures have been insufficient to significantly reduce or remove the threats to the rayed bean and snuffbox and, therefore, that the inadequacy of existing regulatory mechanisms is a threat to these species throughout all of their range.

Based on our analysis of the best available information, we have no reason to believe that the aforementioned regulations, which currently do not offer adequate protection to the rayed bean and snuffbox, will be improved in the foreseeable future.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Other factors have played a role in the decline of rayed bean and snuffbox populations. Reduced numbers of host fish have an indirect impact by contributing to reduced recruitment (Watters 1996, p. 83; Khym and Layzer 2000, p. 183). Factors associated with climate change likely to affect regional mussel populations include changes in stream temperature regimes and precipitation levels that may indirectly result in reduced habitat and declines in host fish stocks (Hastie *et al.* 2003, p. 44). Remedial (such as flood control structures) and preventative (for example, more renewable energy from hydroelectric facilities to reduce greenhouse gas emissions) measures to address climate change issues (Hastie *et al.* 2003, p. 45) may impact rayed bean and snuffbox populations in the future.

Population Fragmentation and Isolation—The majority of the remaining populations of the rayed bean and snuffbox are generally small and geographically isolated. The patchy distributional pattern of populations in short river reaches makes them much more susceptible to extirpation from single catastrophic events, such as toxic chemical spills (Watters and Dunn 1993–94, p. 257). Furthermore, this level of isolation makes natural repopulation of any extirpated population unlikely without human intervention. Population isolation prohibits the natural interchange of genetic material between populations, and small population size reduces the reservoir of genetic diversity within populations, which can lead to inbreeding depression (Avise and Hambrick 1996, p. 461).

The Scioto River system provides a good example of the impacts of population fragmentation and isolation. Historically, the rayed bean and snuffbox were widespread and locally abundant in the mainstem and numerous tributaries. The Scioto River became highly contaminated over a century ago (Trautman 1981, p. 33; Yoder *et al.* 2005, p. 410), and these species eventually died out in the mainstem and most tributaries. The population segments that persist have become increasingly isolated due to impoundments and other factors; all are very small, highly fragmented, and appear to be on a trend towards extirpation.

Many rayed bean and snuffbox populations are potentially below the effective population size (EPS) required to maintain genetic heterogeneity and population viability (Soulé 1980, p. 162). Isolated populations eventually die out when population size drops below the EPS or threshold level of sustainability. Recruitment reduction or failure is a potential problem for many small rayed bean and snuffbox populations rangewide, a condition likely exacerbated by their reduced range and increasingly isolated populations. Evidence of recruitment has not been documented in many populations, indicating that recruitment reduction or outright failure is possible. Many populations of both species may be experiencing the bottleneck effect of not attaining EPS. Small, isolated, below EPS-threshold populations of short-lived species (most host fishes) theoretically die out within a decade or so, while below-threshold populations of long-lived species (like the rayed bean and snuffbox) might take decades to die out even given years of total recruitment failure.

We find that fragmentation and isolation of small remaining populations of the rayed bean and snuffbox are current and ongoing threats to both species throughout all of their range that will continue into the foreseeable future.

Exotic Species—Various exotic or nonnative species of aquatic organisms are firmly established in the range of the rayed bean and snuffbox. The exotic species that poses the most significant threat to the rayed bean and snuffbox is the zebra mussel (*Dreissena polymorpha*). The invasion of the zebra mussel poses a threat to the mussel fauna in many regions, and species extinctions are expected as a result of its continued spread in the eastern United States (Ricciardi *et al.* 1998, p. 616). Strayer (1999b, pp. 77–80) reviewed in detail the mechanisms by which zebra mussels impact native mussels. The primary means of impact is direct fouling of the shells of live native mussels. Zebra mussels attach in large numbers to the shells of live native mussels and are implicated in the loss of entire native mussel beds. Fouling impacts include impeding locomotion (both laterally and vertically), interfering with normal valve movements, deforming valve margins, and locally depleting food resources and increasing waste products. Heavy infestations of zebra mussels on native mussels may overly stress the animals by reducing their energy stores. They may also reduce food concentrations to levels too low to support reproduction, or even survival in extreme cases.

