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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL RESERVE SYSTEM

12 CFR Part 225

Regulation Y; Docket No. R–1397

RIN 7100–AD58

Conformance Period for Entities Engaged in Prohibited Proprietary Trading or Private Equity Fund or Hedge Fund Activities

AGENCY: Board of Governors of the Federal Reserve System ("Board").

ACTION: Final rule.

SUMMARY: The Board is adopting a final rule to implement the conformance period during which banking entities and nonbank financial companies supervised by the Board must bring their activities and investments into compliance with the prohibitions and restrictions on proprietary trading and relationships with hedge funds and private equity funds imposed by section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). Section 619 is commonly referred to as the "Volcker Rule." The final rule is similar to the proposal issued for comment in November 2010. The Board, however, has incorporated a number of changes to the final rule to address issues raised by public commenters, to reduce potential regulatory burdens, and to clarify application of the rule.

DATES: The final rule is effective on April 1, 2011.

FOR FURTHER INFORMATION CONTACT: Brian P. Knestout, Senior Attorney, (202) 452–2249, Jeremy R. Newell, Senior Attorney, (202) 452–3239, Christopher M. Paridon, Senior Attorney, (202) 452–3274, or Kieran J. Fallon, Associate General Counsel, (202) 452–5270, Legal Division; David K. Lynch, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Users of Telecommunication Device for Deaf (TDD) only, call (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

The Dodd-Frank Act was enacted on July 21, 2010.[1] Section 619 of the Dodd-Frank Act adds a new section 13 to the Bank Holding Company Act of 1956 ("BHC Act") (to be codified at 12 U.S.C. 1851) that generally prohibits banking entities [2] from engaging in proprietary trading or from investing in, sponsoring, or having certain relationships with a hedge fund or private equity fund.[3] The new section 13 of the BHC Act also provides that nonbank financial companies supervised by the Board that engage in such activities or have such investments shall be subject to additional capital requirements, quantitative limits, or other restrictions.[4] These prohibitions and other provisions of section 619 are commonly known, and referred to herein, as the "Volcker Rule."

The Board and several other agencies have responsibilities with respect to the Volcker Rule. As required by the Dodd-Frank Act, the FSOC recently issued a study of the Volcker Rule, which included several recommendations regarding the implementation of its prohibitions and restrictions.[5] As a general matter, authority for developing and adopting regulations to implement the prohibitions and restrictions of the Volcker Rule is divided between the Board, the Office of the Comptroller of the Currency ("OCC"), the Federal Deposit Insurance Corporation ("FDIC"), the SEC and the CFTC in the manner provided in section 13(b)(2) of the BHC Act.[6] The Board and these other agencies are directed to adopt implementing rules not later than 9 months after completion of the FSOC's study.[7] The restrictions and prohibitions of the Volcker Rule become effective 12 months after issuance of final rules by the agencies, or July 21, 2012, whichever is earlier.

The Board, however, is solely charged with adopting rules to implement the provisions of the Volcker Rule that provide a banking entity or a nonbank financial company supervised by the Board a period of time after the effective date of the Volcker Rule to bring the activities, investments, and relationships of the banking entity or company that were commenced, acquired, or entered into before the Volcker Rule's effective date into compliance with the Volcker Rule and the agencies' implementing regulations.[8] This period is intended to give markets and firms an opportunity to adjust to the Volcker Rule.[9]

In November 2010, the Board requested public comment on a proposed rule that would implement the conformance period provisions of the Volcker Rule.[10] The proposed rule included the general two-year conformance period available to all banking entities and nonbank financial companies supervised by the Board, as well as the provisions of the Volcker

[1] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

[2] The term "banking entity" is defined in section 13(h)(1) of the BHC Act, as amended by section 619 of the Dodd-Frank Act. *See* 12 U.S.C. 1851(h)(1). The term means any insured depository institution (other than certain limited-purpose trust institutions), any company that controls an insured depository institution, any company that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978 (12 U.S.C. 3106), and any affiliate or subsidiary of any of the foregoing.

[3] The Volcker Rule defines the terms "hedge fund" and "private equity fund" as an issuer that would be an investment company, as defined under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), but for section 3(c)(1) or 3(c)(7) of that Act, or any such similar funds as the appropriate Federal banking agencies, the Securities and Exchange Commission ("SEC"), and the Commodity Futures Trading Commission ("CFTC") may, by rule, determine should be treated as a hedge fund or private equity fund. *See* 12 U.S.C. 1851(h)(2).

[4] *See* 12 U.S.C. 1851(a)(2) and (f)(4). A "nonbank financial company supervised by the Board" is a nonbank financial company or other company that has been designated by the Financial Stability Oversight Council ("FSOC") under section 113 of the Dodd-Frank Act as requiring supervision and regulation by the Board on a consolidated basis because of the danger such company may pose to the financial stability of the United States.

[5] *See* FSOC, Study & Recommendations on Prohibitions on Proprietary Trading & Certain Relationships with Hedge Funds & Private Equity Funds (January 18, 2011), available at *http://www.treasury.gov/initiatives/Documents/Volcker%20sec%20%20619%20study%20final%201%2018%2011%20rg.pdf.*

[6] *See* 12 U.S.C. 1851(b)(2). The Secretary of the Treasury, as Chairperson of the FSOC, is responsible for coordinating the agencies' rulemakings under the Volcker Rule. *See id.* at § 1851(b)(2)(B)(ii).

[7] *See id.* at § 1851(b)(2)(A).

[8] *See id.* at § 1851(c)(6).

[9] *See* 156 Cong. Rec. S5898 (daily ed. July 15, 2010) (Statement of Senator Merkley).

[10] *See* 75 FR 72741 (Nov. 26, 2010).

Rule that allow the Board to extend, by rule or order, this two-year period by up to three, one-year periods.[11] In addition, the proposal implemented the special five-year extended transition period available for certain qualifying investments in hedge funds and private equity funds that are "illiquid funds."[12] The proposed rule also defined certain terms related to the conformance period, specified how an application or request for extension should be submitted, and identified the factors that the Board may consider when evaluating such a request. The public comment period on the proposed rule closed on January 10, 2011.

II. Overview of Comments

The Board received 12 comments on the proposed rule. Commenters included financial trade associations, banking entities, individuals, and a member of Congress. In general, commenters supported the proposed rule but recommended one or more changes to specific provisions of the proposal. A majority of the commenters focused on the 5-year extended transition period available to banking entities to the extent necessary to fulfill a contractual obligation in place on May 1, 2010, to take or retain an interest in a hedge fund or private equity fund that qualifies as an "illiquid fund" under the Volcker Rule. For example, some commenters suggested that the Board broaden its definition of "illiquid assets," which is used in determining whether a hedge fund or private equity fund is an illiquid fund. Others requested that the Board lower the proposed rule's requirement that at least 75 percent of a fund's assets be invested in "illiquid assets" (either as of May 1, 2010, or on a future date) in order for the fund to qualify for the extended transition period. Many commenters also asserted that the proposed rule's definition of when a banking entity has a "contractual obligation" to invest or remain invested in an illiquid fund was too narrow and would limit the number of hedge funds and private equity funds that could take advantage of the extended transition period for illiquid funds.

Some commenters also asked that the Board, in the final rule, address several aspects of the Volcker Rule that were not covered by the proposal. For instance, some commenters requested that the final rule state that section 13 of the BHC Act does not prohibit insurance companies from conducting their normal business operations, or does not prohibit foreign companies from engaging in prohibited proprietary trading in the securities of U.S. companies if such trades were booked outside of the United States.

Additionally, some commenters addressed the procedural aspects of the proposed rule governing the receipt and review of applications for an extension of the conformance period. For example, some commeters requested that the rule permit the Board to grant all possible extensions to a banking entity at a single time. Other commenters suggested that the final rule permit banking entities to submit a request for extension well in advance of the date an extension might be needed, and expressly provide for a standard time period for the Board to review any extension requests. The comments received on the proposed rule are discussed in greater detail in the following parts of this **SUPPLEMENTARY INFORMATION**.

III. Explanation of Final Rule

In developing this final rule, the Board has carefully considered the comments received on the proposal, as well as the language and legislative history of the Volcker Rule, and the Board's experience in supervising and regulating banking entities' trading activities and investments in, or relationships with, hedge funds and private equity funds. The Board also consulted with the Department of the Treasury, the OCC, the FDIC, the SEC, and the CFTC.

After this review, the Board has determined to adopt a final rule that is substantially similar to the proposed rule. However, in response to comments, the Board has modified the proposed rule in a number of respects. For example, the Board has—

- Expanded the conditions under which an asset may be considered an "illiquid asset" to include situations where an asset is subject to a contractual restriction on sale or redemption for a period of 3 years or more;
- Broadened the types of documents that may be considered in determining whether a hedge fund or private equity fund is "contractually committed" to principally invest in illiquid assets or whether a banking entity that has sponsored a hedge fund or private equity fund is "contractually obligated" to invest or remain invested in the fund;
- Extended, from 90 days to 180 days, the number of days in advance a request for an extension of the conformance period by a specific company must be filed with the Board; and
- Clarified that the Board expects to act on extension requests within 90 days from receipt of a complete record.

These changes as well as the Board's responses to the comments received are discussed in greater detail below.

The final rule does not address definitional or other aspects of the Volcker Rule that are subject to, or more appropriately addressed as part of, the separate interagency rulemaking to be conducted under section 13(b)(2) of the BHC Act.[13] For example, the final rule incorporates without modification the definitions of "banking entity," "hedge fund," and "private equity fund" contained in the Dodd-Frank Act. In addition, the final rule does not address several topics suggested by commenters—such as, for example, the general application of the Volcker Rule to banking entities that are insurance companies or foreign entities, or whether banking entities should also have an extended period of time to conform investments in funds that do not qualify for the statute's extended transition period for illiquid funds—that are appropriately addressed through the coordinated interagency rulemaking process provided for in section 13(b)(2) of the BHC Act.[14] The Board expects to review the final rule after completion of the interagency rulemaking process under section 13(b)(2) to determine whether modifications or adjustments to the rule are appropriate in light of the final rules adopted under that section.

A. General Conformance Period

The prohibitions and restrictions of the Volcker Rule do not take effect until the earlier of July 21, 2012, or 12 months after the issuance of final regulations by the rulewriting agencies under section 13(b)(2) of the BHC Act. However, in order to allow the markets and firms to adjust to these prohibitions and restrictions, the Volcker Rule, by its terms and without any action by the Board, provides banking entities and nonbank financial companies supervised by the Board an additional conformance period during which the entity or company can wind down, sell, or otherwise conform its activities, investments, and relationships to the requirements of the Volcker Rule. Under the statute, this conformance period generally extends through the date that is 2 years after the date on which the prohibitions become effective or, in the case of a nonbank financial company supervised by the Board, 2 years after the company is designated by the FSOC for supervision by the Board, if that period is later.

[11] 12 U.S.C. 1851(c)(2).

[12] 12 U.S.C. 1851(c)(3), (c)(4), and (h)(7).

[13] *See id.* at § 1851(b)(2).

[14] *See, e.g.,* 12 U.S.C. 1851 (d)(1)(F), (H), (I), and (J).

Section 225.181(a) of the final rule implements these provisions. In addition, section 225.181(a)(2) of the final rule clarifies how the conformance period applies to a company that first becomes a banking entity after July 21, 2010 (the date of enactment of the Dodd-Frank Act), because, for example, the company acquires or becomes affiliated with an insured depository institution for the first time. In these circumstances, the restrictions and prohibitions of the Volcker Rule would first become effective with respect to the company only at the time it became a banking entity. Accordingly, the final rule (like the proposal) provides that such a company generally must bring its activities, investments, and relationships into compliance with the requirements of the Volcker Rule before the later of: (i) The date the Volcker Rule's prohibitions would otherwise become effective with respect to the company under section 225.181(a)(1) of the rule; or (ii) 2 years after the date on which the company first becomes a banking entity. Thus, for example, a company that first becomes a banking entity on January 1, 2015, would have until January 1, 2017, to bring its activities and investments into conformance with the requirements of section 13 of the BHC Act and its implementing regulations. In this way, the final rule provides comparable treatment to "new" banking entities and nonbank financial companies supervised by the Board, and is consistent with the manner in which newly established bank holding companies are treated for purposes of the nonbanking restrictions under section 4 of the BHC Act.[15]

B. Extension of Conformance Period

The Volcker Rule also permits the Board, by rule or by order, to extend the generally available two-year conformance period by up to three additional one-year periods, for an aggregate conformance period of 5 years.[16] In order to grant any extension, the Board must determine that the extension is consistent with the purposes of the Volcker Rule and would not be detrimental to the public interest.[17] The process and standards for obtaining a one-year extension are discussed in Part III.E of this

SUPPLEMENTARY INFORMATION.

Several commenters requested that the Board modify the rule to allow the Board to grant a banking entity at one time all three of the one-year extensions potentially available under section 13(c)(2) of the BHC Act.[18] One commenter, however, suggested that multiple extensions of the conformance period would not be in keeping with the purpose of the Volcker Rule and urged the Board to restrict extensions to a single one-year general extension (with potentially one additional one-year extension in the case of an illiquid fund investment). Section 13(c)(2) of the BHC Act specifically provides that the "Board may, by rule or order, extend [the general two-year conformance period] *for not more than one year at a time,*" with a maximum of three, one-year extensions.[19] Accordingly, the Board has modified the rule to clarify that the Board may only grant up to three separate one-year extensions of the general conformance period (and may not grant all three one-year extensions at a single time).

Several commenters requested that the Board clarify that the final rule provides a conformance period for both investments in hedge funds and private equity funds and activities prohibited under the Volcker Rule. The general conformance period (including any extension thereof) is available to both banking entities and nonbank financial companies supervised by the Board for activities commenced prior to the Volcker Rule's effective date and applies to any activities, investments and relationships that may be prohibited or restricted by the Volcker Rule.

C. Extended Transition Period for Illiquid Funds

Section 619 of the Dodd-Frank Act includes a special provision to address the difficulty banking entities may experience in conforming investments in illiquid funds. This provision expressly permits a banking entity to request the Board's approval for an additional extension of up to 5 years in order to permit the banking entity to meet contractual commitments in place as of May 1, 2010, to a hedge fund or private equity fund that qualifies as an "illiquid fund." Specifically, the statute provides that the Board may extend the period during which a banking entity may take or retain an ownership interest in, or otherwise provide additional capital to, an illiquid fund, but only if the extension is necessary to allow the banking entity to fulfill a contractual obligation that was in effect on May 1, 2010.[20] The statute also provides that any extended transition period granted with respect to an illiquid fund automatically terminates on the date during any such extension on which the banking entity is no longer under a contractual obligation to invest in, or provide capital to, the illiquid fund.

As provided in the Volcker Rule, the Board may grant a banking entity only one extended transition period with respect to any illiquid fund, which may not exceed 5 years.[21] Any extended transition period granted may be in addition to the conformance period available under other provisions of the Volcker Rule.[22] The purpose of this extended transition or "wind-down" period for investments in an illiquid fund is to minimize disruption of existing investments in illiquid funds and permit banking entities to fulfill existing obligations to illiquid funds while still steadily moving banking entities toward conformance with the prohibitions and restrictions of the Volcker Rule.[23]

Section 225.181(b) of the final rule implements the statute's extended transition period for illiquid funds.[24] As a general matter, and consistent with the terms of the Volcker Rule, the final rule

[15] *See* 12 U.S.C. 1843(a)(2).

[16] 12 U.S.C. 1851(c)(2).

[17] *Id.*

[18] If the extension request pertained to an investment in an illiquid fund, some commenters also requested that the rule allow the Board, at the same time, to also approve a five-year extended transition period for the investment.

[19] *See* 12 U.S.C. 1851(c)(2) (emphasis added).

[20] *Id.* at § 1851(c)(3)(A).

[21] The statute provides that a banking entity may apply for a single extension with respect to an illiquid fund, and that such extension may not exceed 5 years. In light of the statutory language, and as noted in the notice of proposed rulemaking, the Board retains the right to grant an extended transition period of less than 5 years if, based on all the facts and circumstances, it determines a limited extension is appropriate.

[22] *Id.* at § 1851(c)(3)(B).

[23] *See* 156 Cong. Rec. S5899 (daily ed. July 15, 2010) (statement of Sen. Merkley).

[24] Section 13(h)(7)(B) of the BHC Act provides that, for purposes of the definition of an "illiquid fund," the term "hedge fund" shall not include a "private equity fund," as such term is used in section 203(m) of the Investment Advisors Act of 1940 (15 U.S.C. 80b–3(m))." *See* 12 U.S.C. 1851(h)(7)(B). However, section 203(m) of the Investment Advisors Act, as added by section 408 of the Dodd-Frank Act, does not contain a definition of, nor does it use the term, "private equity fund." Moreover, as the Board noted in the proposal, Congress' intent in adopting this exclusion is unclear. For example, a fund that invests primarily in nonpublic portfolio companies, which are commonly referred to in the investment community as "private equity funds," appears to be the type of fund that the Volcker Rule intended to potentially qualify as an "illiquid fund." The Board does not believe that it is necessary to resolve the ambiguity surrounding this provision because the exclusion would not have any effect on the ability of a fund to qualify as an illiquid fund. This is because the Volcker Rule defines a "hedge fund" and a "private equity fund" synonymously. 12 U.S.C. 1851(h)(2). Thus, any illiquid fund that would have been excluded from the definition of "hedge fund" because it met the missing definition of a "private equity fund" in the Investment Advisors Act could still qualify for the extended conformance period afforded to illiquid funds as a "private equity fund" under the Volcker Rule itself.

requires that a banking entity's investment in, or relationship with, a hedge fund or private equity fund must meet two sets of criteria to qualify for the statute's extended transition period. The first set of criteria focuses on the nature, assets and investment strategy of the hedge fund or private equity fund itself. The second set of criteria focuses on the terms of the banking entity's investment in the hedge fund or private equity fund.

1. Fund-Focused Criteria

As noted above, the extended transition period under section 13(c)(3) of the BHC Act is available only with respect to investments made in an "illiquid fund," and then only with respect to investments in or obligations to these funds made as of May 1, 2010. In accordance with the language of the Volcker Rule, the final rule retains the definition of an "illiquid fund" to mean a hedge fund or private equity fund that: (i) As of May 1, 2010, was principally invested in illiquid assets, *or* was invested in, and contractually committed to principally invest in, illiquid assets; and (ii) makes all investments pursuant to, and consistent with, an investment strategy to principally invest in illiquid assets.[25] In determining how to implement the definition of an illiquid fund, the Board has considered, among other things, the terms of the statute, as well as public comments submitted on the proposed rule, information (including confidential supervisory information) concerning the terms of investments in hedge funds or private equity funds, the characteristics of liquid and illiquid assets, and the ability of a fund to divest assets held by the fund.

a. "*Illiquid Asset.*"

The final rule, like the proposal, generally defines an "illiquid asset" as any asset that is not a liquid asset. In turn, the final rule defines "liquid assets" to include:

- Cash or cash equivalents;
- Any asset that is traded on a recognized, established exchange, trading facility or other market on which there exist independent, bona fide offers to buy and sell so that a price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined for the asset almost instantaneously;
- Any asset for which there are bona fide, competitive bid and offer quotations in a recognized inter-dealer quotation system or similar system or for which multiple dealers furnish bona fide, competitive bid and offer quotations to other brokers and dealers on request;
- Any asset the price of which is quoted routinely in a widely disseminated publication that is readily available to the general public or through an electronic service that provides indicative data from real-time financial networks;
- Any asset with an initial term of one year or less and the payments on which at maturity may be settled, closed-out, or paid in cash or one or more other liquid assets described above; and
- Any other asset that the Board determines, based on all the facts and circumstances, is a liquid asset.[26]

These standards are designed to capture the wide range of instruments and assets (or their equivalents) that one actively or routinely trades on markets or trading facilities, or for which bid, offer or price quotations are widely available. For example, these standards would treat as a liquid asset: (i) Equity and debt securities, derivatives, and commodity futures traded on a registered securities exchange, board of trade, alternative trading system, electronic trading platform or similar market that provides independent, bona fide offers to buy and sell; (ii) assets traded on an electronic inter-dealer quotation system, such as OTC Bulletin Board or the system maintained by PINK OTC Markets, Inc., as well as over-the-counter derivatives, debt securities (such as corporate bonds), and syndicated commercial loans for which active inter-dealer markets exist; and (iii) financial instruments for which indicative price data is supplied by an electronic service, such as Markit Group Limited.

The standards contained in the second, third, and fourth standards above are based on existing standards in the Federal banking and securities laws that are designed to identify securities that are liquid and may be sold promptly at a price that is reasonably related to its fair value. Specifically, the second standard above is based in part on the SEC's definition of securities for which a "ready market" exists for purposes of the net capital rules applicable to broker-dealers under the Securities Exchange Act of 1934 ("Exchange Act").[27] Similarly, the third standard above is based, in part, on the actions regularly taken by a "qualified OTC market maker" as defined in the SEC's Rule 3b–8, with respect to securities under the Exchange Act.[28] The fourth standard above is based, in part, on the criteria used to identify whether a security or other asset is a "marketable security" or a "liquid asset" for purposes of the Board's Regulation W governing transactions between member banks and their affiliates.[29] In each instance, the Board has modified the standard as incorporated into the final rule to reflect the broader range of financial instruments (including derivatives) or other assets that may be held by a hedge fund or private equity fund and that should be considered "liquid" if traded or quoted in the manner described.

The fifth standard is designed to capture instruments with a relatively short (one year or less) duration and that can be monetized or converted at maturity into a liquid asset. In light of these features, the Board believes it is appropriate to treat such instruments as liquid assets for purposes of the Volcker Rule's conformance period. The final rule recognizes that there may be situations where other, non-enumerated assets may be liquid even though they are not included in the standards contained in sections 225.181(h)(1)–(5) of the final rule. In order to address these situations, the Board has expressly retained the ability to determine that any other asset is a liquid asset, based on all the facts and circumstances.

On the other hand, consistent with the language of the Volcker Rule, the definition of illiquid assets in the final rule should generally encompass investments made by hedge funds or private equity funds in privately-held portfolio companies, real estate (other than those made through publicly traded REITs), and venture capital opportunities, as well as investments in other hedge funds or private equity funds where such investments do not qualify as liquid assets.[30] The Volcker Rule specifically refers to portfolio company investments, real estate investments, and venture capital investments as examples of the types of investments that should normally be

[25] 12 CFR 225.180(f).

[26] 12 CFR 225.180(h).

[27] *See* 15 CFR 240.15c3–1(c)(11)(i).

[28] *See* 15 CFR 240.3b–8(a).

[29] *See* 12 CFR 223.42(e) and (f)(5).

[30] Some commenters requested that the Board specifically include in the definition of "illiquid asset" any investment in real estate or a portfolio company and venture capital investments. While the Board agrees that such investments are typically illiquid, the Board does not believe it appropriate to include as illiquid assets all investments that potentially could be characterized as a real estate, portfolio company, or venture capital investment. For example, the Board believes that an investment in the equity securities of a small or recently established company should be considered a liquid asset for purposes of the Volcker Rule if such equity securities are traded on a national security exchange.

considered illiquid assets for these purposes.[31]

In addition, the final rule, like the proposed rule, provides that an asset—including a liquid asset such as a security—may be considered an "illiquid asset" if, because of statutory or regulatory restrictions applicable to the hedge fund, private equity fund or asset, the asset cannot be offered, sold, or otherwise transferred by the hedge fund or private equity fund to a person that is unaffiliated with the banking entity. This exception to the general "liquid asset" definition recognizes that funds frequently acquire assets that are normally liquid in transactions that cause the asset to be subject to one or more statutory or regulatory restrictions under the Federal securities laws that temporarily prohibit the transferability or resale of the security. For example, hedge funds or private equity funds often acquire equity securities in private transactions that result in the security being subject to restrictions on resale (such as under Rule 144A of the Securities Act of 1933).[32] Several commenters requested that the final rule also permit an asset to be an illiquid asset due to contractual restrictions on sale or transfer (in addition to statutory or regulatory restrictions). In response to comments, the Board has modified the final rule to provide that an asset may be considered an illiquid asset if contractual restrictions applicable to the hedge fund, private equity fund or asset prohibit the fund from offering, selling, or otherwise transferring the asset to a person that is unaffiliated with the relevant banking entity for a period of 3 or more years.

Similarly, the proposed rule also provided that an asset would be considered illiquid only for so long as the relevant statutory or regulatory restriction was applicable. In light of the foregoing, as well as the forward-looking nature of the "principally invested" and "contractually committed" to principally invest in illiquid assets tests discussed below, the Board has removed those provisions of the proposal. Accordingly, assets subject to the type of statutory, regulatory, or contractual restrictions specified in the final rule would generally be considered illiquid assets for purposes of the Volcker Rule. However, because these restrictions may lapse at a future date (including prior to the point in time when a banking entity submits its request for an extended transition period), the final rule has been modified to specifically provide that, in connection with its review of a banking entity's request for an extended transition period, the Board will consider the extent to which the fund's current assets are no longer illiquid (*e.g.* due to the lapse of applicable restrictions on an investment because a previously illiquid venture capital or portfolio company investment has become liquid, such as through the initial public offering of the company's stock).

Some commenters requested that the Board broaden the definition of "illiquid assets" to specifically include assets that would otherwise meet the rule's definition of a liquid asset, but that the relevant fund may have difficulty selling (or selling at a price the fund believes to be reasonable) because the size of the fund's position in the security or instrument is large relative to daily trading volume in the security or instrument or the outstanding number of securities or instruments of the same class or type. Some commenters also requested that the rule provide the Board flexibility to determine, on a case-by-case basis, that an asset that otherwise meets the definition of a liquid asset was illiquid. Similarly, some commenters asked that the rule specifically provide that a liquid asset could be considered illiquid due to adverse market conditions that might make it difficult for the fund to sell the security or instrument or sell it at a price the fund believes is reasonable.

The Board recognizes that market conditions (including trading volumes) at the time a security or instrument is being sold may have a material effect on the price of the security or instrument. However, by including only investments in portfolio companies, real estate investments, and venture capital investments as examples of illiquid assets, the Volcker Rule itself suggests that the term "illiquid asset" was intended to encompass only those types of investments that are illiquid by their nature, rather than those that may be illiquid due only to prevailing market conditions or the size of a particular fund's holdings of the security or instrument. This intent is reinforced by the fact that the statute requires that a banking entity determine whether a hedge fund or private equity fund is an illiquid fund as of May 1, 2010.[33] If the status of an investment by a fund as a liquid or illiquid asset was dependent on market conditions at a future date, it would be difficult or impossible for banking entities and the Board to determine which funds qualify as illiquid funds and, potentially, all hedge funds and private equity funds could qualify as illiquid funds. The statute provides a general conformance period of up to 5 years for any asset, which should assist banking entities in transitioning large positions or assets to the requirements of the Volcker Rule. Moreover, as discussed in Part III.E below, for those funds that do qualify as illiquid funds, the Board may consider market conditions, as well as the actions taken by the banking entity to divest the impermissible investment, in determining whether to grant up to a 5-year extended transition period with respect to the fund. For these reasons, the Board has not modified the rule to allow an asset to be considered illiquid based on market conditions or the absolute or relative size of a fund's holdings.

b. "*Principally invested.*"

The statute's fund-related criteria also require that the hedge fund or private equity fund either (1) have been principally invested in illiquid assets as of May 1, 2010, or (2) have been invested to some degree in illiquid assets and contractually committed to principally invest in illiquid assets as of such date. In addition, in either case, the fund must make all of its investments pursuant to, and consistent with, an investment strategy to principally invest in illiquid assets. The proposed rule provided that a hedge fund or private equity fund would be considered to be "principally invested" in illiquid assets if at least 75 percent of the fund's consolidated total assets are, or were expected to be, comprised of illiquid assets or risk-mitigating hedges entered into in connection with, and related to, individual or aggregated positions in, or holdings of, illiquid assets. The proposal allowed a fund to count risk-mitigating hedging positions that are related to the fund's holdings of illiquid assets towards the 75 percent asset test because such positions are, by definition, associated with the fund's illiquid holdings.

Commenters supported the inclusion of risk-mitigating hedging positions related to illiquid assets in the determination of whether a fund is "principally invested" in illiquid assets.[34] However, many commenters asserted that the proposed 75 percent threshold for a fund to be principally invested in illiquid assets was too high and requested that a lower threshold—no higher than approximately 50 percent—be included in the final rule. Many of these commenters noted that

[31] 12 U.S.C. 1851(h)(7)(A)(i)

[32] *See* 15 CFR 230.144a.

[33] 12 U.S.C. 1851(h)(7)(A)(i).

[34] The Board expects to interpret the language concerning risk-mitigating hedges consistent with the manner in which such language is implemented through the rulemaking process conducted under section 13(b)(2) of the BHC Act.

the Board had previously interpreted the phrase "engaged principally" in section 20 of the Glass-Steagall Act (previously codified at 12 U.S.C. 377) to mean between 5 percent and 25 percent of the relevant firm's revenue.[35] On the other hand, one commenter asserted that the 75 percent test was appropriate.

The Board continues to believe that 75 percent is an appropriate threshold for determining whether a fund is "principally invested" in illiquid assets for purposes of the Volcker Rule. As noted in the proposed rule, many types of hedge funds and private equity funds have investment strategies that focus almost exclusively on one type of illiquid assets, such as real estate or start-up companies (including new or emerging companies in the technology, life sciences, alternative energy, or "clean tech" areas).[36] These types of hedge funds and private equity funds typically request capital contributions from their investors only when particular investment opportunities have been identified and hold only a small portion of their assets in cash or other liquid assets (other than during brief periods pending the investment of capital or the distribution of proceeds from the sale of an investment). The Board continues to believe that by limiting the availability of the extended transition period to hedge funds or private equity funds that "principally invest" in and have an investment strategy to principally invest in illiquid assets, such as real estate, nonpublic portfolio companies, and venture capital opportunities, Congress appears to have intended the extended transition period to be available to those types of funds that principally focus and direct their capital towards investments in illiquid assets. Moreover, the Volcker Rule's extended transition period is available only to banking entities that are contractually obligated to invest or remain invested in the fund. Funds that have (or expect to have) a substantial majority of their investments in illiquid assets are more likely to prohibit investors from withdrawing their investments prior to the expiration of the general conformance period under the Volcker Rule (which, as noted above, may potentially extend to 2017).

As the courts have recognized, statutory terms must be read in light of the purposes of the relevant statutory provision and, thus, the same or similar terms may appropriately be interpreted differently when used in different acts.[37] The Board notes, moreover, that while commenters requested a lower threshold, commenters did not provide specific examples of funds that would potentially satisfy the "principally invested" asset test if it was set at 50 percent as opposed to 75 percent or supporting explanations as to why treating such funds as illiquid funds would be more consistent with the purposes of the Volcker Rule.

As noted above, by the terms of the statute, a fund qualifies as an illiquid fund if, as of May 1, 2010, it (i) was "principally invested in illiquid assets," or (ii) was invested in illiquid assets to some degree and contractually committed to principally invest in illiquid assets. In addition, the fund must actually make all of its investments (including investments made after May 1, 2010,) pursuant to and consistent with an investment strategy to principally invest in illiquid assets.[38]

The final rule provides that the determination of whether a fund was "principally invested" in illiquid assets as of May 1, 2010, must be made based on the fund's financial statements prepared in accordance with U.S. Generally Accepted Accounting Principles ("GAAP") or other applicable accounting standards. Several commenters noted that funds often prepare their financial statements at the end of each calendar quarter and, thus, may not have financial statements dated as of May 1, 2010. In recognition of this, a banking entity may use a fund's most recent financial statements prepared under GAAP or other appropriate accounting standards as of any date between February 28, 2010, and May 1, 2010, to determine whether the fund was principally invested in illiquid assets as of May 1, 2010. Thus, if a fund prepares financial statements at the end of each calendar quarter, the banking entity could use the fund's financial statements as of March 30, 2010, to determine whether the fund was principally invested in illiquid assets as of May 1, 2010 (assuming the fund did not prepare additional financial statements between March 30 and May 1, 2010).

Under the proposed rule, a fund would have been considered to be "contractually committed to principally invest" in illiquid assets as of May 1, 2010, if the fund's organizational documents (such as the limited partnership agreement in the case of a fund organized in this manner), or other documents that constitute a contractual obligation of the fund (such as a binding side letter agreement entered into with investors) that was in effect as of May 1, 2010, provided for the fund to be principally invested in illiquid assets. The proposed rule would have required that any such contractual commitments require the fund to be principally invested in illiquid assets during the period beginning on the date when capital contributions are first received by the fund for the purpose of making investments and ending on the fund's expected termination date. Additionally, the proposed rule provided that a fund would be considered to have an "investment strategy to principally invest" in illiquid assets if the fund either: (i) markets or holds itself out to investors as intending to principally invest in illiquid assets; or (ii) has a documented investment policy of principally investing in illiquid assets.

The Board has made several changes to the corresponding provisions of the final rule in response to comments received on the proposal. First, the Board has modified the final rule to provide that, in determining whether a fund is contractually committed to principally invest, or has an investment strategy to principally invest, in illiquid assets, a banking entity may take into account written representations contained in the fund's offering documents regarding its investment obligations and strategy (in addition to the fund's organizational documents). Funds typically are bound to comply with any written representations contained in the fund's private placement memorandum or other offering documents and a fund's failure to do so may subject the fund to liability under the Federal securities laws.[39]

Second, the final rule has been modified so that a fund will be

[35] *Revenue Limit on Bank-Ineligible Activities of Subsidiaries of Bank Holding Companies Engaged in Underwriting and Dealing in Securities,* 61 FR 68750 (Dec. 30, 1996); *see also J.P. Morgan & Co., Inc., The Chase Manhattan Corp., Bankers Trust New York Corp., Citicorp, and Security Pacific Corp.,* 75 Federal Reserve Bulletin 192 (1989); *Citicorp, J.P. Morgan & Co., and Bankers Trust New York Corp.,* 73 Federal Reserve Bulletin 473 (1987).

[36] Accordingly, institutional investors, such as pension plans and endowments, that seek exposure to different types of assets typically invest in a range of different types of hedge funds or private equity funds to obtain diversification across asset classes.

[37] *See Environmental Defense* v. *Duke Energy Corp.,* 549 U.S. 561, 575 (2007); *see also U.S.* v. *Cleveland Indians Baseball Co.,* 532 U.S. 200, 213 (2001); *Robinson* v. *Shell Oil Co.,* 519 U.S. 337, 343–344 (1997).

[38] *See* 12 U.S.C. 1851(h)(7)(i) and (ii).

[39] *See, e.g.,* 17 CFR 240.10b–5. Some commenters requested that the Board provide that a fund is "contractually committed" to principally invest in illiquid assets if that was consistent with the reasonable expectations of investors in the fund. The Board has not modified the rule in this manner because such expectations may not represent a legally binding obligation of the fund and would be difficult to verify, thus potentially allowing evasions of the Volcker Rule.

considered "contractually committed to principally invest" in illiquid assets if the fund's organizational documents or offering documents provide for the fund to be principally invested in illiquid assets at all times other than during limited temporary periods. Some commenters noted that, after its initial pre-investment organizational period, an illiquid fund may naturally experience certain limited periods of time when more than 25 percent of its assets may be in liquid assets, such as when investments are exited and capital has not yet been reinvested or distributed to investors.

Several commenters also asked that the Board clarify when the determination of whether a fund is "contractually committed to principally invest" in illiquid assets must be made and how such determination should be made with respect to investments not yet made. The Volcker Rule expressly provides that the determination of whether a fund is "contractually committed to principally invest" in illiquid assets is to be made "as of May 1, 2010." [40] Thus, a fund that was contractually committed to principally invest in illiquid assets on May 1, 2010, would meet this prong of the test to be an illiquid fund.

In considering whether a hedge fund or private equity fund's organizational documents, marketing materials, or investment policy provide for the fund to principally invest in illiquid assets, banking entities should consider whether the assets to be acquired by the fund (as specified in such materials) are of the type and nature that would make the assets "illiquid assets" or "liquid assets" for purposes of the rule. For example, if a fund's investment strategy provides for the fund to primarily invest in publicly traded stocks or OTC derivatives that are regularly bought and sold in the inter-dealer market, the fund would not be considered to have an investment strategy to principally invest in illiquid assets. This would be the case even if the fund's investment strategy did not indicate that the assets acquired by the fund must be traded on a recognized exchange, trading facility, or market of the type described in section 225.180(h)(2) or quoted on inter-dealer systems of the type described in section 225.180(h)(3). On the other hand, a fund generally would be considered to have an investment policy of principally investing in illiquid assets if the fund's organizational documents or offering materials provide for the fund to invest in the equity of early-stage nonpublic companies, even if the fund's documents do not specify that the equity of such companies must not be traded or quoted in the manner described in section 225.180(h)(2)–(4). This would be true even if such investments may later be converted into publicly traded securities of the company (such as, for example, in connection with an initial public offering of the company) in order to facilitate the fund's sale of the investment.

2. Criteria Focused on the Banking Entity's Investment

Besides meeting the criteria described above, a banking entity's interest in a hedge fund or private equity fund may qualify for the extended transition period in section 13(c)(3) of the BHC Act only if the banking entity's retention of that ownership interest in the fund, or provision of additional capital to the fund, is necessary to fulfill a contractual obligation of the banking entity that was in effect on May 1, 2010.[41] This statutory restriction complements and reinforces the fund-related criteria discussed above because a fund that is principally invested in liquid assets is unlikely to require its investors to commit to remaining invested in the fund for, or provide additional capital over, the extended period of time covered by the Volcker Rule's extended transition period.

The proposed rule provided that a banking entity would be considered to have a "contractual obligation" to remain invested in a fund only if the banking entity, under the contractual terms of its equity, partnership, or other ownership interest in the fund or other contractual arrangements with the fund that were in effect as of May 1, 2010, is prohibited from both: (i) Redeeming all of its equity, partnership, or other ownership interests in the fund; and (ii) selling or otherwise transferring all such ownership interests to a person that is not an affiliate of the banking entity. Similarly, the proposed rule specified that a banking entity has a contractual obligation to provide additional capital to an illiquid fund only if the banking entity is required, under the contractual terms of its equity, partnership, or other ownership interest in the fund or other contractual arrangements with the fund (such as a side letter with the fund that is binding on the banking entity) that were in effect as of May 1, 2010, to provide additional capital to the fund. The proposal also provided that either of the contractual obligations described above will be considered not to impose a contractual obligation to invest or remain invested for purposes of the Volcker Rule if: (i) The obligation may be terminated by the banking entity or any of its subsidiaries or affiliates; or (ii) the obligation may be terminated with the consent of other persons unless the banking entity and its subsidiaries and affiliates have used their reasonable best efforts to obtain such consent and such consent has been denied.

The Board received a number of comments on these aspects of the proposal. For example, some commenters noted that a banking entity's contractual obligation to remain invested in a fund may be subject to one or more contractual provisions whereby the obligation may be excused or otherwise terminated if the banking entity's compliance with the obligation would cause, or would be reasonably likely to cause, the banking entity or the fund to be in violation of applicable laws or regulations (so-called "regulatory-out" provisions). Commenters requested that the final rule permit a banking entity to qualify for the extended transition period and remain invested in an illiquid fund despite such regulatory-out provisions. These commenters asserted that otherwise the purpose of the extended transition period would not be fulfilled because those banking entities that exercised prudence in obtaining regulatory outs in their agreements with illiquid funds would be forced to exit these investments and could not take advantage of the Volcker Rule's extended transition period for illiquid funds. These commenters also asserted that such forced sales could have adverse consequences on the banking entity, other investors in the fund, or the markets for illiquid assets.

In addition, some commenters requested that the Board strike the provisions of the final rule that provide that the extended transition period automatically terminates upon expiration of the banking entity's contractual obligation to remain invested in, or provide capital to, an illiquid fund. One commenter specifically requested that the final rule provide a 6-month "grace period" which would allow a banking entity to conform its investment in and relationship with an illiquid fund upon termination of the extended transition period. Several commenters also requested that the final rule allow a banking entity to use "commercially reasonable efforts" instead of "reasonable best efforts" to obtain any consents or approvals necessary to terminate the banking entity's contractual obligation to a fund, and allow the banking entity to remain

[40] 12 U.S.C. 1851(h)(7)(A)(i).

[41] 12 U.S.C. 1851(c)(3)(A).

invested so long as such efforts are not successful.

The Board has carefully considered these comments. The plain language of the Volcker Rule permits a banking entity to potentially receive an extended transition period with respect to an investment in an illiquid fund only if and to the extent necessary to fulfill a contractual obligation that was in effect on May 1, 2010.[42] Moreover, the Volcker Rule specifically provides that any extended transition granted by the Board will automatically, by operation of law, terminate on the date on which the contractual obligation to invest in the illiquid fund terminates.[43]

If, pursuant to the terms of its obligation in effect on May 1, 2010, a banking entity has the contractual right to terminate its investment or commitments to an illiquid fund because such investments would be prohibited by the Volcker Rule after the expiration of the general conformance period (and any extensions thereof), then an extended transition period would not be necessary to fulfill the banking entity's contractual obligation to the fund because the banking entity could legally withdraw from its investments or commitments without violating its contractual obligation at the end of the general conformance period (and any extensions thereof). Thus, the Board does not believe the statute permits it to grant an extended transition period to a banking entity if its contractual obligation in place on May 1, 2010, permits the banking entity to terminate those obligations because they would violate the Volcker Rule after the end of the general conformance period (and any extensions thereof).[44]

Whether a banking entity has the right to withdraw its investments or terminate its obligations to an illiquid fund based on the contractual provisions in effect on May 1, 2010, will depend on the specific terms of those obligations. For example, if those obligations provide the banking entity the right and ability to redeem or sell its investment if the banking entity determines that continued ownership of the investment would violate the Volcker Rule, the banking entity must exercise that right no later than the end of the Volcker Rule's general conformance period and any extensions thereof and should begin to plan for such actions. In some instances, however, the banking entity's right or ability to redeem or sell its investments under a regulatory-out provision pertaining to its obligations in effect as of May 1, 2010, may be dependent on the consent of an unaffiliated party (such as the general partner or other investors of the fund).[45] In such circumstances, the banking entity and its affiliates must use their reasonable best efforts to obtain such consent.[46] The Board will consider whether a banking entity and its affiliates have used their reasonable best efforts to obtain the unaffiliated party's consent in determining whether to grant the banking entity an extended transition period with respect to the investment.[47] For example, the Board will consider whether the banking entity used its reasonable best efforts, but an unaffiliated general partner or other investors denied the request due to the failure of the banking entity to agree to unreasonable demands by the general partner or investors.

As noted above, the statute provides that the extended transition period is only available to banking entities in order to take or retain an interest in an illiquid fund, and then only to the extent necessary to fulfill a contractual obligation that was in effect on May 1, 2010. The Board recognizes that there may be instances where, in connection with its ownership interest in an illiquid fund, a banking entity serves as the general partner or managing member of, or otherwise "sponsors," an illiquid fund. In such situations, a banking entity will usually hold some ownership interest in the fund, and that ownership interest may be in excess of the de minimis interest permitted under the Volcker Rule.[48] Accordingly, if a banking entity is granted an extended transition period to take or retain an interest in an illiquid fund, the banking entity may continue to serve as the general partner, managing member, or sponsor of the illiquid fund to the extent such service is related to the banking entity's retention of its permitted ownership interest. If, however, a banking entity was not acting as general partner, managing member, or sponsor of the illiquid fund as of May 1, 2010, then it may not begin to serve that role during the extended transition period.

D. Nonbank Financial Companies Supervised by the Board

As noted above, the Volcker Rule does not prohibit nonbank financial companies supervised by the Board from engaging in proprietary trading, or from having the types of investments in or relationships with hedge funds or private equity funds that banking entities are prohibited or restricted from having under the Volcker Rule. However, the Volcker Rule provides that the Board or other appropriate agency impose additional capital charges, quantitative limits, or other restrictions on nonbank financial companies supervised by the Board or their subsidiaries that are engaged in such activities or maintain such relationships.[49] The Volcker Rule generally gives nonbank financial companies supervised by the Board the same general two-year conformance period (with the potential of up to three, one-year extensions) to bring their activities into compliance with any requirements or limits established as is available to banking entities. Accordingly, section 225.182 of the final rule provides a nonbank financial company supervised by the Board two years after the date the company first becomes a nonbank financial company supervised by the Board to conform its activities to any applicable requirements of the Volcker Rule, including any capital requirements or quantitative limitations adopted thereunder and applicable to the company. Consistent with the conformance period available to banking entities, the final rule also provides the Board the ability to extend this two-year conformance period by up to three additional one-year periods, if the Board determines that such an extension is consistent with the purpose of the Volcker Rule and would not be detrimental to the public interest.[50]

[42] 12 U.S.C. 1851(c)(3).

[43] *Id.* at § 1851(c)(4)(B).

[44] For similar reasons, the Board does not have discretion to permit the extended transition period to continue after the date the relevant banking entity's contractual obligation terminates. As such, the final rule does not provide any "grace period" and retains the requirement that any extended transition period automatically terminates on the date on which the contractual obligation to invest in, or provide additional capital to, the illiquid fund terminates.

[45] For example, the terms of the banking entity's regulatory-out provision in its contractual obligation may allow the banking entity to redeem or sell its investments only with the approval of the general partner, or only if the general partner concurs that retention of the banking entity's ownership interest would result in a violation of the law.

[46] The Board believes that requiring a banking entity to use its "reasonable best efforts" to terminate its obligation appropriately reflects the Volcker Rule's intent that banking entities should use all reasonable efforts to conform to the requirements of the Volcker Rule.

[47] Some commenters noted that some contractual obligations in place as of May 1, 2010, may require a banking entity to provide additional capital to a fund even after the banking entity has fully sold its investment in the fund (such as, for example, if the person that acquired the banking entity's ownership interest fails to comply with any related obligation to provide such additional amounts). Subject to the conditions and restrictions described above and in the final rule, such obligations may constitute a contractual obligation to provide additional capital to the fund.

[48] *See* 12 U.S.C. 1851(d)(4).

[49] *See id.* at § 1851(a)(2), (d)(4).

[50] *See id.* at § 1851(c)(2).

E. Procedures Governing Extension Requests

The proposed rule also addressed the process for banking entities and nonbank financial companies supervised by the Board to request a one-year extension of the general conformance period and for banking entities to request up to a five-year extended transition period with respect to an illiquid fund. The proposed rule generally required that any request for an extension must: (1) Be submitted in writing to the Board at least 90 days prior to the expiration of the applicable time period; (2) provide the reasons why the banking entity or nonbank financial company supervised by the Board believes the extension should be granted; and (3) provide a detailed explanation of the plan of the banking entity of nonbank financial company supervised by the Board for divesting or conforming the activity or investment(s). The proposed rule also described the factors that the Board may consider in reviewing any requests for an extension.

The Board received several comments on the procedures for requesting an extension and the standards for reviewing these requests set forth in the proposed rule. In general, commenters requested that the Board allow a firm to submit an extension request well in advance of the end of the applicable time period. Commenters noted that winding down the activities and operations subject to the restrictions of the Volcker Rule could take significant time, and, as a result, companies subject to the Volcker Rule would benefit from knowing as early as possible whether or not they had been granted an extension. Some commenters additionally suggested that the Board modify the final rule to expressly provide for a standard time period for its review of any specific extension request, accompanied by an automatic approval of an extension if the review was not completed in the specified period. One commenter suggested that the Board require banking entities to provide extensive information on the steps that the banking entity has taken to conform to the requirements of the Volcker Rule.

Several comments also addressed the proposed rule's list of factors that the Board would take into account in reviewing any request for a conformance period extension. For example, commenters suggested that the Board take into account the impact that an extension (or denial of an extension) related to investments in a hedge fund or private equity fund would have on unaffiliated, third-party investors in the fund, including the potential creation of conflicts of interest between a banking entity that sponsored a private equity or hedge fund and other investors in such fund.

After considering the comments, the Board has modified the provisions governing the submission and review of extension requests in several respects. First, the final rule provides that a banking entity or nonbank financial company supervised by the Board seeking an extension of the conformance period must submit its request at least 180 days prior to the expiration of the applicable time period, rather than 90 days as proposed. This additional period is designed to provide the Board additional time to review any submission, as well as to request additional information from the requesting company if necessary or appropriate. This deadline is the date by which an extension request must be filed. Firms are encouraged to submit their extension requests to the Board as early as possible. If additional requests are contemplated as being necessary after a permissible extension has been granted, a banking entity or nonbank financial company supervised by the Board may submit an additional request after the first day of the newly-extended period, and the Board would consider each request submitted in accordance with the procedures contained in the final rule. The final rule also provides that the Board will seek to act on any extension request no later than 90 days after receipt of all necessary information relating to the request.[51]

The proposed rule provided that, in reviewing a request for an extension, the Board may consider all the facts and circumstances related to the activity, investment, or fund, including each of the following factors (to the extent they are relevant): (i) Whether the activity or investment (A) involves or results in material conflicts of interest between the banking entity (or nonbank financial company supervised by the Board) and its clients, customers or counterparties; (B) would result, directly or indirectly, in a material exposure by the banking entity (or company) to high-risk assets or high-risk trading strategies; (C) would pose a threat to the safety and soundness of the banking entity (or company); or (D) would pose a threat to the financial stability of the United States; (ii) market conditions; (iii) the nature of the activity or investment; (iv) the date that the banking entity's contractual obligation to make or retain an investment in the fund was incurred and when it expires; (v) the contractual terms governing the banking entity's interest in the fund; (vi) the degree of control held by the banking entity over investment decisions of the fund; (vii) the types of assets held by the fund; (viii) the date on which the fund is expected to wind up its activities and liquidate or its investments may be redeemed or sold; (ix) the total exposure of the banking entity (or company) to the activity or investment and the risks that disposing of, or maintaining, the investment or activity may pose to the banking entity (or company); (x) the cost to the banking entity (or company) of disposing of the activity or investment within the applicable period; and (xi) any other factor that the Board believes appropriate

After consideration of the comments, the Board has modified one existing factor and added two additional factors to this list. The first additional factor is whether divestiture or conformance of the activity or investment would involve or result in a material conflict of interest between the banking entity (or nonbank financial company supervised by the Board) and unaffiliated clients, customers, or counterparties to which the banking entity owes a duty. Because the Volcker Rule is intended to help prevent material conflicts of interest between a banking entity or nonbank financial company supervised by the Board and its clients, customers or counterparties, the Board believe this is an appropriate factor to consider in reviewing extension requests.[52] The Board expects that this factor may be relevant when the banking entity serves as general partner or sponsor to a fund in which unaffiliated persons are investors, but generally would not be relevant when the banking entity (in addition to having an investment) serves only as investment advisor to the fund, because serving as an investment advisor would generally be a permissible activity for a banking entity even if it divests its ownership interests in the fund itself. In addition, the Board has modified the list of factors to specify that the Board may consider the firm's prior efforts to divest or conform the activity or investments, including, with respect to an illiquid fund, the extent to which the banking entity has made reasonable best efforts to terminate or obtain a waiver of its contractual obligation to take or retain an equity, partnership, or other ownership interest in, or provide additional capital to, the illiquid fund. The Board expects all banking entities and nonbank financial companies supervised by the Board to make

[51] *See* 12 CFR 225.181(d)(2) and 225.182(d)(2).

[52] *See* 12 U.S.C. 1851(d)(2)(A)(i).

reasonable and good-faith efforts to divest or otherwise conform their prohibited activities and investments within the prescribed time periods. This includes taking all reasonable steps to divest the firm's interests in private equity and hedge funds covered by the restrictions in the Volcker Rule, such as making requests of a general partner or other applicable person(s) to withdraw from or transfer its interest in the fund whenever authorized or permitted by the relevant fund documents. The factors listed in the rule are not exclusive, and the Board retains the ability to consider other factors or considerations that it deems appropriate.

As noted in the proposed rule, the Board expects to carefully review requests for an extended transition period to ensure that the banking entity's interest in the fund and the fund's assets and investment strategy satisfy the requirements contained in the rule in order to be eligible for an extended transition period. As noted above in Part III.C.1.a of this **SUPPLEMENTARY INFORMATION**, the final rule provides that in evaluating the merits and appropriateness of a request for an extended transition period for an investment in an illiquid fund, the Board will consider the extent to which the fund's current assets are no longer illiquid (*e.g.* due to lapse of applicable restrictions on an investment because a previously illiquid venture capital or portfolio company investment has become liquid, such as through the initial public offering of the company's stock). The Board has modified the list of factors the Board may consider in the final rule to make this clear.

The final rule retains the proposed rule's provision that allows the Board to impose conditions on any extension granted if the Board determines such conditions are necessary or appropriate to protect the safety and soundness of banking entities or the financial stability of the United States, address material conflicts of interest or other unsound practices, or otherwise further the purposes of section 13 of the BHC Act and the final rules.[53] In cases where the banking entity is primarily supervised by another Federal banking agency, the SEC, or the CFTC, the Board will consult with such agency prior to approving any extension request by the banking entity, as well as before imposing conditions in connection with the approval of any extension request by the banking entity.

IV. Administrative Law Matters

A. Paperwork Reduction Act Analysis

In accordance with the Paperwork Reduction Act of 1995 ("PRA"),[54] the Board has reviewed this final rule under the authority delegated to the Board by Office of Management and Budget ("OMB"). The Board may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number.

Sections 225.181(c) and 225.182(c) of the final rule contain collections of information that are subject to the PRA. The OMB control number for these information collections will be assigned. These collections of information would only be required for banking entities and nonbank financial companies supervised by the Board that voluntarily decide to seek an extension of time to conform their activities to the Volcker Rule or divest their interest in an illiquid hedge fund or private equity fund. As discussed in the **SUPPLEMENTARY INFORMATION**, the Dodd-Frank Act generally requires banking entities and nonbank financial holding companies supervised by the Board to conform their activities and investments to the restrictions in the Volcker Rule within 2 years of the effective date of the Volcker Rule's restrictions. The final rule implements this conformance period and, as permitted by the Dodd-Frank Act, permits a banking entity or nonbank financial company supervised by the Board to request an extension of time to conform its activities to the Volcker Rule. Section 225.181(c) would require an application for an extension by a banking entity to be (1) submitted in writing to the Board at least 180 days prior to the expiration of the applicable time period, (2) provide the reasons why the banking entity believes the extension should be granted, and (3) provide a detailed explanation of the banking entity's plan for divesting or conforming the activity or investment(s). Section 225.182(c) would require an application for an extension by a nonbank financial holding company to be (1) submitted in writing to the Board at least 180 days prior to the expiration of the applicable time period, (2) provide the reasons why the nonbank financial holding company believes the extension should be granted, and (3) provide a detailed explanation of the company's plan for coming into compliance with the requirements of the Volcker Rule. A request by a banking entity or nonbank financial company supervised by the Board also must address the relevant factors set out in section 225.181(d). A banking entity or nonbank financial company supervised by the Board may request confidential treatment of information submitted as part of an extension request in accordance with the Freedom of Information Act.

In connection with the proposal, the Board estimated that there were approximately 7,200 banking entities as of December 31, 2009. Of that number, the Board estimated that approximately 720 banking entities would request an extension of the conformance period under the proposed rule. The number of nonbank financial companies supervised by the Board will be determined by the FSOC in accordance with the procedures established under the Dodd-Frank Act. Accordingly, the Board was unable and remains unable at this time to estimate the number of nonbank financial companies supervised by the Board that might request an extension of the Volcker Rule conformance period under the proposed rule. In the proposal, the Board estimated the burden request as 1 hour, for a total estimated amount of annual burden of 720 hours.

Some commenters asserted that the Board's proposal underestimated the regulatory burden and stated that it would take substantially longer than one hour to prepare a request for an extension and relevant supporting information. One commenter specifically noted that a banking entity could potentially be required to submit up to four extension requests with respect to a single illiquid fund (three requests for extension of the general conformance period and one request for the extended transition period provided for illiquid funds). In light of the comments received, the Board has revised its estimated burden per request to be 3 hours, and estimates that each of the 720 banking entities that are estimated to request an extension will file, on average, 10 requests for an extension, for a total estimated annual burden of 21,600 hours.

B. Regulatory Flexibility Act Analysis

In accordance with Section 4(a) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq,* ("RFA"), the Board must publish a final regulatory flexibility analysis with this rulemaking. The RFA requires an agency either to provide a final regulatory flexibility analysis with a final rule for which a general notice of

[53] Nothing in the Volcker Rule or the final rule limits or otherwise affects the authority that the Board, the other Federal banking agencies, the SEC, or the CFTC may have under other provisions of law. In the case of the Board, these authorities include, but are not limited to, section 8 of the Federal Deposit Insurance Act and section 8 of the BHC Act. *See* 12 U.S.C. 1818, 1847.

[54] 44 U.S.C. 3506; 5 CFR 1320, Appendix A.1

proposed rulemaking is required or to certify that the final rule will not have a significant economic impact on a substantial number of small entities. Based on this analysis and for the reasons stated below, the Board believes that the final rule would not have a significant economic impact on a substantial number of small entities. Nevertheless, the Board is publishing a final regulatory flexibility analysis.

The Volcker Rule, adopted as a new section 13 of the BHC Act, applies to all banking entities and nonbank financial companies supervised by the Board, regardless of size. The Board is amending Regulation Y to implement the provisions of the Dodd-Frank Act that allow a banking entity—including a small banking entity—or a nonbank financial company supervised by the Board to obtain, with the Board's approval, an extended period of time to conform its activities and investments to the requirements of the Volcker Rule. Under the rule, a banking entity of any size may request up to three one-year extensions of the general two-year conformance period provided under section 13 of the BHC Act, as well as one extension of up to five years to divest certain ownership interests in a hedge fund or private equity fund that qualifies as an "illiquid fund" under the statute and proposed rule. The **SUPPLEMENTARY INFORMATION** provides additional information regarding the reasons for, and the objective and legal basis of, the rule.

Under regulations issued by the Small Business Administration ("SBA"), a bank or other depository institution is considered "small" if it has $175 million or less in assets.[55] As of December 31, 2009, there were approximately 2450 small bank holding companies, 293 small savings association, 132 small national banks, 73 small State member banks, 665 small State nonmember banks, and 21 small foreign banking organizations that are subject to section 8 of the International Banking Act of 1978. As of that date, there were no nonbank financial companies supervised by the Board. The Volcker Rule would affect only those entities that engage in activities or that hold investments prohibited or restricted under the terms of the Volcker Rule. As explained above, the Board estimates that of the total number of banking entities that would be affected by the Volcker Rule, approximately 10 percent would likely file an extension request under the proposed rule. Based on its supervisory experience, the Board believes that small banking entities are less likely to be engaged in the types of activities or hold investments prohibited under the Volcker Rule, and as such estimates that only 5 percent of small banking entities likely would file an extension request under the rule. The Board specifically requested comment on whether this estimate is appropriate, and no comments were received on this issue. The Board notes that the impact of the rule on entities choosing to take advantage of the rule's extended conformance period would be positive and not adverse. This is because the rule would allow affected entities to seek and obtain an extended period of time to conform their activities, investments, or relationships to the requirements of the Volcker Rule. The Board also has taken several steps to reduce the potential burden of the rule on all banking entities, including small banking entities. For example, the rule establishes a straightforward process for banking entities, including small banking entities, to request an extension of the conformance period or an extended transition period with respect to an investment in an illiquid fund, and permits such requests to be submitted in letter form. The rule also uses standards drawn from existing federal banking and securities regulations to help define the types of funds that may qualify as an "illiquid fund" under the statute and the rule, which should assist small banking entities in determining whether their investments qualify for the extended transition period available for investments in illiquid funds.

As discussed in the **SUPPLEMENTARY INFORMATION**, the Dodd-Frank Act requires that the Board adopt rules implementing the Volcker Rule's conformance period. The Board does not believe that the final rule duplicates, overlaps, or conflicts with any other Federal rules.

Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Board invited comment on whether the proposed rule was written plainly and clearly, or whether there were ways the Board could make the rule easier to understand. The Board received no comments on these matters and believes that the final rule is written plainly and clearly.

List of Subjects in 12 CFR Part 225

Administrative practice and procedure, Banks, Banking, Holding companies, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons stated in the preamble, the Board is amending Regulation Y, 12 CFR part 225, as set forth below:

PART 225—REGULATION Y—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

■ 1. The authority citation for part 225 is revised to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1844(b), 1851, 1972(1), 3106, 3108, 3310, 3331–3351, 3907, and 3909; 15 U.S.C. 6801 and 6805.

■ 2. Section 225.1(c)(11) is revised to read as follows:

§ 225.1 Authority, purpose, and scope.

* * * * *

(c) * * *

(11) *Subpart K* governs the period of time that firms subject to section 13 of the Bank Holding Company Act (12 U.S.C. 1851) have to bring their activities, investments and relationships into compliance with the requirements of such section.

* * * * *

■ 3. Subpart K is added to read as follows:

Subpart K—Proprietary Trading and Relationships With Hedge Fund and Private Equity Funds

Sec.
225.180 Definitions.
225.181 Conformance Period for Banking Entities Engaged in Proprietary Trading or Private Fund Activities.
225.182 Conformance Period for Nonbank Financial Companies Supervised by the Board Engaged in Proprietary Trading or Private Fund Activities.

Subpart K—Proprietary Trading and Relationships With Hedge Funds and Private Equity Funds

§ 225.180 Definitions.

For purposes of this subpart:

(a) *Banking entity* means—

(1) Any insured depository institution;

(2) Any company that controls an insured depository institution;

(3) Any company that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978; and

(4) Any affiliate or subsidiary of any of the foregoing entities.

(b) *Hedge fund* and *private equity fund* mean an issuer that would be an investment company, as defined in the Investment Company Act of 1940 (15

[55] 13 CFR 121.201.

U.S.C. 80a–1 *et seq.*), but for section 3(c)(1) or 3(c)(7) of that Act, or such similar funds as the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission may, by rule, as provided in section 13(b)(2) of the Bank Holding Company Act (12 U.S.C. 1851(b)(2)), determine.

(c) *Insured depository institution* has the same meaning as given that term in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813), except that for purposes of this subpart the term shall not include an institution that functions solely in a trust or fiduciary capacity if—

(1) All or substantially all of the deposits of such institution are in trust funds and are received in a bona fide fiduciary capacity;

(2) No deposits of such institution which are insured by the Federal Deposit Insurance Corporation are offered or marketed by or through an affiliate of such institution;

(3) Such institution does not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others or make commercial loans; and

(4) Such institution does not—

(i) Obtain payment or payment related services from any Federal Reserve bank, including any service referred to in section 11A of the Federal Reserve Act (12 U.S.C. 248a); or

(ii) Exercise discount or borrowing privileges pursuant to section 19(b)(7) of the Federal Reserve Act (12 U.S.C. 416(b)(7)).

(d) *Nonbank financial company supervised by the Board* means a nonbank financial company supervised by the Board of Governors, as defined in section 102 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (12 U.S.C. 5311).

(e) *Board* means the Board of Governors of the Federal Reserve System.

(f) *Illiquid fund* means a hedge fund or private equity fund that:

(1) As of May 1, 2010—

(i) Was principally invested in illiquid assets; or

(ii) Was invested in, and contractually committed to principally invest in, illiquid assets; and

(2) Makes all investments pursuant to, and consistent with, an investment strategy to principally invest in illiquid assets.

(g) *Illiquid assets* means any real property, security, obligation, or other asset that—

(1) Is not a liquid asset;

(2) Because of statutory or regulatory restrictions applicable to the hedge fund, private equity fund or asset, cannot be offered, sold, or otherwise transferred by the hedge fund or private equity fund to a person that is unaffiliated with the relevant banking entity; or

(3) Because of contractual restrictions applicable to the hedge fund, private equity fund or asset, cannot be offered, sold, or otherwise transferred by the hedge fund or private equity fund for a period of 3 years or more to a person that is unaffiliated with the relevant banking entity.

(h) *Liquid asset* means:

(1) Cash or cash equivalents;

(2) An asset that is traded on a recognized, established exchange, trading facility or other market on which there exist independent, bona fide offers to buy and sell so that a price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined for the particular asset almost instantaneously;

(3) An asset for which there are bona fide, competitive bid and offer quotations in a recognized inter-dealer quotation system or similar system or for which multiple dealers furnish bona fide, competitive bid and offer quotations to other brokers and dealers on request;

(4) An asset the price of which is quoted routinely in a widely disseminated publication that is readily available to the general public or through an electronic service that provides indicative data from real-time financial networks;

(5) An asset with an initial term of one year or less and the payments on which at maturity may be settled, closed-out, or paid in cash or one or more other liquid assets described in paragraphs (h)(1), (2), (3), or (4); and

(6) Any other asset that the Board determines, based on all the facts and circumstances, is a liquid asset.

(i) *Principally invested* and related definitions. A hedge fund or private equity fund:

(1) Is *principally invested* in illiquid assets if at least 75 percent of the fund's consolidated total assets are—

(i) Illiquid assets; or

(ii) Risk-mitigating hedges entered into in connection with and related to individual or aggregated positions in, or holdings of, illiquid assets;

(2) Is *contractually committed to principally invest* in illiquid assets if the fund's organizational documents, other documents that constitute a contractual obligation of the fund, or written representations contained in the fund's offering materials distributed to potential investors provide for the fund to be principally invested in assets described in paragraph (i)(1) at all times other than during temporary periods, such as the period prior to the initial receipt of capital contributions from investors or the period during which the fund's investments are being liquidated and capital and profits are being returned to investors; and

(3) Has an *investment strategy to principally invest* in illiquid assets if the fund—

(i) Markets or holds itself out to investors as intending to principally invest in assets described in paragraph (i)(1) of this section; or

(ii) Has a documented investment policy of principally investing in assets described in paragraph (i)(1) of this section.

§ 225.181 Conformance Period for Banking Entities Engaged in Prohibited Proprietary Trading or Private Fund Activities.

(a) *Conformance Period*—(1) *In general.* Except as provided in paragraph (b)(2) or (3) of this section, a banking entity shall bring its activities and investments into compliance with the requirements of section 13 of the Bank Holding Company Act (12 U.S.C. 1851) and this subpart no later than 2 years after the earlier of:

(i) July 21, 2012; or

(ii) Twelve months after the date on which final rules adopted under section 13(b)(2) of the Bank Holding Company Act (12 U.S.C. 1851(b)(2)) are published in the **Federal Register**.

(2) *New banking entities.*—A company that was not a banking entity, or a subsidiary or affiliate of a banking entity, as of July 21, 2010, and becomes a banking entity, or a subsidiary or affiliate of a banking entity, after that date shall bring its activities and investments into compliance with the requirements of section 13 of the Bank Holding Company Act (12 U.S.C. 1851) and this subpart before the later of—

(i) The conformance date determined in accordance with paragraph (a)(1) of this section; or

(ii) Two years after the date on which the company becomes a banking entity or a subsidiary or affiliate of a banking entity.

(3) *Extended conformance period.* The Board may extend the two-year period under paragraph (a)(1) or (2) of this section by not more than three separate one-year periods, if, in the judgment of the Board, each such one-year extension is consistent with the purposes of section 13 of the Bank Holding Company Act (12 U.S.C. 1851)

and this subpart and would not be detrimental to the public interest.

(b) *Illiquid funds*—(1) *Extended transition period.* The Board may further extend the period provided by paragraph (a) of this section during which a banking entity may acquire or retain an equity, partnership, or other ownership interest in, or otherwise provide additional capital to, a private equity fund or hedge fund if—

(i) The fund is an illiquid fund; and

(ii) The acquisition or retention of such interest, or provision of additional capital, is necessary to fulfill a contractual obligation of the banking entity that was in effect on May 1, 2010.

(2) *Duration limited.* The Board may grant a banking entity only one extension under paragraph (b)(1) of this section and such extension—

(i) May not exceed 5 years beyond any conformance period granted under paragraph (a)(3) of this section; and

(ii) Shall terminate automatically on the date during any such extension on which the banking entity is no longer under a contractual obligation described in paragraph (b)(1)(ii).

(3) *Contractual obligation.* For purposes of this paragraph (b)—

(i) A banking entity has a contractual obligation to take or retain an equity, partnership, or other ownership interest in an illiquid fund if the banking entity is prohibited from redeeming all of its equity, partnership, or other ownership interests in the fund, and from selling or otherwise transferring all such ownership interests to a person that is not an affiliate of the banking entity—

(A) Under the terms of the banking entity's equity, partnership, or other ownership interest in the fund or the banking entity's other contractual arrangements with the fund or unaffiliated investors in the fund; or

(B) If the banking entity is the sponsor of the fund, under the terms of a written representation made by the banking entity in the fund's offering materials distributed to potential investors;

(ii) A banking entity has a contractual obligation to provide additional capital to an illiquid fund if the banking entity is required to provide additional capital to such fund—

(A) Under the terms of its equity, partnership or other ownership interest in the fund or the banking entity's other contractual arrangements with the fund or unaffiliated investors in the fund; or

(B) If the banking entity is the sponsor of the fund, under the terms of a written representation made by the banking entity in the fund's offering materials distributed to potential investors; and

(iii) A banking entity shall be considered to have a contractual obligation for purposes of paragraph (b)(3)(i) or (ii) of this section only if—

(A) The obligation may not be terminated by the banking entity or any of its subsidiaries or affiliates under the terms of its agreement with the fund; and

(B) In the case of an obligation that may be terminated with the consent of other persons, the banking entity and its subsidiaries and affiliates have used their reasonable best efforts to obtain such consent and such consent has been denied.

(c) *Approval Required to Hold Interests in Excess of Time Limit.* The conformance period in paragraph (a) of this section may be extended in accordance with paragraph (a)(3) or (b) of this section only with the approval of the Board. A banking entity that seeks the Board's approval for an extension of the conformance period under paragraph (a)(3) or for an extended transition period under paragraph (b)(1) must—

(1) Submit a request in writing to the Board at least 180 days prior to the expiration of the applicable time period;

(2) Provide the reasons why the banking entity believes the extension should be granted, including information that addresses the factors in paragraph (d)(1) of this section; and

(3) Provide a detailed explanation of the banking entity's plan for divesting or conforming the activity or investment(s).

(d) *Factors governing Board determinations*—(1) *Extension requests generally.* In reviewing any application by a specific company for an extension under paragraph (a)(3) or (b)(1) of this section, the Board may consider all the facts and circumstances related to the activity, investment, or fund, including, to the extent relevant—

(i) Whether the activity or investment—

(A) Involves or results in material conflicts of interest between the banking entity and its clients, customers or counterparties;

(B) Would result, directly or indirectly, in a material exposure by the banking entity to high-risk assets or high-risk trading strategies;

(C) Would pose a threat to the safety and soundness of the banking entity; or

(D) Would pose a threat to the financial stability of the United States;

(ii) Market conditions;

(iii) The nature of the activity or investment;

(iv) The date that the banking entity's contractual obligation to make or retain an investment in the fund was incurred and when it expires;

(v) The contractual terms governing the banking entity's interest in the fund;

(vi) The degree of control held by the banking entity over investment decisions of the fund;

(vii) The types of assets held by the fund, including whether any assets that were illiquid when first acquired by the fund have become liquid assets, such as, for example, because any statutory, regulatory, or contractual restrictions on the offer, sale, or transfer of such assets have expired;

(viii) The date on which the fund is expected to wind up its activities and liquidate, or its investments may be redeemed or sold;

(ix) The total exposure of the banking entity to the activity or investment and the risks that disposing of, or maintaining, the investment or activity may pose to the banking entity or the financial stability of the United States;

(x) The cost to the banking entity of divesting or disposing of the activity or investment within the applicable period;

(xi) Whether the divestiture or conformance of the activity or investment would involve or result in a material conflict of interest between the banking entity and unaffiliated clients, customers or counterparties to which it owes a duty;

(xii) The banking entity's prior efforts to divest or conform the activity or investment(s), including, with respect to an illiquid fund, the extent to which the banking entity has made efforts to terminate or obtain a waiver of its contractual obligation to take or retain an equity, partnership, or other ownership interest in, or provide additional capital to, the illiquid fund; and

(xiii) Any other factor that the Board believes appropriate.

(2) *Timing of Board review.* The Board will seek to act on any request for an extension under paragraph (a)(3) or (b)(1) of this section no later than 90 calendar days after the receipt of a complete record with respect to such request.

(3) *Consultation.* In the case of a banking entity that is primarily supervised by another Federal banking agency, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, the Board will consult with such agency prior to the approval of a request by the banking entity for an extension under paragraph (a)(3) or (b)(1) of this section.

(e) *Authority to impose restrictions on activities or investments during any extension period*—(1) *In general.* The Board may impose such conditions on any extension approved under paragraph (a)(3) or (b)(1) of this section as the Board determines are necessary or

appropriate to protect the safety and soundness of the banking entity or the financial stability of the United States, address material conflicts of interest or other unsound banking practices, or otherwise further the purposes of section 13 of the Bank Holding Company Act (12 U.S.C. 1851) and this subpart.

(2) *Consultation.* In the case of a banking entity that is primarily supervised by another Federal banking agency, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, the Board will consult with such agency prior to imposing conditions on the approval of a request by the banking entity for an extension under paragraph (a)(3) or (b)(1) of this section.

§ 225.182 Conformance Period for Nonbank Financial Companies Supervised by the Board Engaged in Proprietary Trading or Private Fund Activities.

(a) *Divestiture Requirement.* A nonbank financial company supervised by the Board shall come into compliance with all applicable requirements of section 13 of the Bank Holding Company Act (12 U.S.C. 1851) and this subpart, including any capital requirements or quantitative limitations adopted thereunder and applicable to the company, not later than 2 years after the date the company becomes a nonbank financial company supervised by the Board.

(b) *Extensions.* The Board may, by rule or order, extend the two-year period under paragraph (a) by not more than three separate one-year periods, if, in the judgment of the Board, each such one-year extension is consistent with the purposes of section 13 of the Bank Holding Company Act (12 U.S.C. 1851) and this subpart and would not be detrimental to the public interest.

(c) *Approval Required to Hold Interests in Excess of Time Limit.* A nonbank financial company supervised by the Board that seeks the Board's approval for an extension of the conformance period under paragraph (b) of this section must—

(1) Submit a request in writing to the Board at least 180 days prior to the expiration of the applicable time period;

(2) Provide the reasons why the nonbank financial company supervised by the Board believes the extension should be granted; and

(3) Provide a detailed explanation of the company's plan for conforming the activity or investment(s) to any applicable requirements established under section 13(a)(2) or (f)(4) of the Bank Holding Company Act (12 U.S.C. 1851(a)(2) and (f)(4)).

(d) *Factors governing Board determinations*—(1) *In general.* In reviewing any application for an extension under paragraph (b) of this section, the Board may consider all the facts and circumstances related to the nonbank financial company and the request including, to the extent determined relevant by the Board, the factors described in § 225.181(d)(1).

(2) *Timing.* The Board will seek to act on any request for an extension under paragraph (b) of this section no later than 90 calendar days after the receipt of a complete record with respect to such request.

(f) *Authority to impose restrictions on activities or investments during any extension period.* The Board may impose conditions on any extension approved under paragraph (b) of this section as the Board determines are necessary or appropriate to protect the safety and soundness of the nonbank financial company or the financial stability of the United States, address material conflicts of interest or other unsound practices, or otherwise further the purposes of section 13 of the Bank Holding Company Act (12 U.S.C. 1851) and this subpart.

Subpart L—Conditions to Orders

■ 4. Add subpart L with a heading as set forth above, and consisting of existing § 225.200.

By order of the Board of Governors of the Federal Reserve System, February 8, 2011.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2011–3199 Filed 2–11–11; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM443; Special Conditions No. 25–416–SC]

Special Conditions: Gulfstream Model GVI Airplane; Enhanced Flight Vision System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Gulfstream GVI airplane. This airplane will have a novel or unusual design feature associated with a head-up display (HUD) system modified to display forward-looking infrared (FLIR) imagery. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is February 3, 2011. We must receive your comments by March 31, 2011.

ADDRESSES: You must mail two copies of your comments to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM443, 1601 Lind Avenue, SW., Renton, Washington, 98057–3356. You may deliver two copies to the Transport Airplane Directorate at the above address. You must mark your comments: Docket No. NM443. You can inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Dale Dunford, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Standards Staff, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2239; facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION: The FAA has determined that the substance of these special conditions has been subject to the public-comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel about these special conditions. You can inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

If you want us to acknowledge receipt of your comments on these special conditions, include with your comments a self-addressed, stamped postcard on which you have written the docket number. We will stamp the date on the postcard and mail it back to you.

Background

On March 29, 2005, Gulfstream Aerospace Corporation (hereafter referred to as "Gulfstream") applied for an FAA type certificate for its new Gulfstream Model GVI passenger airplane. Gulfstream later applied for, and was granted, an extension of time for the type certificate, which changed the effective application date to September 28, 2006. The Gulfstream Model GVI airplane will be an all-new, two-engine jet transport airplane with an executive cabin interior. The maximum takeoff weight will be 99,600 pounds, with a maximum passenger count of 19 passengers.

Type Certification Basis

Under provisions of Title 14 Code of Federal Regulations (14 CFR) 21.17, Gulfstream must show that the Gulfstream Model GVI airplane (hereafter referred to as "the GVI") meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–119, 25–122 and 25–124. If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the GVI because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to complying with the applicable airworthiness regulations and special conditions, the GVI must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36. The FAA must also issue a finding of regulatory adequacy pursuant to section 611 of Public Law 92–574, the "Noise Control Act of 1972."

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design features, the special conditions would also apply to the other model under provisions of § 21.101.

Novel or Unusual Design Features

The enhanced flight vision system (EFVS) is a novel or unusual design feature because it projects a video image derived from a forward-looking infrared (FLIR) camera through the head-up display (HUD). The EFVS image is projected in the center of the "pilot compartment view," which is governed by § 25.773. The image is displayed with HUD symbology and overlays the forward outside view. Therefore, § 25.773 does not contain appropriate safety standards for the EFVS display.

Operationally, during an instrument approach, the EFVS image is intended to enhance the pilot's ability to detect and identify "visual references for the intended runway" (*see* § 91.175(l)(3)) to continue the approach below decision height or minimum descent altitude. Depending on atmospheric conditions and the strength of infrared energy emitted and/or reflected from the scene, the pilot can see these visual references in the image better than he or she can see them through the window without EFVS.

Scene contrast detected by infrared sensors can be much different from that detected by natural pilot vision. On a dark night, thermal differences of objects which are not detectable by the naked eye will be easily detected by many imaging infrared systems. On the other hand, contrasting colors in visual wavelengths may be distinguished by the naked eye but not by an imaging infrared system. Where thermal contrast in the scene is sufficiently detectable, the pilot can recognize shapes and patterns of certain visual references in the infrared image. However, depending on conditions, those shapes and patterns in the infrared image can appear significantly different than they would with normal vision. Considering these factors, the EFVS image needs to be evaluated to determine that it can be accurately interpreted by the pilot.

The image may improve the pilot's ability to detect and identify items of interest. However, the EFVS needs to be evaluated to determine that the imagery allows the pilot to perform the normal duties of the flight crew and adequately see outside the window through the image, consistent with the safety intent of § 25.773(a)(2).

Compared to a HUD displaying the EFVS image and symbology, a HUD that displays only stroke-written symbols is easier to see through. Stroke symbology illuminates a small fraction of the total display area of the HUD, leaving much of that area free of reflected light that could interfere with the pilot's view out the window through the display. However, unlike stroke symbology, the video image illuminates most of the total display area of the HUD (approximately 30 degrees horizontally and 25 degrees vertically) which is a significant fraction of the pilot compartment view. The pilot cannot see around the larger illuminated portions of the video image but must see the outside scene through it.

Unlike the pilot's external view, the EFVS image is a monochrome, two-dimensional display. Many, but not all, of the depth cues found in the natural view are also found in the image. The quality of the EFVS image and the level of EFVS infrared sensor performance could depend significantly on conditions of the atmospheric and external light sources. The pilot needs adequate control of sensor gain and image brightness, which can significantly affect image quality and transparency (*i.e.,* the ability to see the outside view through the image). Certain system characteristics could create distracting and confusing display artifacts. Finally, because this is a sensor-based system that is intended to provide a conformal perspective corresponding with the outside scene, the system must be able to ensure accurate alignment.

Hence, safety standards are needed for each of the following factors:

—An acceptable degree of image transparency;
—Image alignment;
—Lack of significant distortion; and
—The potential for pilot confusion or misleading information.

Section 25.773, "Pilot Compartment View," specifies that "Each pilot compartment must be free of glare and reflection that could interfere with the normal duties of the minimum flight crew. * * *" In issuing § 25.773, the FAA did not anticipate the development of EFVSs and does not consider § 25.773 to be adequate to address the specific issues related to such a system. Therefore, the FAA has determined that special conditions are needed to address the specific issues particular to the installation and use of an EFVS.

Discussion

The EFVS is intended to function by presenting an enhanced view during the approach. This enhanced view would help the pilot to see and recognize external visual references, as required by § 91.175(l), and to visually monitor the integrity of the approach, as

described in FAA Order 6750.24D ("Instrument Landing System and Ancillary Electronic Component Configuration and Performance Requirements," dated March 1, 2000).

Based on this functionality, users would seek to obtain operational approval to conduct approaches, including approaches to Type I runways, when the runway visual range is as low as 1,200 feet.

The purpose of these special conditions is to ensure that the EFVS to be installed can perform the following functions:

—Present an enhanced view that would aid the pilot during the approach.
—Provide enhanced flight visibility to the pilot that is no less than the visibility prescribed in the standard instrument approach procedure.
—Display an image that the pilot can use to detect and identify the "visual references for the intended runway" required by § 91.175(l)(3) to continue the approach with vertical guidance to 100 feet height above the touchdown zone elevation.

Depending on the atmospheric conditions and the particular visual references that happen to be distinctly visible and detectable in the EFVS image, these functions would support its use by the pilot to visually monitor the integrity of the approach path.

Compliance with these special conditions does not affect the applicability of any of the requirements of the operating regulations (*i.e.,* 14 CFR parts 91, 121, and 135). Furthermore, use of the EFVS does not change the approach minima prescribed in the standard instrument approach procedure being used; published minima still apply.

The FAA certification of this EFVS is limited as follows:

—The infrared-based EFVS image will not be certified as a means to satisfy the requirements for descent below 100 feet height above touchdown (HAT).
—The EFVS may be used as a supplemental device to enhance the pilot's situational awareness during any phase of flight or operation in which its safe use has been established.

An EFVS image may provide an enhanced image of the scene that may compensate for any reduction in the clear outside view of the visual field framed by the HUD combiner. The pilot must be able to use this combination of information seen in the image and the natural view of the outside scene seen through the image as safely and effectively as the pilot would use a § 25.773 compliant pilot compartment view without an EVS image. This is the fundamental objective of the special conditions.

The FAA will also apply additional certification criteria, not as special conditions, for compliance with related regulatory requirements, such as §§ 25.1301 and 25.1309. These additional criteria address certain image characteristics, installation, demonstration, and system safety.

Image characteristics criteria include the following:

—Resolution,
—Luminance,
—Luminance uniformity,
—Low level luminance,
—Contrast variation,
—Display quality,
—Display dynamics (*e.g.,* jitter, flicker, update rate, and lag), and
—Brightness controls.

Installation criteria address visibility and access to EFVS controls and integration of EFVS in the cockpit.

The EFVS demonstration criteria address the flight and environmental conditions that need to be covered.

The FAA also intends to apply certification criteria relevant to high intensity radiated fields (HIRF) and lightning protection.

Applicability

As discussed above, these special conditions are applicable to the GVI. Should Gulfstream apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, the FAA has determined that prior public notice and comment are unnecessary, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Gulfstream GVI airplanes.