Another way zebra mussels may impact native mussels is through filtering their sperm and possibly glochidia from the water column, thus reducing reproductive potential. Habitat for native mussels may also be degraded by large deposits of zebra mussel pseudofeces (undigested waste material passed out of the incurrent siphon) (Vaughan 1997, p. 11). Additionally, an indirect impact is the proliferation of aquatic plants from increased water clarity in lakes, which in turn has prompted managers to increase the use of herbicides that may threaten mussels via food reduction (Marangelo 2005b, pers. comm.).

Zebra mussels are thoroughly established in the Great Lakes drainages and much of the Ohio River system, overlapping much of the current range of the rayed bean and snuffbox. Zebra mussels have eliminated populations of the rayed bean in Lakes Erie and Tippecanoe and the Detroit River. The greatest current potential for zebra mussels to impact the rayed bean and snuffbox are in the Lake St. Clair drainages, Allegheny River, Tippecanoe River, French Creek, and Lake Maxinkuckee. In addition, there is long-term potential for zebra mussel invasions into other systems that currently harbor rayed bean and snuffbox populations. However, zebra mussels are not always a serious threat to rayed bean and snuffbox (Tippecanoe River, Fisher 2005, pers. comm.; Clinton River, Butler 2007, p. 94; French Creek, Butler 2007, p. 94). Significant but highly fluctuating zebra mussel populations remain largely restricted to navigational waterways, although smaller streams have also had their mussel fauna virtually eliminated by them (Martel *et al.* 2001, p. 2188). At least two of the stronghold snuffbox populations (Wolf River and French Creek) presently have low numbers of zebra mussels.

The Asian clam (*Corbicula fluminea*) has spread throughout the range of the rayed bean and snuffbox since its introduction in the mid-1900s. Asian clams compete with native mussels, especially juveniles, for food, nutrients, and space (Neves and Widlak 1987, p. 6; Leff *et al.* 1990, p. 415) and may ingest sperm, glochidia, and newly metamorphosed juveniles of native mussels (Strayer 1999b, p. 82; Yeager *et al.* 2001, p. 257). Dense Asian clam populations actively disturb sediments that may reduce habitat for juvenile mussels (Strayer 1999b, p. 82).

Asian clam densities vary widely in the absence of native mussels or in patches with sparse mussel concentrations, but clam density is never high in dense mussel beds, indicating that the clam is unable to successfully invade small-scale habitat patches with high unionid biomass

(Vaughn and Spooner 2006, p. 335). The invading clam therefore appears to preferentially invade sites where mussels are already in decline (Strayer 1999b, p. 82; Vaughn and Spooner 2006, p. 332) and does not appear be a causative factor in the decline of mussels in dense beds. However, an Asian clam population that thrives in previously stressed, sparse mussel populations can exacerbate unionid imperilment through competition and impeding mussel population expansion (Vaughn and Spooner 2006, p. 335).

The round goby (*Neogobius melanostomus*) is another exotic fish species released into the Great Lakes that is well established and likely to spread through the Mississippi River system (Strayer 1999b, pp. 87–88). This species is an aggressive competitor of similar sized benthic fish (sculpins, darters) as well as a voracious carnivore despite its size (less than 10 in. (25.4 cm) in length), preying on a variety of foods, including small mussels and fishes that could serve as glochidial hosts (Strayer 1999b, p. 88; Janssen and Jude 2001, p. 325). Round gobies may therefore have indirect effects on the rayed bean and snuffbox through negative impacts to their host fishes.

Additional exotic species will invariably become established in the foreseeable future (Strayer 1999b, pp. 88–89). These include *Limnoperna fortunei,* a biofouling mussel (an animal that undesirably accumulates on wetted surfaces) from southeast Asia that has already spread to Japan and South America, and "probably will have strong effects" on native mussels (Strayer 1999b, p. 89). Exotic species could carry diseases and parasites that may be devastating to the native biota. Because of our ignorance of mollusk diseases and parasites, "it is imprudent to conclude that alien diseases and parasites are unimportant" (Strayer 1999b, p. 88).

Exotic species, such as those described above, are an ongoing threat to the rayed bean and snuffbox—a threat that is likely to increase as these exotic species expand their occupancy within the range of the rayed bean and snuffbox.