1. Enhanced flight vision system (EFVS) imagery on the head-up display (HUD) must not degrade the safety of flight or interfere with the effective use of outside visual references for required pilot tasks during any phase of flight in which it is to be used.

2. To avoid unacceptable interference with the safe and effective use of the pilot compartment view, the EFVS device must meet the following requirements:

(a) The EFVS design must minimize unacceptable display characteristics or artifacts (e.g. noise, "burlap" overlay, running water droplets, etc.) that obscure the desired image of the scene, impair the pilot's ability to detect and identify visual references, mask flight hazards, distract the pilot, or otherwise degrade task performance or safety.

(b) Control of EFVS display brightness must be sufficiently effective, in dynamically changing background (ambient) lighting conditions, to prevent full or partial blooming of the display that would distract the pilot, impair the pilot's ability to detect and identify visual references, mask flight hazards, or otherwise degrade task performance or safety. If automatic control for image brightness is not provided, it must be shown that a single manual setting is satisfactory for the range of lighting conditions encountered during a time-critical, high workload phase of flight (*e.g.,* low visibility instrument approach).

(c) A readily accessible control must be provided that permits the pilot to immediately deactivate and reactivate display of the EFVS image on demand without removing the pilot's hands from the primary flight controls (yoke or equivalent) or thrust control.

(d) The EFVS image on the HUD must not impair the pilot's use of guidance information or degrade the presentation and pilot awareness of essential flight information displayed on the HUD, such as alerts, airspeed, attitude, altitude and direction, approach guidance, wind shear guidance, TCAS resolution

advisories, unusual attitude recovery cues, etc.

(e) The EFVS image and the HUD symbols (which are spatially referenced to the pitch scale, outside view, and image), must be scaled and aligned (*i.e.,* conformal) to the external scene. Also, when considered singly or in combination, the EFVS image and HUD symbols must not be misleading, cause pilot confusion, or increase workload. It should be noted that there may be airplane attitudes or cross-wind conditions which cause certain symbols, such as the zero-pitch line or flight path vector, to reach field of view limits such that they cannot be positioned conformally with the image and external scene. In such cases these symbols may be displayed, but with an altered appearance which makes the pilot aware that they are no longer displayed conformally (*e.g.,* "ghosting").

(f) A HUD system used to display EFVS images must, if previously certified, continue to meet all of the requirements of the original approval.

3. The safety and performance of the pilot tasks associated with the pilot compartment view must be not be degraded by the display of the EFVS image. Pilot tasks which must not be degraded by the EFVS image include:

(a) Detection, accurate identification and maneuvering, as necessary, to avoid traffic, terrain, obstacles, and other hazards of flight.

(b) Accurate identification and utilization of visual references required for every task relevant to the phase of flight.

4. Appropriate limitations must be stated in the operating limitations section of the airplane flight manual to prohibit the use of the EFVS for functions that have not been found to be acceptable.

Issued in Renton, Washington, on February 3, 2011.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–3214 Filed 2–11–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0514; Airspace Docket No. 07–AWA–1]

RIN 2120–AA66

Amendment to Class B Airspace; Cleveland, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Cleveland, OH, Class B airspace area by expanding the existing airspace area to ensure containment of all published instrument procedures and the aircraft flying those instrument procedures within Class B airspace, and segregation of Instrument Flight Rules (IFR) aircraft arriving/departing Cleveland-Hopkins International Airport (CLE) and non-participating Visual Flight Rules (VFR) aircraft operating in the vicinity of the Cleveland Class B airspace area. The additional Class B airspace will support simultaneous arrival and departure operations under VFR conditions and simultaneous IFR approaches during marginal VFR conditions using Precision Runway Monitor/Simultaneous Offset Instrument Approaches (PRM/SOIA). Geographic coordinates listed in the description are also updated to reflect current aeronautical database information. This action enhances safety, improves the flow of air traffic, and reduces the potential for midair collision in the Cleveland terminal area.

DATES: *Effective Date:* 0901 UTC, April 7, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

History

On April 20, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to modify the Cleveland, OH, Class B airspace area (75 FR 20528). The FAA proposed this action to ensure containment of turbo-jet IFR aircraft conducting instrument approaches to CLE within the confines of Class B airspace and better segregate IFR aircraft arriving/departing CLE and non-participating VFR aircraft operating in the vicinity of the Cleveland Class B airspace area.

Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. In response to the NPRM, the FAA received 14 written comment submissions, including comments from Aircraft Owners and Pilots Association (AOPA) and the Soaring Society of America (SSA). Two comments received were duplicate documents submitted by two different commenters. Many of the commenters identified themselves as pilots who operate within, or through, the local area. All comments received were considered before making a determination on the final rule. An analysis of the comments received and the FAA's responses are contained in the "Discussion of Comments" section below.

Subsequent to the NPRM publication, typographical errors were identified for two geographic coordinates proposed in the Area E description published in the regulatory text. The geographic coordinates that were published as "lat. 42°47′20″ N., long. 81°27′36″ W." in the NPRM should have been "lat. 41°47′20″ N., long. 81°27′36″ W.", and the geographic coordinates that were published as "lat. 42°40′43″ N., long. 81°38′13″ W." should have been "lat. 41°40′43″ N., long. 81°38′13″ W.". The geographic coordinate errors are corrected in this action.

Discussion of Comments

The AOPA cited the work of the FAA in developing this rule. They support the proposed modifications and appreciate the common sense approach the FAA adopted to include only that airspace required for the containment of arrivals and departures at CLE. Further, AOPA applauded the FAA's efforts to address and mitigate concerns raised by general aviation pilots regarding access to the airports affected by the redesign.

Seven commenters objected to proposed Areas F and G. They argued the FAA proposed these areas significantly larger than required or presented previously. Six of the commenters wanted the lateral dimensions of the areas reduced to only five nautical mile (NM) extensions in length by five NM in width. One commenter argued that federal airways are established with four NM lateral widths from a radial of a navigation aid and that the FAA should reduce the widths of the areas to four NM also. Three commenters wanted Areas F and

G eliminated altogether if the lateral dimensions could not be reduced. And lastly, three commenters suggested the FAA define the boundaries of Areas F and G to coincide with visual landmarks to prevent inadvertent Class B airspace violations. Unless changed, the commenters believed the proposed Areas F and G would deteriorate safe flight operations beneath and in the vicinity of the Class B airspace extension.

The FAA does not agree. For clarity, the lateral dimensions of Areas F and G as proposed in the NPRM are 10 NM in length, extending from the CLE Runway 24L ILS/DME antenna (I–HPI) 20 NM arc to the I–HPI 30 NM arc. The areas are 6 NM in width, from the CLE Runway 6R localizer (I–CLE) signal extended to 6 NM north of the Runway 6L localizer (I–LIZ) signal extended for Area F and from the I–CLE signal extended to 6 NM south of the Runway 6R localizer (I–EYU) signal extended for Area G. These lateral dimensions were determined to be the absolute minimum essential to control IFR aircraft arriving from multiple arrival streams that are being sequenced in the traffic patterns for Precision Runway Monitor/Simultaneous Offset Instrument Approaches (PRM/SOIA) procedures into CLE. The length of these areas ensures the 15 to 18 percent of IFR aircraft arrivals that currently enter, exit, and re-enter the CLE Class B airspace (as noted in the NPRM) are fully contained within Class B airspace once they enter the traffic patterns to intercept the final approach course and the PRM/SOIA procedures. During periods of moderate and heavy traffic, aircraft may be turned onto the PRM/SOIA finals as far as 25 NM to 30 NM from CLE, as is the case today. The width of these areas ensures IFR arrival aircraft conducting PRM/SOIA are contained within Class B airspace while flying in the traffic patterns and are safely separated, in accordance with aircraft separation standards and guidance, between non-participating VFR aircraft that may be flying along the boundaries of Areas F and G and IFR aircraft flying the instrument approach procedures to Runways 6L/6R. To reduce the lateral dimensions (length or width) of the Areas F or G Class B airspace extensions would be impractical.

For the same reasons as discussed above, the FAA has determined the request to consider eliminating Areas F and G if they cannot be reduced in size is also impractical. The extensions are necessary in the interest of flight safety to contain all the instrument approach procedures and the IFR aircraft flying those procedures at CLE within Class B airspace, as well as segregate the IFR aircraft and non-participating VFR aircraft flying in the vicinity of the CLE Class B airspace area.

The FAA acknowledges the benefits of using visual landmarks for defining airspace boundaries and does so when possible. However, there are no prominent landmarks in the areas needed to mark the lateral boundaries of Areas F and G. Using the landmarks that the commenters noted would not define the minimum airspace needed as addressed above. Since there were no visual landmarks to define the boundaries of Areas F and G, the FAA used arcs and radials from existing CLE navigation aids to define them.

Eight commenters suggested the split floor altitudes proposed for Areas F and G (5,000 feet mean sea level (MSL) and 6,000 feet MSL, respectively) would cause confusion and probably some inadvertent Class B airspace incursions. The commenters stated the split level proposed design still presented a safety infringement to the glider operations at Reader-Botsford airport (67D) and offered multiple recommendations for changing the floor altitudes to remedy their concerns. Two commenters recommended raising the floor of Areas F and G to 6,000 feet MSL and 7,000 feet MSL, respectively; two commenters recommended making both floor altitudes 6,000 feet MSL; and three commenters recommended raising the Area G floor only to 7,000 feet MSL.

The FAA does not agree and has determined it is not possible to raise the floor altitude of either area without impacting the operational efficiency of the PRM/SOIA into CLE. Again, for clarity, the vertical dimensions of Areas F and G as proposed in the NPRM are from 5,000 feet MSL to and including 8,000 feet MSL for Area F and from 6,000 feet MSL to and including 8,000 feet MSL for Area G. Initially, the Class B airspace extension to the southwest in the same airspace proposed as Areas F and G was designed as a single area with a floor altitude of 5,000 feet MSL. After receiving public input from the ad hoc committee and public comments following the informal airspace meetings recommending the configuration proposed, the subdivision and altitudes of the two areas were proposed using the minimum amount of airspace necessary to contain PRM/SOIA procedures to Runways 6L/6R at CLE.

Aircraft flying PRM/SOIA procedures cannot be assigned the same altitude during turn-on to the final approach course; they must be assigned an altitude that differs by at least 1,000 feet from the altitude of other aircraft conducting simultaneous approaches. Air traffic control must continue to maintain at least 1,000 feet vertical separation between aircraft flying PRM/SOIA procedures until they reach 14 NM from CLE where the actively monitored No Transgression Zone between the approaches begins. Specifically, during an east flow at CLE, aircraft will be turned onto and established on final approach courses at 5,000 feet MSL and 7,000 feet MSL for Runway 6L, and 6,000 feet MSL and 8,000 feet MSL for Runway 6R. For both runways, air traffic controllers may be sequencing aircraft from two or more arrival streams, necessitating the use of multiple altitudes in the arrival descent areas, until lateral separation is established. Under some projected traffic scenarios, multiple altitude downwind patterns will be utilized, with aircraft "layered" by altitude and worked by separate controllers. As the boundary between Areas F and G is based on the extended Runway 6R localizer I–CLE signal, the FAA continues to believe that Class B incursions will not become an issue.

Lastly, as noted in the NPRM, the proposed Areas F and G are expected to provide the gliders operating at 67D with airspace supportive of their operations while at the same time ensuring the integrity of the CLE Class B airspace by containing all instrument procedures and the IFR aircraft flying the procedures at CLE.

Eleven commenters stated that establishing the proposed Areas F and G extension would adversely affect flight safety beneath and in the near vicinity of the extension. The safety concerns cited included compression of general aviation aircraft under the extension where gliders operate, increased potential for mid-air collisions, wake turbulence effects on gliders from heavy aircraft arrivals on approach to CLE, and increased potential for off-field landings by glider pilots as a result of the extension overhead 67D.

The FAA acknowledges that some compression will occur since non-participating VFR general aviation and glider aircraft have their choice of flying either above or below the Class B airspace extension or circumnavigating it further west to remain clear should they decide not to contact the Cleveland Terminal Radar Approach Control (TRACON) facility to receive Class B services. However, establishing the Class B airspace extensions is necessary, consistent with regulatory guidance, to contain all instrument procedures and the IFR turbo-jet aircraft flying the instrument approach procedures within

Class B airspace, and to enhance flight safety to all in the CLE terminal area by segregating the large turbo-jet aircraft and the non-participating VFR aircraft operating in the vicinity of the CLE Class B airspace areas.

All aircraft operating beneath or in the vicinity of Areas F and G are expected to continue to comply with the regulatory requirements of Title 14 of the Code of Federal Regulations (14 CFR) § 91.111, titled Operating Near Other Aircraft, to avoid creating a collision hazard with other aircraft operating in the same airspace. Additionally, all aircraft operating in the same areas noted above are expected to continue complying with 14 CFR § 91.113, titled Right-of-Way Rules: Except Water Operations, to "see and avoid" other aircraft as well. The FAA believes that continued general aviation and glider operator compliance with established flight rules regulatory requirements, and these two regulations specifically, will overcome the mid-air collision and wake turbulence concerns raised by the commenters.

Lastly, the FAA acknowledges the concerns of the glider community with the establishment of Class B airspace overhead 67D. However, the design of the Class B airspace extension to the southwest of CLE was minimized to the absolute essential dimensions operationally practical by incorporating the recommendations made by the glider community participating on the ad hoc committee and as requested during the informal airspace meetings. Since the majority of glider operations occur to the south and west of 67D and the redesigned configuration of the Class B airspace extension overlying 67D was raised to 6,000 feet MSL, the FAA believes impacts to local area or cross-country glider flight operation at 67D will be negligible and off-field landing will not be a factor.

The FAA has considered the safety concerns cited above thoroughly and determined they do not negate the need for this action. At the present time, large turbo-jet air carrier, general aviation, and glider aircraft are flying simultaneously in the airspace proposed to become Areas F and G, due to the outdated design of the CLE Class B airspace area. The traffic compression, mid-air collisions, effects of wake turbulence on gliders, and off-field landings concerns raised by the commenters all exist today. Moving forward with the Class B airspace modifications in this action will enhance flight safety for all operators flying within, through, or near the CLE Class B airspace area.

Six commenters stated that the proposed Class B airspace Areas F and G would establish Class B airspace directly over the airspace Fun Country Soaring (FCS) currently flies in and would diminish safe glider operations. The commenters argued that FCS would be forced to consider shutting down its operation or relocating away from 67D. The commenters further suggested that the loss of FCS would create personal financial hardships and result in financial impacts for the owner of 67D and the town of Wellington, OH.

The FAA does not agree. As noted in the NPRM, the initial CLE Class B airspace extension extending to the southwest was proposed from 5,000 feet MSL to 8,000 feet MSL. During the informal airspace meeting held in Wellington, OH, a member of the glider community suggested the airspace extension be split into a north section and a south section whereby the floor of the Class B airspace overlying 67D, where the gliders operate, could be raised to 6,000 feet MSL. This would provide glider operators over 5,000 feet of airspace to maneuver and minimize impacts to glider operations at 67D. Almost half of the comments received following the informal airspace meetings endorsed this recommendation, including the comments received from the Village of Wellington, OH, Administrator. The FAA adopted this suggestion and created Area F and Area G as proposed in the NPRM. Again, since most glider operations occur to the south and west of 67D, the Areas F and G proposed in the NPRM are expected to enable glider operations to continue with negligible impact to local area or cross-country flights. As such, the FCS operation at 67D is not expected to shut down or relocate and the financial impacts to the FCS members, owner of 67D, and town of Wellington, OH, that were alluded to by the commenters responding to the NPRM, would be averted.

Seven commenters questioned the need for the proposed CLE Class B modifications in light of the United and Continental airlines merger. They suggested that the merger would include considerable consolidation and reduction of routes resulting in a lower traffic volume at CLE; making the Class B airspace expansion unnecessary. In addition, one commenter stated further that if the proposed Class B airspace extension areas were being used by air carriers currently, then they did not see the requirement to legislate the exclusion of general aviation flyers by initiating this rulemaking action. In essence they were, arguing this rulemaking action was not needed.

The FAA does not agree. The FAA is taking action to modify the current Class B airspace area to contain all instrument procedures at CLE and the aircraft flying those instrument procedures to and from CLE within Class B airspace, consistent with FAA directives, based on the instrument approach and departure procedures in place today. This action overcomes IFR aircraft entering, exiting, and reentering the CLE Class B airspace area while flying published instrument approach procedures and the associated traffic patterns during arrival. Additionally, this action further enhance flight safety by segregating IFR aircraft flying instrument procedures into CLE and VFR aircraft operating in the vicinity of the CLE Class B airspace. The Class B airspace modifications in this rule represent the minimum airspace needed to reasonably accommodate the current operations, fleet mix, and existing flight tracks at CLE.

AOPA recommended the FAA consider raising the portion of Area B north of the shoreline over Lake Erie from the existing 1,900 feet MSL to 3,000 feet MSL. A second commenter also requested the FAA lift the existing 1,900 feet MSL and 3,000 feet MSL Class B airspace floors over Lake Erie (Areas B and C, respectively), but did not indicate an alternative altitude. Both commenters stated that an alternative to raising the Class B floor altitudes over Lake Erie could be the addition of a VFR flyway. The second commenter also requested the FAA establish a VFR flyway between the eastern Cleveland suburban airports, Cuyahoga County Airport and Burke Lakefront Airport, and the greater Columbus and Cincinnati airports.

The FAA has determined it is not possible to raise the floor altitudes for the CLE Class B airspace areas over Lake Erie, as requested. No modifications were proposed for these areas as the existing airspace structure was deemed sufficient to continue supporting and protecting IFR aircraft departing Runways 6L/6R and VFR aircraft flying along the Lake Erie shoreline. Although the commenters cited safety reasons as the basis for their recommendation and request, there are no known safety issues for that airspace today. The FAA recognizes that raising the CLE Class B Areas B and C airspace floors over Lake Erie would provide VFR pilots additional transit altitudes and airspace over Lake Erie to operate east and west along the shoreline north of Cleveland. However, the Class B airspace in Areas B and C protects the IFR aircraft departing Runways 6L/6R climbing and turning left over Lake Erie to transition

to westbound routings and the VFR aircraft flying in the vicinity of those Class B airspace areas from the IFR departures. Additionally, establishing VFR flyways is not a regulatory action and falls outside the scope of this rule. As such, the commenters' VFR flyway recommendations are being provided to the Cleveland TRACON facility for their consideration as appropriate, and are not addressed further in this action.

One commenter questioned the adequacy of the air traffic controller and radar resources to safely control and separate the aircraft operating in the vicinity of the proposed Class B airspace Areas E, F, and G. The commenter was specifically concerned that establishing the new Class B airspace extensions without additional resources would increase the number of near mid-air collisions occurring in the airspace below the extensions due to increasing numbers of high performance aircraft skirting beneath the proposed Class B airspace extensions and impacting those aircraft already flying there.

The FAA does not agree. Staffing and equipment resources are already in place and adequate to support the CLE Class B modifications and provide all Class B services without impacting safety or efficiency. The FAA does not expect either to be an issue for CLE. No air traffic control facility airspace sector changes will be required to handle the Class B airspace modifications; hence, the existing number of air traffic controllers assigned is sufficient. Additionally, since there are no changes to the current traffic flows associated with this Class B modification action, the existing radar sites, radar displays, navigation aids and communication equipment is also sufficient. However, should circumstances arise that indicate a need for additional air traffic controller or radar resources, action will be taken to obtain them.

Three commenters stated that the geographic coordinates [latitude/longitude] defining Areas F and G did not coincide with the text of the NPRM and needed to be redefined consistent with the dimensions briefed at the informal airspace meetings. Two of these commenters further noted that the southern boundary of Area G was not parallel with the Runway 6R centerline extended as proof the coordinates were in error.

The FAA does not agree. The coordinates published in the NPRM regulatory text for defining Areas F and G were validated with the FAA's Aeronautical Navigation Procedures Group and found to be correct and consistent with the text published in the NPRM. The FAA acknowledges that Areas F and G proposed in the NPRM differ from what was presented during the informal airspace meetings. However, the proposed Areas F and G airspace published in the NPRM is the minimum necessary to reasonably contain IFR arrival aircraft flying PRM/SOIA procedures to runways 6L and 6R, and the geographic coordinates published accurately reflect these areas. With respect to the comments about the southern boundary of Area G, the commenters are correct that the boundary is not parallel to the runway 6R centerline extended. The northern and southern boundaries of the Area G are defined from different navigation aids. The northern boundary is defined by the Runway 6R localizer (I–CLE) signal extended, and the southern boundary is defined 6 miles south and parallel to the Runway 6R localizer (I–EYU) signal extended. This accounts for the fact that the southern boundary of Area G is offset by 3 degrees and is not parallel to the northern boundary.

One commenter requested the FAA consider opening a "Window" into the proposed Areas F and G to make that airspace available to glider pilots when CLE is landing on Runways 24L and 24R. The commenter based their request on what they noted as the FAA's practice of opening Windows into Class A airspace for glider operations under mountain wave conditions in Western States.

Air traffic control has the authority to authorize, on a case by case basis, certain operations within Class B airspace pursuant to the regulatory requirements of 14 CFR part 91.131, Operations in Class B Airspace. Establishing operational procedures is not a regulatory action. As such, this commenter's request for operational procedures is being provided to the Cleveland TRACON for further consideration as appropriate.

One commenter recommended that a steeper descent profile from the existing 3 degree glide slopes at CLE be used so as to enhance air carrier safety. The SSA was concerned that poor weather descents, with reduced aircraft performance in landing configurations, could result in air carrier crashes not being contained within airfield boundaries, risking the public and others.

The FAA does not agree. Aircraft accidents and crash sites are influenced by many factors, i.e. nature of the emergency, altitude, airspeed, weight, phase of flight, distance from an airport, terrain, etc. Establishing steeper instrument approach descent profiles does not necessarily equate to a safer approach into an airport or less risk to the public. Additionally, glide slope angles above 3.1 degrees would result in the loss of approach minimums for category D and E aircraft. A 3 degree glide slope angle is the standard for safety, and increasing the angle of the glide slope is outside the scope of this airspace rule.

Two commenters noted the dimensions of the airspace modifications [presumably Areas F and G] proposed in the NPRM were different from what the ad hoc committee discussed. One of the commenters went on to question whether the FAA had published the airspace extension descriptions in the NPRM with errors, while the other asserted that the passage of time since the ad hoc committee meeting in 2008 had diminished the public's awareness and participation in this proposed rulemaking. In addition, five commenters argued that the airspace modifications proposed in the NPRM did not reflect the correct dimensions the users agreed would be a workable revision. Two of these commenters further argued they did not think it was proper or legal for the FAA to force what they consider to be unacceptable, unsafe restrictions on pilots and air traffic by publishing incorrect information without re-engaging the public forum.

The FAA acknowledges that the dimensions of the Class B airspace proposed in the NPRM are different from the initial airspace configuration dimensions discussed by the ad hoc committee. However, the FAA does not agree that the NPRM was published with errors in the proposed airspace extension descriptions, or that the public's awareness and participation in the rulemaking process has been diminished. An ad hoc committee was formed to solicit local input on an initial proposal and met in 2008 to develop recommendations to the FAA regarding the proposed design of the Class B airspace. The committee did not reach consensus on an airspace design, but did recommend a variety of alternatives for the FAA to consider. In addition, as announced in the **Federal Register** (73 FR 40446) on July 14, 2008, the FAA held Informal Airspace Meetings in the CLE local area on September 16 and September 17, 2008, to inform users of the planned airspace changes and to gather facts and information relevant to the proposed airspace action. A comment period followed these informal airspace meetings to solicit comments or recommendations on the proposal from the public. Finally, the NPRM was published in the **Federal Register** (75 FR 20528) on April 20, 2010, to again

inform users of the proposed airspace changes and provide a 60 day period for users to submit comments or recommendations on the proposal. All comments received were considered prior to the FAA's determination in this final rule action.

The development of the CLE Class B airspace modification was a dynamic, iterative process of informing the public of the proposed airspace action, receiving comments and recommendations from the public, and considering the operational requirements in concert with public comments and recommendations received. The comments and recommendations received from the ad hoc committee were considered by the FAA in developing the proposed airspace action presented at the informal airspace meetings, and the public's comments and recommendations received following the informal airspace meetings were considered in the development of the proposed airspace action presented in the NPRM. As such, the proposed Class B airspace extension (Areas F and G) descriptions in the NPRM were not published with errors and the public's awareness and participation in this rulemaking action has not been diminished with the passage of time.

One commenter questioned the total operations figure of 550,171 for CLE in 2008 that was cited in the **Federal Register** (75 FR 20528) notice. The commenter stated he was unable to find any traffic numbers near the figure presented, but did find a 200,268 total operations statistic for 2009 provided by the Hopkins International Airport website, as well as a Department of Transportation statistic that showed 104,823 total departures for CLE in 2008. The commenter further questioned that with actual traffic numbers less than half of the volume cited in the NPRM summary was the proposed change to the airspace really justified?

The FAA source for the 550,171 total operations for CLE in 2008 cited in the background section of the NPRM comes from the Air Traffic Activity Data Systems (ATADS). The FAA's ATADS contains the official National Airspace System (NAS) air traffic operations data available for public release. The total operations figure cited in the NPRM is in fact the total terminal operations for CLE; which is the sum of the tower operations (240,340) and the TRACON operations (309,831) using the Cleveland Class B airspace area. The total operations figure the commenter cited from the Hopkins International Airport website is the total airport operations; which reflect the IFR and VFR arrivals, departures, and local operations at the airport only. It does not account for any overflight operations flying in the vicinity of CLE that contribute to the traffic density or operational complexity.

As noted in the NPRM, the procedural requirements for using PRM/SOIA to establish aircraft on final at least 15 miles from CLE result in aircraft exceeding the lateral boundaries of the current Class B airspace by up to 10 miles during moderate levels of air traffic. Based on the total terminal operations figures above and the existing IFR traffic flows in the vicinity of CLE, the FAA has determined the proposed Class B airspace area modifications are justified and necessary. The Class B airspace extensions will enhance flight safety by containing all instrument procedures and the aircraft flying the instrument approach procedures within Class B airspace and ensuring the segregation of IFR aircraft arriving/departing CLE and VFR general aviation and glider aircraft operating in the vicinity of the Cleveland Class B airspace area.

The Rule

The FAA is amending 14 CFR part 71 to modify the Cleveland, OH, Class B airspace area. This action (depicted on the attached chart) administratively corrects one area within the existing Cleveland Class B airspace area and establishes two airspace extensions (the first, Area E, to the northeast, and the second, defined by Areas F and G, to the southwest) in order to provide additional airspace needed to contain IFR aircraft conducting instrument approach operations within Class B airspace once they have entered it and to better segregate the IFR aircraft arriving/departing CLE and the non-participating VFR aircraft operating in the vicinity of the Cleveland Class B airspace area. The modifications to the Cleveland Class B airspace area are discussed below.

Areas A, C, and D. Areas A, C, and D are unchanged by this action.

Area B. The FAA is correcting the legal description for Area B by removing the portion that excludes the airspace within a 2-mile radius of Burke Lakefront Airport. The Class B airspace within Area B does not overlap the airspace contained within a 2-mile radius of the Burke Lakefront Airport. Therefore, the Area B exclusion language addressing the airspace within a 2-mile radius of Burke Lakefront Airport is unnecessary.

Area E. Area E is established to the northeast of CLE. This modification extends from the existing Area D boundary defined by the 20-mile arc of I–HPI to the 30-mile arc of I–HPI. The northern boundary of this area is 6 miles north and parallel to the Runway 24R localizer (I–PVY) signal extended, and the southern boundary is 6 miles south and parallel to the Runway 24L localizer (I–FVZ) signal extended. This new area is established with the floor extending upward from 5,000 feet MSL to and including 8,000 feet MSL, overlying the Willoughby Lost Nation Airport in Willoughby, OH. The effect of this new area ensures IFR aircraft flying instrument approaches to runways 24L and 24R are contained within Class B airspace throughout the approach, segregates IFR aircraft arriving CLE and non-participating VFR aircraft operating in the vicinity of the Cleveland Class B airspace area, and provides airspace below and above this area for non-participating VFR aircraft operations outside of Class B airspace.

Area F. Area F is established to the southwest of CLE. This modification extends from the existing Area D boundary defined by the 20-mile arc of I–HPI to the 30-mile arc of I–HPI. The northern boundary is 6 miles north and parallel to the Runway 6L localizer (I–LIZ) signal extended, and the southern boundary is defined by the Runway 6R localizer (I–CLE) signal extended. This new area is established with the floor extending upward from 5,000 feet MSL to and including 8,000 feet MSL, overlying to the north and west of Wellington, OH. Similar to the effect of Area E, this new area [with Area G described below] ensures IFR aircraft flying instrument approaches to runways 6L and 6R are contained within Class B airspace throughout the approach, segregates IFR aircraft arriving CLE and non-participating VFR aircraft operating in the vicinity of the Cleveland Class B airspace area, and provides airspace below and above this area for VFR aircraft operations outside of Class B airspace.

Area G. Area G is established to the southwest of CLE also. This modification extends from the existing Area D boundary defined by the 20-mile arc of I–HPI to the 30-mile arc of I–HPI. The northern boundary is defined by the Runway 6R localizer (I–CLE) signal extended, and the southern boundary is defined 6 miles south and parallel to the Runway 6R localizer (I–EYU) signal extended. This new area is established with the floor extending upward from 6,000 feet MSL to and including 8,000 feet MSL, overlying the Reader-Botsford Airport in Wellington, OH. Similar to the effect of Areas E and F, this new area (with Area F described above) ensures

IFR aircraft flying instrument approaches to runways 6L and 6R are contained within Class B airspace throughout the approach, segregates IFR aircraft arriving CLE and non-participating VFR aircraft operating in the vicinity of the Cleveland Class B airspace area, and provides airspace below and above this area for VFR aircraft operations outside of Class B airspace.

Additionally, this action updates the CLE airport reference point and the CLE Runway 24L ILS/DME antenna (I–HPI) geographic coordinates listed in the airspace designation of the Cleveland Class B airspace area to reflect current NAS aeronautical data.

Environmental Review

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

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 new information collection requirement associated with this final rule.

Regulatory Evaluation Summary

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, the 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 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.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this final rule. The reasoning for this determination follows.

This final rule enhances safety by improving the flow of air traffic, and reducing the potential for midair collision in the Cleveland terminal area. In the NPRM, we concluded that the benefits of the proposed rule exceeded any minimal cost associated with the requirements. One commenter indicated that a soaring club would be forced to consider shutting down or relocating operations as a result of the proposal. The company may decide not to relocate which would result in no additional costs. If a company changes locations, there would be relocation costs. However, as explained earlier, the final rule will continue to allow glider operations resulting in only a minimal impact.

The FAA has determined establishing these requirements are essential to ensure flight safety and efficiency of the NAS in the CLE terminal airspace. Due to the efficiency and safety benefits, and because we have incorporated the recommendations of affected individuals into the requirements, there will only be minimal economic cost with substantial positive net benefits.

The FAA has, therefore, determined that this final rule is not a "significant regulatory action" as defined in section 3(f) of Executive Order 12866, and is not "significant" as defined in DOT's Regulatory Policies and Procedures.

Final 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.

Our initial determination was that the rule would not have a significant economic impact on a substantial number of small entities. One commenter indicated that a soaring club would be affected as a result of the proposal. We agree that, if a company changes locations, there would be some relocation cost. However, because we have incorporated the recommendations of affected individuals into the requirements, and we expect operations to continue, there will be minimal economic impact. As such, this final rule will not have a significant economic impact on a substantial number of small entities because the economic impact is expected to be minimal.

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

International Trade Impact Assessment

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 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 statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the effect of this final rule and determined that it will enhance safety and is not considered an unnecessary obstacle to trade.

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 (in 1995 dollars) 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; therefore, the requirements of Title II of the Act do not apply.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010, is amended as follows:

Paragraph 3000 Subpart B—Class B airspace

* * * * *

AGL OH B Cleveland, OH [Modified]

Cleveland-Hopkins International Airport (Primary Airport)
(Lat. 41°24′34″ N., long. 81°51′18″ W.)
Cleveland-Hopkins International Airport Runway 24L ILS/DME Antenna (I–HPI)
(Lat. 41°23′44″ N., long. 81°52′18″ W.)
Gilbert Airport (Pvt)
(Lat. 41°22′00″ N., long. 81°58′00″ W.)

Boundaries

Area A. That airspace extending upward from the surface to and including 8,000 feet MSL within a 5-mile radius of I–HPI, excluding that airspace within a 1-mile radius of Gilbert Airport.

Area B. That airspace extending upward from 1,900 feet MSL to and including 8,000 feet MSL within an 8.5-mile radius of I–HPI, excluding Area A previously described.

Area C. That airspace extending upward from 3,000 feet MSL to and including 8,000 feet MSL within a 15-mile radius of I–HPI, excluding Areas A and B previously described.

Area D. That airspace extending upward from 4,000 feet MSL to and including 8,000 feet MSL within a 20-mile radius of I–HPI, excluding Areas A, B, and C previously described.

Area E. That airspace extending upward from 5,000 feet MSL to and including 8,000 feet MSL starting at point lat. 41°30′41″ N., long. 81°27′22″ W., then northeast to point lat. 41°37′00″ N., long. 81°16′29″ W., then northwest along the 30-mile arc of I–HPI to point lat. 41°47′20″ N., long. 81°27′36″ W., then southwest to point lat. 41°40′43″ N., long. 81°38′13″ W., then southeast along the 20-mile arc of I–HPI to the point of beginning.

Area F. That airspace extending upward from 5,000 feet MSL to and including 8,000 feet MSL starting at point lat. 41°16′17″ N., long. 82°16′56″ W., then southwest to point lat. 41°09′35″ N., long. 82°27′23″ W., then southeast along the 30-mile arc of I–HPI to point lat. 41°04′24″ N., long. 82°22′43″ W., then northeast to point lat. 41°10′52″ N., long. 82°12′37″ W., then northwest along the 20-mile arc of I–HPI to the point of beginning.

Area G. That airspace extending upward from 6,000 feet MSL to and including 8,000 feet MSL starting at point lat. 41°06′13″ N., long. 82°05′07″ W., then southwest to point lat. 40°59′08″ N., long. 82°15′03″ W., then northwest along the 30-mile arc of I–HPI to point lat. 41°04′24″ N., long. 82°22′43″ W., then northeast to point lat. 41°10′52″ N, long. 82°12′37″ W, then southeast along the 20-mile arc of I–HPI to the point of beginning.

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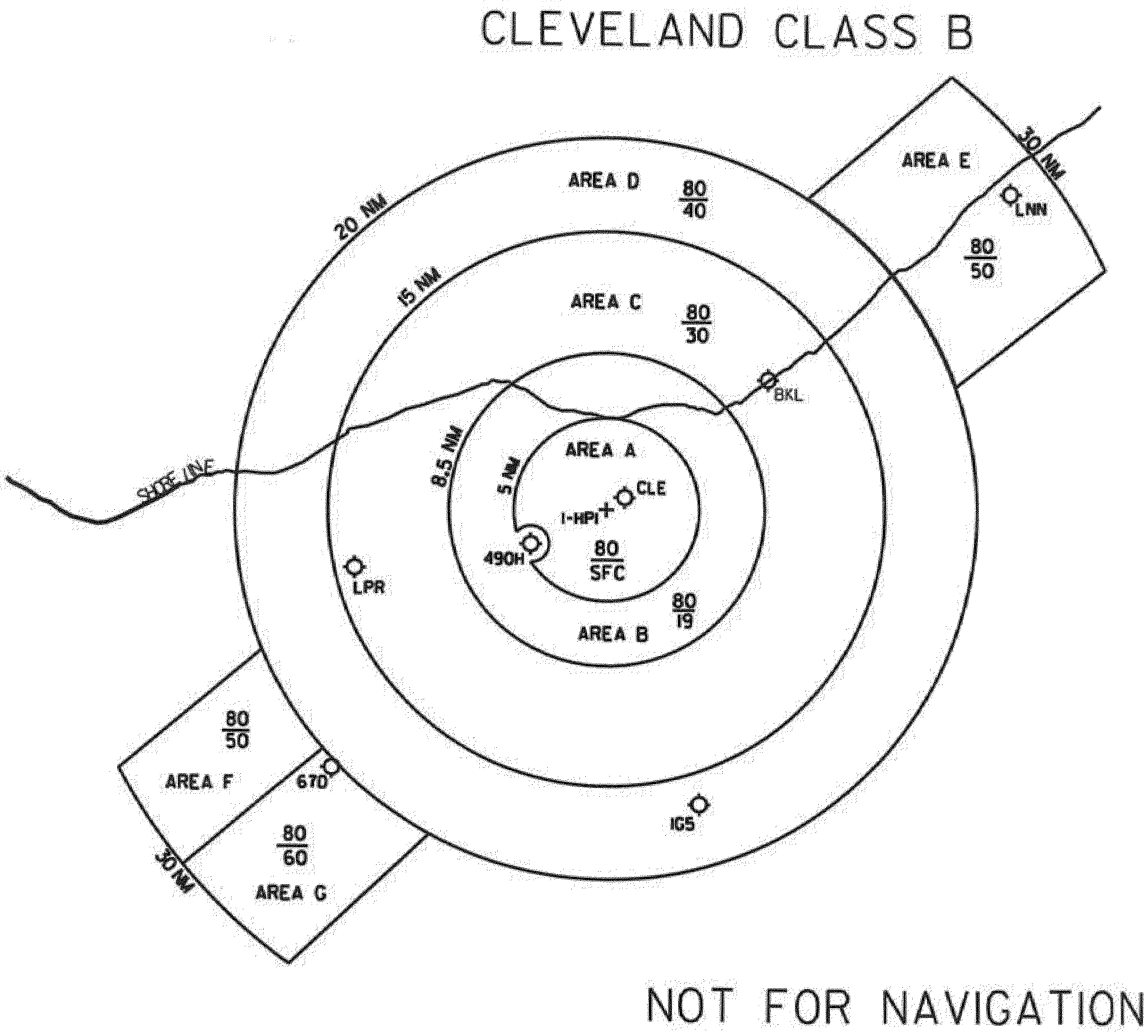

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Issued in Washington, DC, on February 7, 2011.

Edith V. Parish,

Manager, Airspace, Regulations and ATC Procedures Group.

[FR Doc. 2011–3211 Filed 2–11–11; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

14 CFR Part 97

[Docket No. 30768; Amdt. No. 3413]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective February 14, 2011. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 14, 2011.

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

For Examination—

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

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

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

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

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

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

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

FOR FURTHER INFORMATION CONTACT: Harry J. Hodges, Flight Procedure Standards Branch (AFS–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 rule amends Title 14, Code of Federal Regulations, part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of Title 14 of the Code of Federal Regulations.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAP and the corresponding effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC on February 4, 2011.

John McGraw,

Deputy Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
10–Mar–11 ...	AR	Little Rock	Adams Field	0/2077	1/26/11	RADAR–1, Amdt 17
10–Mar–11 ...	AR	Little Rock	Adams Field	0/2078	1/26/11	ILS OR LOC RWY 22R, Amdt 2
10–Mar–11 ...	AR	Little Rock	Adams Field	0/2079	1/26/11	VOR A, Orig-B
10–Mar–11 ...	AR	Little Rock	Adams Field	0/2080	1/26/11	ILS OR LOC RWY 4R, Amdt 2
10–Mar–11 ...	AR	Little Rock	Adams Field	0/2081	1/26/11	ILS OR LOC RWY 22L, Orig
10–Mar–11 ...	AR	Little Rock	Adams Field	0/2084	1/26/11	ILS OR LOC RWY 4L, Amdt 25C
10–Mar–11 ...	IN	Terre Haute	Terre Haute Intl—Hulman Field.	0/3721	1/5/11	RNAV (GPS) RWY 14, Orig-A
10–Mar–11 ...	IN	Terre Haute	Terre Haute Intl—Hulman Field.	0/3722	1/5/11	RNAV (GPS) RWY 5, Orig
10–Mar–11 ...	IN	Terre Haute	Terre Haute Intl—Hulman Field.	0/3723	1/5/11	LOC BC RWY 23, Amdt 19
10–Mar–11 ...	IN	Terre Haute	Terre Haute Intl—Hulman Field.	0/3724	1/5/11	VOR RWY 23, Amdt 20A
10–Mar–11 ...	IN	Terre Haute	Terre Haute Intl—Hulman Field.	0/3725	1/5/11	ILS OR LOC RWY 5, Amdt 22E

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
10–Mar–11	IN	Terre Haute	Terre Haute Intl—Hulman Field.	0/3726	1/5/11	RNAV (GPS) RWY 32, Orig-A
10–Mar–11	IN	Terre Haute	Terre Haute Intl—Hulman Field.	0/3727	1/5/11	RADAR–1, Amdt 4
10–Mar–11	IN	Terre Haute	Terre Haute Intl—Hulman Field.	0/3729	1/5/11	RNAV (GPS) RWY 23, Orig
10–Mar–11	MN	Rochester	Rochester Intl	0/3831	1/3/11	ILS OR LOC RWY 31, Amdt 22
10–Mar–11	MA	Provincetown	Provincetown Muni	1/0137	1/4/11	RNAV (GPS) RWY 7, Orig-B
10–Mar–11	GA	Atlanta	Hartsfield-Jackson Atlanta Intl	1/0138	1/4/11	ILS PRM RWY 27R (Sim. Close Parallel), Orig
10–Mar–11	WV	Petersburg	Grant County	1/0140	1/4/11	GPS RWY 31, Amdt 1
10–Mar–11	FL	Orlando	Orlando Intl	1/0142	1/4/11	ILS OR LOC RWY 35L, ILS RWY 35L (CAT II), ILS RWY 35L (CAT III), Amdt 6
10–Mar–11	TN	Memphis	Memphis Intl	1/0148	1/4/11	ILS OR LOC RWY 27, Amdt 3
10–Mar–11	TN	Memphis	Memphis Intl	1/0149	1/4/11	ILS OR LOC RWY 9, Amdt 27
10–Mar–11	TN	Memphis	Memphis Intl	1/0150	1/4/11	ILS OR LOC RWY 18L, Amdt 2
10–Mar–11	TN	Memphis	Memphis Intl	1/0178	1/6/11	ILS OR LOC RWY 36C, ILS RWY 36C (CAT II), ILS RWY 36C (CAT III), Amdt 3
10–Mar–11	TN	Memphis	Memphis Intl	1/0179	1/6/11	ILS OR LOC RWY 36L, ILS RWY 36L (CAT II), ILS RWY 36L (CAT III), Amdt 14
10–Mar–11	TN	Memphis	Memphis Intl	1/0180	1/6/11	ILS OR LOC RWY 36R, ILS RWY 36R (CAT II), ILS RWY 36R (CAT III), Amdt 3
10–Mar–11	WI	Oshkosh	Wittman Rgnl	1/0188	1/4/11	RNAV (GPS) RWY 36, Amdt 1D
10–Mar–11	WI	Oshkosh	Wittman Rgnl	1/0189	1/4/11	ILS OR LOC RWY 36, Amdt 6D
10–Mar–11	WI	Oshkosh	Wittman Rgnl	1/0190	1/4/11	NDB RWY 36, Amdt 5C
10–Mar–11	WI	Oshkosh	Wittman Rgnl	1/0191	1/4/11	VOR RWY 36, Amdt 16B
10–Mar–11	WI	Oshkosh	Wittman Rgnl	1/0192	1/4/11	VOR RWY 27, Amdt 4B
10–Mar–11	WI	Oshkosh	Wittman Rgnl	1/0193	1/4/11	LOC/DME BC RWY 18, Amdt 6B
10–Mar–11	AR	De Queen	J Lynn Helms Sevier County	1/0559	1/7/11	RNAV (GPS) RWY 8, Orig
10–Mar–11	SD	Sioux Falls	Joe Foss Field	1/0728	1/18/11	RNAV (GPS) RWY 21, Orig-B
10–Mar–11	SD	Sioux Falls	Joe Foss Field	1/0735	1/18/11	VOR/DME OR TACAN RWY 33, Amdt 12A
10–Mar–11	AR	De Queen	J Lynn Helms Sevier County	1/0739	1/10/11	Takeoff Minimums and Obstacle DP, Amdt 1
10–Mar–11	MO	Trenton	Trenton Muni	1/0740	1/18/11	NDB RWY 36, Amdt 9A
10–Mar–11	AR	Paragould	Kirk Field	1/0742	1/10/11	NDB RWY 22, Amdt 1
10–Mar–11	WI	Wausau	Wausau Downtown	1/0747	1/10/11	RNAV (GPS) RWY 12, Orig
10–Mar–11	AR	Heber Springs	Heber Springs Muni	1/0749	1/18/11	RNAV (GPS) RWY 23, Orig
10–Mar–11	WI	Wausau	Wausau Downtown	1/0750	1/10/11	NDB OR GPS B, Orig
10–Mar–11	IL	Chicago	Chicago-O'Hare Intl	1/0754	1/10/11	ILS OR LOC RWY 22L, Amdt 4H
10–Mar–11	WI	Marshfield	Marshfield Muni	1/0755	1/26/11	NDB RWY 16, Amdt 9A
10–Mar–11	NE	Lincoln	Lincoln	1/0789	1/10/11	ILS OR LOC RWY 18, Amdt 6E
10–Mar–11	NE	Lincoln	Lincoln	1/0790	1/10/11	RNAV (GPS) RWY 14, Orig
10–Mar–11	AL	Tuscaloosa	Tuscaloosa Rgnl	1/0841	1/18/11	Takeoff Minimums and Obstacle DP, Amdt 2
10–Mar–11	WI	Marshfield	Marshfield Muni	1/0912	1/26/11	NDB OR GPS RWY 4, Amdt 13A
10–Mar–11	AR	Rogers	Rogers Muni-Carter Field	1/0913	1/26/11	Takeoff Minimums and Obstacle DP, Orig
10–Mar–11	AR	Texarkana	Texarkana Rgnl-Webb Field	1/0914	1/19/11	RNAV (GPS) RWY 31, Orig-A
10–Mar–11	IN	New Castle	New Castle-Henry Co Muni	1/0915	1/19/11	NDB OR GPS RWY 9, Amdt 5A
10–Mar–11	IN	New Castle	New Castle-Henry Co Muni	1/0916	1/19/11	NDB RWY 27, Amdt 5
10–Mar–11	IL	Urbana	Frasca Field	1/1096	1/18/11	VOR/DME OR GPS B, Amdt 6
10–Mar–11	IL	Urbana	Frasca Field	1/1097	1/18/11	VOR OR GPS A, Amdt 11
10–Mar–11	VA	Franklin	Franklin Muni-John Beverly Rose.	1/1120	1/18/11	RNAV (GPS) RWY 9, Orig
10–Mar–11	VA	Franklin	Franklin Muni-John Beverly Rose.	1/1121	1/18/11	VOR RWY 9, Amdt 14B
10–Mar–11	VA	Franklin	Franklin Muni-John Beverly Rose.	1/1122	1/18/11	VOR/DME RWY 27, Amdt 9E
10–Mar–11	VA	Franklin	Franklin Muni-John Beverly Rose.	1/1123	1/18/11	RNAV (GPS) RWY 27, Orig-A
10–Mar–11	GA	Hampton	Clayton County—Tara Field	1/1176	1/14/11	RNAV (GPS) RWY 6, Orig
10–Mar–11	IA	Webster City	Webster City Muni	1/1309	1/18/11	VOR/DME OR GPS RWY 14, Amdt 4
10–Mar–11	WI	Hayward	Sawyer County	1/1310	1/18/11	RNAV (GPS) RWY 2, Orig-A
10–Mar–11	IA	Hampton	Hampton Muni	1/1312	1/18/11	Takeoff Minimums and Obstacle DP, Amdt 3
10–Mar–11	IA	Hampton	Hampton Muni	1/1313	1/18/11	VOR/DME RWY 35, Amdt 1B
10–Mar–11	IA	Hampton	Hampton Muni	1/1314	1/18/11	RNAV (GPS) RWY 35, Orig
10–Mar–11	IA	Hampton	Hampton Muni	1/1315	1/18/11	RNAV (GPS) RWY 17, Orig

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
10–Mar–11 ...	IA	Hampton	Hampton Muni	1/1316	1/18/11	NDB RWY 17, Amdt 4A
10–Mar–11 ...	IL	Centralia	Centralia Muni	1/1318	1/18/11	RNAV (GPS) RWY 36, Orig
10–Mar–11 ...	IL	Centralia	Centralia Muni	1/1322	1/18/11	RNAV (GPS) RWY 18, Orig
10–Mar–11 ...	NE	Scottsbluff	Western Neb. Rgnl/William B. Heilig Field.	1/1358	1/19/11	ILS OR LOC/DME RWY 12, Orig
10–Mar–11 ...	NE	Crete	Crete Muni	1/1437	1/18/11	VOR/DME RWY 35, Amdt 3B
10–Mar–11 ...	MI	Lakeview	Lakeview Airport—Griffith Field	1/1547	1/18/11	GPS RWY 27, Orig
10–Mar–11 ...	MI	Lakeview	Lakeview Airport—Griffith Field	1/1550	1/18/11	GPS RWY 9, Orig
10–Mar–11 ...	VA	Warrenton	Warrenton-Fauquier	1/1693	1/14/11	RNAV (GPS) RWY 15, Orig
10–Mar–11 ...	VA	Warrenton	Warrenton-Fauquier	1/1694	1/14/11	VOR RWY 15, Amdt 4
10–Mar–11 ...	TN	Memphis	Memphis Intl	1/1695	1/14/11	RNAV (GPS) RWY 36C, Amdt 1
10–Mar–11 ...	NC	Oak Island	Brunswick County	1/1790	1/14/11	Takeoff Minimums and Obstacle DP, Orig
10–Mar–11 ...	FL	Brooksville	Hernando County	1/1798	1/19/11	ILS RWY 9, Amdt 2A
10–Mar–11 ...	FL	St. Petersburg	Albert Whitted	1/1879	1/14/11	RNAV (GPS) RWY 18, Orig-A
10–Mar–11 ...	OH	Hillsboro	Highland County	1/1889	1/14/11	NDB OR GPS RWY 23, Amdt 4
10–Mar–11 ...	LA	Bastrop	Morehouse Memorial	1/1893	1/18/11	NDB RWY 34, Amdt 6A
10–Mar–11 ...	LA	Bastrop	Morehouse Memorial	1/1896	1/18/11	VOR/DME A, Amdt 9A
10–Mar–11 ...	NJ	Woodbine	Woodbine Muni	1/1912	1/14/11	RNAV (GPS) RWY 1, Orig
10–Mar–11 ...	RI	Providence	Theodore Francis Green State	1/1935	1/18/11	RNAV (GPS) RWY 34, Orig-C
10–Mar–11 ...	NJ	Trenton	Trenton Mercer	1/1936	1/18/11	VOR OR GPS RWY 24, Amdt 4A
10–Mar–11 ...	TN	Springfield	Springfield Robertson County	1/1938	1/18/11	Takeoff Minimums and Obstacle DP, Orig
10–Mar–11 ...	NJ	Lincoln Park	Lincoln Park	1/1939	1/19/11	Takeoff Minimums and Obstacle DP, Orig
10–Mar–11 ...	TN	Smyrna	Smyrna	1/1942	1/18/11	ILS RWY 32. Amdt 5B
10–Mar–11 ...	FL	Lakeland	Lakeland Linder Rgnl	1/1974	1/18/11	VOR RWY 27, Amdt 7A
10–Mar–11 ...	FL	Lakeland	Lakeland Linder Rgnl	1/1975	1/18/11	VOR RWY 9, Amdt 4
10–Mar–11 ...	FL	Lakeland	Lakeland Linder Rgnl	1/1977	1/18/11	NDB RWY 5, Amdt 4A
10–Mar–11 ...	FL	Lakeland	Lakeland Linder Rgnl	1/1978	1/18/11	ILS OR LOC RWY 5, Amdt 7A
10–Mar–11 ...	MI	Traverse City	Cherry Capital	1/2194	1/18/11	GPS RWY 36, Orig-A
10–Mar–11 ...	IN	Indianapolis	Indianapolis Intl	1/2195	1/19/11	ILS OR LOC RWY 5L, ILS OR LOC RWY 5L (CAT II), ILS OR LOC RWY 5L (CAT III), Amdt 3A
10–Mar–11 ...	IL	Chicago	Chicago-O'Hare Intl	1/2497	1/26/11	RNAV (GPS) RWY 14L, Amdt 1B
10–Mar–11 ...	IL	Chicago	Chicago-O'Hare Intl	1/2499	1/26/11	RNAV (GPS) RWY 28, Amdt 2A
10–Mar–11 ...	IL	Chicago	Chicago-O'Hare Intl	1/2500	1/26/11	ILS OR LOC RWY 14L, ILS RWY 14L (CAT II), ILS RWY 14L (CAT III), Amdt 29B
10–Mar–11 ...	PA	Allentown	Lehigh Valley Intl	1/2602	1/19/11	RNAV (GPS) RWY 31, Amdt 1A
10–Mar–11 ...	VA	Richmond/Ashland ..	Hanover County Muni	1/2664	1/26/11	RNAV (GPS) RWY 16, Orig
10–Mar–11 ...	KY	Campbellsville	Taylor County	1/2665	1/26/11	SDF RWY 23, Amdt 2A
10–Mar–11 ...	KY	Campbellsville	Taylor County	1/2667	1/26/11	NDB OR GPS RWY 23, Amdt 3A
10–Mar–11 ...	TN	Memphis	Memphis Intl	1/2724	1/26/11	RNAV (GPS) RWY 36L, Amdt 1
10–Mar–11 ...	FL	Fort Lauderdale	Fort Lauderdale/Hollywood Intl	1/2726	1/26/11	ILS OR LOC RWY 27R, Amdt 9
10–Mar–11 ...	AL	Huntsville	Madison County Executive/ Tom Sharp Jr. Fld.	1/2727	1/26/11	Takeoff Minimums and Obstacle DP, Amdt 3
10–Mar–11 ...	GA	Atlanta	Newnan Coweta County	1/2746	1/26/11	Takeoff Minimums and Obstacle DP, Amdt 3A
10–Mar–11 ...	FL	Venice	Venice Muni	1/2764	1/26/11	NDB RWY 31, Amdt 2
10–Mar–11 ...	ME	Portland	Portland Intl Jetport	1/2971	1/26/11	RNAV (GPS) RWY 36, Orig-B
10–Mar–11 ...	OR	John Day	Grant Co. Rgnl/Ogilvie Field ...	1/3435	1/26/11	RNAV (GPS) Y RWY 9, Orig
10–Mar–11 ...	KY	Monticello	Wayne County	1/3700	1/26/11	GPS RWY 21, Orig
10–Mar–11 ...	KY	Monticello	Wayne County	1/3702	1/26/11	GPS RWY 3, Orig

[FR Doc. 2011–3000 Filed 2–11–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30767; Amdt. No. 3412]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new

obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective February 14, 2011. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 14, 2011.

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

For Examination—

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

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

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

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

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

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

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

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

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

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

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as contained in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPS and Takeoff Minimums and ODPS, an effective date at least 30 days after publication is provided.

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

Conclusion

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

List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC, on February 4, 2011.

John McGraw,

Deputy Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

Little Rock, AR, Adams Field, RNAV (GPS) RWY 18, Amdt 1

Show Low, AZ, Show Low Rgnl, RNAV (GPS) RWY 24, Amdt 1

Titusville, FL, Arthur Dunn Air Park, Takeoff Minimums and Obstacle DP, Amdt 2

Atlanta, GA, Atlanta Rgnl Falcon Field, ILS OR LOC RWY 31, Amdt 1

Atlanta, GA, Atlanta Rgnl Falcon Field, NDB RWY 31, Amdt 2
Atlanta, GA, Atlanta Rgnl Falcon Field, RNAV (GPS) RWY 13, Amdt 1
Atlanta, GA, Atlanta Rgnl Falcon Field, RNAV (GPS) RWY 31, Amdt 1A
Atlanta, GA, Atlanta Rgnl Falcon Field, Takeoff Minimums and Obstacle DP, Amdt 2
Algona, IA, Algona Muni, Takeoff Minimums and Obstacle DP, Amdt 4
Ankeny, IA, Ankeny Rgnl, RNAV (GPS) RWY 18, Amdt 1
Davenport, IA, Davenport Muni, ILS OR LOC RWY 15, Amdt 1
Davenport, IA, Davenport Muni, RNAV (GPS) RWY 3, Amdt 1
Davenport, IA, Davenport Muni, RNAV (GPS) RWY 15, Amdt 2
Davenport, IA, Davenport Muni, RNAV (GPS) RWY 21 Amdt 1
Davenport, IA, Davenport Muni, RNAV (GPS) RWY 33, Amdt 1
Moline, IL, Quad City Intl., LOC RWY 10, Orig
Moline, IL, Quad City Intl., RNAV (GPS) RWY 28, Orig
Moline, IL, Quad City Intl, Takeoff Minimums and Obstacle DP, Orig
French Lick, IN, French Lick Muni, GPS RWY 26, Orig-A, CANCELLED
French Lick, IN, French Lick Muni, RNAV (GPS) RWY 8, Amdt 1
French Lick, IN, French Lick Muni, RNAV (GPS) RWY 26, Orig
Winchester, IN, Randolph County, GPS RWY 25, Orig-A, CANCELLED
Winchester, IN, Randolph County, RNAV (GPS) RWY 8, Orig
Winchester, IN, Randolph County, RNAV (GPS) RWY 26, Orig
Winchester, IN, Randolph County, VOR–A, Amdt 9
El Dorado, KS, Captain Jack Thomas/El Dorado, GPS RWY 4, Orig, CANCELLED
El Dorado, KS, Captain Jack Thomas/El Dorado, GPS RWY 15, Orig, CANCELLED
El Dorado, KS, Captain Jack Thomas/El Dorado, GPS RWY 22, Orig, CANCELLED
El Dorado, KS, Captain Jack Thomas/El Dorado, GPS RWY 33, Orig-B, CANCELLED
El Dorado, KS, Captain Jack Thomas/El Dorado, NDB RWY 4, Amdt 3, CANCELLED
El Dorado, KS, Captain Jack Thomas/El Dorado, RNAV (GPS) RWY 4, Orig
El Dorado, KS, Captain Jack Thomas/El Dorado, RNAV (GPS) RWY 15, Orig
El Dorado, KS, Captain Jack Thomas/El Dorado, RNAV (GPS) RWY 22, Orig
El Dorado, KS, Captain Jack Thomas/El Dorado, RNAV (GPS) RWY 33, Orig
Marysville, KS, Marysville Muni, NDB RWY 34, Amdt 5
Marysville, KS, Marysville Muni, RNAV (GPS) RWY 16, Orig
Marysville, KS, Marysville Muni, RNAV (GPS) RWY 34, Orig
Shreveport, LA, Shreveport Downtown, Takeoff Minimums and Obstacle DP, Amdt 3A
Ely, MN, Ely Muni, VOR–A, Orig, CANCELLED
Paynesville, MN, Paynesville Muni, RNAV (GPS) RWY 11, Orig
Paynesville, MN, Paynesville Muni, RNAV (GPS) RWY 29, Orig
Kansas City, MO, Kansas City Intl, ILS OR LOC RWY 1L, Amdt 14
Mountain View, MO, Mountain View, Takeoff Minimums and Obstacle DP, Amdt 4
Potosi, MO, Washington County, RNAV (GPS) RWY 2, Amdt 1
Potosi, MO, Washington County, RNAV (GPS) RWY 20, Amdt 1
Wilmington, NC, Wilmington Intl, ILS OR LOC RWY 35, Amdt 21
Bismarck, ND, Bismarck Muni, Takeoff Minimums and Obstacle DP, Amdt 8
Berlin, NH, Berlin Rgnl, VOR–B, Amdt 3
Columbus, OH, Ohio State University, ILS OR LOC RWY 9R, Amdt 5
Hamilton, OH, Butler Co Rgnl, Takeoff Minimums and Obstacle DP, Amdt 4
Tulsa, OK, Richard Lloyd Jones Jr., Takeoff Minimums and Obstacle DP, Amdt 7
John Day, OR, Grant Co Rgnl/Ogilvie Field, RNAV (GPS) Z RWY 9, Orig-A
Rapid City, SD, Rapid City Rgnl, Takeoff Minimums and Obstacle DP, Amdt 7
Anahuac, TX, Chambers County, Takeoff Minimums and Obstacle DP, Orig
Brownsville, TX, Brownsville/South Padre Island Intl, VOR/DME RNAV OR GPS RWY 17, Amdt 3A, CANCELLED
Coleman, TX, Coleman Muni, Takeoff Minimums and Obstacle DP, Orig
Dallas, TX, Dallas Love Field, RNAV (GPS) Z RWY 13L, Orig-B
Midlothian/Waxahachie, TX, Mid-Way Rgnl, RNAV (GPS) RWY 18, Orig
Midlothian/Waxahachie, TX, Mid-Way Rgnl, Takeoff Minimums and Obstacle DP, Amdt 1
Mineola, TX, Mineola Wisener Field, Takeoff Minimums and Obstacle DP, Orig
Wink, TX, Winkler County, Takeoff Minimums and Obstacle DP, Orig-A
Amery, WI, Amery Muni, NDB RWY 18, Amdt 6A, CANCELLED
Williamson, WV, Mingo County Rgnl, Takeoff Minimums and Obstacle DP, Orig, CANCELLED

[FR Doc. 2011–3003 Filed 2–11–11; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 157

[Docket No. RM81–19–000]

Natural Gas Pipelines; Project Cost and Annual Limits

February 8, 2011.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: Pursuant to the authority delegated by 18 CFR 375.308(x)(1), the Director of the Office of Energy Projects (OEP) computes and publishes the project cost and annual limits for natural gas pipelines blanket construction certificates for each calendar year.

DATES: *Effective date:* This final rule is effective February 14, 2011.

Applicability date: This final rule establishes cost limits applicable from January 1, 2011 through December 31, 2011.

FOR FURTHER INFORMATION CONTACT: Richard Foley, Chief, Certificates Branch 1, Division of Pipeline Certificates, (202) 502–8955.

SUPPLEMENTARY INFORMATION:

Publication of Project Cost Limits Under Blanket Certificates; Order of the Director, OEP

Section 157.208(d) of the Commission's Regulations provides for project cost limits applicable to construction, acquisition, operation and miscellaneous rearrangement of facilities (Table I) authorized under the blanket certificate procedure (Order No. 234, 19 FERC ¶ 61,216). Section 157.215(a) specifies the calendar year dollar limit which may be expended on underground storage testing and development (Table II) authorized under the blanket certificate. Section 157.208(d) requires that the "limits specified in Tables I and II shall be adjusted each calendar year to reflect the 'GDP implicit price deflator' published by the Department of Commerce for the previous calendar year."

Pursuant to § 375.308(x)(1) of the Commission's Regulations, the authority for the publication of such cost limits, as adjusted for inflation, is delegated to the Director of the Office of Energy Projects. The cost limits for calendar year 2011, as published in Table I of § 157.208(d) and Table II of § 157.215(a), are hereby issued.

List of Subjects in 18 CFR Part 157

Administrative practice and procedure, Natural Gas, Reporting and recordkeeping requirements.

Jeff C. Wright,

Director, Office of Energy Projects.

Accordingly, 18 CFR part 157 is amended as follows:

PART 157—[AMENDED]

■ 1. The authority citation for part 157 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352.

■ 2. Table I in § 157.208(d) is revised to read as follows:

§ 157.208 Construction, acquisition, operation, replacement, and miscellaneous rearrangement of facilities.

* * * * *

(d) * * *

TABLE I

Year	Limit	
	Auto. proj. cost limit (Col.1)	Prior notice proj. cost limit (Col.2)
1982	$4,200,000	$12,000,000
1983	4,500,000	12,800,000
1984	4,700,000	13,300,000
1985	4,900,000	13,800,000
1986	5,100,000	14,300,000
1987	5,200,000	14,700,000
1988	5,400,000	15,100,000
1989	5,600,000	15,600,000
1990	5,800,000	16,000,000
1991	6,000,000	16,700,000
1992	6,200,000	17,300,000
1993	6,400,000	17,700,000
1994	6,600,000	18,100,000
1995	6,700,000	18,400,000
1996	6,900,000	18,800,000
1997	7,000,000	19,200,000
1998	7,100,000	19,600,000
1999	7,200,000	19,800,000
2000	7,300,000	20,200,000
2001	7,400,000	20,600,000
2002	7,500,000	21,000,000
2003	7,600,000	21,200,000
2004	7,800,000	21,600,000
2005	8,000,000	22,000,000
2006	9,600,000	27,400,000
2007	9,900,000	28,200,000
2008	10,200,000	29,000,000
2009	10,400,000	29,600,000
2010	10,500,000	29,900,000
2011	10,600,000	30,200,000

* * * * *

■ 3. Table II in § 157.215(a)(5) is revised to read as follows:

§ 157.215 Underground storage testing and development.

(a) * * *

(5) * * *

TABLE II

Year	Limit
1982	$2,700,000
1983	2,900,000
1984	3,000,000
1985	3,100,000
1986	3,200,000
1987	3,300,000
1988	3,400,000
1989	3,500,000
1990	3,600,000
1991	3,800,000
1992	3,900,000
1993	4,000,000
1994	4,100,000
1995	4,200,000
1996	4,300,000
1997	4,400,000
1998	4,500,000

TABLE II—Continued

Year	Limit
1999	4,550,000
2000	4,650,000
2001	4,750,000
2002	4,850,000
2003	4,900,000
2004	5,000,000
2005	5,100,000
2006	5,250,000
2007	5,400,000
2008	5,550,000
2009	5,600,000
2010	5,700,000
2011	5,750,000

* * * * *

[FR Doc. 2011–3190 Filed 2–11–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

U. S. Customs and Border Protection

19 CFR Part 141

[USCBP–2008–0062; CBP Dec. 10–34]

RIN 1515–AD61 (Formerly 1505–AB96)

Technical Correction: Completion of Entry and Entry Summary—Declaration of Value; Correction

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Final rule; correction.

SUMMARY: Customs and Border Protection (CBP) published in the **Federal Register** of December 30, 2010, a document concerning technical corrections to part 141 of title 19 of the CBP Regulations (19 CFR part 141). Inadvertently, an erroneous CBP Decision Number was listed in the heading of that document. This document corrects the December 30, 2010 document to reflect that the correct CBP Decision Number is 10–34 as set forth above.

DATES: The final rule is effective February 14, 2011.

FOR FURTHER INFORMATION CONTACT: Michele J. Snavely, Regulations and Rulings, Office of International Trade, (202) 325–0354.

Correction

In rule document 2010–32912 beginning on page 82241 in the issue of Thursday, December 30, 2010, make the following correction in the third column:

Remove in the heading of the document "CBP Dec. 10–33" and add in its place "CBP Dec. 10–34".

Dated: February 9, 2011.

Harold M. Singer,

Director, Regulations and Disclosure Law Division, U.S. Customs and Border Protection.

[FR Doc. 2011–3265 Filed 2–11–11; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DOD–2008–HA–0057]

RIN 0720–AB24

TRICARE Program; Surgery for Morbid Obesity

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule adds a definition of Bariatric Surgery, amends the definition of Morbid Obesity, and revises the language relating to the treatment of morbid obesity to allow benefit consideration for newer bariatric surgical procedures that are considered appropriate medical care. The final rule removes language that specifically limits the types of surgical procedures to treat co-morbid conditions associated with morbid obesity and retains the TRICARE Program exclusion of non-surgical interventions related to morbid obesity, obesity and/or weight reduction. This final rule is necessary to allow coverage for other surgical procedures that reduce or resolve co-morbid conditions associated with morbid obesity and the use of the Body Mass Index (BMI), which is the more accurate measure for excess weight to estimate relative risk of disease. As new technologies or procedures evolve from investigational into generally accepted norms for medical practice, the statutes and regulations governing the TRICARE Program allow the Department to offer beneficiaries these new benefits. These changes are required in order to allow the Department to provide these newer technologies and procedures for the treatment of morbid obesity as they evolve.

DATES: *Effective Date:* This rule is effective March 16, 2011.

ADDRESSES: TRICARE Management Activity, Medical Benefits and Reimbursement Branch, 16401 East Centretech Parkway, Aurora, CO 80011–9066.

FOR FURTHER INFORMATION CONTACT: Gail L. Jones, Medical Benefits and Reimbursement Branch, TRICARE Management Activity, telephone (303) 676–3401.

SUPPLEMENTARY INFORMATION:

I. Background

On December 27, 1982, the Department of Defense (DoD) published a final rule in the **Federal Register** (47 FR 57491–57493) that restricted surgical intervention for morbid obesity to gastric bypass, gastric stapling, or gastroplasty method (excluding all other types) when the primary purpose of surgery is to treat a severe related medical illness or medical condition. The severe medical conditions or illness associated with morbid obesity included diabetes mellitus, hypertension, cholecystitis, narcolepsy, Pickwickian Syndrome (and other severe respiratory disease), hypothalamic disorders, and severe arthritis of the weight-bearing joints. The DoD also limited program payments to two categories of patients: (1) Those who weighed 100 pounds over their ideal weight with a specific severe medical condition; and (2) those who were 200 percent or more over their ideal weight with no medical complications required. Program payment was made available as well in cases in which a patient, who originally met the criteria, received an intestinal bypass, or other surgery for obesity and, because of complications, required a second surgery. Payment was allowed even though the patient's condition may not have technically met the definition of morbid obesity because of the weight that was already lost following the initial surgery. All other surgeries including non-surgical treatment related to morbid obesity, obesity, and/or weight reduction were excluded.

The DoD used the definition of morbid obesity, which was based on the Metropolitan Life Table and used then by other major health care plans, as well as reflected the 1982 general opinion regarding which cases justify surgical intervention. The DoD decided, at the time, that it was necessary to be very specific in benefit parameters due to fiscal responsibility and to ensure that Program beneficiaries were not being exposed to less than fully developed medical technology or procedures.

At the time the current regulation was written in 1982, gastric bypass, gastric stapling, and gastroplasty methods were the recognized surgeries for morbid obesity. However, in recent years, other bariatric surgical procedures have evolved and some have a substantial body of literature to support their safety and efficacy. Unlike the original rule that listed the specific surgical procedures and the clinical conditions for which coverage may be extended; this final rule authorizes benefit consideration for those bariatric surgical procedures that have moved from the unproven status to the position of nationally accepted medical practice, as determined by the Program standard of reliable evidence.

Also in 1982 during development of the current regulation for morbid obesity, overweight and obesity were typically measured with height-weight tables (such as the Metropolitan Life Table). The 1982 regulation restricted eligibility for bariatric surgery to individuals who exceed their ideal weight for height by 100 pounds with an associated severe medical condition, or 200 percent or more over their ideal body weight with no associated medical condition required.

This final rule changes the Program definition of morbid obesity to reflect the current nationally accepted medical use of the BMI, rather than the typical assessed height-weight table (*i.e.,* the Metropolitan Life Table), to determine an individual's eligibility for bariatric surgical treatment. The BMI is the more accurate measure for excess weight to estimate relative risk of disease. Since there now are more than 30 major diseases associated with obesity, the final rule requires the Director, TMA, to issue specific criteria for co-morbid conditions exacerbated or caused by (morbid) obesity, as determined by the Program standard of reliable evidence.

This final rule does not expand the TRICARE benefit for morbid obesity surgery. However, it does make the specific procedures that are covered, as well as the clinical conditions for which coverage may be extended, a matter of policy. In other words, new bariatric surgery procedures may be added to the TRICARE benefit structure as such procedures are proven safe and effective and are established as nationally accepted medical practice as determined by the Program standard of reliable evidence.

II. Public Comments

On October 29, 2009 (74 FR 55792–55794), the Office of the Secretary of Defense published a proposed rule and provided the public the opportunity to comment on implementing changes to surgery for morbid obesity. The comment period closed on December 28, 2009. As result of publication of the proposed rule, DoD received 18 comments. Thirteen commenters expressed support and approval. We appreciate all expressions of support and approval for the proposed guidelines. We do not discuss the majority these comments which were favorable to the proposed rule and thus with which the Agency generally agrees. However, several people made comments with specific suggestions and questions and we have responded to each of these comments below.

Comment: One commenter objected to the provisions of the proposed rule in the belief the coverage is inappropriate for the selected group of patients.

Response: We disagree. As discussed in the proposed rule, TRICARE allows coverage for surgical procedures that may reduce or resolve co-morbid conditions associated with morbid obesity. This is because a component of the effective treatment of the co-morbidity condition for those who fit the morbid obesity criteria set forth in this rule is weight loss. Thus while the Department does not pay for general weight loss programs, it may pay for these bariatric surgical procedures as a component of the treatment of the co-morbidity condition. Title 10, United States Code Section 1079(a)(13) is sometimes referred to as the Department's "medical necessity" provision. It prohibits the Department from providing any service or supply, which is not medically, or psychologically necessary to prevent, diagnose, or treat a mental or physical illness, injury, or bodily malfunction as assessed or diagnosed by a physician or other authorized provider. Because the Department has found this type of treatment for the co-morbidity condition to be medically necessary, the type of health care services in the proposed rule are the type of health care services authorized by statute and may be provided by the TRICARE program.

Comment: Another commenter asked if there is anything being done to help employees cope with their obesity, and whether there are any preventative programs in place to educate people and help them to avoid obesity.

Response: There is a focus on health and wellness for active duty members, DoD civilians, retired members, contractors, reservists, and beneficiaries to help encourage healthy lifestyles. Each of the armed services has developed programs to promote fitness and health. The Army has the *MOVE* Program, which is a personalized online weight management program that comprises up to 13 one-hour sessions. The Navy *Shipshape* Program is designed to move military personnel and their families toward healthier food choices, fitness habits and lifestyles. The Air Force *Fit to Fight* Program encourages unit fitness programs, encourages units to exercise together, and offers nutrition and fitness counseling to those with borderline fitness test scores. These wellness programs are designed to provide individuals with tools to improve their

overall health and lifestyles and address everything from smoking to obesity.

Comment: One professional organization affirmed the purpose and scope of the rule acknowledging the need to use body mass index (BMI) criteria instead of the Metropolitan Life Tables accurately to classify the degree of morbid obesity. The commenter recommends that DoD provide coverage for other standard accepted bariatric surgical procedures as recognized by the American College of Surgeons (ACS), Bariatric Surgery Center Network (BSCN) and American Society for Metabolic and Bariatric Surgery (ASMBS). Another professional commenter points out that gastric sleeve resection has been established and recognized by the ASMBS as having an important role, as an intermediate intervention regarding both risk and efficacy of weight loss between bypass and adjustable gastric banding.

Response: Before the Department may offer any treatment or procedure to its beneficiaries, the regulations in this part require that the treatment or procedure must be "proven care". This is done as outlined in § 199.4(g)(15) of this part using the hierarchy of established reliable evidence as defined in § 199.2 of this part. A procedure must meet this standard in order for the Department to ensure safe, quality health care for its beneficiaries and to avoid arbitrary administration of TRICARE benefit decisions.

Comment: Another commenter agrees with the changes as well but recommends that the list of obesity-associated co-morbidities be a complete, inclusive list to prevent inappropriate denial of service. The commenter goes on to state that covered procedures should include the laparoscopic vertical sleeve gastrectomy and duodenal switch procedures.

Response: We appreciate the suggestion that morbid obesity multiple co-morbidities be a complete, inclusive list and will consider it as one of many recommendations in revising the benefit policy. We disagree with the commenter's suggestion that vertical sleeve gastrectomy (VSG) and biliopancreatic diversion with duodenal switch (BPD/DS) should be covered under the TRICARE Program. The evidence evaluating the safety and efficacy of BPD/DS and VSG do not meet the program specific standards of reliable evidence. Existing data does suggest the use of these procedures is a possible benefit to some patients but there is incomplete information to predict the effect of long-term outcomes. This lack of information relating to the long-term outcomes is a matter of concern to the Department. Medical literature indicates as well that well-controlled trials are needed to determine both short-term and long-term safety and efficacy of BPD/DS and long-term (> 5 years) weight loss and co-morbidity resolution data for VSG. The Agency will continue to monitor the development of the literature and the status of ongoing well-controlled clinical trials regarding the effectiveness of the laparoscopic VSG and BPD/DS procedures. At such time when the reliable evidence demonstrates that these bariatric surgical procedures have proven medical effectiveness, the Director, TMA will initiate action to cover these procedures.

Comment: This same commenter asks that DoD consider improving reimbursement for bariatric surgical procedure to a level that increases access for patients. The commenter goes on to state that current reimbursement levels are so low that many surgeons will not accept these patients because TRICARE rates are tied to Medicare fee schedule, and rates have declined over 10% in the last two years despite increasing practice overhead expenses.

Response: In section 707 the National Defense Authorization Act of Fiscal Year 2002, Congress amended the statutory authorization (in 10 U.S.C. 1079(j)(2)) to a mandate that TRICARE payment methods shall be determined in accordance with Medicare payment rules to the extent practicable. In the same way under 10 U.S.C. 1079(h), the amount to be paid to health care professional and other non-institutional health care providers "shall be equal to an amount determined to be appropriate, to the extent practicable, in accordance with the same reimbursement rules used by Medicare"

Comment: One commenter asked if the proposed guidelines apply to active duty service members as well.

Response: TRICARE covers most health care deemed medically necessary for active and retired military and their dependent family. However, bariatric surgery primarily represents a major and permanent change to the digestive system and requires a strict adherence to a dietary regimen, which interferes with operational deployment of active duty service members (ADSMs). Because of this, ADSMs are not permitted to have bariatric surgery. ADSMs have an obligation to maintain themselves in a state of high physical readiness and the Services have weight and fitness screening programs to assure compliance with Service standards, and each Service offers evidence-based, multidisciplinary weight and fitness programs for individuals who are unable to meet those standards.

Comment: Another commenter expresses his company's support for the proposal rule to add new bariatric surgical procedures to the TRICARE benefit structure when such procedures are proven safe, effective, and established as nationally accepted medical practice, as determined by the TRICARE definition of reliable evidence. The commenter also noted that the proposed rule did not clearly state that the definition of reliable evidence applies to the determination that a procedure is established as nationally accepted medical practice; and therefore, recommend paragraph (e)(15) of this section be modify.

Response: We appreciate the commenter's support and concerns regarding the application of TRICARE definition of reliable evidence and have modified paragraph (e)(15) of this section to include a reference to § 199.2 of this part for the procedures used in determining if a medical treatment or procedure is unproven.

Comment: This same commenter recommends coverage for laparoscopic adjustable gastric band (LAGB) and medically necessary adjustment of LAGB systems. The commenter also recommends that DoD revise the proposed rule to add coverage for post-surgical follow-up and band adjustments. The commenter also recommends that DoD not specify any minimum duration of weight loss management as a precondition for the bariatric surgery and that type 2 diabetes mellitus be specified as a high-risk co-morbidity exacerbated or caused by morbid obesity.

Response: The laparoscopic adjustable gastric banding surgical procedure (including post-surgical follow-up and band adjustments) became a TRICARE benefit effective February 1, 2007. TRICARE also provides coverage for follow-up care to include band adjustments and any unfortunate sequelae resulting from the adjustment for those patients who underwent the LAP-Band surgery before the effective date of coverage. Coverage, however, is contingent upon the patient meeting TRICARE morbid obesity policy criteria at the time of his or her surgery. We appreciate the suggestion that DoD not specify any minimum duration of weight loss management as a precondition for the bariatric surgery and that type 2 diabetes mellitus be specified as a high-risk co-morbidity and will consider these as one of many recommendations in future revisions regarding the benefit policy.

Comment: This same commenter noted that the proposed rule did not require physicians or facilities performing bariatric surgical procedures to fulfill any specific qualification requirements for coverage. The commenter states that it is the understanding that DoD intends to leave the issue of facility and surgeon qualification to the discretion of TMA or its Managed Care Support Contractors.

Response: All TRICARE authorized providers are subject to the requirements as outlined in 32 CFR 199.6. Otherwise covered services are cost shared only if the individual professional provider holds a current, valid license or certification to practice his or her profession in the jurisdiction where the service is rendered.

This final rule considered all comments received during the comment period and has responded to those comments in this final rule. Since the proposed rule was published, DoD has revised paragraph (e)(15) of this section.

Regulatory Procedures

Executive Order 12866, "*Regulatory Planning and Review*"

It has been determined that this rule is not a significant regulatory action. This rule does not:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104–4)

It has been certified that this rule does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

Public Law 96–354, "*Regulatory Flexibility Act*" *(5 U.S.C. 601)*

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. Set forth in the final rule are minor revisions to the existing regulation. The DoD does not anticipate a significant impact on the Program. The change from height-weight tables to the BMI should have a minimal impact on the number of beneficiaries eligible for surgery.

Public Law 96–511, "*Paperwork Reduction Act*" *(44 U.S.C. Chapter 35)*

It has been certified that this rule does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

Executive Order 13132, Federalism

It has been certified that this rule does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

(1) The States;

(2) The relationship between the National Government and the States; or

(3) The distribution of power and responsibilities among the various levels of Government.

The final rule is consistent with the proposed rule.

List of Subjects in 32 CFR Part 199

Claims, Dental health, Health care, Health insurance, Individuals with disabilities, and Military personnel.

Accordingly, 32 CFR part 199 is amended as follows:

PART 199—[AMENDED]

■ 1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

■ 2. Section 199.2, paragraph (b) is amended by adding the definition of "Bariatric Surgery" and revising the definition of "Morbid Obesity" to read as follows:

§ 199.2 Definitions.

* * * * *

(b) * * *

Bariatric Surgery. Surgical procedures performed to treat co-morbid conditions associated with morbid obesity. Bariatric surgery is based on two principles: (1) Divert food from the stomach to a lower part of the digestive tract where the normal mixing of digestive fluids and absorption of nutrients cannot occur (i.e., Malabsorptive surgical procedures); or (2) Restrict the size of the stomach and decrease intake (i.e., Restrictive surgical procedures).

* * * * *

Morbid obesity. A body mass index (BMI) equal to or greater than 40 kilograms per meter squared (kg/m^2), or a BMI equal to or greater than 35 kg/m^2 in conjunction with high-risk co-morbidities, which is based on the guidelines established by the National Heart, Lung and Blood Institute on the Identification and Management of Patients with Obesity.

Note: Body mass index is equal to weight in kilograms divided by height in meters squared.

* * * * *

■ 3. Section 199.4 is amended by revising paragraphs (e)(15) and (g)(28) to read as follows:

§ 199.4 Basic program benefits.

* * * * *

(e) * * *

(15) *Morbid obesity.* The TRICARE morbid obesity benefit is limited to those bariatric surgical procedures for which the safety and efficacy has been proven comparable or superior to conventional therapies and is consistent with the generally accepted norms for medical practice in the United States medical community. (See the definition of *reliable evidence* in § 199.2 of this part for the procedures used in determining if a medical treatment or procedure is unproven.)

(i) *Conditions for coverage.*

(A) Payment for bariatric surgical procedures is determined by the requirements specified in paragraph (g)(15) of this section, and as defined in § 199.2(b) of this part.

(B) Covered bariatric surgical procedures are payable only when the patient has completed growth (18 years of age or documentation of completion of bone growth) and has met one of the following selection criteria:

(*1*) The patient has a BMI that is equal to or exceeds 40 kg/m^2 and has previously been unsuccessful with medical treatment for obesity.

(*2*) The patient has a BMI of 35 to 39.9 kg/m^2, has at least one high-risk co-morbid condition associated with morbid obesity, and has previously been unsuccessful with medical treatment for obesity.

Note: The Director, TMA, shall issue guidelines for review of the specific high-risk co-morbid conditions, exacerbated or caused by obesity based on the Reliable Evidence Standard as defined in § 199.2 of this part.