Summary of Threats

The decline of the rayed bean and snuffbox (described by Butler 2002, 2007) is primarily the result of habitat loss and degradation (Neves 1991, p. 252). These losses have been well documented since the mid-19th century (Higgins 1858, p. 551). Chief among the causes of decline are impoundments, channelization, chemical contaminants, mining, and sedimentation (Neves 1991, pp. 260–261; 1993, p. 4–5; Williams *et al.* 1993, p. 7; Neves *et al.* 1997, pp. 60–72; Watters 2000, p. 269). These stressors have had profound impacts on rayed bean and snuffbox populations and their habitat.

The majority of the remaining populations of the rayed bean and snuffbox are generally small and geographically isolated (Butler 2002, 2007). The patchy distributional pattern of populations in short river reaches makes those populations much more susceptible to extirpation from single catastrophic events, such as toxic chemical spills (Watters and Dunn 1993–94, p. 257). Furthermore, this level of isolation makes natural repopulation of any extirpated population virtually impossible without human intervention. Various nonnative species of aquatic organisms are firmly established in the range of the rayed bean and snuffbox; however, the exotic species that poses the most significant threat to the rayed bean and snuffbox is the zebra mussel (*Dreissena polymorpha*) (Butler 2002, p. 27; 2007, p. 93).

Proposed Determination

Section 3 of the Act defines an endangered species as any species that is "in danger of extinction throughout all or a significant portion of its range" and a threatened species as any species that "is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." We find that the rayed bean and snuffbox are presently in danger of extinction throughout their entire range, based on the immediacy, severity, and scope of the threats described above. Although there are ongoing attempts to alleviate some threats, there appear to be no populations without current significant threats and many threats are without obvious or readily available solutions. Therefore, on the basis of the best available scientific and commercial information, we propose listing the rayed bean and snuffbox as endangered in accordance with sections 3(6) and 4(a)(1) of the Act.

Under the Act and our implementing regulations, a species may warrant listing if it is endangered or threatened throughout all or a significant portion of its range. Threats to the rayed bean and snuffbox occur throughout their range. Therefore, we assessed the status of the species throughout their entire range. The threats to the survival of the species occur throughout the species' ranges and are not restricted to any particular significant portion of those ranges. Accordingly, our assessment and proposed determination applies to the species throughout their entire range.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. 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 (comprised of species experts, Federal and State agencies, non-government 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 Ohio Ecological Services Field Office (*see* **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribal, non-governmental 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 this species is listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost share grants for non-Federal landowners, the academic community, and nongovernmental organizations. Additionally, under section 6 of the Act, we would be able to grant funds to the States of Illinois, Indiana, Kentucky, Michigan, New York, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia for management actions promoting the conservation of the rayed bean and to the States of Alabama, Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Mississippi, Missouri, New York, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia, and Wisconsin for the conservation of the snuffbox. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants.*

Although the rayed bean and snuffbox 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 these species. Additionally, we invite you to submit any new information on these species whenever it becomes available and any information you may have for recovery planning purposes; if you submit information after the date listed in the **DATES** section above, you will need to send it to the street address provided in the **FOR FURTHER INFORMATION CONTACT** section.

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 being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with us on any action that is likely to jeopardize the continued existence of a proposed species 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 such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us.

Federal agency actions that may require conference or consultation as described in the preceding paragraph include the issuance of permits for reservoir construction, stream alterations, wastewater facility development, water withdrawal projects, pesticide registration, agricultural assistance programs, mining, road and bridge construction, and Federal loan programs. Activities will trigger consultation under section 7 of the Act if they may affect the rayed bean or snuffbox, or both species, addressed in this proposed rule.

Jeopardy Standard

Prior to and following listing and designation of critical habitat, if prudent and determinable, the Service applies an analytical framework for jeopardy analyses that relies heavily on the importance of core area populations to the survival and recovery of the species. The section 7(a)(2) analysis is focused not only on these populations but also on the habitat conditions necessary to support them.