(ii) *Treatment of complications.*

(A) Payment may be extended for repeat bariatric surgery when medically necessary to correct or treat complications from the initial covered bariatric surgery (a takedown). For instance, the surgeon in many cases will

do a gastric bypass or gastroplasty to help the patient avoid regaining the weight that was lost. In this situation, payment is authorized even though the patient's condition technically may not meet the definition of morbid obesity because of the weight that was already lost following the initial surgery.

(B) Payment is authorized for otherwise covered medical services and supplies directly related to complications of obesity when such services and supplies are an integral and necessary part of the course of treatment that was aggravated by the obesity.

(iii) *Exclusions.* CHAMPUS payment may not be extended for weight control services, weight control/loss programs, dietary regimens and supplements, appetite suppressants and other medications; food or food supplements, exercise and exercise programs, or other programs and equipment that are primarily intended to control weight or for the purpose of weight reduction, regardless of the existence of co-morbid conditions.

* * * * *

(g) * * *

(28) *Obesity, weight reduction.* Service and supplies related "solely" to obesity or weight reduction or weight control whether surgical or nonsurgical; wiring of the jaw or any procedure of similar purpose, regardless of the circumstances under which performed (except as provided in paragraph (e)(15) of this section).

* * * * *

Dated: February 1, 2011.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–3207 Filed 2–11–11; 8:45 am]

BILLING CODE 5001–06–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2010–0902; FRL–9265–6]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Revision to the Definition of Volatile Organic Compound

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the Virginia State Implementation Plan (SIP). The revision amends the definition of Volatile Organic Compound (VOC). EPA is approving these revisions to Virginia's definitions in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on April 15, 2011 without further notice, unless EPA receives adverse written comment by March 16, 2011. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2010–0902 by one of the following methods:

A. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. E-mail: *frankford.harold@epa.gov.*

C. Mail: EPA–R03–OAR–2010–0902, Harold A. Frankford, Air Protection Division, Mailcode 3AP00, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2010–0902. EPA's policy is that all comments received 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 information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

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

SUPPLEMENTARY INFORMATION:

I. Background

Throughout this document, whenever "we," "us," or "our" is used, we mean EPA. On September 27, 2010, the Commonwealth of Virginia submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of the revised definition of "Volatile organic compound" (VOC) listed in 9VAC5 Chapter 10 (General Definitions), Regulation 5–10–20 (Terms defined).

II. Summary of SIP Revision

Virginia amended the definition of "Volatile organic compound" to add the organic compounds propylene carbonate and dimethyl carbonate to the list of excluded compounds. The exclusion of these compounds is consistent with the list of excluded compounds found in EPA's definition of "Volatile organic compounds (VOC)" at 40 CFR 51.100(s)(1).

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

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the

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

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

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

IV. Final Action

EPA is approving the amendment to the definition of "Volatile organic compound" in Virginia Regulation 9VAC5–10–20 (Terms defined) as a revision to the Virginia State Implementation Plan. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on April 15, 2011 without further notice unless EPA receives adverse comment by March 16, 2011. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

V. Statutory and Executive Order Reviews

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

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

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

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 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).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 15, 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 to approve Virginia's revision to the definition of "Volatile organic compound" may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: February 1, 2011.

W.C. Early,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart VV—Virginia

■ 2. In § 52.2420, the table in paragraph (c) is amended by adding a seventh entry under 5–10–20 to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES

State citation	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
9 VAC 5 Chapter 10		**General Definitions [Part I]**		
* *	*	*	*	* *
5–10–20	Terms Defined	2/18/10	2/14/11 [*Insert page number where the document begins*].	Revised definition of "Volatile organic compound."
* *	*	*	*	* *

* * * * *

[FR Doc. 2011–3096 Filed 2–11–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0041; FRL–9264–1]

Finding of Failure To Submit State Implementation Plan Revisions for Particulate Matter, PM–10, Maricopa County (Phoenix) PM–10 Nonattainment Area, AZ

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to find that Arizona failed to make a state implementation plan (SIP) submittal required under the Clean Air Act (CAA or Act) for the Maricopa County (Phoenix) nonattainment area (Maricopa area) for particulate matter of 10 microns or less (PM–10). The Maricopa area is a serious PM–10 nonattainment area which, having failed to attain the PM–10 National Ambient Air Quality Standards (NAAQS) by its required statutory attainment deadline, is subject to section 189(d) of the CAA. For such areas, section 189(d) requires that states submit within 12 months after the applicable attainment date, plan revisions which provide for attainment of the PM–10 NAAQS, and from the date of such submission until attainment, for an annual reduction of PM–10 or PM–10 precursor emissions within the area of not less than 5 percent of the amount of such emissions as reported in the most recent inventory prepared for the area.

Arizona submitted a section 189(d) plan for the Maricopa area on December 21, 2007, and EPA proposed action on this plan on September 9, 2010. On January 25, 2011, prior to final action on the plan by EPA, Arizona withdrew the submitted plan from the Agency's consideration. As a result of the withdrawal, EPA is today finding that Arizona failed to make the submittal required for the Maricopa area under section 189(d) of the Act.

This action triggers the 18-month clock for mandatory application of sanctions and 2-year clock for a federal implementation plan (FIP) under the Act. This action is consistent with the CAA mechanism for assuring SIP submissions.

DATES: *Effective Date:* This action was effective as of February 14, 2011.

FOR FURTHER INFORMATION CONTACT: Gregory Nudd, U.S. Environmental Protection Agency, Region 9, Air Division (AIR–2), 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 947–4107; *nudd.gregory@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The NAAQS are standards for certain ambient air pollutants set by EPA to protect public health and welfare. PM–10 is among the ambient air pollutants for which EPA has established health-based standards. PM–10 causes adverse health effects by penetrating deep in the lungs, aggravating the cardiopulmonary system. Children, the elderly, and people with asthma and heart conditions are the most vulnerable.

On July 1, 1987 EPA revised the health-based NAAQS (52 FR 24672), replacing the standards for total suspended particulates with new standards applying only to particulate matter up to ten microns in diameter (PM–10). At that time, EPA established two PM–10 standards, annual standards and 24-hour standards. Effective December 18, 2006, EPA revoked the annual PM–10 standards but retained the 24-hour PM–10 standards. 71 FR 61144 (October 17, 2006). The 24-hour PM–10 standards of 150 micrograms per cubic meter (μg/m^3) are attained when the expected number of days per calendar year with a 24-hour average concentration above 150 μg/m^3, as determined in accordance with appendix K to 40 CFR part 50, is equal to or less than one. 40 CFR 50.6 and 40 CFR part 50, appendix K.

On the date of enactment of the 1990 Clean Air Act Amendments (CAA or the Act), many areas, including the Maricopa area, meeting the qualifications of section 107(d)(4)(B) of the amended Act were designated nonattainment by operation of law. 56 FR 11101 (March 15, 1991). The Maricopa area is located in the eastern portion of Maricopa County and encompasses the cities of Phoenix, Mesa, Scottsdale, Tempe, Chandler, Glendale, as well as 17 other jurisdictions and unincorporated County lands. The nonattainment area also includes the town of Apache Junction in Pinal County. EPA codified the boundaries of the Maricopa area at 40 CFR 81.303.

Once an area is designated nonattainment for PM–10, section 188 of the CAA outlines the process for classifying the area as moderate or serious and establishes the area's attainment deadline. In accordance with section 188(a), at the time of designation, all PM–10 nonattainment areas, including the Maricopa area, were initially classified as moderate.

A moderate PM–10 nonattainment area must be reclassified to serious PM–10 nonattainment by operation of law if EPA determines after the applicable attainment date that, based on air quality, the area failed to attain by that date. CAA sections 179(c) and 188(b)(2). On May 10, 1996, EPA reclassified the Maricopa area as a serious PM–10 nonattainment area. 61 FR 21372.

As a serious PM–10 nonattainment area, the Maricopa area acquired a new attainment deadline of no later than December 31, 2001. CAA section 188(c)(2). However CAA section 188(e) allows states to apply for up to a 5-year extension of that deadline if certain conditions are met. Arizona requested an attainment date extension under CAA section 188(e) from December 31, 2001 to December 31, 2006. On July 25, 2002, EPA approved the serious area PM–10 plan for the Maricopa area and granted Arizona's request to extend the attainment date for the area to December 31, 2006. 67 FR 48718. This final action, as well as the two proposals preceding it, provide a more detailed discussion of the history of PM–10 planning in the Maricopa area. See 65 FR 19964 (April 13, 2000) and 66 FR 50252 (October 2, 2001).

On June 6, 2007, EPA found that the Maricopa area failed to attain the 24-hour PM–10 NAAQS by December 31, 2006 (72 FR 31183) and required the submittal of a new plan meeting the requirements of section 189(d) by December 31, 2007.

On December 19, 2007, the Maricopa Association of Governments (MAG) adopted the "MAG 2007 Five Percent Plan for PM–10 for the Maricopa County Nonattainment Area" (189(d) plan). On December 21, 2007 the Arizona Department of Environmental Quality (ADEQ) submitted the 189(d) plan. MAG adopted and ADEQ submitted this SIP revision in order to address the CAA requirements in section 189(d).

CAA section 110(k)(1) requires EPA to determine whether a SIP submission is complete within 60 days of receipt. This section also provides that any plan that has not been affirmatively determined to be complete or incomplete shall become complete within 6 months by operation of law. EPA's completeness criteria are found in 40 CFR part 51, appendix V. The 189(d) plan submittal became complete by operation of law on June 21, 2008.

EPA proposed to partially approve and partially disapprove the 189(d) plan on September 9, 2010 (75 FR 54806). On January 25, 2011, prior to any final EPA action, Arizona withdrew the 189(d) plan from the Agency's consideration.

II. Final Action

A. Finding of Failure To Submit Required SIP Revisions

If Arizona does not submit the required plan revisions within 18 months of the effective date of today's rulemaking, pursuant to CAA section 179(a) and 40 CFR 52.31, the offset sanction identified in CAA section 179(b) will be applied in the affected area. If the State has still not made a complete submittal 6 months after the offset sanction is imposed, then the highway funding sanction will apply in the affected area, in accordance with 40 CFR 52.31.[1] The 18-month clock will stop and the sanctions will not take effect if, within 18 months after the date of the finding, EPA finds that the State has made a complete submittal addressing the 189(d) PM–10 requirements for the Maricopa area. In addition, CAA section 110(c)(1) provides that EPA must promulgate a federal implementation plan (FIP) no later than 2 years after a finding under section 179(a) unless EPA takes final action to approve the submittal within 2 years of EPA's finding.

B. Effective Date Under the Administrative Procedures Act

This final action is effective on February 14, 2011.

Under the Administrative Procedures Act (APA), 5 U.S.C. 553(d)(3), an agency rulemaking may take effect before 30 days after the date of publication in the **Federal Register** if an agency has good cause to mandate an earlier effective date. Today's action concerns SIP revisions that are already overdue and the State has been aware of applicable provisions of the CAA relating to overdue SIPs. In addition, today's action simply starts a "clock" that will not result in sanctions for 18 months, and that the State may "turn off" by a complete SIP submittal addressing the 189(d) PM–10 requirements for the Maricopa area. These reasons support an effective date prior to 30 days after the date of publication.

C. Notice-and-Comment Under the Administrative Procedures Act

This final agency action is not subject to the notice-and-comment requirements of the APA, 5 U.S.C. 533(b). EPA believes that because of the limited time provided to make findings of failure to submit regarding SIP submissions, Congress did not intend such findings to be subject to notice-and-comment rulemaking. However, to the extent such findings are subject to notice-and-comment rulemaking, EPA invokes the good cause exception pursuant to the APA, 5 U.S.C. 553(d)(3). Notice and comment are unnecessary because no EPA judgment is involved in making a nonsubstantive finding of failure to submit SIPs required by the

[1] In a 1994 rulemaking, EPA established the Agency's selection of the sequence of these two sanctions: The offset sanction under section 179(b)(2) shall apply at 18 months, followed 6 months later by the highway sanction under section 179(b)(1) of the Act. EPA does not choose to deviate from this presumptive sequence in this instance. For more details on the timing and implementation of the sanctions, see 59 FR 39832 (August 4, 1994), promulgating 40 CFR 52.31, "Selection of sequence of mandatory sanctions for findings made pursuant to section 179 of the Clean Air Act."

CAA. Furthermore, providing notice and comment would be impracticable because of the limited time provided under the statute for making such determinations. Finally, notice and comment would be contrary to the public interest because it would divert Agency resources from the critical substantive review of submitted SIPs. See 58 FR 51270, 51272, note 17 (October 1, 1993); 59 FR 39832, 39853 (August 4, 1994).

III. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because findings of failure to submit required SIP revisions do not by themselves create any new requirements. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that today's action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. The CAA provision discussed in this rule requires states to submit SIPs. This rule merely finds that Arizona has not met that requirement. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This final rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it merely finds that Arizona has failed to make a submission that is required under the Clean Air Act.

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

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to

perform activities conducive to the use of VCS.

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

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

EPA lacks the discretionary authority to address environmental justice in this rulemaking.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2). This rule will be effective February 14, 2011.

L. Petitions for Judicial Review

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 April 15, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

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

Dated: January 3, 2011.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2011–3027 Filed 2–11–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 216 and 252

RIN 0750–AF51

Defense Federal Acquisition Regulation Supplement; Award-Fee Contracts (DFARS Case 2006–D021)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to address award-fee contracts, including eliminating the use of provisional award-fee payments.

DATES: *Effective Date:* February 14, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Gomersall, Defense Acquisition Regulations System, OUSD (AT&L) DPAP/DARS, 3060 Defense Pentagon, Room 3B855, Washington, DC 20301–3060. Telephone 703–602–0302; facsimile 703–602–0350. Please cite DFARS Case 2006–D021.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** (75 FR 22728) on April 30, 2010, to revise guidance for award-fee evaluations and payments, eliminate the use of provisional award-fee payments, and incorporate DoD policy guidance on the use of objective criteria. A new clause entitled Award Fee sets forth the use of award fees in DoD contracts.

II. Discussion and Analysis

A. Analysis of Public Comments

In response to the proposed rule, DoD received comments from three respondents. A discussion of the comments is provided below:

1. Making 40 Percent of the Award-Fee Pool Available for the Final Evaluation

a. *Comment:* The respondents considered the language aligning fee distributions with contract performance and cost schedules. One respondent stated that holding 40 percent of the award fee until the final evaluation does not consider the completion of individual contract line items or undefinitized work.

DoD Response: The purpose of making 40 percent of the award-fee pool available under the final evaluation period is to set aside a sufficient amount to protect the taxpayer's interest in the event a contractor fails to meet contractual obligations. Assuming the contract is properly structured, there is nothing in the rule that prohibits contractors from being paid for completed contract line items or work performed under undefinitized contracts.

b. *Comment:* The respondents expressed concern that holding 40 percent award fee until the final evaluation does not reward contract performance, particularly if a contract is terminated before the final evaluation. One respondent was concerned that by making a specified percentage of the award fee available for the final evaluation period, in the event of a termination for convenience, the contractor may not have the ability to earn that final award–fee percentage.

DoD response: The rule does not change the current procedures for terminations for convenience. In the event of a termination for convenience prior to the final evaluation period, contractors will be eligible to earn award fee available up to the point of the termination.

c. *Comment:* One respondent was concerned that holding of 40 percent of the award fee until final evaluation will negatively affect cash flow. The respondents were also concerned that the proposed rule will increase financial risk to Government contractors and result in an imbalance in the risk/reward relationship. One respondent was concerned, therefore, that the rule will unfavorably impact DoD's supplier base by adversely impacting suppliers' ability to attract debt and equity investment.

DoD Response: Contractors will continue to be paid incurred costs on cost-type contracts, completed work under fixed-price contracts with progress payments, or milestones achieved under fixed-price contracts with performance-based payments. Accordingly, a contractor's cash flow should not be significantly impacted. Since contractors who consistently meet contractual performance requirements will maximize the amount of award fee earned, there is no imbalance in the risk/reward relationship. There should be little, if any, impact on a superior

performer's ability to attract debt and equity investment.

d. *Comment:* One respondent commented that the 40 percent fee withhold until final evaluation is arbitrary. The respondent requested DoD to consider reducing the 40 percent of the award-fee amount held until final evaluation to a minimum of 20 percent.

DoD response: DoD agrees that under certain circumstances it may be appropriate to establish a lower percentage of award fee to be available for the final evaluation period. Therefore, DFARS 216.405–2(1) has been revised to state that the percentage of award fee available for the final evaluation may be set below 40 percent if the contracting officer determines that a lower percentage is appropriate, and this determination is approved by the head of the contracting activity.

2. Elimination of Provisional Award-Fee Payments

a. *Comment:* One respondent was concerned that the elimination of provisional award-fee payments will negatively affect cash flow. One respondent suggested that DoD should provide a definition of "provisional award-fee payments" and consider continuation of provisional award-fee payments, but with more restrictions.

DoD response: DoD understands the respondents' concerns. However, the payment of award fee prior to the end of an award-fee period is not appropriate since the contractor's performance has not been evaluated and the contractor may not earn that paid award fee during that period. Because DoD has made the policy decision that provisional award-fee payments are not appropriate, no definition of the term is required.

b. *Comment:* One respondent stated that payment for successful completion of elements of multiple-incentive contracts should not be affected by the proposed rule's elimination of provisional award fees.

DoD Response: DoD agrees. There is nothing in the rule that prohibits payment when a contractor has successfully completed elements of a multiple-incentive contract.

3. Selection of Contract Type

a. *Comment:* According to one respondent, limitations on cost-plus-award-fee (CPAF) contracts have the unintended consequence of encouraging the use of the less desirable cost-plus-fixed-fee (CPFF) contract type.

DoD Response: The purpose of the proposed rule is to ensure the amount of award fees paid on CPAF contracts is commensurate with the contractor's performance. DoD expects contracting officers to utilize appropriate contract types.

b. *Comment:* One respondent suggested DoD delete the language at DFARS 216.45–2(3)(A)(1).

DoD Response: DoD believes the respondent meant proposed DFARS 216.405–2(3)(i)(A)(2) (renumbered from current DFARS 216.405–2(c)(3)(i)(A)(2)), which states that the CPAF contract should not be used to avoid developing objective targets so a cost-plus-incentive-fee (CPIF) contract can be used. This language has not been revised by this rule. CPAF contract types should not be used instead of a CPIF contract type where a CPFF contract type is appropriate.

4. Other Issues

a. *Comment:* One respondent recommended the reference to the "Government" be revised to reference the "Contracting Officer" in the proposed clause at DFARS 252.216–70XX.

DoD Response: DoD agrees. DFARS 252.216–7005 has been changed accordingly. Furthermore, the reference to "the Contracting Officer's final evaluation" in DFARS 216.405–2(2) has been revised for clarity to reference "the fee-determining official's final evaluation."

b. *Comment:* One respondent suggested that DoD clarify the definition of CPAF such that it includes only contracts that provide for fee only on an award-fee basis, and does not include any hybrid award-fee/incentive-fee contracts.

DoD Response: No change to the definition has been made. Award-fee portions of hybrid contracts shall be subject to the award-fee requirements of this rule.

c. *Comment:* Respondents suggested that the proposed rule should not be applied retroactively.

DoD Response: The incorporation into an existing contract of the new clause at DFARS 252.216–7005 would require a bilateral modification to that contract. The rule does not require contracting officers to insert DFARS 252.216–7005 into existing contracts. However, in cases where its use may be justified, the contracting officer may insert the clause via a bilateral modification in accordance with FAR 1.108(d).

d. *Comment:* Respondents suggested that award-fee contract funding modifications should be provided concurrent with the fee-determining official's rating.

DoD Response: This rule has no effect on the timeliness of funding modifications.

e. *Comment:* Respondents suggested that DoD should reconsider the policy that prohibits roll-over of unearned award fee.

DoD Response: Contractors should not be given a second opportunity to obtain unearned award fees when they fail to meet cost, schedule, and technical performance criteria specified in the contract. The roll-over of unearned award fee would provide a disincentive to contractors to meet cost, schedule, and technical performance criteria specified in the contract in a given evaluation period if the contractor believes they will be given additional opportunities to obtain that unearned award fee in subsequent evaluation periods.

B. Other Change

In addition to changes made in response to the public comments, the phrase "held for" has been replaced by the phrase "available for" in DFARS 216.405–2(1) to better reflect DoD policy.

III. Executive Order 12866

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive fixed-price basis and do not utilize award-fee type incentives. Of the 1.16 million contracts awarded to small businesses in Fiscal Year 2010, less than 0.1 percent were award-fee contracts.

The rule prohibits roll-over of unearned award fee, and requires that at least 40 percent of the award-fee pool be available for the final performance evaluation with the intent of incentivizing the contractor throughout performance of the contract. Any impact of these requirements on small businesses that do have award-fee contracts is mitigated by the fact that contractors will continue to be paid costs on cost-type contracts, and progress or performance-based payments on fixed-price contracts. Therefore, contractors' cash flow will not be impacted significantly unless there is a failure to meet the performance criteria in the contract.

Furthermore, the final rule provides more flexibility regarding the requirement that 40 percent of the award-fee pool must be available for the final evaluation period. With the approval of the head of the contracting activity, the contracting officer can determine that, in some cases, a percentage of less than 40 percent of the award-fee pool is appropriate to be made available for the final evaluation period.

Additionally, no comments were received in response to publication of the proposed rule with respect to the impact of the proposed rule on small entities.

V. Paperwork Reduction Act

The final rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*).

List of Subjects in 48 CFR Parts 216 and 252

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 216 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 216 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR chapter 1.

PART 216—TYPES OF CONTRACTS

■ 2. Revise section 216.401, paragraph (e), to read as follows:

216.401 General.

* * * * *

(e) Award-fee plans required in FAR 16.401(e) shall be incorporated into all award-fee type contracts. Follow the procedures at PGI 216.401(e) when planning to award an award-fee contract.

■ 3. Add section 216.401–71 to read as follows:

216.401–71 Objective criteria.

(1) Contracting officers shall use objective criteria to the maximum extent possible to measure contract performance. Objective criteria are associated with cost-plus-incentive-fee and fixed-price–incentive contracts.

(2) When objective criteria exist but the contracting officer determines that it is in the best interest of the Government also to incentivize subjective elements of performance, the most appropriate contract type is a multiple-incentive contract containing both objective incentives and subjective award-fee criteria (i.e., cost-plus-incentive-fee/award-fee or fixed-price-incentive/award-fee).

(3) See PGI 216.401(e) for guidance on the use of award-fee contracts.

■ 4. Revise section 216.405–2 to read as follows:

216.405–2 Cost-plus-award-fee contracts.

(1) *Award-fee pool.* The award-fee pool is the total available award fee for each evaluation period for the life of the contract. The contracting officer shall perform an analysis of appropriate fee distribution to ensure at least 40 percent of the award fee is available for the final evaluation so that the award fee is appropriately distributed over all evaluation periods to incentivize the contractor throughout performance of the contract. The percentage of award fee available for the final evaluation may be set below 40 percent if the contracting officer determines that a lower percentage is appropriate, and this determination is approved by the head of the contracting activity (HCA). The HCA may not delegate this approval authority.

(2) *Award-fee evaluation and payments.* Award-fee payments other than payments resulting from the evaluation at the end of an award-fee period are prohibited. (This prohibition does not apply to base-fee payments.) The fee-determining official's rating for award-fee evaluations will be provided to the contractor within 45 calendar days of the end of the period being evaluated. The final award-fee payment will be consistent with the fee-determining official's final evaluation of the contractor's overall performance against the cost, schedule, and performance outcomes specified in the award-fee plan.

(3) *Limitations.*

(i) The cost-plus-award-fee contract shall not be used—

(A) To avoid—

(*1*) Establishing cost-plus-fixed-fee contracts when the criteria for cost-plus-fixed-fee contracts apply; or

(*2*) Developing objective targets so a cost-plus-incentive-fee contract can be used; or

(B) For either engineering development or operational system development acquisitions that have specifications suitable for simultaneous research and development and production, except a cost-plus-award-fee contract may be used for individual engineering development or operational system development acquisitions ancillary to the development of a major weapon system or equipment, where—

(*1*) It is more advantageous; and

(*2*) The purpose of the acquisition is clearly to determine or solve specific problems associated with the major weapon system or equipment.

(ii) Do not apply the weighted guidelines method to cost-plus-award-fee contracts for either the base (fixed) fee or the award fee.

(iii) The base fee shall not exceed three percent of the estimated cost of the contract exclusive of the fee.

(4) See PGI 216.405–2 for guidance on the use of cost-plus-award-fee contracts.

■ 5. Revise section 216.406 to read as follows:

216.406 Contract clauses.

(e)(1) Use the clause at 252.216–7004, Award Fee Reduction or Denial for Jeopardizing the Health or Safety of Government Personnel, in all solicitations and contracts containing award-fee provisions.

(2) Use the clause at 252.216–7005, Award Fee, in solicitations and contracts when an award-fee contract is contemplated.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 6. Add section 252.216–7005 to read as follows:

252.216–7005 Award Fee.

As prescribed in 216.406(e)(2), insert the following clause:

AWARD FEE (FEB 2011)

The Contractor may earn award fee from a minimum of zero dollars to the maximum amount stated in the award-fee plan in this contract. In no event will award fee be paid to the Contractor for any evaluation period in which the Government rates the Contractor's overall cost, schedule, and technical performance below satisfactory. The Contracting Officer may unilaterally revise the award-fee plan prior to the beginning of any rating period in order to redirect contractor emphasis.

(End of clause)

[FR Doc. 2011–3116 Filed 2–11–11; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 100804323–0569–02]

RIN 0648–BA03

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Specifications and Management Measures

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

ACTION: Final rule.

SUMMARY: This final rule implements 2011 specifications and management measures for the Atlantic mackerel, squid, and butterfish (MSB) fisheries. Specifically, this action sets quotas for the MSB fisheries, modifies the measure that transfers *Loligo* squid (*Loligo*) quota underages from Trimester I to Trimesters II and III by limiting the Trimester II quota increase to no more than 50 percent, and revises the 72-hr pre-trip observer notification requirement for the *Loligo* fishery to accommodate vessels departing for multiple day trips in a week. These specifications and management measures promote the utilization and conservation of the MSB resource.

DATES: Effective February 14, 2011.

ADDRESSES: Copies of supporting documents used by the Mid-Atlantic Fishery Management Council (Council), including the Environmental Assessment (EA) and Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), are available from: Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 N. State Street, Dover, DE 19901. The EA/RIR/IRFA is accessible via the Internet at *http://www.nero.noaa.gov.* NMFS prepared a Final Regulatory Flexibility Analysis (FRFA), which is contained in the Classification section of this rule. Copies of the FRFA and the Small Entity Compliance Guide are available from: Patricia Kurkul, Regional Administrator, National Marine Fisheries Service, Northeast Region, 55 Great Republic Drive, Gloucester, MA 01930–2276, or via the Internet at *http://www.nero.noaa.gov.*

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted to NMFS, Northeast Regional Office, and by e-mail to *OIRA_Submission@omb.eop.gov,* or fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Aja Peters-Mason, Fishery Policy Analyst, 978–281–9195, fax 978–281–9135.

SUPPLEMENTARY INFORMATION:

Background

Regulations implementing the MSB Fishery Management Plan (FMP) appear at 50 CFR part 648, subpart B. Regulations governing foreign fishing appear at 50 CFR part 600, subpart F. The regulations at §§ 648.21 and 600.516(c) require that NMFS, based on the maximum optimum yield (Max OY) of each fishery, as established by the regulations, annually publish a rule specifying the amounts of the initial optimum yield (IOY), allowable biological catch (ABC), domestic annual harvest (DAH), and domestic annual processing (DAP), as well as, where applicable, the amounts for total allowable level of foreign fishing (TALFF) and joint venture processing (JVP) for the affected species managed under the FMP. In addition, these regulations allow specifications to be specified for up to 3 years, subject to annual review. The regulations at § 648.21 also specify that IOY for *Illex* and *Loligo* squid is equal to the combination of Research Set-Aside (RSA) and DAH, with no TALFF specified for squid. For butterfish, the regulations specify that a butterfish bycatch TALFF will be specified only if TALFF is specified for mackerel.

At its June 8–10, 2010, meeting in New York, NY, the Council recommended MSB specifications for the 2011 fishing year. The Council considered the recommendations made by its Monitoring Committee and Scientific and Statistical Committee (SSC). The SSC recommends ABC. SSC advice accounts for scientific uncertainty regarding stock status and biological reference points in recommending the ABC, and the Council relies on that ABC recommendation to set other specifications. In addition to 2011 specifications for each of the MSB species, the Council recommended a modification to the provision that transfers Trimester I quota underages to Trimesters II and III for the *Loligo* fishery. The Council submitted these recommendations, along with the required analyses, for agency review on July 19, 2010, with final submission on September 23, 2010. A proposed rule for the 2011 MSB specifications and management measures was published on November 17, 2010 (75 FR 70187), and the public comment period for the proposed rule ended on December 17, 2010. Details concerning the Council's development of these measures were presented in the preamble of the proposed rule and are not repeated here.

Final MSB Specifications and Management Measures for the 2011 Fishing Year

This action implements the following MSB specifications and management measures for the 2011 fishing year, which are described in detail below.

TABLE 1—FINAL SPECIFICATIONS, IN METRIC TONS (MT), FOR ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FOR 2011 FISHING YEAR

Specifications	*Loligo*	*Illex*	Mackerel	Butterfish
Max OY	32,000	Unknown	Unknown	Unknown
ABC	24,000	24,000	47,395	1,500
IOY	20,000	23,328	46,779	500
DAH	[1] 19,906	23,328	[2] 46,779	[3] 495
DAP	19,906	23,328	31,779	495
JVP	N/A	N/A	0	0
TALFF	N/A	N/A	0	0

[1] Excludes 94 mt for RSA.
[2] Includes a 15,000-mt catch of Atlantic mackerel by the recreational fishery.
[3] Excludes 5 mt for RSA.

Atlantic Mackerel

This action specifies the mackerel ABC at 47,395 mt, based on the formula ABC = T − C. T, or total annual catch, is the yield associated with a fishing mortality rate that is equal to the target fishing mortality rate (F). The Transboundary Resources Advisory Committee (TRAC) could not establish biomass reference points or target F at its March 2010 mackerel stock status assessment, and recommended that total annual catches not exceed the average total landings (80,000 mt) over the last 3 years (2006–2008) until new information is available. C is the estimated catch of mackerel in Canadian waters (32,605 mt) for the upcoming fishing year. Thus 80,000 mt minus 32,605 mt results in the 2011 mackerel ABC of 47,395 mt. The 2010 TRAC assessment estimated that U.S. mackerel discards from 2004–2008 (the most recent years for which complete data are available) accounted for 1.3 percent of total catch. Thus NMFS is specifying the mackerel IOY and DAH at 46,779 m (ABC minus 616 mt for discards). The DAH includes commercial harvest plus the 15,000 mt available for the recreational fishery.

While a surplus existed between ABC and DAH for many years, that surplus has disappeared due to downward adjustments of the specifications in recent years. Analysis of the state of the world mackerel market and possible increases in U.S. production levels concluded that specifying an IOY resulting in zero TALFF will yield positive social and economic benefits to both U.S. harvesters and processors, and to the Nation. For these reasons NMFS is specifying IOY at level that can be fully harvested by the domestic fleet (46,779 mt), thereby precluding the specification of a TALFF, in order to support the U.S. mackerel industry.

This action maintains JVP at zero. In the past, the Council recommended a JVP greater than zero because it believed U.S. processors lacked the ability to process the total amount of mackerel that U.S. harvesters could land. However, for the past 7 years, the Council has recommended zero JVP because U.S. shoreside processing capacity for mackerel has expanded. The Council concluded that processing capacity was no longer a limiting factor relative to domestic production of mackerel, even at the higher DAP of 100,000 mt; this is even more true with the specified DAP of 31,779 mt. The differential between the DAH and the DAP reflects a projection that the recreational mackerel fishery will land 15,000 mt.

Atlantic Squids

Loligo

This action specifies a *Loligo* Max OY of 32,000 mt, an ABC of 24,000 mt, an IOY of 20,000 mt, an RSA of 94 mt, and a DAH and DAP of 19,906 mt. The FMP does not authorize the specification of JVP and TALFF for the *Loligo* fishery because of the domestic industry's capacity to harvest and process the OY for this fishery; therefore, there will be no JVP or TALFF in 2011.

Distribution of the *Loligo* DAH

As was done in fishing years 2007 through 2010, this action allocates the 2011 *Loligo* DAH into trimesters, according to percentages specified in the FMP, as follows:

TABLE 2—TRIMESTER ALLOCATION OF LOLIGO QUOTA IN 2011

Trimester	Percent	Metric tons [1]
I (Jan–Apr)	43	8,560
II (May–Aug)	17	3,384
III (Sep–Dec)	40	7,962
Total	100	19,906

[1] Trimester allocation after 94-mt RQ deduction.

For the 2010 fishing year, Trimester I *Loligo* underages greater than 25 percent of the Trimester I quota were distributed evenly between Trimesters II and III. The Council expressed concern that the butterfish mortality cap on the *Loligo* fishery, established in 2010 by Amendment 10 to the FMP (Amendment 10) (75 FR 11441, March 11, 2010), could result in a substantial Trimester I underage if the *Loligo* fishery is closed because the Trimester I butterfish catch cap is reached. Under the 2010 underage distribution scheme, this could result in a large roll-over of *Loligo* quota to Trimester II, when the butterfish catch cap cannot close the fishery. Therefore, this action limits the roll-over of quota from Trimester I to Trimester II to no more than 50 percent of the Trimester II allocation. This adjustment will continue to prevent an underharvest of the annual quota by distributing the quota across the remaining trimesters, while reducing management uncertainty related to the implementation of the butterfish mortality cap for the *Loligo* fishery.

Adjustment to the *Loligo* Pre-trip Trip Notification Requirement

The action changes the 72-hr pre-trip observer notification requirement established through Amendment 10 for vessels issued a *Loligo* and butterfish moratorium permit. Such vessels intending to land more than 2,500 lb (1.13 mt) of *Loligo* are now required to notify the NMFS Northeast Fishery Observer Program (NEFOP) at least 72 hr, but not more than 10 days before embarking on a *Loligo* trip. This adjustment is intended to reduce the burden of this requirement for vessels that embark on multiple trips that last less than 24 hr during a single week by allowing them to notify for several upcoming trips at one time.

Illex

This action specifies the *Illex* ABC as 24,000 mt, and specifies IOY, DAH, and DAP as 23,328 mt to account for discards, which were estimated as 2.8 percent of total catch in the last assessment. The FMP does not authorize the specification of JVP and TALFF for the *Illex* fishery because of the domestic fishing industry's capacity to harvest and to process the IOY from this fishery.

Butterfish

This action specifies the butterfish ABC at 1,500 mt, and the IOY at 500 mt, and DAH and DAP at 495 mt. Additionally, consistent with MSB regulations, the Council recommended, and this action is specifying, zero TALFF for butterfish because zero TALFF is specified for mackerel.

Amendment 10 created a butterfish mortality cap for the *Loligo* fishery, which is equal to 75 percent of the butterfish ABC. Thus, this action sets the butterfish mortality cap at 1,125 mt. If the portion of the butterfish mortality cap allocated to Trimester I (January–April) or Trimester III (September–December) is harvested, the directed *Loligo* fishery will close for the remainder of that trimester.

Comments and Responses

NMFS received seven comments from industry entities: Three from the Garden State Seafood Association (GSSA), submitted on behalf of several fishery organizations; one from Lund's Fisheries, Incorporated; one submitted on behalf of Seafreeze, Ltd.; one from Top Catch, Inc.; and one from TrawlWorks, Inc. In addition, there was one form letter submitted with signatures from 73 individuals. Some commenters identified issues that are not related to this action; only comments related to the proposed specifications are responded to below.

Comment 1: All of the industry groups and the 73 individuals who commented through the form letter stated their opposition to the proposed specifications for butterfish, due to the butterfish mortality cap specified for the

Loligo fishery. Most of these commenters noted that the butterfish stock assessment results produced by the Northeast Fisheries Science Center's 49th Stock Assessment Workshop (SAW 49) did not include a finding that overfishing was occurring, and did not attribute the butterfish stock decline to fishing mortality. All of the commenters expressed concern about the restrictive butterfish mortality cap, given the uncertainty in the butterfish stock assessment results produced by SAW 49, arguing that the uncertainty means the level specified for the cap cannot be justified.

All of the commenters expressed concern that the butterfish mortality cap will be attained, and that participants in the *Loligo* fishery will be precluded from fully harvesting the *Loligo* quota, causing unnecessary economic harm to participants in the *Loligo* fishery. GSSA and Lunds both requested that NMFS consider the potential loss of income that will occur in Mid-Atlantic communities. GSSA, Lunds, Top Catch, Inc., and the form letter stated the view that measures to regulate butterfish, a bycatch species with a 3-year lifespan, should not control the $50-million *Loligo* fishery. TrawlWorks stated that *Loligo* harvesters will be particularly impacted if the butterfish mortality cap is attained in the fall, and the *Loligo* fishery is closed when *Loligo* is usually abundant. GSSA noted that the decline in butterfish stock abundance is unrelated to the recent rate of *Loligo* fishing, and that the economic losses that would result from closure of the *Loligo* fishery would be much greater than any potential benefit to the butterfish resource.

GSSA, Lunds, Top Catch, Inc., and the form letter specifically requested NMFS to specify the butterfish ABC at 4,445 mt, a level the commenters claimed is justified based on the best available science. GSSA, Lunds, and Top Catch stated their view that this level was identified by the SSC as a safe, scientifically justified harvest level. The form letter also stated that it is unjustified to use a precautionary approach when specifying butterfish ABC in light of the uncertainty in the recent assessment. The commenters expressed the view that guesswork was used to quantify butterfish predation mortality. GSSA and Lunds stated their view that the range of ABCs considered valid by the SSC included a 25,000-mt option that was risk-neutral; therefore, they concluded that the ABC of 1,500 mt seems excessively precautionary. GSSA and Lund's pointed out that the butterfish ABC was set at 4,545 mt in 2007, and that the reduction of ABC to 1,500 mt in 2008 was made at a time when no new assessment data were available, in an effort to discourage a directed butterfish fishery. GSSA stated the view that SAW 49 determined that butterfish were not overfished, nor were they overfished in the past; therefore, the 1,500-mt ABC is based on erroneous information. They argued that setting the ABC at 4,445 mt is more scientifically sound, and appropriately risk averse.

Seafreeze stated that the 2011 butterfish specifications violate National Standard 1 because the butterfish quota prevents a directed butterfish fishery from occurring, and the butterfish mortality cap would result in the premature closure of the *Loligo* fishery. Thus, they concluded that the butterfish specifications will prevent the *Loligo* fishery from achieving optimum yield, in violation of National Standard 1. Seafreeze also stated that the specifications violate National Standard 2 because they ignore the best available science, namely the most recent NEFSC bottom trawl survey results. Seafreeze claimed that the Autumn 2009 and Spring 2010 bottom trawl surveys both showed butterfish catches comparable to the period from 1980–1990 when butterfish biomass was estimated at 125,000–150,000 mt, therefore indicating that the butterfish stock can sustain an ABC of 20,000 mt. They stated that, because the life span of butterfish is about 3 years, it is imperative to use this recent trawl survey data. Seafreeze suggested that NMFS should reject the proposed specifications, reassess the butterfish stock based on trawl survey data, and establish a butterfish ABC that will allow for a directed butterfish fishery.

GSSA noted that the 2004 SARC only had abundance estimates based on survey data from the R/V *Albatross,* and that calibration exercises since that time, that compare R/V *Albatross* data with new data from the R/V *Bigelow,* shows that that butterfish catch data from the R/V *Albatross* were biased low. They stated that, in their view, the SAW 49 estimated 2008 butterfish biomass of 88,800 mt would indicate that setting the butterfish ABC at 20,000 mt will result in no risk to the stock.

GSSA further asserted that the lack of reference points for the butterfish stock, the fact that butterfish predation mortality far surpasses fisheries mortality, and the fact that the Autumn 2010 bottom trawl survey results have yet to be compiled, all indicate that there is no information to inform abundance projections for butterfish for 2011, making any management action arbitrary and unsupported by science.

GSSA also stated that recent downward trends in the butterfish stock may be due to increased predation. They believe that, because predation mortality is high and because *Loligo* squid is a major butterfish predator, management measures that promote the utilization of the *Loligo* resource may actually be beneficial to the butterfish stock.

Response 1: The MSB FMP and its implementing regulations require the specification of the butterfish ABC, and the resulting butterfish mortality cap. NMFS acknowledges that SAW 49 did not produce approved biological reference points, and thus did not make a formal determination that the butterfish stock is currently overfished. The stock assessment concluded that fishing mortality has been declining over time, and has been very low in recent years. However, SAW 49 also recommended that point estimates of both biomass and fishing mortality should be interpreted with caution, and noted that the biological reference points could not be estimated because the stock does not appear to be at equilibrium. It also concluded that the stock assessment appropriately reflected stock trends, demonstrating a convincing long-term decreasing trend in spawning stock biomass (SSB), with recent biomass estimates among the lowest in the time series.

While butterfish fishing mortality is low, and overfishing appears not to be occurring, the butterfish mortality cap was designed by the Council in Amendment 10 to minimize butterfish bycatch in the *Loligo* fishery, not to address overfishing. In addition to the butterfish mortality cap, Amendment 10 enacted a rebuilding program for butterfish. At the time Amendment 10 was being developed, the 2004 butterfish assessment (SAW 38) indicated that a reduction in fishing mortality may lead to improvements in the butterfish stock. The analysis in Amendment 10 noted that the butterfish mortality cap could be a tool to limit the portion of butterfish fishing mortality attributable to the *Loligo* fishery and, accordingly, may provide rebuilding benefits to the stock. Though more recent information provided in SAW 49 indicates that fishing mortality is low compared to natural mortality, and is likely not the driver of long-term declines in SSB, both SAW 38 and SAW 49 did determine that butterfish discards were equal to twice the annual landings. Amendment 10 identified the *Loligo* fishery as the predominate source of butterfish discards. Thus, Amendment 10 enacted the butterfish mortality cap as a permanent measure to

limit butterfish bycatch in the *Loligo* fishery.