The jeopardy analysis usually expresses the survival and recovery needs of the species in a qualitative fashion without making distinctions between what is necessary for survival and what is necessary for recovery. Generally, if a proposed Federal action is incompatible with the viability of the affected core area populations(s), inclusive of associated habitat conditions, a jeopardy finding is considered to be warranted, because of the relationship of each core area population to the survival and recovery of the species as a whole.

Section 9 Take

The Act and implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered and threatened wildlife. If we finalize listing of the rayed bean and snuffbox, these prohibitions would be applicable to the rayed bean and snuffbox. The prohibitions of section 9(a)(2) of the Act, codified at 50 CFR 17.21 for endangered wildlife, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt any of these), import or export, deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Further, it is illegal for any person to attempt to commit, to solicit another person to commit, or to cause to be committed, any of these acts. Certain exceptions apply to our agents and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. We codified the regulations governing permits for endangered species at 50 CFR 17.22. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, or for incidental take in the course of otherwise lawful activities.

It is our policy, 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 and associated regulations at 50 CFR 17.21. The intent of this policy is to increase public awareness of the effect of this proposed listing on proposed and ongoing activities within a species' range. We believe, based on the best available information, that the following actions will not result in a violation of the provisions of section 9 of the Act, provided these actions are carried out in accordance with existing regulations and permit requirements:

(1) Activities authorized, funded, or carried out by Federal agencies (*e.g.,* bridge and highway construction, pipeline construction, hydropower licensing, *etc.*), when such activities are conducted in accordance with the consultation and planning requirements for listed species under section 7 of the Act.

(2) Any action carried out for scientific research or to enhance the propagation or survival of the rayed bean or snuffbox that is conducted in

accordance with the conditions of a 50 CFR 17.22 permit.

(3) Any incidental take of rayed bean or snuffbox resulting from an otherwise lawful activity conducted in accordance with the conditions of an incidental take permit issued under 50 CFR 17.22. Non-Federal applicants may design a habitat conservation plan (HCP) for the species and apply for an incidental take permit. HCPs may be developed for listed species and are designed to minimize and mitigate impacts to the species to the greatest extent practicable.

We believe the following activities would be likely to result in a violation of section 9 of the Act; however, possible violations are not limited to these actions alone:

(1) Unauthorized killing, collecting, handling, or harassing of individual rayed bean or snuffbox, or both species, at any life stage.

(2) Sale or offer for sale of rayed bean or snuffbox in addition to delivering, receiving, carrying, transporting, or shipping in interstate or foreign commerce any rayed bean or snuffbox.

(3) Unauthorized destruction or alteration of the species' habitat (instream dredging, channelization, impoundment, streambank clearing, discharge of fill material) that actually kills or injures individual rayed bean or snuffbox by significantly impairing their essential behavioral patterns, including breeding, feeding, or sheltering.

(4) Violation of any discharge or water withdrawal permit within these species' occupied ranges that results in the death or injury of individual rayed bean or snuffbox by significantly impairing their essential behavioral patterns, including breeding, feeding, or sheltering.

(5) Discharge or dumping of toxic chemicals or other pollutants into waters supporting the species that actually kills or injures individual rayed bean or snuffbox by significantly impairing their essential behavioral patterns, including breeding, feeding, or sheltering.

We will review other activities not identified above on a case-by-case basis to determine whether they may be likely to result in a violation of section 9 of the Act. We do not consider these lists to be exhaustive, and provide them as information to the public.

You should direct questions regarding whether specific activities may constitute a future violation of section 9 of the Act to the Field Supervisor of the Service's Ohio Ecological Services Field Office (*see* **FOR FURTHER INFORMATION CONTACT** section). Requests for copies of regulations regarding listed species and inquiries about prohibitions and permits should be addressed to the U.S. Fish and Wildlife Service, Ecological Services Division, Henry Whipple Federal Building, 1 Federal Drive, Fort Snelling, MN 55111 (Phone 612–713–5350; Fax 612–713–5292).

Critical Habitat

Background

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

(i) 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

(I) Essential to the conservation of the species and

(II) That may require special management considerations or protection; and

(ii) 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.