Though there was considerable uncertainty in the recent assessment, including limited information about the causes of the butterfish stock decline, NMFS determined that there was no evidence presented that suggests that the status of the butterfish stock has improved since the 2004 SAW 38 assessment concluded that the stock was overfished. SAW 49 reviewers agreed that the status of the butterfish stock could not be determined based on the assessment. Several commenters argued that, in their view, the cap is overly precautionary, and that the uncertainty in the stock assessment results means it is inappropriate to be precautionary. NMFS disagrees that this is necessarily the case, and notes that this alone is insufficient basis for an increase to the butterfish ABC (and the resulting butterfish mortality cap).

NMFS notes that the SSC utilized the results of SAW 49 in making the recommendation for the ABC specified in this action. The alternate suggested values for ABC were not validated or endorsed by the SSC, as some commenters indicated. Because of uncertainty about butterfish stock size, and uncertainty about the potential response of the butterfish stock to fishing pressure, the Council staff generated a range of potential ABCs for consideration by the SSC. These ranged from 1,362 mt to 25,000 mt, and were developed using several different approaches. The 4,445-mt ABC (average catch from 1996–2008) and the 25,000-mt ABC (an F of 0.39 applied to a 45,000-mt stock) cited by the commenters were included in this range. While the SSC used this information from Council staff, in conjunction with SAW 49, to inform its final ABC recommendation, the range generated by Council staff was in no way binding for the SSC, nor was it endorsed by the SSC as appropriate or scientifically justified. There is no basis for the commenters' contention that these higher values are risk-averse or risk-neutral; there is no SSC conclusion to that effect. The SSC ultimately recommended 1,500 mt as the 2011 butterfish ABC because available information suggested that, provided improved environmental conditions affecting recruitment, the butterfish stock size could increase in the future if the 2011 ABC was maintained at this level. The SSC used the best scientific information available to it at the time it made its recommendation.

The commenters are correct that the butterfish ABC was set at 4,545 mt until 2007, but did not fully describe the reason for the reduction of the ABC to 1,500 mt for subsequent years. Though no new stock assessment data were available leading up to implementation of the 2008 specifications (the action that first set the butterfish ABC at 1,500 mt, and IOY/DAH at 500 mt), the ABC and IOY were reduced to cap the fishery at recent levels (500 mt) to prevent any expansion of the directed fishery of butterfish while the stock is being rebuilt. At that time, the Council was developing measures for Amendment 10 to reduce butterfish discards and rebuild the stock.

NMFS disagrees that the butterfish specifications violate either National Standard 1 or National Standard 2. National Standard 1 does not require NMFS to specify a quota that will support a directed fishery if it is inappropriate to the stock condition. In fact, since 2008, the Council has recommended, and NMFS has specified, the butterfish quota at 500 mt to maintain butterfish landings at low levels due to concerns about the stock. In addition, courts have recognized that optimum yield is a level to be achieved on a continuing basis and not in a single year (*see North Carolina Fisheries Association* v. *Daley*). The commenters concluded that National Standard 2 is violated because the specifications were developed before the most recent NEFSC bottom trawl survey results were available. They believe that these survey results, which obtained more butterfish samples than in previous years, must be incorporated into the 2011 butterfish specifications. NMFS disagrees. National Standard 2 requires the use of the best available science at the point in time that an action is being developed. The Council's process for developing annual specifications for the butterfish fishery begins in June each year, and the Council utilized the best science available to it at that time to develop this action. If, in the future, new information indicates that the butterfish stock condition has changed, the Council can consider that information in the 2012 specifications process.

The results of the Autumn 2009, Spring 2010, and Autumn 2010 NEFSC surveys were not included in the data used for the SAW 49 stock assessment. NMFS notes that survey indices do not provide a point estimate of stock size or amount to a status determination. The calibration-adjusted butterfish catch rates from the Autumn 2009 and Autumn 2010 bottom trawl surveys were 6.4 kg/tow and 5.59 kg/tow, respectively. Though these numbers are about twice the average from Autumn surveys from 1999–2008 (3.4 kg/tow), it is not possible to determine if this upturn constitutes a trend. NMFS notes that the butterfish stock assessment is not based solely on survey biomass indices, but incorporates data sets within a stock assessment model.

NMFS acknowledges that, if the cap is attained before the *Loligo* fishery has fully harvested the annual *Loligo* quota, there could be revenue losses for some *Loligo* harvesters. This possibility was discussed in the Council's Initial Regulatory Flexibility Analysis (IRFA), which assessed impacts of the proposed measures on small businesses. That analysis noted that, in 2009, the *Loligo* fishery ex-vessel value was approximately $18 million. It is not possible to estimate when the *Loligo* fishery might reach the cap, because environmental conditions and fleet behavior are likely to strongly influence how much butterfish the *Loligo* fishery encounters. If high rates of butterfish catch occur, Amendment 10 estimated that up to 64 percent of 2006 *Loligo* revenue levels could be lost. The analysis noted that 2007–2009 landings were lower than in 2006, so a closure of the *Loligo* fishery would likely have a smaller impact, but concluded that a closure related to the butterfish mortality cap could substantially restrict *Loligo* landings. The economic impacts of the cap are further detailed in Amendment 10. NMFS notes that the preliminary data for *Loligo* in 2010 indicate that landings appear to have decreased from 9,306 mt in 2009 to approximately 6,714 mt in 2010. NMFS also notes that, during the debate over Amendment 10, some industry members often stated they could avoid butterfish voluntarily, and thus minimize interactions.

Comment 2: GSSA and Lund's both supported setting aside 3 percent of the mackerel IOY as RSA, but thought that the proposed rule should have included information about the 14 bilateral research priorities that emerged from the recent TRAC.

Response 2: NMFS solicited research proposals under the 2011 Mid-Atlantic RSA Program through the **Federal Register** (75 FR 3092, January 19, 2010), and reviewed them in an application process that is separate from the setting of annual specifications. The solicitation document is the appropriate vehicle to identify research priorities. The distribution of RSA quota to fund research depends both on Council specified research priorities and on the desire and capacity for the research community to compete for mackerel RSA. For the 2011 RSA Program, no proposals requesting mackerel RSA were approved, and thus no mackerel RSA will be allocated through this

action. The identification and development of joint U.S./Canada research priorities for mackerel is the subject of U.S./Canada Bilateral Fisheries Consultations and is not the subject of this rulemaking.

Comment 3: GSSA and Lund's expressed concern that the proposed mackerel specifications, which reflect the TRAC's recommendation that U.S. and Canadian catch not exceed 80,000 mt, are overly conservative and will unnecessarily reduce U.S. access to the mackerel resource. Both organizations are supportive of the proposed 2011 U.S. ABC of 47,395 mt as an interim quota, given the current uncertainty in stock status, and the method used to derive expected Canadian catch; however, they expressed concern that the Canadian mackerel quota for 2011 has been specified at 60,000 mt, a value higher than the Council expected. Lund's expressed concern that scientific uncertainty has recently led to dramatically reduced catch levels for otherwise apparently healthy resources like mackerel, which, until the 2010 assessment, was described as not overfished, with overfishing not occurring.

Both organizations supported the Agency's determination that both JVP and TALFF be set at zero because there is sufficient demand for mackerel in world markets to create opportunities for U.S. harvesters and shoreside processors to utilize all of the U.S. ABC.

Response 3: Although the TRAC was unable to establish reference points for stock biomass and fishing mortality, the assessment indicated reduced stock productivity and a lack of older fish in the survey and catch, and suggested limiting total catch of mackerel to 80,000 mt (average U.S./Canadian landings from 2006–2008) until new information suggests that a different amount is appropriate. The SSC's advice to the Council was consistent with this recommendation, and NMFS has determined that the approach reflected in the specifications is based on the best scientific information available.

The U.S. quota is derived from ABC by estimating Canadian catch in 2011 at 32,605 mt. NMFS acknowledges the commenters' concern that the Canadian Government has set the mackerel quota at 60,000 mt, but does not believe it is necessary to adjust the Canadian catch estimate in response. While the Canadian quota provides the opportunity for the Canadian fishery to increase landings substantially, NMFS believes that the Council's derivation method, which is based on recent fishery performance, provides the most reliable estimate of 2011 Canadian catch. Despite the progress made in the recent joint assessment of the mackerel stock, there is no joint process for the allocation of the mackerel resource, and the United States and Canada set their catch levels for mackerel independently. NMFS notes that, despite the fact that the mackerel quota allocation for 2011 (46,779 mt) is lower than the 2010 allocation of 115,000 mt, it is still almost double the average U.S. mackerel landings of 25,000 mt during the past 3 years (2007–2009). NMFS notes that mackerel apparently continues to be unavailable to the U.S. fleet, as preliminary 2010 landings of mackerel are approximately 10,000 mt. As a result, the 2011 mackerel quota appears unlikely to constrain the fishery.

Comment 4: GSSA and Lund's both support the proposed specifications for *Illex* and *Loligo* squid.

Response 4: NMFS is implementing the proposed specifications through this final rule.

Classification

The Administrator, Northeast Region, NMFS, determined that these specifications are necessary for the conservation and management of the Atlantic mackerel, squid, and butterfish fisheries and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

The Assistant Administrator for Fisheries finds good cause under 5 U.S.C. 553(d)(3), to waive the 30-day delay in effectiveness otherwise required by the Administrative Procedure Act. If there is a delay in implementing this action, NMFS will lack the regulatory authority to issue a closure for the *Loligo* fishery if the butterfish mortality cap is attained. The *Loligo* squid fishery is particularly active during the first Trimester of the fishing year. Given the timing of *Loligo* fleet activity, and history of fishery interactions between *Loligo* and butterfish, a delay in the effectiveness of this action is likely to result in a situation where the Trimester I butterfish mortality cap is exceeded. The regulations state that any overages of the butterfish mortality cap during Trimester I and II will be applied to Trimester III of the same year. If the 2011 mortality for Trimester I is exceeded prior to the effectiveness of this rule, this overage must be deducted from Trimester III, and the *Loligo* fishery would be closed even more prematurely during Trimester III. This outcome would severely limit the activity of *Loligo* fishermen who participate in the fishery during the latter portion of the year, which would negatively impact these fishermen. The overall conservation objectives of the butterfish mortality cap will be undermined if the mortality cap is exceeded in Trimester I prior to the implementation of this action.

The Council prepared an EA for the 2011 specifications, and the NOAA Assistant Administrator for Fisheries concluded that there will be no significant impact on the human environment as a result of this rule. A copy of the EA is available upon request (*see* **ADDRESSES**).

This action is authorized by 50 CFR part 648 and has been determined to be not significant for purposes of Executive Order 12866 (E.O. 12866).

NMFS, pursuant to section 604 of the Regulatory Flexibility Act, has prepared a FRFA, included in the preamble of this final rule, in support of the 2011 MSB specifications and management measures. The FRFA describes the economic impact that this final rule, along with other non-preferred alternatives, will have on small entities.

The FRFA incorporates the economic impacts and analysis summarized in the IRFA, a summary of the significant issues raised by the public in response to the IRFA, and NMFS responses to those comments. A copy of the IRFA, the RIR, and the EA are available upon request (*see* **ADDRESSES**).

Statement of Need for This Action

This action proposes 2011 specifications and management measures for MSB fisheries and modifies existing management measures to improve the management of MSB fisheries. A complete description of the reasons why this action is being considered, and the objectives of and legal basis for this action, is contained in the preamble to the proposed and final rules and is not repeated here.

A Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA, a Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made in the Final Rule as a Result of Such Comments

Eight unique comment letters were received during the comment period on the proposed specifications. The comments were not specifically directed to the IRFA, but each of the comments expressed concern about negative economic impacts of the proposed ABCs for butterfish and mackerel, on small entities. All public comments on issues relative to the IRFA, in which commenters expressed concern directly and indirectly about the economic impacts of the 2011 specifications, are

described in the "Comments and Responses" section of the preamble to this final rule and, therefore, are not repeated here. NMFS's response to the concerns about the economic impacts associated with the butterfish mortality cap for the *Loligo* fishery is provided in Response 1; and Response 3 addresses concerns about mackerel.

Description and Estimate of Number of Small Entities To Which the Rule Will Apply

Based on permit data for 2010, the numbers of potential fishing vessels in the 2011 fisheries are as follows: 360 *Loligo*/butterfish moratorium permits, 76 *Illex* moratorium permits, 2,156 mackerel permits, 1,844 incidental squid/butterfish permits, and 1,844 MSB party/charter permits. There are no large entities participating in this fishery, as defined in section 601 of the RFA. Therefore, there are no disproportionate economic impacts on small entities. Many vessels participate in more than one of these fisheries; therefore, permit numbers are not additive.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This action contains a change to an information collection previously approved by the Office of Management and Budget (OMB) under OMB Control Number 0648–0601: Atlantic Mackerel, Squid, and Butterfish Amendment 10 Data Collection. This action requires that vessels intending to embark on *Loligo* trips notify NEFOP at least 72 hr, but no more than 10 days before their intended departure dates. The adjustment will also allow vessels to submit an email address for contact. This change did not increase the reporting burden for these entities, and has been approved by OMB. This action does not duplicate, overlap, or conflict with any other Federal rules.

Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impacts on Small Entities Consistent With the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and Why Each One of the Other Significant Alternatives to the Rule Considered by the Agency Which Affect the Impact on Small Entities Was Rejected

Actions Implemented With the Final Rule

The mackerel IOY specified in this action (46,779 mt, with 15,000 mt allocated to recreational catch) represents a reduction from status quo (115,000 mt). Despite the reduction, the specified IOY is above recent U.S. landings; mackerel landings for 2007–2009 averaged 23,310 mt; and preliminary landings in 2010 are approximately 10,000 mt. Thus, the reduction does not pose a constraint to vessels relative to the landings in recent years. Accordingly, no reductions in revenues for the mackerel fishery are expected as a result of this action.

The *Loligo* IOY (20,000 mt) represents a slight increase from the status quo (19,000 mt). *Loligo* landings for 2007–2009 averaged 11,019 mt. This provides an opportunity to increase landings, though if recent trends continue, there may be no increase in landings, despite the increase in the allocation. No reductions in revenues for the *Loligo* fishery are expected as a result of this action.

The accounting methods for *Loligo* trimester underages implemented in this action will distribute any substantial underage in Trimester I (greater than 25 percent of the Trimester I quota) between Trimester II and III, but will limit the transfer of quota such that the Trimester II quota could increase by 50 percent, at most. This method of transferring quota may provide some economic benefit to the fishery during Trimesters II and III, because it will allow access to underutilized Trimester I quota later in the fishing year.

The change to the pre-trip observer notification requirement implemented in this action, which would allow vessels to notify at least 72 hr, but no more than 10 days prior to fishing trips, is an administrative measure to facilitate the placement of observers aboard the *Loligo* fleet, and is intended to reduce the burden of the notification requirement for vessels that depart on multiple trips in a short period by allowing for advance notification. The economic burden on fishery participants associated with this measure is expected to be minimal.

The *Illex* IOY (23,328 mt) specified in this action represents a slight decrease compared to status quo (24,000 mt). Though annual *Illex* landings have been increasing over the past 3 years (9,002 mt for 2007, 15,900 mt for 2008, and 18,419 mt for 2009), the landings were lower than the specified level. Thus, implementation of this action should not result in a reduction in revenue or a constraint on expansion of the fishery in 2011.

The butterfish IOY specified in this action (500 mt) represents status quo, as compared to 2010, and represents only a minimal constraint to vessels relative to the landings in recent years. Due to market conditions, there has not been a directed butterfish fishery in recent years; therefore, recent landings have been low. Given the lack of a directed butterfish fishery and low butterfish landings, this action is not expected to reduce revenues in this fishery more than minimally.

As discussed in the FRFA for MSB Amendment 10, the butterfish mortality cap has a potential for economic impact on fishery participants. The *Loligo* fishery will close during Trimesters I and III, if the butterfish mortality cap is reached. If the *Loligo* fishery is closed in response to butterfish catch before the entire *Loligo* quota is harvested, then a loss in revenue is possible. The potential for *Loligo* revenue loss is dependent upon the size of the butterfish mortality cap, which is based on the level of butterfish abundance. As the butterfish stock rebuilds, the mortality cap will increase, and the potential for lost *Loligo* revenue should decrease. When the butterfish stock rebuilds, a directed butterfish fishery could resume, provided discards are kept low, and would have economic benefits for fishery participants.

Alternatives to the Actions in the Final Rule

The Council analysis evaluated two alternatives to this action for mackerel. Based on recent harvest levels, neither of the ABC and IOY alternatives would represent a constraint on vessels in this fishery. The first alternative (status quo; least restrictive), which would have set the ABC at 156,000 mt and IOY at 115,000 mt, was not selected because the ABC would have exceeded the SSC's recommendation.

As in the selected action (intermediately restrictive), the second alternative (most restrictive) started from the SSC recommended stockwide ABC of 80,000 mt, but instead subtracted an estimated 41,556 mt for

Canadian landings. This would have resulted in a U.S. ABC of 38,444 mt, and an IOY and DAH of 37,944 mt (U.S. ABC minus 1.3 percent for discards). For this alternative, expected Canadian catch (41,556 mt) was derived by examining the relationship between Canadian landings in one year (*e.g.,* 1994) and the Canadian landings 2 years later (*e.g.,* 1996); this analysis was chosen so that 2009 Canadian landings could be used to determine expected Canadian landings for 2011. The years examined included 1962–2009. Though the two landings series were found to be strongly correlated (correlation coefficient = 0.71), this method of deriving expected Canadian catch (and the resulting specifications alternative) was not determined to be the best approach. The landings series compared in the method used to derive 2011 Canadian catch in the selected alternative (U.S. landings in one year and Canadian landings in the next year) were found to have a stronger correlation (correlation coefficient = 0.86) than the landings series compared in this alternative. Thus, using the Canadian catch derivation method in the selected alternative provides a more reliable estimate of 2011 Canadian catch.

There were two alternatives to the selected action evaluated for *Loligo.* Both alternatives set the Max OY at 32,000 mt, the same level as the selected action. The first alternative (status quo) would have set the ABC and IOY at 19,000 mt; this alternative was not chosen, because it was not consistent with the ABC recommended by the SSC. The second alternative (least restrictive) would have set the ABC at the level recommended by the SSC (24,000 mt), but would have set the IOY at 22,560 mt (ABC reduced by 6 percent to account for discards). This alternative was not adopted by the Council because two sources of uncertainty, namely the uncertainty regarding the discard estimate and the management uncertainty regarding the operation of the *Loligo* fishery in 2011, given the impending implementation of the butterfish mortality cap, warranted setting the IOY at the more precautionary level specified in this action (intermediately restrictive).

The alternatives also differed in how Trimester I underages and overages would be applied to the *Loligo* quotas in the following Trimesters. The first alternative (status quo) would maintain the current measure to distribute an underage in Trimester I greater than 25 percent of the Trimester I quota evenly between Trimesters II and III. The current measure was not considered to be sufficient to address management uncertainty related to the implementation of the butterfish mortality cap in 2011.

Two non-selected alternatives were considered for *Illex;* both would have set the ABC at 24,000 mt. The first alternative would have set IOY, DAH, and DAP at 24,000 mt (status quo; least restrictive) rather than the 23,328 mt specified in this action (intermediately restrictive). This alternative was not selected because the higher specifications were inconsistent with the results of the most recent stock assessment. The second alternative (most restrictive) would have set IOY, DAH, and DAP at 22,656 mt (ABC reduced by 5.6 percent, based on double the discard ratio estimate). The Council considered this alternative unnecessarily restrictive.

One non-selected alternative was considered for butterfish that would maintain the status quo, which only differs from the selected alternative in that it would have set Max OY at 12,175 mt. The selected alternative removes the specification of Max OY, because it is no longer supported by best available science. All other specifications are identical to the status quo alternative.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as small entity compliance guide was prepared. The guide will be sent to all holders of permits issued for the MSB fisheries. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from the Regional Administrator and are also available from NMFS, Northeast Region (*see* **ADDRESSES**).

This action contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA), which was previously approved by OMB under OMB Control Number 0648–0601. The public reporting burden for the phone call to declare a *Loligo* fishing trip is estimated to average 2 min per call per trip. Public burden for the phone call to cancel a *Loligo* trip is estimated to average 1 min. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (*see* **ADDRESSES**) and by e-mail to *OIRA_Submission@omb.eop.gov,* or fax to 202–395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: February 8, 2011.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.21, paragraph (f)(2) is revised to read as follows:

§ 648.21 Procedures for determining initial annual amounts.

* * * * *

(f) * * *

(2) Any underages of commercial period quota for Trimester I that are greater than 25 percent of the Trimester I quota will be reallocated to Trimesters II and III of the same year. The reallocation of quota from Trimester I to Trimester II is limited, such that the Trimester II quota may only be increased by 50 percent; the remaining portion of the underage will be reallocated to Trimester III. Any underages of commercial period quota for Trimester I that are less than 25 percent of the Trimester I quota will be applied to Trimester III of the same year. Any overages of commercial quota for Trimesters I and II will be subtracted from Trimester III of the same year.

* * * * *

■ 3. In § 648.22, paragraph (a)(2)(i) is revised to read as follows:

§ 648.22 Closure of the fishery.

(a) * * *

(2) * * *

(i) If the Regional Administrator determines that the Trimester I closure threshold has been underharvested by

25 percent or more, then the amount of the underharvest shall be reallocated to Trimesters II and III, as specified at § 648.21(f)(2), through notice in the **Federal Register**.

* * * * *

■ 4. Section 648.26 is amended by revising paragraphs (a) and (d) to read as follows:

§ 648.26 Observer requirements for the Loligo fishery.

(a) A vessel issued a *Loligo* and butterfish moratorium permit, as specified at § 648.4(a)(5)(i), must, for the purposes of observer deployment, have a representative provide notice to NMFS of the vessel name, vessel permit number, contact name for coordination of observer deployment, telephone number or e-mail address for contact; and the date, time, port of departure, and approximate trip duration, at least 72 hr, but no more than 10 days prior to beginning any fishing trip, unless it complies with the possession restrictions in paragraph (c) of this section.

* * * * *

(d) If a vessel issued a *Loligo* and butterfish moratorium permit, as specified at § 648.4(a)(5)(i), intends to possess, harvest, or land 2,500 lb (1.13 mt) or more of *Loligo* per trip or per calendar day, has a representative notify NMFS of an upcoming trip, is selected by NMFS to carry an observer, and then cancels that trip, then the representative is required to provide notice to NMFS of the vessel name, vessel permit number, contact name for coordination of observer deployment, and telephone number or e-mail for contact, and the intended date, time, and port of departure for the cancelled trip prior to the planned departure time. In addition, if a trip selected for observer coverage is canceled, then that vessel is required to carry an observer, provided an observer is available, on its next trip.

[FR Doc. 2011–3245 Filed 2–11–11; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 76, No. 30

Monday, February 14, 2011

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 40

RIN 3150–AH15

[NRC–2011–0003]

Implementation Guidance for Distribution of Source Material to Exempt Persons and to General Licensees and Revision of General License and Exemptions; Draft Guidance Document; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for comment; correction.

SUMMARY: This document corrects a notice appearing in the **Federal Register** on January 7, 2011, that announces the availability of draft implementation guidance for public comment. This action is necessary to correct the ADAMS Accession Number for the draft Part 40 implementation guidance.

FOR FURTHER INFORMATION CONTACT: Lisa Dimmick, Health Physicist, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–0694, e-mail: *Lisa.Dimmick@nrc.gov.*

SUPPLEMENTARY INFORMATION: On January 7, 2011, at 76 FR 1100, NRC published a document announcing the availability of draft implementation guidance for public comment. In that publication, the accession number was incorrect.

In the January 7, 2011, issue of the **Federal Register**, on page 1101, the first paragraphs in both the second and third columns, the ADAMS accession number for the guidance document is corrected to read "ML103160257."

Dated at Rockville, Maryland, this 24th day of January 2011.

For the Nuclear Regulatory Commission.

Jack W. Foster,

Chief, Licensing Branch, Division of Materials Safety and State Agreements, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2011–3222 Filed 2–11–11; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM444 Special Conditions No. 25–11–03–SC]

Special Conditions: Gulfstream Model GVI Airplane; Operation Without Normal Electric Power

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the Gulfstream GVI airplane. The Gulfstream GVI airplane will have numerous electrically operated systems whose function is needed for continued safe flight and landing of the airplane. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: We must receive your comments by March 31, 2011.

ADDRESSES: You must mail two copies of your comments to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM444, 1601 Lind Avenue, SW., Renton, Washington 98057–3356. You may deliver two copies to the Transport Airplane Directorate at the above address. You must mark your comments: Docket No. NM444. You can inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Nazih Khaouly, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Standards Staff, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2432; facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. You can inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want us to acknowledge receipt of your comments on this proposal, include with your comments a self-addressed, stamped postcard on which you have written the docket number. We will stamp the date on the postcard and mail it back to you.

Background

On March 29, 2005, Gulfstream Aerospace Corporation (hereafter referred to as "Gulfstream") applied for an FAA type certificate for its new Gulfstream Model GVI passenger airplane. Gulfstream later applied for, and was granted, an extension of time for the type certificate, which changed the effective application date to September 28, 2006. The Gulfstream Model GVI airplane will be an all-new, two-engine jet transport airplane with an executive cabin interior. The maximum takeoff weight will be 99,600 pounds, with a maximum passenger count of 19 passengers.

Type Certification Basis

Under provisions of Title 14 Code of Federal Regulations (14 CFR) 21.17, Gulfstream must show that the Gulfstream Model GVI airplane (hereafter referred to as "the GVI") meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–119, 25–122, and 25–124. If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the GVI because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to complying with the applicable airworthiness regulations and special conditions, the GVI must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36. The FAA must also issue a finding of regulatory adequacy pursuant to section 611 of Public Law 92–574, the "Noise Control Act of 1972."

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design features, the special conditions would also apply to the other model under provisions of § 21.101.

Novel or Unusual Design Features

The GVI incorporates an electronic flight control system that requires a continuous source of electrical power in order to keep the system operable. Due to rapid improvements in airplane technology, the applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These proposed special conditions for the GVI contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Discussion of Proposed Special Conditions

The GVI incorporates an electronic flight control system that requires a continuous source of electrical power in order to keep the system operable. The criticality of this system is such that their failure will either reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions, or prevent continued safe flight and landing of the airplane. The airworthiness standards of part 25 do not contain adequate or appropriate standards for protection of these systems from the adverse effects of operation without normal electrical power.

The current rule, § 25.1351(d), Amendment 25–72, requires safe operation under visual flight rules (VFR) conditions for at least five minutes after loss of all normal electrical power. This rule was structured around traditional airplane designs that used mechanical control cables and linkages for flight control. These manual controls allowed the crew to maintain aerodynamic control of the airplane for an indefinite period of time after loss of all electrical power. Under these conditions, the mechanical flight control system provided the crew with the ability to fly the airplane while attempting to identify the cause of the electrical failure, start the engine(s) if necessary, and reestablish some of the electrical power generation capability, if possible.

To maintain the same level of safety associated with traditional designs, the GVI must be designed for operation with the normal sources of engine and auxiliary power unit (APU) generated electrical power inoperative. Service experience has shown that loss of all electrical power from the airplane's engine and APU driven generators is not extremely improbable. Thus, Gulfstream must demonstrate that the airplane is capable of recovering adequate primary electrical power generation for safe flight and landing.

For compliance purposes, a test demonstration of the loss of normal engine generator must be established such that:

1. The failure condition should be assumed to occur during night instrument meteorological conditions (IMC) at the most critical phase of the flight relative to the electrical power system design and distribution of equipment loads on the system.

2. After the unrestorable loss of normal engine generator power, the airplane engine restart capability must be provided and operations continued in IMC.

3. The airplane should be demonstrated to be capable of continuous safe flight and landing. The length of time must be computed based on the maximum diversion time capability for which the airplane is being certified. Consideration for speed reductions resulting from the associated failure must be made.

4. Availability of APU operation should not be considered in establishing emergency power system adequacy.

Applicability

As discussed above, these proposed special conditions are applicable to the GVI. Should Gulfstream apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design features, these proposed special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features of the GVI. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the GVI airplanes.

Since the total loss of normal generated electrical power in two engine aircraft has not achieved the extremely improbable level, and since the loss of all electrical power may be catastrophic to aircraft utilizing an electronic flight control system, the following special conditions are proposed in lieu of 14 CFR 25.1351(d):

It must be demonstrated by test or a combination of test and analysis that the airplane can continue safe flight and landing with inoperative normal engine and APU generator electrical power (electrical power sources excluding the battery and any other standby electrical sources). The airplane operation should be considered at the critical phase of flight and include the ability to restart the engines and maintain flight for the maximum diversion time capability being certified.

Issued in Renton, Washington, on February 3, 2011.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–3210 Filed 2–11–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM442 Special Conditions No. 25–11–02–SC]

Special Conditions: Gulfstream Model GVI Airplane; Interaction of Systems and Structures

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the Gulfstream GVI airplane. This airplane will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. These design features include systems that affect the structural capability of the airplane. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. The proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: We must receive your comments by March 31, 2011.

ADDRESSES: You must mail two copies of your comments to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM442, 1601 Lind Avenue, SW., Renton, Washington 98057–3356. You may deliver two copies to the Transport Airplane Directorate at the above address. You must mark your comments: Docket No. NM442. You can inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Carl Niedermeyer, FAA, Airframe/Cabin Safety Branch, ANM–115, Transport Standards Staff, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2279; facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. You can inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want us to acknowledge receipt of your comments on this proposal, include with your comments a self-addressed, stamped postcard on which you have written the docket number. We will stamp the date on the postcard and mail it back to you.

Background

On March 29, 2005, Gulfstream Aerospace Corporation (hereafter referred to as "Gulfstream") applied for an FAA type certificate for its new Gulfstream Model GVI passenger airplane. Gulfstream later applied for, and was granted, an extension of time for the type certificate, which changed the effective application date to September 28, 2006. The Gulfstream Model GVI airplane will be an all-new, two-engine jet transport airplane with an executive cabin interior. The maximum takeoff weight will be 99,600 pounds, with a maximum passenger count of 19 passengers.

Type Certification Basis

Under provisions of Title 14, Code of Federal Regulations (14 CFR) 21.17, Gulfstream must show that the Gulfstream Model GVI airplane (hereafter referred to as "the GVI") meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–119, 25–122, and 25–124. If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the GVI because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to complying with the applicable airworthiness regulations and special conditions, the GVI must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36. The FAA must also issue a finding of regulatory adequacy pursuant to section 611 of Public Law 92–574, the "Noise Control Act of 1972."

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design features, the special conditions would also apply to the other model under provisions of § 21.101.

Novel or Unusual Design Features

The Model GVI airplane will incorporate novel or unusual design features. These features are systems that may affect the airplane's structural performance, either directly or as a result of failure or malfunction. That is, the airplane's systems affect how it responds in maneuver and gust conditions, and thereby affect its structural capability. These systems may also affect the aeroelastic stability of the airplane. These systems include the GVI's flight control systems, autopilots, stability augmentation systems, load alleviation systems, and fuel management systems. Such systems represent a novel and unusual feature when compared to the technology envisioned in the current airworthiness standards.

Discussion of Proposed Special Conditions

Special conditions are needed to require consideration of the effects of systems on the structural capability and aeroelastic stability of the airplane, both in the normal and in the failed state, because these effects are not covered by current regulations.

These proposed special conditions are identical or nearly identical to those previously required for type certification of other transport airplane models. These proposed special conditions were derived initially from standardized requirements developed by the Aviation Rulemaking Advisory Committee (ARAC), comprised of representatives of the FAA, Europe's Joint Aviation Authorities (now replaced by the European Aviation Safety Agency), and industry.

These proposed special conditions require that the airplane meets the structural requirements of subparts C and D of 14 CFR part 25 when the airplane systems are fully operative. These proposed special conditions also require that the airplane meet these requirements considering failure conditions. In some cases, reduced margins are allowed for failure conditions based on system reliability.

These special conditions establish a level of safety that neither raises nor lowers the standard set forth in the applicable regulations.

In these proposed special conditions and in the current standards and regulations, the term "any" is used. Use of this term has traditionally been understood to require all items covered by the term are addressed, rather than addressing only a portion of the items. The use of the term "any" in these proposed special conditions continues this traditional understanding.

Applicability

As discussed above, these proposed special conditions are applicable to the GVI. Should Gulfstream apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design features, these proposed special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features of the GVI. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for this special condition is as follows:

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

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the GVI airplanes.

A. General

The GVI is equipped with systems that affect structural performance, either directly or as a result of a failure or malfunction. The influence of these systems and their failure conditions on structural performance must be taken into account when showing compliance with the requirements of Subparts C and D of part 25 of Title 14, Code of Federal Regulations.

1. The following criteria must be used for showing compliance with this proposed special condition for airplanes equipped with flight control systems, autopilots, stability augmentation systems, load alleviation systems, fuel management systems, and other systems that either directly or as a result of failure or malfunction affect structural performance.

2. The criteria defined herein only address the direct structural consequences of the system responses and performance. They cannot be considered in isolation but should be included in the overall safety evaluation of the airplane. These criteria may in some instances duplicate standards already established for this evaluation. These criteria are only applicable to structure whose failure could prevent continued safe flight and landing. Specific criteria that define acceptable limits on handling characteristics or stability requirements when operating in the system degraded or inoperative mode are not provided in this proposed special condition.

3. Depending upon the specific characteristics of the airplane, additional studies may be required that go beyond the criteria provided in this proposed special condition in order to demonstrate the capability of the airplane to meet other realistic conditions such as alternative gust or maneuver descriptions for an airplane equipped with a load alleviation system.

4. The following definitions are applicable to this proposed special condition.

(a) Structural performance: Capability of the airplane to meet the structural requirements of 14 CFR part 25.

(b) Flight limitations: Limitations that can be applied to the airplane flight conditions following an in-flight occurrence and that are included in the flight manual (*e.g.,* speed limitations, avoidance of severe weather conditions, etc.).

(c) Operational limitations: Limitations, including flight limitations, that can be applied to the airplane operating conditions before dispatch (*e.g.,* fuel, payload and master minimum equipment list limitations).

(d) Probabilistic terms: The probabilistic terms (probable, improbable, extremely improbable) used in this proposed special condition are the same as those used in § 25.1309.

(e) Failure condition: The term failure condition is the same as that used in § 25.1309; however, this proposed special condition applies only to system failure conditions that affect the structural performance of the airplane (*e.g.,* system failure conditions that induce loads, change the response of the airplane to inputs such as gusts or pilot actions, or lower flutter margins).

B. Effects of Systems on Structures

1. *General.* The following criteria will be used in determining the influence of a system and its failure conditions on the airplane structure.

2. *System fully operative.* With the system fully operative, the following apply:

(a) Limit loads must be derived in all normal operating configurations of the system from all the limit conditions specified in Subpart C (or used in lieu of those specified in Subpart C), taking into account any special behavior of such a system or associated functions or any effect on the structural performance of the airplane that may occur up to the limit loads. In particular, any significant nonlinearity (rate of displacement of control surface, thresholds or any other system nonlinearities) must be accounted for in a realistic or conservative way when deriving limit loads from limit conditions.

(b) The airplane must meet the strength requirements of part 25 (static strength, residual strength), using the specified factors to derive ultimate loads from the limit loads defined above. The effect of nonlinearities must be investigated beyond limit conditions to ensure the behavior of the system presents no anomaly compared to the behavior below limit conditions. However, conditions beyond limit conditions need not be considered when it can be shown that the airplane has design features that will not allow it to exceed those limit conditions.

(c) The airplane must meet the aeroelastic stability requirements of § 25.629.

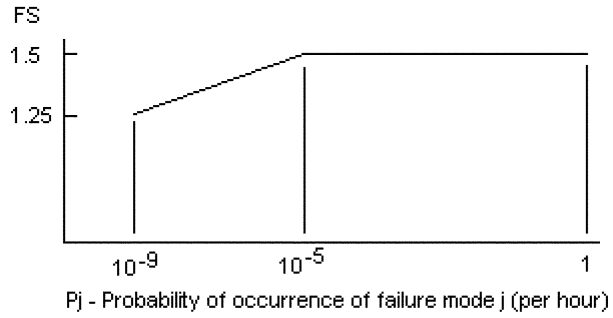
3. *System in the failure condition.* For any system failure condition not shown to be extremely improbable, the following apply:

(a) At the time of occurrence. Starting from 1-g level flight conditions, a realistic scenario, including pilot corrective actions, must be established to determine the loads occurring at the time of failure and immediately after the failure.

(1) For static strength substantiation, these loads multiplied by an appropriate factor of safety that is related to the probability of occurrence of the failure are ultimate loads to be considered for design. The factor of safety (FS) is defined in Figure 1.

Figure 1

Factor of safety at the time of occurrence



(2) For residual strength substantiation, the airplane must be able to withstand two thirds of the ultimate loads defined in subparagraph B.3(a)(1). For pressurized cabins, these loads must be combined with the normal operating differential pressure.

(3) Freedom from aeroelastic instability must be shown up to the speeds defined in § 25.629(b)(2). For failure conditions that result in speeds beyond V_C/M_C, freedom from aeroelastic instability must be shown to increased speeds, so that the margins intended by § 25.629(b)(2) are maintained.

(4) Failures of the system that result in forced structural vibrations (oscillatory failures) must not produce loads that could result in detrimental deformation of primary structure.

(b) For the continuation of the flight. For the airplane in the system failed state, and considering any appropriate reconfiguration and flight limitations, the following apply:

(1) The loads derived from the following conditions (or used in lieu of the following conditions) at speeds up to V_C/M_C (or the speed limitation prescribed for the remainder of the flight) must be determined:

(i) The limit symmetrical maneuvering conditions specified in § 25.331 and in § 25.345.

(ii) The limit gust and turbulence conditions specified in § 25.341 and in § 25.345.

(iii) The limit rolling conditions specified in § 25.349 and the limit unsymmetrical conditions specified in § 25.367 and § 25.427(b) and (c).

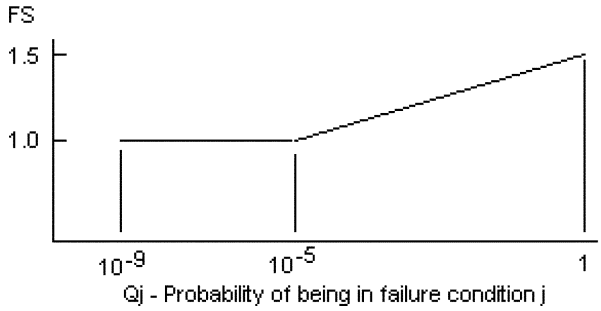
(iv) The limit yaw maneuvering conditions specified in § 25.351.

(v) The limit ground loading conditions specified in § 25.473 and § 25.491.

(2) For static strength substantiation, each part of the structure must be able to withstand the loads in paragraph B.3(b)(1) of this proposed special condition multiplied by a factor of safety depending on the probability of being in this failure state. The factor of safety is defined in Figure 2.

Figure 2

Factor of safety for continuation of flight



$Qj = (Tj)(Pj)$

Where:

Qj = Probability of being in failure condition j

Tj = Average time spent in failure condition j (in hours)

Pj = Probability of occurrence of failure mode j (per hour)

Note: If Pj is greater than 10^{-3} per flight hour then a 1.5 factor of safety must be applied to all limit load conditions specified in Subpart C.

(3) For residual strength substantiation, the airplane must be able to withstand two thirds of the ultimate loads defined in paragraph B.3(b)(2) of this proposed special condition. For pressurized cabins, these loads must be combined with the normal operating differential pressure.

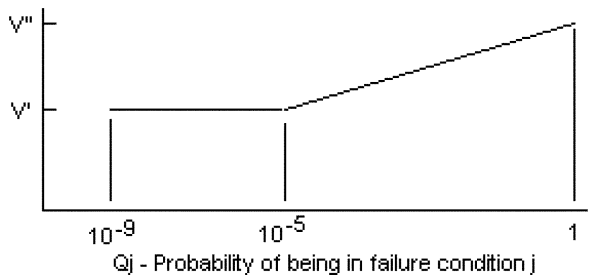
(4) If the loads induced by the failure condition have a significant effect on fatigue or damage tolerance then their effects must be taken into account.

(5) Freedom from aeroelastic instability must be shown up to a speed determined from Figure 3. Flutter clearance speeds V′ and V″ may be

based on the speed limitation specified for the remainder of the flight using the margins defined by § 25.629(b).

Figure 3

Clearance speed



V′ = Clearance speed as defined by § 25.629(b)(2).
V″ = Clearance speed as defined by § 25.629(b)(1).
Qj = (Tj)(Pj) where:
Qj = Probability of being in failure condition j
Tj = Average time spent in failure condition j (in hours)
Pj = Probability of occurrence of failure mode j (per hour)

Note: If Pj is greater than 10^{-3} per flight hour, then the flutter clearance speed must not be less than V″.

(6) Freedom from aeroelastic instability must also be shown up to V′ in Figure 3 above, for any probable system failure condition combined with any damage required or selected for investigation by § 25.571(b).

(c) Consideration of certain failure conditions may be required by other sections of 14 CFR part 25 regardless of calculated system reliability. Where analysis shows the probability of these failure conditions to be less than 10^{-9}, criteria other than those specified in this paragraph may be used for structural substantiation to show continued safe flight and landing.

4. *Failure indications.* For system failure detection and indication, the following apply:

(a) The system must be checked for failure conditions, not extremely improbable, that degrade the structural capability below the level required by part 25 or significantly reduce the reliability of the remaining system. As far as reasonably practicable, the flight crew must be made aware of these failures before flight. Certain elements of the control system, such as mechanical and hydraulic components, may use special periodic inspections, and electronic components may use daily checks, in lieu of detection and indication systems to achieve the objective of this requirement. These certification maintenance requirements must be limited to components that are not readily detectable by normal detection and indication systems, and where service history shows that inspections will provide an adequate level of safety.

(b) The existence of any failure condition, not extremely improbable, during flight that could significantly affect the structural capability of the airplane and for which the associated reduction in airworthiness can be minimized by suitable flight limitations, must be signaled to the flight crew. For example, failure conditions that result in a factor of safety between the airplane strength and the loads of Subpart C below 1.25, or flutter margins below V″, must be signaled to the crew during flight.

5. *Dispatch with known failure conditions.* If the airplane is to be dispatched in a known system failure condition that affects structural performance, or that affects the reliability of the remaining system to maintain structural performance, then the provisions of this proposed special condition must be met, including the provisions of paragraph B.2 for the dispatched condition and paragraph B.3 for subsequent failures. Expected operational limitations may be taken into account in establishing Pj as the probability of failure occurrence for determining the safety margin in Figure 1. Flight limitations and expected operational limitations may be taken into account in establishing Qj as the combined probability of being in the dispatched failure condition and the subsequent failure condition for the safety margins in Figures 2 and 3. These limitations must be such that the probability of being in this combined failure state and then subsequently encountering limit load conditions is extremely improbable. No reduction in these safety margins is allowed if the subsequent system failure rate is greater than 1E–3 per hour.

Issued in Renton, Washington, on February 3, 2011.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–3215 Filed 2–11–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM441 Special Conditions No. 25–11–01–SC]

Special Conditions: Gulfstream Model GVI Airplane; Design Roll Maneuver Requirement for Electronic Flight Controls

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the Gulfstream GVI airplane. This airplane will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. These design features include an electronic flight control system that provides roll control of the airplane through pilot inputs to the flight

computers. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: We must receive your comments by March 31, 2011.

ADDRESSES: You must mail two copies of your comments to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM441, 1601 Lind Avenue, SW., Renton, Washington 98057–3356. You may deliver two copies to the Transport Airplane Directorate at the above address. You must mark your comments: Docket No. NM441. You can inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Carl Niedermeyer, FAA, Airframe/Cabin Safety Branch, ANM–115, Transport Standards Staff, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2279; facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. You can inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want us to acknowledge receipt of your comments on this proposal, include with your comments a self-addressed, stamped postcard on which you have written the docket number. We will stamp the date on the postcard and mail it back to you.

Background

On March 29, 2005, Gulfstream Aerospace Corporation (hereafter referred to as "Gulfstream") applied for an FAA type certificate for its new Gulfstream Model GVI passenger airplane. Gulfstream later applied for, and was granted, an extension of time for the type certificate, which changed the effective application date to September 28, 2006. The Gulfstream Model GVI airplane will be an all-new, two-engine jet transport airplane with an executive cabin interior. The maximum takeoff weight will be 99,600 pounds, with a maximum passenger count of 19 passengers.

Type Certification Basis

Under provisions of Title 14, Code of Federal Regulations (14 CFR) 21.17, Gulfstream must show that the Gulfstream Model GVI airplane (hereafter referred to as "the GVI") meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–119, 25–122, and 25–124. If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the GVI because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to complying with the applicable airworthiness regulations and special conditions, the GVI must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36. The FAA must also issue a finding of regulatory adequacy pursuant to section 611 of Public Law 92–574, the "Noise Control Act of 1972."

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design features, the special conditions would also apply to the other model under provisions of § 21.101.

Novel or Unusual Design Features

The GVI is equipped with an electronic flight control system that provides roll control of the airplane through pilot inputs to the flight computers. The current design roll maneuver requirement for structural loads in 14 CFR part 25 is inadequate for addressing an airplane with electronic flight controls that affect maneuvering. Special conditions are proposed to take into account the effects of an electronic flight control system.

Discussion of Proposed Special Conditions

The GVI is equipped with an electronic flight control system that provides roll control of the airplane through pilot inputs to the flight computers. Current part 25 airworthiness regulations account for "control laws" for which aileron deflection is proportional to control wheel deflection. They do not address any nonlinearities [1] or other effects on aileron and spoiler actuation that may be caused by electronic flight controls. Therefore, the FAA considers the flight control system to be a novel and unusual feature compared to those envisioned when the current regulations were adopted. Since this type of system may affect flight loads, and therefore the structural capability of the airplane, special conditions are needed to address these effects.

These proposed special conditions differ from current requirements in that the special conditions require that the roll maneuver result from defined movements of the cockpit roll control as opposed to defined aileron deflections. Also, these proposed special conditions require an additional load condition at design maneuvering speed (V_A), in which the cockpit roll control is returned to neutral following the initial roll input.

Applicability

As discussed above, these proposed special conditions are applicable to the GVI. Should Gulfstream apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design features, these proposed special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features of the GVI. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

[1] A nonlinearity is a situation where output does not change in the same proportion as input.

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

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the GVI airplanes.

In lieu of compliance with § 25.349(a), Gulfstream must comply with the following special conditions.

The following conditions, speeds, and cockpit roll control motions (except as the motions may be limited by pilot effort) must be considered in combination with an airplane load factor of zero and of two-thirds of the positive maneuvering factor used in design. In determining the resulting control surface deflections, the torsional flexibility of the wing must be considered in accordance with § 25.301(b):

1. Conditions corresponding to steady rolling velocities must be investigated. In addition, conditions corresponding to maximum angular acceleration must be investigated for airplanes with engines or other weight concentrations outboard of the fuselage. For the angular acceleration conditions, zero rolling velocity may be assumed in the absence of a rational time history investigation of the maneuver.

2. At V_A, sudden movement of the cockpit roll control up to the limit is assumed. The position of the cockpit roll control must be maintained until a steady roll rate is achieved and then must be returned suddenly to the neutral position.

3. At V_C, the cockpit roll control must be moved suddenly and maintained so as to achieve a roll rate not less than that obtained in paragraph 2.

4. At V_D, the cockpit roll control must be moved suddenly and maintained so as to achieve a roll rate not less than one third of that obtained in paragraph 2.

Issued in Renton, Washington, on February 3, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–3216 Filed 2–11–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 33

[Docket No. NE130; Notice No. 33–10–01–SC]

Special Conditions: Pratt and Whitney Canada Model PW210S Turboshaft Engine

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the Pratt and Whitney Canada (PWC) model PW210S turboshaft engine. This engine model will have a novel or unusual design feature associated with engine operation in auxiliary power unit (APU) mode. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the added safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: We must receive your comments by March 16, 2011.

ADDRESSES: You must mail two copies of your comments to: Federal Aviation Administration, Engine and Propeller Directorate, *Attn:* Marc Bouthillier, Rules Docket (ANE–111), Docket No. NE130, 12 New England Executive Park, Burlington, Massachusetts 01803–5299. You may deliver two copies to the Engine and Propeller Directorate at the above address. You must mark your comments: Docket No. NE130. You can inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 am. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this proposed rule contact Marc Bouthillier, ANE–111, Engine and Propeller Directorate, Aircraft Certification Service, 12 New England Executive Park, Burlington, Massachusetts 01803–5299, telephone (781) 238–7120; facsimile (781) 238–7199; e-mail *marc.bouthillier@faa.gov.* For legal questions concerning this proposed rule contact Vincent Bennett, ANE–7 Engine and Propeller Directorate, Aircraft Certification Service, 12 New England Executive Park, Burlington, Massachusetts 01803–5299; telephone (781) 238–7044; facsimile (781) 238–7055; e-mail *vincent.bennett@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel about these special conditions. You can inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 am. and 5 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive by the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want us to let you know we received your comments on this proposal, send us a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On December 5, 2005, PWC applied for a type certificate for the model PW210S turboshaft engine. The engine is a free turbine turboshaft designed for a transport category helicopter. This engine incorporates a two stage compressor driven by a single stage turbine and a two stage free power turbine driving a two stage reduction gearbox and main output shaft. The control system includes a dual channel digital electronic control. The engine will incorporate a novel or unusual design feature associated with engine operation in auxiliary power unit (APU) mode. The helicopter will incorporate a main rotor brake what will allow the engine main output shaft and power turbine to be brought to a stop and to remain stationary, while the gas generator portion of the engine continues to operate as an APU while on the ground.

The applicable airworthiness standards do not contain adequate or appropriate airworthiness standards to address this design feature.

These special conditions contain the additional airworthiness standards necessary to establish a level of safety equivalent to the level that would result

from compliance with the applicable standards of airworthiness in effect on the date of application.

Type Certification Basis

Under the provisions of 14 CFR 21.17, PWC must show that the model PW210S turboshaft engine meets the provisions of the applicable regulations in effect on the date of application. The application date is December 5, 2005, which corresponds to 14 CFR part 33 Amendment 20. However, PWC has elected to demonstrate compliance to later amendments of part 33 for this model. Therefore, the certification basis for the PW210S model turboshaft engine will be part 33, effective February 1, 1965, as amended by Amendments 33–1 through 33–24.

If the Administrator finds that the applicable airworthiness regulations in part 33, as amended, do not contain adequate or appropriate safety standards for the PWC model PW210S turboshaft engine, because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

The FAA issues special conditions, as defined by 14 CFR 11.19, in accordance with 14 CFR 11.38, which become part of the type certification basis in accordance with § 21.17(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include another related model that incorporates the same or similar novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same or similar novel or unusual design feature, the special conditions would also apply to the other model.

Novel or Unusual Design Features

The Pratt and Whitney Canada (PWC) model PW210S turboshaft engine will incorporate a novel or unusual design feature associated with engine operation in auxiliary power unit (APU) mode. Special conditions for APU mode are proposed to address the novel and unusual design feature. The special conditions are discussed below.

Discussion

The proposed special conditions are similar to those requirements that currently exist in 14 CFR part 33, § 33.96 Engine Tests in Auxiliary Power Unit (APU) Mode. However the current rule only applies to turboprop type engines, therefore special conditions are needed to apply appropriate requirements to turboshaft type engines. Also, the type certification considerations for function and reliability are common between these two engine types in this regard, making requirements similar to current § 33.96 generally applicable to turboshaft engine types. Future rulemaking may occur to expand the applicability of § 33.96 to include turboshaft type engines.

Applicability

As discussed above, these special conditions are applicable to PWC model PW210S turboshaft engines. If Pratt and Whitney Canada applies later for a change to the type certificate to include another related model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one model of engine. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the engine.

List of Subjects in 14 CFR Part 33

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

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

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Pratt and Whitney Canada (PWC) model PW210S turboshaft engines.

1. PART 1 DEFINITION. Unless otherwise approved by the Administrator and documented in the appropriate manuals and certification documents, the following definition applies to this special condition: "Auxiliary Power Unit Mode" Engine operation with the main output shaft and power turbine locked and stationary, while the gas generator portion of the engine continues to operate, for the purpose of supplying the rotorcraft with electric/hydraulic/pneumatic power (as applicable) while on the ground.

2. PART 33 REQUIREMENTS:

(a) Ground locking: A total of 45 hours with the engine output shaft locked to simulate rotor brake engagement, in a manner which clearly demonstrates the complete engine's ability to function without adverse affect while operating in the APU mode under the maximum conditions of engine rotor speed, torque, temperature, air bleed and power extraction as specified by the applicant.

(b) Dynamic braking: A total of 400 application-release cycles of simulated brake engagements must be made in a manner which clearly demonstrates the complete engine's ability to function without adverse affect under the maximum conditions of engine acceleration and deceleration rate, rotor speed, torque and temperature as specified by the applicant. The engine output shaft must be stopped prior to brake-release.

(c) One hundred engine starts and stops with the output shaft locked in a manner simulating rotor brake engagement.

(d) The tests required by paragraphs (a), (b) and (c) of this section must be performed on the same engine, but this engine need not be the same engine used for the tests required by § 33.87 of 14 CFR part 33.

(e) The tests required by paragraphs (a), (b) and (c) of this section must be followed by engine disassembly to the extent necessary to show that each engine part conforms to the type design and is eligible for incorporation into an engine for continued operation in accordance with information submitted in compliance with § 33.4, Instructions for Continued Airworthiness.

(f) Brake engagement and release: The effects on the engine of braking and releasing the output shaft, including partial or sudden events while the engine is running, must be determined.

Issued in Burlington, Massachusetts, on January 30, 2011.

Peter A. White,

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

[FR Doc. 2011–3068 Filed 2–11–11; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–1264; Airspace Docket No. 10–AWP–23]

Proposed Amendment of Class D and Class E Airspace; Livermore, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Livermore, CA, to accommodate aircraft using new Instrument Landing System (ILS)

Localizer (LOC) standard instrument approach procedures at Livermore Municipal Airport, and would also correct the airspace designation. This action also would correct a typographical error in the airspace description for Class D airspace. The FAA is proposing this action to enhance the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before March 31, 2011.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2010–1264; Airspace Docket No. 10–AWP–23, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2010–1264 and Airspace Docket No. 10–AWP–23) and be submitted in triplicate to the Docket Management System (*see* **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA–2010–1264 and Airspace Docket No. 10–AWP–23". The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (*see* the **ADDRESSES** section for the address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue, SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying Class E airspace extending upward from 700 feet above the surface at Livermore Municipal Airport, Livermore, CA. This action also would add the airport name and geographic coordinates to the Class E airspace designation. Controlled airspace is necessary to accommodate aircraft using the new ILS LOC standard instrument approach procedures at Livermore Municipal Airport. Also, this action would correct a typographic error in the regulatory text of the Class D airspace area by correcting the word 'iport' to 'Airport'. This action would enhance the safety and management of aircraft operations at the Airport.

Class D and Class E airspace designations are published in paragraph 5000 and 6005, respectively, of FAA Order 7400.9U, dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designation listed in this document will be published subsequently in this Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes additional controlled airspace at Livermore Municipal Airport, Livermore, CA.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010 is amended as follows:

Paragraph 5000 Class D airspace.

* * * * *

AWP CA D Livermore, CA [Amended]

Livermore Municipal Airport, CA
(Lat. 37°41′36″ N., long. 121°49′13″ W.)

That airspace extending upward from the surface to and including 2,900 feet MSL within a 4-mile radius of Livermore Municipal Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

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

* * * * *

AWP CA E5 Livermore, CA [Amended]

Livermore Municipal Airport, CA
(Lat. 37°41′36″ N., long. 121°49′13″ W.)

That airspace extending upward from 700 feet above the surface within 8.1 miles north and 4 miles south of the Livermore Municipal Airport 091° bearing extending 23 miles east of Livermore Municipal Airport, and within 3.5 miles north and 4 miles south of the Livermore Municipal Airport 271° bearing extending 2.6 miles west of the airport.

Issued in Seattle, Washington, on February 7, 2011.

John Warner,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2011–3219 Filed 2–11–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0097; Airspace Docket No. 11–ANM–3]

Proposed Amendment of Class E Airspace; McCall, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at McCall Municipal Airport, McCall, ID. Decommissioning of the McCall Non-Directional Beacon (NDB) at McCall Municipal Airport has made this action necessary for the safety and management of Instrument Flight Rules (IFR) operations at the airport. This action also would correct the airport name from McCall Airport.

DATES: Comments must be received on or before March 31, 2011.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2011–0097; Airspace Docket No. 11–ANM–3, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2011–0097 and Airspace Docket No. 11–ANM–3) and be submitted in triplicate to the Docket Management System (*see* **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA–2011–0097 and Airspace Docket No. 11–ANM–3". The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (*see* the **ADDRESSES** section for the address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue, SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class E airspace extending upward from 700 feet above the surface for standard instrument approach procedures at McCall Municipal Airport, McCall, ID. Airspace reconfiguration is necessary due to the decommissioning of the McCall NDB and cancellation of the NDB approach. Controlled airspace is necessary for the safety and management of IFR operations at the Airport. This also would correct the airport name from McCall Airport to McCall Municipal Airport.

Class E airspace designations are published in paragraph 6005, of FAA Order 7400.9U, dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designation listed in this document will

be published subsequently in this Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at McCall Municipal Airport, McCall, ID.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010 is amended as follows:

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

* * * * *

ANM ID E5 McCall, ID [Amended]

McCall Municipal Airport, ID
(Lat. 44°53′19″ N., long. 116°06′06″ W.)

That airspace extending upward from 700 feet above the surface within 5 miles west and 7 miles east of the 169° and 349° bearings from the McCall Municipal Airport extending from 21 miles south to 6 miles north of the McCall Municipal Airport; that airspace extending upward from 1,200 feet above the surface within a line from lat. 44°12′00″ N., long. 116°06′00″ W.; to lat. 45°05′00″ N., long. 117°28′00″ W.; to lat. 45°15′00″ N., long. 117°19′00″ W.; to lat. 45°05′30″ N., long. 115°52′00″ W.; to lat. 44°16′00″ N., long. 115°40′00″ W.; thence to the point of beginning, excluding Federal airways; La Grande and Baker City, OR, and Boise, ID, Class E airspace areas.

Issued in Seattle, Washington, on February 7, 2011.

John Warner,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2011–3218 Filed 2–11–11; 8:45 am]

BILLING CODE 4910–13–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3050

[Docket No. RM2011–7; Order No. 664]

Periodic Reporting

AGENCY: Postal Regulatory Commission.

ACTION: Notice of proposed rulemaking; availability of rulemaking petition.

SUMMARY: The Commission is establishing a docket to consider certain temporary waivers from periodic reporting of service performance measurement. Establishing this docket will allow the Commission to consider the Postal Service's proposal and comments from the public.

DATES: *Comments are due:* February 15, 2011.

ADDRESSES: Submit comments electronically by accessing the "Filing Online" link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx*. Commenters who cannot submit their views electronically should contact the person identified in **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY HISTORY: On February 3, 2011, the Postal Service filed a request for temporary waivers from periodic reporting of service performance measurement for various market dominant postal services, or components of postal services, pursuant to Commission Order No. 465.[1]

Order No. 465 established a process for the Postal Service to achieve full compliance with all periodic service performance reporting requirements by the filing date of the FY 2011 Annual Compliance Report. Order No. 465 at 18–24. As part of the process, the Commission directed the Postal Service to seek temporary waivers where it cannot immediately comply with specific reporting requirements. As a condition of granting any waiver, the Commission directed the Postal Service to develop and present implementation plans addressing each reporting requirement for which the Postal Service cannot provide the required information. The "plans at a minimum should provide an explanation of why a reporting requirement cannot be complied with, the steps necessary to come into compliance, and a timeline of events necessary to achieve compliance. Interim milestones shall be included in the plans where applicable such that both the Postal Service and the Commission can evaluate progress being made." *Id.* at 23.

In the instant docket, the Postal Service requests certain temporary waivers from periodic reporting (quarterly) of service performance measurements for Standard Mail, Bound Printed Matter Flats, and certain area and district level data for Presort First-Class Mail, and End-to-End Periodicals. Request at 1. The Request includes proposals for interim service performance measurement reporting.

Two related dockets are pending before the Commission. Docket No. RM2011–1 concerns a Postal Service request which seeks temporary waivers for First-Class Mail Flats at the district level, non-retail First-Class Mail Parcels,

[1] United States Postal Service Request for Temporary Waivers from Periodic Reporting of Service Performance Measurement, February 3, 2011 (Request); *see also* Docket No. RM2009–11, Order Establishing Final Rules Concerning Periodic Reporting of Service Performance Measurements and Customer Satisfaction, May 25, 2010, at 22–24 (Order No. 465).

all categories of Standard Mail, Outside County Periodicals, non-retail Media Mail, Library Mail, Bound Printed Matter Parcels, and Stamp Fulfillment Services.[2] Docket No. RM2011–4 concerns a Postal Service request for a semi-permanent exception from periodic reporting of service performance measurement for First-Class Mail Flats at the district level or other relief as appropriate.[3] Interested persons are encouraged to review the filings presented in both related dockets when considering the instant request for waivers.

The Commission establishes Docket No. RM2011–7 for consideration of matters related to the proposed temporary waivers from periodic reporting of service performance measurement identified in the Postal Service's Request.

Interested persons may submit comments on whether the Postal Service's Request is consistent with the policies of 39 U.S.C. 3652(a)(2) and with the directions given in Order No. 465. Interested persons also may comment on interim measurement proposals. Comments are due no later than February 15, 2011. The Postal Service's Request can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Emmett Rand Costich to serve as Public Representative in the captioned proceeding.

It is ordered:

1. The Commission establishes Docket No. RM2011–7 for consideration of matters raised by the Postal Service's Request.

2. Comments by interested persons in this proceeding are due no later than February 15, 2011.

3. Pursuant to 39 U.S.C. 505, Emmett Rand Costich is appointed to serve as the officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2011–3192 Filed 2–11–11; 8:45 am]

BILLING CODE 7710–FW–P

[2] *See* Docket No. RM2011–1, United States Postal Service Request for Temporary Waivers from Periodic Reporting of Service Performance Measurement, October 1, 2010.

[3] *See* Docket No. RM2011–4, United States Postal Service Request for Semi-Permanent Exception from Periodic Reporting of Service Performance Measurement or, in the Alternative, Petition for Rulemaking Concerning 39 CFR 3055.45(c).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2007–1036; FRL–9266–2]

Approval and Promulgation of State Implementation Plans; State of Colorado; Interstate Transport of Pollution Revisions for the 1997 8-Hour Ozone and 1997 $PM_{2.5}$ NAAQS: "Interference With Visibility" Requirement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing partial approval of the Colorado interstate transport State Implementation Plan (SIP) revisions, submitted on March 31, 2010, addressing the requirements of Clean Air Act (CAA) section 110(a)(2)(D)(i)(II) for the 1997 ozone National Ambient Air Quality Standards (NAAQS), and the requirements of CAA section 110(a)(2)(D)(i)(I) and (II) for the 1997 $PM_{2.5}$ NAAQS. Specifically, in this **Federal Register** action EPA proposes full approval of those portions of the Colorado March 31, 2010 submission that address the section 110(a)(2)(D)(i)(II) requirement prohibiting a State's emissions from interfering with any other State's required measures to protect visibility for the 1997 ozone and $PM_{2.5}$ NAAQS. This action is being taken under section 110 of the CAA.

DATES: Comments must be received on or before March 16, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2007–1036, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: dygowski.laurel @epa.gov.*
- *Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Mail:* Callie Videtich, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.
- *Hand Delivery:* Callie Videtich, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop, Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R08–OAR–2007–1036. EPA's policy is that all comments received 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 information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly-available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket

Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Laurel Dygowski, Air Program, U.S. Environmental Protection Agency, Region 8, Mailcode 8P–AR, 1595 Wynkoop, Denver, Colorado 80202–1129, (303) 312–6144, *dygowski.laurel@epa.gov.*

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *SIP* mean or refer to State Implementation Plan.

(iv) The words *Colorado* and *State* mean the State of Colorado.

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I. General Information

What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit CBI to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

b. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

d. Describe any assumptions and provide any technical information and/or data that you used.

e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

f. Provide specific examples to illustrate your concerns, and suggest alternatives.

g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

h. Make sure to submit your comments by the comment period deadline identified.

II. Background Information

On July 18, 1997, EPA promulgated new NAAQS for 8-hour ozone and for fine particulate matter ($PM_{2.5}$). This action is being taken in response to the promulgation of the 1997 8-hour ozone and $PM_{2.5}$ NAAQS. This action does not address the requirements for the 2006 $PM_{2.5}$, or the 2008 8-hour ozone NAAQS; those standards will be addressed in later actions.

Section 110(a)(1) of the CAA requires States to submit SIPs to address a new or revised NAAQS within 3 years after promulgation of such standards, or within such shorter period as EPA may prescribe. Section 110(a)(2) lists the elements that such new SIPs must address, as applicable, including section 110(a)(2)(D)(i), which pertains to interstate transport of certain emissions.

Section 110(a)(2)(D)(i) of the CAA requires that a State's SIP must contain adequate provisions prohibiting any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will: (1) Contribute significantly to nonattainment of the NAAQS in any other State; (2) interfere with maintenance of the NAAQS by any other State; (3) interfere with any other State's required measures to prevent significant deterioration of air quality; or (4) interfere with any other State's required measures to protect visibility.

On June 11, 2008, the State of Colorado submitted to EPA an Interstate Transport SIP addressing all four elements of the interstate transport requirements of CAA section 110(a)(2)(D)(i) for the 1997 ozone and $PM_{2.5}$ NAAQS. In response to EPA's concerns regarding the June 11, 2008 submission, the State later submitted two superceding interstate transport SIP revisions: (a) A June 18, 2009 submission addressing the requirements of elements (1) and (2) of section 110(a)(2)(D)(i) for the 1997 ozone NAAQS; and (b) a March 31, 2010 submission addressing the requirements of elements (3) and (4) for the 1997 8-hour ozone NAAQS and of elements (1) through (4) for the 1997 $PM_{2.5}$ NAAQS. As noted earlier, in this rulemaking EPA is evaluating only the Colorado SIP revisions of the March 31, 2010 submission that address the requirements of element (4), prohibiting sources in Colorado from emitting pollutants from interfering with any other state's measures to protect visibility, for the 1997 ozone and $PM_{2.5}$ NAAQS. EPA has already taken final action on elements (1) and (2) for ozone (*see* 75 FR 31306 and 75 FR 71029, respectively). EPA will be taking action on elements (1)–(3) for $PM_{2.5}$ and element (3) for ozone in a separate action.

III. What action is EPA proposing?

EPA is proposing approval of the sections of the Colorado Interstate Transport SIP submitted March 31, 2010 that address the section 110(a)(2)(D)(i)(II) "interference with visibility protection" requirement for the 1997 ozone and $PM_{2.5}$ NAAQS. On January 13, 2010, the Colorado Air Quality Control Commission (AQCC) adopted interstate transport SIP revisions addressing the requirements of CAA section 110(a)(2)(D)(i)(II) for the 1997 ozone NAAQS, and the requirements of CAA section 110(a)(2)(D)(i)(I) and (II) for the 1997 $PM_{2.5}$ NAAQS. Colorado submitted these revisions to EPA on March 31, 2010. In this **Federal Register** action EPA is proposing to approve the sections of the March 31, 2010 submissions that address element (4), "interference with visibility protection," of section 110(a)(2)(D)(i).

IV. What is the State process to submit these materials to EPA?

Section 110(k) of the CAA addresses EPA's rulemaking action on SIP submissions by States. The CAA requires States to observe certain procedural requirements in developing SIP revisions for submittal to EPA. Section 110(a)(2) of the CAA requires that each SIP revision be adopted after reasonable notice and public hearing. This must occur prior to the revision being submitted by a State to EPA.

The Colorado AQCC held a public hearing in December 2009 for the interstate transport SIP revision: "State

of Colorado Implementation Plan to Meet the Requirements of the Clean Air Act Section 110(a)(2)(d)(i)(I) and (II)—Regarding Interstate Transport for the 1997 8-Hour Ozone and $PM_{2.5}$ NAAQS." The AQCC adopted this revision on January 13, 2010, and the State submitted it to EPA on March 31, 2010.

EPA has reviewed the submittal from the State of Colorado and has determined that the State met the requirements for reasonable notice and public hearing under section 110(a)(2) of the CAA.

V. EPA's Review and Technical Information

The interstate transport provisions at CAA section 110(a)(2)(D)(i), also referred to as the "good neighbor" provisions, require that each SIP contain adequate provisions prohibiting emissions that adversely affect any other State's air quality through interstate transport of air pollutants. As discussed in the Background Information section of this notice, a SIP must contain provisions that satisfy the four elements of section 110(a)(2)(D)(i). This action only addresses element (4), or the "interference with visibility protection" requirement, for the 1997 ozone and $PM_{2.5}$ NAAQS. On August 15, 2006, EPA issued guidance (2006 Guidance) [1] outlining the Agency's phased approach to visibility protection: The 1980 requirements of the Reasonably Attributable Visibility Impairment (RAVI) program, that addressed visibility impairment caused by one or a small number of sources, and the 1999 Regional Haze requirements addressing visibility impairment due to emission of air pollutants from numerous sources located over a wide geographical area.

The 2006 Guidance further explains that since EPA had not determined at that point in time that emissions from any States interfered with any other States' measures addressing RAVI, States could satisfy this portion of the "interference with visibility protection" requirement by certifying that none of their sources emitted pollutants interfering with other States' implementation plan measures to protect visibility under the 1980 regulations.[2] The Colorado Interstate Transport submission of March 31, 2010 outlines the periodic update of the State RAVI SIP and verifies that "no State or Federal Land Manager has identified Class I area impairment attributed to a Colorado source or identified a Colorado source that interferes with efforts to improve visibility." [3] Consistent with EPA's 2006 Guidance, the Colorado SIP verifies that there are no sources in the State that emit pollutants interfering with any other State's measures to protect visibility through their RAVI SIPs.

With respect to the 1999 Regional Haze provisions (*see* 64 FR 35714) addressing visibility impairment due to emission of air pollutants from numerous sources located over a wide geographical area, the 2006 Guidance indicated that States could satisfy the interference with visibility protection requirement through their EPA-approved Regional Haze (RH) SIPs. The 2006 Guidance did not prohibit States from satisfying element (4) by something other than an EPA-approved RH SIP. The State submitted a partial RH SIP to EPA on June 11, 2008, and revisions to the 2008 submittal on June 18, 2009. In the fall of 2010, the State revised its entire RH SIP and will be submitting this SIP to EPA in 2011. Thus, at the time the State submitted the March 13, 2010 Interstate Transport SIP, EPA had not approved a RH SIP for Colorado.

The State of Colorado has elected to satisfy the element (4) requirement of the good neighbor provisions by providing a demonstration in its March 13, 2010 Interstate Transport SIP submittal that it does not interfere with other State's measures to protect visibility through their RH SIP. The State provides an analysis in its SIP that begins with an inventory of current control measures (some approved only at the State level, some that are Federally enforceable, and some that are Federal programs) that reduce visibility impairing pollutants. Some examples of measures the State has relied on in making its demonstration that are Federally enforceable or are Federal programs include: (1) Regulation Number 1—Emission Controls for Particulates, Smoke, Carbon Monoxide and Sulfur Oxides; (2) parts of Regulation Number 3—Stationary Source Permitting and Air pollutant Emission Notice Requirements; and (3) Federal mobile source tailpipe exhaust programs. The State also included some reductions attributable to its RH SIP, which have not been approved by EPA.

The State used emission inventory information and modeling provided by the Western Regional Air Partnership (WRAP) to quantify the visibility impacts from Colorado sources on Class I areas outside of the State. Under the RH Rule, States must establish reasonable progress goals which provide for an improvement in visibility for the most impaired, or worst days, and no degradation on the best days (*see* 40 CFR 51.308(d)(1)). The State analyzed its projected 2018 impacts on the worst days on surrounding Class I areas in Arizona, Arkansas, Missouri, New Mexico, Oklahoma, South Dakota, Utah, and Wyoming. The modeling the State used for this analysis includes emission reductions for RH that are not Federally enforceable. For nitrates, the most impacted areas were Canyonlands National Park in Utah and Bandelier National Monument in New Mexico. Colorado's modeled contribution to nitrate extinction was 6.9% and 5.1%, respectively. Total nitrates from all source regions are projected to comprise 9.5% of the extinction in Canyonlands and 6.6% of the extinction in Bandelier. Thus, Colorado's nitrate contribution to the overall extinction in 2018 is 0.3% at Bandelier (0.051×0.066) and 0.7% (0.069×0.095) at Canyonlands. For sulfates, the most impacted areas were also Canyonlands National Park and Bandelier National Monument. Colorado's modeled contribution to sulfate extinction was 2.3% and 1.2%, respectively. Total sulfates from all source regions are projected to comprise 15.5% of the extinction in Canyonlands and 14.8% of the extinction in Bandelier. Thus, Colorado's sulfate contribution to the overall extinction in 2018 is 0.3% (0.012×0.148) at Bandelier and 0.2% (0.023×0.155) at Canyonlands. Colorado's total impact from nitrates and sulfates combined at Bandelier and at Canyonlands is 0.5% and 1.0% of the overall extinction, respectively. EPA performed additional analysis (discussed below) to assess impacts to reasonable progress goals in Class I areas outside of the State.

Under CAA section 110(a)(2)(D), the measures relied on by Colorado to make a demonstration that it does not interfere with other States' measures to protect visibility in their RH SIP have to be approved by EPA as part of a SIP and made Federally enforceable. As mentioned above, the State's demonstration relies on potential RH SIP emission reductions that have not been approved by EPA. EPA conducted a weight of evidence analysis on Canyonlands National Park, the most impacted Class I area to determine Colorado's impact if non-Federally enforceable measures were not included in the demonstration. EPA's weight of evidence analysis includes a recalculation of the reasonable progress goal to reflect the addition of non-

[1] "Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards" August 15, 2006.

[2] *Id.*

[3] Colorado March 31, 2010 SIP submission, at 23.

Federally enforceable measures, review of current and future year emission inventories, and an evaluation of the weighted emission potential (WEP) for sulfates and nitrates. The weighted emission potential information was obtained from technical work performed by the WRAP.[4] (The complete weight of evidence analysis is included in the docket for this notice.)

EPA recalculated the reasonable progress goal to determine approximate changes to visibility impacts at Canyonlands due to emission increases. To account for measures that are not Federally enforceable, EPA increased the Colorado emission inventory 45,700 tons for sulfates and 5,200 tons for nitrates from the emission inventory used for Colorado in the WRAP 2018 reasonable progress modeling. To calculate the approximate visibility impact from this change, the following procedure was followed: (1) Recalculate the baseline haze index (2000–2004) using daily 20% worst case monitored species extinction from WRAP data; (2) recalculate 2018 predicted reasonable progress goal haze index by applying Class I area specific annual relative response factors (RRFs) provided by WRAP to the daily 20% worst case monitored for each pollutant; (3) assume that Colorado's relative contribution of nitrates and sulfates identified by WRAP tracer modeling for the 2018 base case is the same for the 2018 reasonable progress case; (4) rescale sulfate extinction and nitrate extinction in step 2 to account for Colorado emissions that are not Federally enforceable; and (5) recalculate the reasonable progress goals that would be expected. This method of approximating the change in the haze index, given in deciviews (dv),[5] shows that the 2018 predicted reasonable progress goal would only increase from 10.77 dv to 10.80 dv.

EPA also analyzed WEP information developed by the WRAP. The WEP analysis was developed as a screening tool for States to decide which source regions have the potential to contribute to haze formation in Class I areas, based on annual emissions inventories, baseline period back trajectories, and source to Class I area distances. The WEP analyses also show that Colorado has a minimal impact on visibility at Canyonlands.

The RH Rule also requires States ensure no degradation of visibility on the best days. The WRAP modeling projects that visibility on the best days will not degrade in 2018 at any of the surrounding Class I areas. For example, modeling indicates that the visibility at Canyonlands on the best days is expected to improve from 3.8 dv to 3.5 dv. Accordingly, EPA finds that Colorado does not interfere with another States' ability to ensure no degradation of visibility on the best days.

Based on the information presented above, EPA concludes that Colorado does not interfere with Utah's measures to protect visibility at Canyonlands National Park. Since Colorado impacts Canyonlands more than any other out of State Class I area, Colorado's impacts on other Class I areas, including Bandelier, would be even less. EPA thus has determined that Colorado does not interfere with other States' measures to protect visibility in their RH SIP.

VI. Proposed Action

EPA is proposing partial approval of the March 31, 2010 Colorado Interstate Transport SIP revisions submission. Specifically, in this action EPA is proposing to approve subsections 3.1, 3.2 and 3.3, addressing the "interference with protection of visibility" requirement for the 1997 ozone NAAQS, and subsections 6.1, 6.2 and 6.3, addressing the "interference with protection of visibility" requirement for the 1997 $PM_{2.5}$ NAAQS.

VII. Statutory and Executive Order Review

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

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile Organic Compounds.

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

Dated: February 3, 2011.

Carol Rushin,

Deputy Regional Administrator, Region 8.

[FR Doc. 2011–3280 Filed 2–11–11; 8:45 am]

BILLING CODE 6560–50–P

[4] The WRAP technical work, including modeling, was used by all western States as the basis for evaluating impacts on Class I areas and the need for controls.

[5] A deciview is a measure of visibility impairment that directly relates to human perception. A higher deciview number indicates more perceptible visibility impairment.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2010–0902; FRL–9265–7]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Revision to the Definition of Volatile Organic Compound

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia consisting of the amended wording of the definition of "Volatile organic compound" (VOC). In the Final Rules section of this **Federal Register**, EPA is approving Virginia's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by March 16, 2011.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2010–0902 by one of the following methods:

A. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail: frankford.harold@epa.gov.*

C. *Mail:* EPA–R03–OAR–2010–0902, Harold A. Frankford, Air Protection Division, Mailcode 3AP00, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2010–0902. EPA's policy is that all comments received 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 information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

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

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: February 1, 2011.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2011–3098 Filed 2–11–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2011–0002; Internal Agency Docket No. FEMA–B–1171]

Proposed Flood Elevation Determinations

Correction

In proposed rule document 2011–1061, appearing on pages 3590–3595, in the issue of Thursday, January 20, 2011, make the following correction:

§ 67.4 [Corrected]

On page 3592 in § 67.4, under **ADDRESSES,** in "Unincorporated Areas of Nowata County," in the Maps line, the text is corrected to read as follows:

Unincorporated Areas of Nowata County

Maps are available for inspection at the Nowata County Office, 229 North Maple Street, Nowata, OK 74048.

[FR Doc. C1–2011–1061 Filed 2–11–11; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 101210611–1080–02]

RIN 0648–BA58

Hawaii Bottomfish and Seamount Groundfish Fisheries; Modification to Advance Notification Period for Fishery Closures

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would change the advance notification period for in-season closure of the main Hawaiian Islands (MHI) Deep-7 bottomfish fishery to seven days from

the current 14 days. The intent of the proposed change is to enhance administration of the fishery.

DATES: Comments on the amendment must be received by March 1, 2011.

ADDRESSES: Comments on the proposed rule, identified by 0648–BA58, may be sent to either of the following addresses:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal *http://www.regulations.gov;* or
- *Mail:* Mail written comments to Michael D. Tosatto, Regional Administrator, NMFS, Pacific Islands Region (PIR), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814–4700.

Instructions: Comments must be submitted to one of these two addresses to ensure that the comments are received, documented, and considered by NMFS. Comments sent to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.) submitted voluntarily by the commenter may be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "NA" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Jarad Makaiau, NMFS PIR Sustainable Fisheries, 808–944–2108.

SUPPLEMENTARY INFORMATION: The MHI Deep 7 bottomfish are onaga (*Etelis coruscans*), ehu (*E. carbunculus*), gindai (*Pristipomoides zonatus*), kalekale (*P. sieboldii*), opakapaka (*P. filamentosus*), lehi (*Aphareus rutilans*), and hapuupuu (*Epinephelus quernus*). The Deep 7 fishery is managed under a total allowable catch (TAC) limit. The TAC is specified each fishing year by NMFS, as recommended by the Western Pacific Fishery Management Council (Council) based on the best available scientific, commercial, and other information. The fishing year begins on September 1, and if the TAC is not reached, the fishing year ends on August 31. NMFS and the State of Hawaii monitor progress towards the TAC based on commercial bottomfish landings data submitted to the State by commercial marine license (CML) holders. When bottomfish landings approach the TAC, NMFS, the State of Hawaii, and the Council meet to determine the specified date the TAC is projected to be reached.

Pursuant to Federal regulations at 50 CFR 665.211, when the specified TAC is projected to be reached, NMFS notifies fishermen and the public of the date when the non-commercial and commercial Deep-7 bottomfish fisheries will be closed, through a notice in the **Federal Register** and by other means. The regulations require that NMFS provide at least 14 days from the date the notice is filed for public inspection at the Office of the **Federal Register** to the actual closure date. The 14-day advanced notification period has created an administrative challenge for NMFS, in that it requires the agency to determine the projected closure date at least three weeks in advance of actual closure so that the closure notice can be processed to provide the required 14-day notice. This requires projecting the closure date further in advance than is necessary and with less complete information compared to this proposed action.

Trip reports submitted to the State of Hawaii by the 500+ state CML holders who reported fishing for bottomfish indicate that the vast majority of fishermen engage in single day trips, i.e., lasting less than 24 hours. Only 12 fishermen reported multi-day bottomfish trips, and those trips lasted only three days or less. Based on this information about the fishery, and on the need for more time to process the closure notice, the Council recommended that NMFS shorten the advance notice period to seven days.

The objective of the proposed action is to enhance administration of the fishery by streamlining the advanced notification period. A seven-day notification period would continue to provide ample time for fishermen to be made aware of the in-season closure. (By comparison, NMFS provides seven days advance notification when closing the commercial longline fishery; this has been ample time for longliners, even when their trips last up to six weeks.) Additionally, shortening the advance notification period from 14 to seven days allows the agency to determine the projected closure date closer to the actual closure. This is because the seven additional days can be allocated to processing and analyzing catch data. This could increase precision in forecasting the closure date, and also facilitate adherence to the catch limit by reducing the number of days fish could be caught once a closure notice is announced.

Up-to-date catch information is posted at *http://www.fpir.noaa.gov* throughout the fishing year to show the cumulative progress towards the TAC. With this information, fishermen are able to see an estimate of when the fishery may close and are able to plan accordingly. Additionally, prior to the closure date, letters notifying bottomfish fishermen of the closure date are mailed to permit holders, and advisements of the closure date are announced to the public in local news media.

To be considered, comments on this proposed rule must be received by March 1, 2011, not postmarked or otherwise transmitted by that date.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1854(b)(1)(A), the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Fishery Ecosystem Plan for the Hawaiian Archipelago, other provisions of the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The analysis follows:

The proposed rule is administrative in nature, and would change the advance notification period for closure of the main Hawaiian Islands (MHI) Deep-7 bottomfish fishery to seven days from the current 14 days. A description of the action, why it is being considered, and the legal basis are contained in the preamble to this proposed rule.