"Conservation" is defined in section 3 of the Act as meaning the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against Federal agencies carrying out, funding, or authorizing the destruction or adverse modification of critical habitat. Section 7(a)(2) requires consultation on Federal actions that may affect critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner seeks or requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, Federal action agency's and the applicant's obligation is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

For inclusion in a critical habitat designation, the habitat within the geographical area occupied by the species at the time it was listed must contain the physical and biological features essential to the conservation of the species, and be included only if those features may require special management considerations or protection. Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (areas on which are found the physical and biological features (PBFs) laid out in the appropriate quantity and spatial arrangement for the conservation of the species). Under the Act and regulations at 50 CFR 424.12, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed only when we determine that those areas are essential for the conservation of the species and that designation limited to those areas occupied at the time of listing would be inadequate to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a

critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be required for recovery of the species.

Areas that are important to the conservation of the species, but are outside the critical habitat designation, will continue to be subject to conservation actions we implement under section 7(a)(1) of the Act. Areas that support populations are also subject to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available scientific information at the time of the agency action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Prudency Determination

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

There is currently no imminent threat of take attributed to collection or vandalism under Factor B (overutilization for commercial, recreational, scientific, or educational purposes) for the rayed bean or snuffbox, and identification of critical habitat is not expected to initiate such a threat. 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 include: (1) Triggering consultation under section 7(a)(2) of the Act, in new areas for actions in which there may be a Federal nexus where it would not otherwise occur because the species may not be present; (2) focusing conservation activities on the most essential habitat features and areas; (3) increasing awareness of important habitat areas among State or county governments, or private entities; and (4) preventing inadvertent harm to the species.

Critical habitat designation includes the identification of the physical and biological features of the habitat essential to the conservation of each species that may require special management and protection. As such, these designations will provide useful information to individuals, local and State governments, and other entities engaged in activities or long-range planning that may affect areas essential to the conservation of the species. Conservation of the rayed bean and snuffbox and essential features of their habitats will require habitat management, protection, and restoration, which will be facilitated by disseminating information on the locations and the key physical and biological features of those habitats. In the case of the rayed bean and snuffbox, these aspects of critical habitat designation would potentially benefit the conservation of the species. Therefore, since we have determined that the designation of critical habitat will not likely increase the degree of threat to these species and may provide some measure of benefit, we find that designation of critical habitat is prudent for the rayed bean and snuffbox.

Critical Habitat Determinability

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

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

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

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

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 to propose as critical habitat, we must consider those physical and biological features essential to the conservation of the species. 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, and rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distribution of a species.

We are currently unable to identify the physical and biological features essential for the conservation of the rayed bean and snuffbox because information on those features for these species is not known at this time. The apparent poor viability of the species' occurrences observed in recent years indicates that current conditions are not sufficient to meet the basic biological requirements of these species in many rivers. Since the rayed bean and snuffbox have not been observed for decades in many of their historical locations, and much of the habitat in which they still persist has been drastically altered, the optimal conditions that would provide the biological or ecological requisites of these species are not known. Although we can surmise that habitat degradation from a variety of factors has contributed to the decline of these species, we do not know specifically what essential physical or biological features of that habitat are currently lacking for the rayed bean and snuffbox.

Key features of the basic life history, ecology, reproductive biology, and habitat requirements of most mussels, including the rayed bean and snuffbox, are unknown. Species-specific ecological requirements have not been determined (for example, minimum water flow and effects of particular pollutants). Population dynamics, such as species' interactions and community structure, population trends, and population size and age class structure necessary to maintain long-term viability, have not been determined for these species. Of particular concern to both species is that many of the remaining rayed bean and snuffbox populations consist of very low densities, which limit our ability to investigate their population dynamics. Basics of reproductive biology for these species are unknown, such as age and size at earliest maturity, reproductive longevity, and the level of recruitment needed for species' survival and long-term viability. As we are unable to

identify many physical and biological features essential to the conservation of the rayed bean and snuffbox, we are unable to identify areas that contain these features. Therefore, although we have determined that the designation of critical habitat is prudent for the rayed bean and snuffbox, because the biological and physical requirements of these species are not sufficiently known, we find that critical habitat for the rayed bean and snuffbox is not determinable at this time.

Peer Review

In accordance with our policy, "Notice of Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities," that was published on July 1, 1994 (59 FR 34270), we will seek the expert opinion of at least three appropriate independent specialists regarding this proposed rule. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analysis. We will send copies of this proposed rule to the peer reviewers immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and the data that are the basis for our conclusions regarding the proposal to list rayed bean and snuffbox as endangered and our proposal regarding critical habitat for this species.

We will consider all comments and information we receive during the comment period on this proposed rule during preparation of a final rulemaking. Accordingly, our final decision may differ from this proposal.

Public Hearings

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 proposal in the **Federal Register** (*see* **DATES**). Such requests must be sent to the address shown in the **FOR FURTHER INFORMATION CONTACT** section. 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 accommodation, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Persons needing reasonable accommodation to attend and participate in a public hearing should contact the Ohio Ecological Services Field Office at 614–416–8993, ext. 22, as soon as possible. To allow sufficient time to process requests, please call no later than one week before the hearing date. Information regarding this proposed rule is available in alternative formats upon request.

Required Determinations

Clarity of 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:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the names 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.

Paperwork Reduction Act (44 U.S.C. 3501, et seq.)

This proposed rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. This rule will not impose new recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

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

We have determined that we do not need to prepare an environmental assessment, as defined under the authority of the National Environmental Policy Act of 1969, in connection with regulations adopted under section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited in this proposed rule is available on the Internet at *http://www.regulations.gov* or upon request from the Field Supervisor, Ohio Ecological Services Field Office (*see* **FOR FURTHER INFORMATION CONTACT** section).

Author

The primary author of this proposed rule is Angela Boyer of the Ohio Ecological Services Field Office (*see* **FOR FURTHER INFORMATION CONTACT** section).

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 follows:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding new entries for "Mussel, rayed bean" and "Mussel, snuffbox" in alphabetical order under CLAMS to the List of Endangered and Threatened Wildlife as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	

.

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
CLAMS							
*	*	*	*	*	*	*	
Mussel, rayed bean	*Villosa fabalis*	U.S.A. (IL, IN, KY, MI, NY, OH, PA, TN, VA, WV, WI).	NA	E	.....	NA	NA
*	*	*	*	*	*	*	
Mussel, snuffbox	*Epioblasma triquetra* ...	U.S.A. (AL, AR, IL, IN, IA, KS, KY, MI, MN, MS, MO, NY, OH, PA, TN, VA, WV, WI).	NA	E	.....	NA	NA
*	*	*	*	*	*	*	

* * * * *

Dated: October 15, 2010.

Gary D. Frazer,

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

[FR Doc. 2010–27413 Filed 11–1–10; 8:45 am]

BILLING CODE 4310–55–P

Federal Register

Tuesday,
November 2, 2010

Part V

The President

Notice of November 1, 2010—Continuation of the National Emergency With Respect to Sudan

Federal Register
Vol. 75, No. 211
Tuesday, November 2, 2010

Presidential Documents

Title 3—

The President

Notice of November 1, 2010

Continuation of the National Emergency With Respect to Sudan

On November 3, 1997, by Executive Order 13067, the President declared a national emergency with respect to Sudan, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706), to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States posed by the actions and policies of the Government of Sudan. On April 26, 2006, in Executive Order 13400, the President determined that the conflict in Sudan's Darfur region posed an unusual and extraordinary threat to the national security and foreign policy of the United States, expanded the scope of the national emergency to deal with that threat, and ordered the blocking of property of certain persons connected to the conflict. On October 13, 2006, the President issued Executive Order 13412 to take additional steps with respect to the national emergency and to implement the Darfur Peace and Accountability Act of 2006 (Public Law 109–344).

Because the actions and policies of the Government of Sudan continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States, the national emergency declared on November 3, 1997, as expanded on April 26, 2006, and with respect to which additional steps were taken on October 13, 2006, must continue in effect beyond November 3, 2010. Therefore, consistent with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to Sudan.

This notice shall be published in the *Federal Register* and transmitted to the Congress.

THE WHITE HOUSE,
November 1, 2010.

[FR Doc. 2010–27876
Filed 11–1–10; 1:15 pm]
Billing code 3195–W1–P

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Mount Stevens and Ted Stevens Icefield Designation Act (Oct. 18, 2010; 124 Stat. 3050)

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