All fishing vessels that participate in the MHI Deep 7 bottomfish fishery are considered to be small entities under the Small Business Administration definition of a small entity, i.e., they are engaged in the business of fish harvesting, are independently-owned or operated, are not dominant in their field of operation, and have annual gross receipts not in excess of $4 million. Therefore, there are no disproportionate economic impacts between large and small entities, and the proposed action is not expected to have any impact on these small entities. Trip reports submitted to the State of Hawaii by the 500+ state CML holders who reported fishing for bottomfish indicate that the vast majority of fishermen engage in single day trips, i.e., lasting less than 24 hours. Only 12 fishermen reported multi-day bottomfish trips, and those trips lasted only three days or less. Therefore, a seven-day notification period would provide ample time for all fishery participants to be made aware of the in-season closure. Additionally, shortening the advance

notification period from 14 to seven days allows the agency to determine the projected closure date closer to the actual closure. This is because the seven additional days can be allocated to processing and analyzing catch data. This could increase precision in forecasting the closure date, and also facilitate adherence to the catch limit by reducing the number of days fish could be caught once a closure notice is announced.

This rule does not duplicate, overlap, or conflict with other Federal rules.

As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 665

Bottomfish, Fishing, Hawaii.

Dated: February 8, 2011.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 665 is proposed to be amended as follows:

PART 665—FISHERIES IN THE WESTERN PACIFIC

1. The authority citation for part 665 continues to read as follows:

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

2. In § 665.211, revise paragraph (c) to read as follows:

§ 665.211 Total allowable catch (TAC) limit.

* * * * *

(c) When the TAC limit specified in this section is projected to be reached based on analyses of available information, the Regional Administrator shall publish a notice to that effect in the **Federal Register** and shall use other means to notify permit holders. The notice will include an advisement that the fishery will be closed beginning at a specified date, which is not earlier than seven days after the date of filing the closure notice for public inspection at the Office of the Federal Register, until the end of the fishing year in which the TAC is reached.

* * * * *

[FR Doc. 2011–3244 Filed 2–11–11; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 76, No. 30
Monday, February 14, 2011

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Public Meeting, Cherokee National Forest Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of public meeting, Cherokee National Forest Resource Advisory Committee.

SUMMARY: In accordance with the Secure Rural Schools and Community Self Determination Act of 2000 (Pub. L. 106–393), [as reauthorized as part of Public Law 110–343] and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of Agriculture, Forest Service, Cherokee National Forest Resource Advisory Committee will meet as indicated below.

DATES: The Cherokee National Forest Resource Advisory Committee meeting will be conducted on Thursday, March 10, 2011 from 12:30–4:30 p.m.

ADDRESSES: McGhee Tyson Airport, 2055 Alcoa Highway, Alcoa, TN 37701. Meeting visitors should park in the main airport parking garage and bring their parking ticket to the meeting for validation. Take the centrally located elevator in the passenger terminal to the 3rd floor and see the receptionist for directions to the meeting room.

FOR FURTHER INFORMATION CONTACT: Terry Bowerman, Designated Federal Official, Cherokee National Forest, 4900 Asheville Hwy SR 70, Greeneville, TN 37743: Telephone: 423–638–4109, e-mail *tbowerman@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The Cherokee National Forest Resource Advisory Committee (RAC) proposes projects and funding to the Secretary of Agriculture under Section 203 of the Secure Rural Schools and Community Self Determination Act of 2000, (as reauthorized as part of Pub. L. 110–343). The Cherokee National Forest RAC consists of 15 people selected to serve on the committee by Secretary of Agriculture Tom Vilsack. Two Tennessee counties, Cocke and Monroe, are setting aside a percentage of their Secure Rural Schools Act payment under Title II of the Act to be used for projects on federal land. The RAC will ultimately review and recommend projects to be funded from this money. Projects approved must benefit National Forests lands. Projects can maintain infrastructure, improve the health of watersheds and ecosystems, protect communities, and strengthen local economies. The agenda for the March 10th meeting of the Cherokee National Forest RAC will focus on review and consideration of proposed projects. RAC meetings are open to the public.

H. Thomas Speaks, Jr.,
Forest Supervisor, Cherokee National Forest.

[FR Doc. 2011–3066 Filed 2–11–11; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Ashley Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ashley Resource Advisory Committee will meet in Vernal, Utah. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose of the meeting is conduct introductions, approve meeting minutes, develop and finalize evaluation criteria for the ranking of recommended projects, set the next meeting date, time and location and receive public comment on the meeting subjects and proceedings.

DATES: The meetings will be held March 17, 2011, from 6 p.m. to 8 p.m.

ADDRESSES: The meeting will be held in the Interagency Fire Dispatch Center conference room at the Ashley National Forest Supervisor's Office, 355 North Vernal Avenue in Vernal, Utah. Written comments should be sent to Ashley National Forest, 355 North Vernal Avenue, Vernal, UT 84078. Comments may also be sent via e-mail to *ljhaynes@fs.fed.us,* or via facsimile to 435–781–5142.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Ashley National Forest, 355 North Vernal Avenue, Vernal, UT.

FOR FURTHER INFORMATION CONTACT: Louis Haynes, RAC Coordinator, Ashley National Forest, (435) 781–5105; e-mail: *ljhaynes@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: (1) Welcome and roll call; (2) Approval of meeting minutes; (3) Creation and approval of evaluation criteria to be used to rank order recommended projects; (4) Review of next meeting purpose, location, and date; (5) Receive public comment. Persons who wish to bring related matters to the attention of the Committee may file written statements with the committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by March 10, 2011 will have the opportunity to address the committee at these meetings.

Dated: February 7, 2011.

Kevin B. Elliott,
Forest Supervisor.

[FR Doc. 2011–3070 Filed 2–11–11; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Del Norte Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Del Norte Resource Advisory Committee (RAC) will meet in Crescent City, California. The committee meeting is authorized under the Secure Rural Schools and Community Self-Determination (SRS) Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act.

DATES: The meeting will be held February 28, 2011, from 5 p.m. to 9 p.m.

ADDRESSES: The meeting will be held at the Del Norte County Unified School District, Redwood Room, 301 West Washington Boulevard, Crescent City, California 95531.

FOR FURTHER INFORMATION CONTACT: Adam Dellinger, Committee Coordinator, Six Rivers National Forest, at (707) 441–3569; e-mail *adellinger@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The Del Norte RAC will review applications received during the 2nd round of proposal solicitations and will vote on projects to recommend for funding. The meeting is open to the public and there will also be a public comment opportunity.

Dated: February 4, 2011.

Tyrone Kelley,

Forest Supervisor.

[FR Doc. 2011–3281 Filed 2–11–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

White Pine-Nye County Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The White Pine-Nye County Resource Advisory Committee (RAC) will hold a meeting.

DATES: The meeting will be held on March 2nd, 2011 and will begin at 9 a.m.

ADDRESSES: The meeting will be held in Eureka County at the Eureka Opera House, 31 S. Main Street, Eureka, Nevada 89316.

FOR FURTHER INFORMATION CONTACT: Jose Noriega, RAC Coordinator, USDA, Humboldt-Toiyabe National Forest, Ely Ranger District, 825 Avenue E Ely, NV 89301 (775) 289–3031; e-mail *jnoriega@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items include: (1) Review and approve operating guidelines, (2) Review and approve meeting and business expenses, (3) Review and recommend funding allocation for proposed projects, (4) Determine timeframes for the next round of project proposals, (5) Public Comment. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: January 18, 2011.

Steven Williams,

Designated Federal Official.

[FR Doc. 2011–3283 Filed 2–11–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Inviting Applications for the Rural Economic Development Loan and Grant Program for Fiscal Year 2011

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: This Notice is to invite applications for loans and grants under the Rural Economic Development Loan and Grant (REDLG) program pursuant to 7 CFR part 4280, subpart A for Fiscal Year (FY) 2011 subject to the availability of funding. The commitment of program dollars will be made to applicants of selected responses that have fulfilled the necessary requirements for obligation. Expenses incurred in developing applications will be at the applicant's risk. Historically, on an annual basis, Congress has appropriated $33 million for loans and $10 million for grants for these programs. This Notice is being issued prior to passage of a FY 2011 Appropriations Act, which may or may not provide an appropriation for these programs, to allow applicants sufficient time to leverage financing, submit applications, and give the Agency time to process applications within FY 2011. A subsequent notice identifying the amount received in the appropriations will be published, if any.

DATES: The deadline for receipt of applications in the USDA Rural Development State Office is: Third Quarter, March 31, 2011; and Fourth Quarter, June 30, 2011.

ADDRESSES: Submit applications in paper format to the USDA Rural Development State Office in the state where your project is located. A list of the USDA Rural Development State Offices addresses and telephone numbers are as follows:

Alabama

USDA Rural Development State Office, Sterling Centre, Suite 601, 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3400/TDD (334) 279–3495.

Alaska

USDA Rural Development State Office, 800 West Evergreen, Suite 201, Palmer, AK 99645–6539, (907) 761–7707/TDD (907) 761–8905.

Arizona

USDA Rural Development State Office, 230 North First Avenue, Suite 206, Phoenix, AZ 85003–1706, (602) 280–8702/TDD (602) 280–8705.

Arkansas

USDA Rural Development State Office, Federal Building, 700 West Capitol Avenue, Room 3416, Little Rock, AR 72201–3225, (501) 301–3200/TDD (501) 301–3279.

California

USDA Rural Development State Office, 430 G Street, Agency 4169, Davis, CA 95616–4169, (530) 792–5800/TDD (530) 792–5848.

Colorado

USDA Rural Development State Office, Denver Federal Center, Building 56, Room 2300, P.O. Box 25426, Denver, CO 80225–0426, (720) 544–2903/TDD (800) 659–3656.

Delaware/Maryland

USDA Rural Development State Office, 1221 College Park Drive, Suite 200, Dover, DE 19904, (302) 857–3580/TDD (302) 857–3585.

Florida/Virgin Islands

USDA Rural Development State Office, 4440 NW 25th Place, P.O. Box 147010, Gainesville, FL 32614–7010, (352) 338–3400/TDD (352) 338–3499.

Georgia

USDA Rural Development State Office, Stephens Federal Building, 355 East Hancock Avenue, Stop 300, Athens, GA 30601–2768, (706) 546–2162/TDD (706) 546–2034.

Hawaii

USDA Rural Development State Office, Federal Building, Room 311, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8302/TDD (808) 933–8321.

Idaho

USDA Rural Development State Office, 9173 West Barnes Drive, Suite A1, Boise, ID 83709, (208) 378–5601/TDD (208) 378–5644.

Illinois

USDA Rural Development State Office, 2118 West Park Court, Suite A, Champaign, IL 61821, (217) 403–6200/TDD (217) 403–6240.

Indiana

USDA Rural Development State Office, 5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290–3100 ext. 4/TDD (317) 290–3343.

Iowa

USDA Rural Development State Office, Federal Building, Room 873, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4663/TDD (515) 284–4858.

Kansas

USDA Rural Development State Office, 1303 SW First American Place, Suite 100, Topeka, KS 66604–4040, (785) 271–2700/TDD (785) 271–2767.

Kentucky

USDA Rural Development State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (859) 224–7300/TDD (859) 224–7422.

Louisiana

USDA Rural Development State Office, 3727 Government Street, Alexandria, LA 71302, (318) 473–7920/TDD (318) 473–7655.

Maine

USDA Rural Development State Office, 967 Illinois Avenue, Suite 4, P.O. Box 405, Bangor, ME 04402–0405, (207) 990–9160/TDD (207) 942–7331.

Massachusetts/Rhode Island/Connecticut

USDA Rural Development State Office, 451 West Street, Amherst, MA 01002–2999, (413) 253–4300/TDD (413) 253–4590.

Michigan

USDA Rural Development State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 324–5190/TDD (517) 324–5169.

Minnesota

USDA Rural Development State Office, 375 Jackson Street, Suite 410, St. Paul, MN 55101–1853, (651) 602–7800/TDD (651) 602–3799.

Mississippi

USDA Rural Development State Office, Federal Building, Suite 831, 100 West Capitol Street, Jackson, MS 39269, (601) 965–4211/TDD (601) 965–5850.

Missouri

USDA Rural Development State Office, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–0987/TDD (573) 876–9480.

Montana

USDA Rural Development State Office, 2229 Boot Hill Court, Bozeman, MT 59715, (406) 585–2580/TDD (406) 585–2562.

Nebraska

USDA Rural Development State Office, Federal Building, Room 152, 100 Centennial Mall North, Lincoln, NE 68508, (308)632–2195/TDD (402) 437–5093.

Nevada

USDA Rural Development State Office, 1390 South Curry Street, Carson City, NV 89703–9910, (775) 887–1222/TDD (775) 885–0633.

New Jersey

USDA Rural Development State Office, 8000 Midlantic Drive, 5th Floor North, Suite 500, Mt. Laurel, NJ 08054, (856) 787–7700/TDD (856) 787–7784.

New Mexico

USDA Rural Development State Office, 6200 Jefferson Street, Room 255, Albuquerque, NM 87109, (505) 761–4950/TDD (505) 761–4938.

New York

USDA Rural Development State Office, The Galleries of Syracuse, 441 South Salina Street, Suite 357, Syracuse, NY 13202–2541, (315) 477–6435/TDD (315) 477–6447.

North Carolina

USDA Rural Development State Office, 4405 Bland Road, Suite 260, Raleigh, NC 27609, (919) 873–2015/TDD (919) 873–2003.

North Dakota

USDA Rural Development State Office, Federal Building, Room 208, 220 East Rosser, P.O. Box 1737, Bismarck, ND 58502–1737, (701) 530–2037/TDD (701) 530–2113.

Ohio

USDA Rural Development State Office, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2418, (614) 255–2400/TDD (614) 255–2554.

Oklahoma

USDA Rural Development State Office, 100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1000/TDD (405) 742–1007.

Oregon

USDA Rural Development State Office, 1201 Northeast Lloyd Blvd., Suite 801, Portland, OR 97232, (503) 414–3305/TDD (503) 414–3387.

Pennsylvania

USDA Rural Development State Office, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2262/TDD (717) 237–2261.

Puerto Rico

USDA Rural Development State Office, 654 Munos Rivera Avenue, Suite 601, San Juan, PR 00918–6106, (787) 766–5095/TDD (787) 766–5332.

South Carolina

USDA Rural Development State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 765–5163/TDD (803) 765–5697.

South Dakota

USDA Rural Development State Office, Federal Building, Room 210, 200 Fourth Street, SW, Huron, SD 57350, (605) 352–1100/TDD (605) 352–1147.

Tennessee

USDA Rural Development State Office, 3322 West End Avenue, Suite 300, Nashville, TN 37203–1071, (615) 783–1300.

Texas

USDA Rural Development State Office, Federal Building, Suite 102, 101 South Main, Temple, TX 76501, (254) 742–9700/TDD (254) 742–9712.

Utah

USDA Rural Development State Office, Wallace F. Bennett Federal Building, 125 South State Street, Room 4311, Salt Lake City, UT 84138, (801) 524–4321/TDD (801) 524–3309.

Vermont/New Hampshire

USDA Rural Development State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6080/TDD (802) 223–6365.

Virginia

USDA Rural Development State Office, 1606 Santa Rosa Road, Suite 238, Richmond, VA 23229–5014, (804) 287–1552/TDD (804) 287–1753.

Washington

USDA Rural Development State Office, 1835 Black Lake Boulevard SW, Suite B, Olympia, WA 98512–5715, (360) 704–7740/TDD (360) 704–7760.

West Virginia

USDA Rural Development State Office, 1550 Earl Core Road, Suite 101, Morgantown, WV 26505, (304) 284–4860/TDD (304) 284–4836.

Wisconsin

USDA Rural Development State Office, 4949 Kirschling Court, Stevens Point, WI 54481, (715) 345–7600/TDD (715) 345–7614.

Wyoming

USDA Rural Development State Office, P.O. Box 11005, 100 East B, Federal Building, Room 1005, Casper, WY 82601, (307) 233–6703/TDD (307) 233–6733.

FOR FURTHER INFORMATION CONTACT: The Rural Development State Office identified in this Notice where the project will be located.

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency: Rural Business-Cooperative Service.

Funding Opportunity Type: Rural Economic Development Loans and Grants.

Announcement Type: Initial Announcement.

Catalog of Federal Domestic Assistance Number: 10.854.

Dates: Application Deadline: Completed applications must be received in the State Office as follows: Third Quarter, March 31, 2011; and Fourth Quarter, June 30, 2011.

I. Funding Opportunity Description

The regulations for these programs are at 7 CFR part 4280, subpart A. The primary objective of the program is to promote rural economic development and job creation projects. Assistance provided to rural areas, as defined, under this program may include business startup costs, business expansion, business incubators, technical assistance feasibility studies, advanced telecommunications services and computer networks for medical, educational, and job training services and community facilities projects for economic development. Awards are made on a competitive basis using specific selection criteria contained in 7 CFR part 4280, subpart A. Information

required to be in the application includes an SF–424, "Application for Federal Assistance;" a Resolution of the Board of Directors; AD–1047, "Debarment/Suspension Certification;" Assurance Statement for the Uniform Act; Restrictions on Lobbying, AD 1049, "Certification Regarding Drug-Free Workplace Requirements;" Form RD 400–1, "Equal Opportunity Agreement;" Form RD 400–4, "Assurance Agreement;" Seismic Certification (if construction); Form RD 1940–20, "Request for Environmental Information;" RUS Form 7,"Financial and Statistical Report;" and RUS Form 7a, "Investments, Loan Guarantees, and Loans," or similar information; and written narrative of project description. Applications will be tentatively scored by the State Offices and submitted to the National Office for review.

Definitions

The definitions are published at 7 CFR 4280.3.

II. Award Information

Type of Awards: Loans and Grants.

Fiscal Year Funds: FY 2011.

Maximum Anticipated Award: This amount depends on the amount Congress appropriates, but the Agency anticipates the following amounts: Loans—$740,000; Grant—$300,000.

Anticipated Award Dates: Third Quarter, June 15, 2011; and Fourth Quarter, September 15, 2011.

III. Eligibility Information

A. Eligible Applicants

Loans and grants may be made to any entity that is identified by USDA Rural Development as an eligible borrower under the Rural Electrification Act. In accordance with 7 CFR 4280.13, applicants that are not delinquent on any Federal debt or otherwise disqualified from participation in these programs are eligible to apply. An applicant must be eligible under 7 U.S.C. 940c.

B. Cost Sharing or Matching

For loans, either the Ultimate Recipient or the Intermediary must provide supplemental funds for the project equal to at least 20 percent of the loan to the Intermediary. For grants, the Intermediary must provide supplemental funds for the project equal to at least 20 percent of the grant to the Intermediary.

C. Other Eligibility Requirements

Applications will only be accepted for projects that promote rural economic development and job creation.

D. Completeness Eligibility

Applications will not be considered for funding if they do not provide sufficient information to determine eligibility or are missing required elements.

IV. Fiscal Year 2011 Application and Submission Information

A. Address To Request Application Package

For further information, entities wishing to apply for assistance should contact the Rural Development State Office identified in this Notice to obtain copies of the application package.

Applicants are encouraged to submit applications through the Grants.gov Web site at: *http://www.grants.gov.* Applications may be submitted in either electronic or paper format. Users of Grants.gov will be able to download a copy of the application package, complete it off line, and then upload and submit the application via the Grants.gov Web site. Applications may not be submitted by electronic mail.

- When you enter the Grants.gov Web site, you will find information about submitting an application electronically through the site as well as the hours of operation. USDA Rural Development strongly recommends that you do not wait until the application deadline date to begin the application process through Grants.gov. To use Grants.gov, applicants must have a Dun and Bradstreet Data Universal Numbering System (DUNS) number which can be obtained at no cost via a toll-free request line at 1–866–705–5711 or at *http://www.dnb.com.*
- You may submit all documents electronically through the Web site, including all information typically included on the application for REDLGs and all necessary assurances and certifications.
- After electronically submitting an application through the Web site, the applicant will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number.
- USDA Rural Development may request that the applicant provide original signatures on forms at a later date.
- If applicants experience technical difficulties on the closing date and are unable to meet the deadline, you may submit a paper copy of your application to your respective Rural Development State Office. Paper applications submitted to a Rural Development State Office must meet the closing date and local time deadline.

Please note that applicants must locate the downloadable application package for this program by the Catalog of Federal Domestic Assistance Number or FedGrants Funding Opportunity Number, which can be found at *http://www.grants.gov.*

B. Content and Form of Submission

An application must contain all of the required elements. Each selection priority criterion outlined in 7 CFR 4280.42(b), must be addressed in the application. Failure to address any of the criteria will result in a zero-point score for that criterion and will impact the overall evaluation of the application. Copies of 7 CFR part 4280, subpart A, will be provided to any interested applicant making a request to a Rural Development State Office listed in this notice.

C. Submission Dates and Times

Application Deadline Dates: Third Quarter, March 31, 2011, and Fourth Quarter, June 30, 2011.

Explanation of Deadlines: Applications must be in the Rural Development State Office by the deadline dates as indicated above.

V. Application Review Information

The National Office will score applications based on the grant selection criteria and weights contained in 7 CFR part 4280, subpart A, and will select an Intermediary subject to the Intermediary's satisfactory submission of the additional items required by 7 CFR part 4280, subpart A and the USDA Rural Development Letter of Conditions.

VI. Award Administration Information

A. Award Notices

Successful applicants will receive notification for funding from the Rural Development State Office. Applicants must comply with all applicable statutes and regulations before the loan/grant award will be approved. Provided the application requirements have not changed, an application not selected will be reconsidered in three subsequent funding competitions for a total of four competitions. If an application is withdrawn, it can be resubmitted and will be evaluated as a new application.

B. Administrative and National Policy Requirements

Additional requirements that apply to Intermediary's selected for this program can be found in 7 CFR part 4280, subpart A. Applicable provisions of 7 CFR parts 3015, 3019, and 3052 also apply.

VII. Agency Contacts

For general questions about this announcement, please contact your

Rural Development State Office identified in this Notice.

VIII. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the information collection requirement contained in this Notice is approved by the Office of Management and Budget (OMB) under OMB Control Number 0570–0024.

Nondiscrimination Statement

"The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

To file a complaint of discrimination, write to USDA, Director, Office of Adjudication and Compliance, 1400 Independence Avenue, SW., Washington, DC 20250–9410, or call (800) 795–3272 (voice), or (202) 720–6382 (TDD). USDA is an equal opportunity provider, employer, and lender."

Dated: February 1, 2011.

Judith A. Canales,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2011–3198 Filed 2–11–11; 8:45 am]

BILLING CODE 3410–XY–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: Pacific Tuna Fisheries Logbook.

OMB Control Number: 0648–0148.

Form Number(s): NA.

Type of Request: Regular submission (extension of a current information collection).

Number of Respondents: 15.

Average Hours per Response: 5 minutes.

Burden Hours: 106.

Needs and Uses: United States (U.S.) participation in the Inter-American Tropical Tuna Commission (IATTC) results in certain recordkeeping requirements for U.S. fishermen who fish in the IATTC's area of management responsibility. These fishermen must maintain a log of all operations conducted from the fishing vessel, including the date, noon position, and the tonnage of fish aboard the vessel, by species. The logbook form provided by the IATTC is universally used by U.S. fishermen to meet this recordkeeping requirement. The information in the logbooks includes areas and times of operation, and catch and effort by area. Logbook data are used in stock assessments and other research concerning the fishery. If the data were not collected or if erroneous data were provided, the IATTC assessments would likely be incorrect and there would be an increased risk of overfishing or inadequate management of the fishery.

Affected Public: Business or other for-profit organizations.

Frequency: Daily.

Respondent's Obligation: Mandatory.

OMB Desk Officer: *OIRA_Submission@omb.eop.gov.*

Copies of the above information collection proposal can be obtained by calling or writing 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: February 9, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–3206 Filed 2–11–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

International Trade Administration

Proposed Information Collection; Comment Request; Survey of Participating Companies in the U.S.-European Union and U.S.-Swiss Safe Harbor Frameworks

AGENCY: International Trade Administration.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before April 15, 2011.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to David A. Ritchie, U.S. Department of Commerce, Office of Technology and Electronic Commerce, *Telephone:* 202–482–4936; *e-mail: david.ritchie@trade.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Office of Technology and Electronic Commerce in the Manufacturing and Services unit of the International Trade Administration (ITA) administers the U.S.-European Union (EU) and U.S.-Swiss Safe Harbor Frameworks. These Frameworks allow U.S. companies to meet the requirements of the European Union's Data Protection Directive and the Swiss Federal Act on Data Protection, respectively. This is significant because the Frameworks ensure uninterrupted transfers of personal information worth billions of dollars in trade between the United States and the EU and Switzerland.

In line with the President's National Export Initiative, ITA is interested in gathering information from U.S. companies that use the U.S.-EU and U.S.-Swiss Safe Harbor Frameworks to better evaluate the programs and how they support U.S. exports. The information will be obtained via a survey using the following questions:

(1) Does your company's participation in the U.S.-EU or U.S.-Swiss Safe Harbor programs help your company increase U.S. exports and support U.S. jobs? Please explain.

(2) Please specify the approximate amount of exports in United States Dollars (USD) facilitated by your company's participation in the U.S.-EU or U.S.-Swiss Safe Harbor programs

(please include any sales or contracts that were won or retained as a result of your participation in the programs).

(3) How much of your annual sales/exports to Europe, Switzerland, or other parts of the world are dependent on self-certification to the U.S.-EU or U.S.-Swiss Safe Harbor programs?

(4) Does your company currently have a contract that is dependent on self-certification to the U.S.-EU or U.S.-Swiss Safe Harbor programs? If so, what is the value of that contract(s)?

(5) What do the U.S.-EU and U.S.-Swiss Safe Harbor programs mean to your company in terms of business opportunities in Europe?

(6) Tell us what you think about the U.S.-EU and U.S.-Swiss Safe Harbor programs?

II. Method of Collection

The information will be collected via an electronic form on the Safe Harbor Web site (*http://www.export.gov/safeharbor*).

III. Data

OMB Control Number: None.

Form Number(s): None.

Type of Review: Regular submission (new information collection).

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,300.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 767.

Estimated Total Annual Cost to Public: $500.

IV. Request for Comments

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 (including hours and cost) 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.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 8, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–3173 Filed 2–11–11; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–893]

Certain Frozen Warmwater Shrimp From the People's Republic of China: Preliminary Results and Preliminary Partial Rescission of Fifth Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("Department") is conducting an administrative review of the antidumping duty order on certain frozen warmwater shrimp ("shrimp") from the People's Republic of China ("PRC"), covering the period of review ("POR") of February 1, 2009, through January 31, 2010. As discussed below, the Department preliminarily determines that the respondent in this review did not make sales in the United States at prices below normal value ("NV") during the POR.

DATES: *Effective Date:* February 14, 2011.

FOR FURTHER INFORMATION CONTACT: Kabir Archuletta, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–2593.

SUPPLEMENTARY INFORMATION:

Background

The Department received timely requests from members of the Ad Hoc Shrimp Trade Action Committee ("Petitioner") and the American Shrimp Processors Association and the Louisiana Shrimp Association (collectively, "domestic parties"), in accordance with 19 CFR 351.213(b), during the anniversary month of February, for administrative reviews of the antidumping duty order on shrimp from the PRC. On April 9, 2010, the Department initiated an administrative review of 92 producers/exporters of subject merchandise from the PRC. *See Notice of Initiation of Administrative Reviews and Requests for Revocation in Part of the Antidumping Duty Orders on Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam and the People's Republic of China,* 75 FR 18154 (April 9, 2010) ("*Initiation*"). However, after accounting for duplicate names and additional trade names associated with certain exporters, the number of companies upon which we initiated was actually 88.[1]

Between April 15, 2010, and April 27, 2010, the following companies submitted "no shipment certifications"[2]: Allied Pacific Food (Dalian) Co., Ltd., Allied Pacific Aquatic Products (Zhanjiang) Co., Ltd., Zhanjiang Allied Pacific Aquaculture Co., Ltd., Allied Pacific (H.K.) Co., Ltd., and King Royal Investments Ltd.;[3] Shantou Yelin Frozen Seafood Co., Ltd. (doing business as ("d.b.a.") Shantou Yelin Quick-Freeze Marine Products Co., Ltd.); Fuqing Yihua Aquatic Food Co., Ltd.; Fuqing Minhua Trade Co., Ltd.; and Yangjiang City Yelin Hoitat Quick Frozen Seafood Co., Ltd.

On July 6, 2010, Petitioner withdrew its request for an administrative review of Allied Pacific Aquatic Products (Zhanjiang) Co., Ltd. and Allied Pacific Food (Dalian) Co., Ltd. Petitioner was the only party to request a review of these companies. Accordingly, on July 20, 2010, the Department published a partial rescission with respect to these two companies. *See Certain Frozen Warmwater Shrimp from the People's Republic of China: Partial Rescission of Antidumping Duty Administrative Review,* 75 FR 42070 (July 20, 2010) ("*Partial Rescission*").

Respondent Selection

On May 17, 2010, in accordance with section 777A(c)(2) of the Tariff Act of 1930, as amended ("Act"), the Department selected Hilltop International ("Hilltop") for individual examination in this review, since it was the largest exporter by volume during the POR, based on U.S. Customs and Border Protection ("CBP") data of U.S. imports. *See* Memorandum to James Doyle, Director, Office 9, from Kabir Archuletta, Case Analyst, Office 9, "Antidumping Duty Administrative

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[1] The following companies were duplicated: Fuqing Yihua Aquatic Food Co., Ltd. and/or Fuqing Yihua Aquatic Products Co., Ltd., Regal Marine Resources Co., Ltd., Shantou Longsheng Aquatic Product, and Zhanjiang Regal Integrated Marine Resources.

[2] Companies have the opportunity to submit statements certifying that they did not ship the subject merchandise to the United States during the POR.

[3] The Department did not initiate upon Zhanjiang Allied Pacific Aquaculture Co., Ltd., Allied Pacific (H.K.) Co., Ltd., and King Royal Investments Ltd. because no parties requested a review of them for this POR.

Review of Certain Frozen Warmwater Shrimp from the People's Republic of China: Selection of Respondents for Individual Review," dated May 17, 2010.

Questionnaires

On May 18, 2010, the Department issued its initial non-market economy ("NME") antidumping duty questionnaire to Hilltop, and issued supplemental questionnaires to Hilltop between July 2010 and November 2010. Hilltop responded to the Department's initial and subsequent supplemental questionnaires between June 2010 and November 2010.

Surrogate Country and Surrogate Values

On July 20, 2010, the Department sent interested parties a letter requesting comments on the surrogate country and information pertaining to the valuation of factors of production ("FOPs"). On August 31, 2010, the Department received comments from Hilltop and Petitioner regarding selection of a surrogate country. On September 10, 2010, the Department received comments from Hilltop, domestic parties and Petitioner regarding selection of surrogate country and valuation of FOPs. On September 20, 2010, the Department received rebuttal comments from Hilltop regarding surrogate value submissions.

Case Schedule

On September 17, 2010, in accordance with section 751(a)(3)(A) of the Act, we extended the time period for issuing the preliminary results by 120 days, until February 28, 2011. *See Certain Frozen Warmwater Shrimp From the People's Republic of China: Extension of Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 56988 (September 17, 2010).

Scope of the Order

The scope of the order includes certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,[4] deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of the order, regardless of definitions in the Harmonized Tariff Schedule of the United States ("HTS"), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the *Penaeidae* family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, white-leg shrimp (*Penaeus vannemei*), banana prawn (*Penaeus merguiensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of the order. In addition, food preparations, which are not "prepared meals," that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of the order.

Excluded from the scope are: (1) Breaded shrimp and prawns (HTS subheading 1605.20.1020); (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (HTS subheadings 0306.23.0020 and 0306.23.0040); (4) shrimp and prawns in prepared meals (HTS subheading 1605.20.0510); (5) dried shrimp and prawns; (6) Lee Kum Kee's shrimp sauce; (7) canned warmwater shrimp and prawns (HTS subheading 1605.20.1040); (8) certain dusted shrimp; and (9) certain battered shrimp. Dusted shrimp is a shrimp-based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a "dusting" layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and 10 percent of the product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to individually quick frozen ("IQF") freezing immediately after application of the dusting layer. Battered shrimp is a shrimp-based product that, when dusted in accordance with the definition of dusting above, is coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by the order are currently classified under the following HTS subheadings: 0306.13.0003, 0306.13.0006, 0306.13.0009, 0306.13.0012, 0306.13.0015, 0306.13.0018, 0306.13.0021, 0306.13.0024, 0306.13.0027, 0306.13.0040, 1605.20.1010 and 1605.20.1030. These HTS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of the order is dispositive.

Affiliation/Single Entity

Based on the evidence on the record in this administrative review, including information found in Hilltop's questionnaire responses, the Department preliminarily finds affiliation between Hilltop and Yangjiang City Yelin Hoitat Quick Frozen Seafood Co., Ltd. and Fuqing Yihua Aquatic Food Co., Ltd., producers of subject merchandise, pursuant to section 771(33)(F) of the Act. Further, we preliminarily find Hilltop affiliated with Yelin Enterprise Co., Ltd., Ocean Beauty Corporation, and Ever Hope International Co., Ltd., Taiwanese resellers of subject merchandise, pursuant to 771(33)(A) and (F) of the Act. Lastly, we preliminarily find affiliation between Hilltop and Ocean Duke Corporation, a U.S. importer of subject merchandise, pursuant to sections 771(33)(A) and (F) of the Act.

Based on the evidence presented in Hilltop's questionnaire responses, we preliminarily find that Hilltop, Yelin Enterprise Co., Ltd., Ocean Beauty Corporation, and Ever Hope International Co., Ltd., should be treated as a single entity for the purposes of this administrative review. This finding is based on our determination that Yelin Enterprise Co., Ltd., Ocean Beauty Corporation, and Ever Hope International Co., Ltd., are involved in the export of subject merchandise sold by Hilltop and that a significant potential for manipulation of price or production exists between these entities.[5] For a detailed discussion of

[4] "Tails" in this context means the tail fan, which includes the telson and the uropods.

[5] While Yelin Enterprise Co., Ltd., Ocean Beauty Corporation, and Ever Hope International Co., Ltd., are not producers of subject merchandise, we note that where companies are affiliated, and there exists a significant potential for manipulation of prices and/or export decisions, the Department has found it appropriate to treat those companies as a single entity. The Court of International Trade upheld the Department's decision to include export decisions in its analysis of whether there was a significant potential for manipulation. *See Hontex Enterprises,*

Continued

this issue, *see* Memorandum to the File, through Catherine Bertrand, Program Manager, Office 9, from Kabir Archuletta, Case Analyst, Office 9, "Preliminary Determination of Affiliation/Single Entity Treatment of Hilltop International, Yelin Enterprise Co., Ltd., Ocean Beauty Corporation and Ever Hope International Co., Ltd.," issued concurrently with this notice.

Preliminary Partial Rescission of Review

As discussed in the *Background* section above, several companies filed no shipment certifications indicating that they did not export subject merchandise to the United States during the POR. The Department's practice concerning "no-shipment" respondents has been to rescind the administrative review if the respondent certifies that it had no shipments and the Department has confirmed through its examination of data from CBP that there were no shipments of subject merchandise during the POR. *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27393 (May 19, 1997).

On May 11, 2010, the Department sent an inquiry to CBP to determine whether CBP entry data is consistent with the statements of Allied Pacific Aquatic Products Zhanjiang Co. Ltd. and Allied Pacific Food (Dalian) Co., Ltd. *See* Memorandum to the File from Kabir Archuletta, Analyst, Office 9, regarding "U.S. Customs and Border Protection Inquiries" dated December 15, 2010 ("Customs Inquiries"). As stated above, Petitioner withdrew its request for an administrative review of Allied Pacific Aquatic Products (Zhanjiang) Co., Ltd. and Allied Pacific Food (Dalian) Co., Ltd., and on July 20, 2010, the Department published in the **Federal Register** a partial rescission notice with respect to these two companies. *See Partial Rescission.*

On May 17, 2010, the Department sent an inquiry to CBP to confirm the claims made by Yelin Frozen Seafood Co., Ltd. (d.b.a. Shantou Yelin Quick-Freeze Marine Products Co., Ltd.); Yangjiang City Yelin Hoitat Quick Frozen Seafood Co., Ltd.; Fuqing Yihua Aquatic Food Co., Ltd.; and Fuqing Minhua Trading Co., Ltd. *See* Customs Inquiries. Because CBP did not respond to the Department's inquiry [6] and no party submitted comments, we are preliminarily rescinding the review with respect to Shantou Yelin Frozen Seafood Co., Ltd. (d.b.a. Shantou Yelin Quick-Freeze Marine Products Co., Ltd.); Yangjiang City Yelin Hoitat Quick Frozen Seafood Co., Ltd.; Fuqing Yihua Aquatic Food Co., Ltd.; and Fuqing Minhua Trading Co., Ltd. *See, e.g., Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Notice of Preliminary Results and Partial Rescission of the Third Antidumping Duty Administrative Review,* 72 FR 53527, 53530 (September 19, 2007), unchanged in *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and Partial Rescission,* 73 FR 15479, 15480 (March 24, 2008).

NME Country Status

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. *See Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the 2004/2005 Administrative Review and Notice of Rescission of 2004/2005 New Shipper Review,* 71 FR 66304 (November 14, 2006). None of the parties to this proceeding has contested such treatment. Accordingly, we calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

Separate Rates

A designation of a country as an NME remains in effect until it is revoked by the Department. *See* section 771(18)(C) of the Act. Accordingly, there is a rebuttable presumption that all companies within the PRC are subject to government control and, thus, should be assessed a single antidumping duty rate. *See Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China,* 71 FR 53079 (September 8, 2006); *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof From the People's Republic of China,* 71 FR 29303 (May 22, 2006).

In the *Initiation,* the Department notified parties of the application process by which exporters and producers may obtain separate rate status in NME proceedings. *See Initiation.* It is the Department's policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure)* and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in *Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China,* 56 FR 20588 (May 6, 1991), as amplified by *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China,* 59 FR 22585 (May 2, 1994). However, if the Department determines that a company is wholly foreign-owned or located in a market economy, then a separate rate analysis is not necessary to determine whether it is independent from government control. *See, e.g., Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles From the People's Republic of China,* 72 FR 52355, 52356 (September 13, 2007).

In this administrative review, Zhanjiang Regal ("Regal") is the only company that submitted a separate rate certification. *See* Regal's Separate Rate Certification dated May 10, 2010. Additionally, the Department received completed responses to the Section A portion of the NME antidumping questionnaire from Hilltop, which contained information pertaining to the company's eligibility for a separate rate. *See* Hilltop's Section A response dated June 15, 2010. All other companies upon which the Department initiated an administrative review that have not been rescinded did not submit either a separate rate application or certification. Therefore, we have determined it appropriate to consider those companies that did not demonstrate their eligibility for separate rate status as part of the PRC-wide entity.

Inc. v. *United States,* 248 F. Supp. 2d 1323, 1343 (CIT 2003). In this case, not only are Yelin Enterprise Co., Ltd., Ocean Beauty Corporation, and Ever Hope International Co., Ltd. exporters of subject merchandise, but they are the sole intermediaries for all transactions of subject merchandise between Hilltop and its U.S. affiliate.

[6] CBP only responds to the Department's inquiry when there are records of shipments from the company in question. *See Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Flat Products From Brazil: Notice of Rescission of Antidumping Duty Administrative Review,* 75 FR 65453, 65454 (October 25, 2010); *Certain Circular Welded Carbon Steel Pipes and Tubes From Taiwan: Notice of Intent To Rescind Administrative Review,* 74 FR 3559, 3560 (January 21, 2009); and *Certain In–Shell Raw Pistachios From Iran: Rescission of Antidumping Duty Administrative Review,* 73 FR 9292, 9293 (February 20, 2008).

Separate Rate Recipients

Wholly Foreign-Owned

Hilltop has reported that it is a Hong Kong based exporter of subject merchandise. *See* Hilltop's Section A response dated June 15, 2010, at 1. In its separate rate submission, Regal, the sole applicant for separate rate status in this administrative review, certified that it was 100 percent owned by foreign entity/entities located in Singapore and Hong Kong. Therefore, there is no PRC ownership of Hilltop or Regal, and because the Department has no evidence indicating that either of these companies are under the control of the PRC, a separate rate analysis is not necessary to determine whether it is independent from government control.[7] Consequently, we preliminarily determine that Hilltop and Regal have met the criteria for a separate rate.

In the *Initiation,* we instructed all companies requesting separate rate status in this administrative review to submit, as appropriate, either a separate rate status application or certification. *See Initiation.* As discussed above, the Department initiated this administrative review with respect to 88 companies. On July 20, 2010, the Department published a partial rescission of this antidumping duty order with respect to Allied Pacific Aquatic Products Zhanjiang Co. Ltd. and Allied Pacific Food (Dalian) Co., Ltd. *See Partial Rescission.* Additionally, we are preliminarily rescinding this review with respect to four companies[8] because we have preliminarily determined that they had no shipments of subject merchandise during the POR. Thus, including Hilltop and Regal, 82 companies remain subject to this review. While Hilltop and Regal provided documentation supporting their eligibility for a separate rate, the remaining companies under active review have not demonstrated their eligibility for a separate rate. Therefore, the Department preliminarily determines that there were exports of merchandise under review from 80 PRC exporters that did not demonstrate their eligibility for separate rate status.[9] As a result, the Department is treating these 80 PRC exporters as part of the PRC-wide entity, subject to the PRC-wide rate.

Rate for Non-Selected Companies

In accordance with section 777A(c)(2)(B) of the Act, the Department employed a limited examination methodology, as it did not have the resources to examine all companies for which a review request was made. As stated above, the Department selected Hilltop as the mandatory respondent in this review. In addition to the mandatory respondent, only Regal submitted timely information as requested by the Department and remains subject to review as a cooperative separate rate respondent.

We note that the statute and the Department's regulations do not directly address the establishment of a rate to be applied to individual companies not selected for examination where the Department limited its examination in an administrative review pursuant to section 777A(c)(2) of the Act. The Department's practice in cases involving limited selection based on exporters accounting for the largest volumes of trade has been to look to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance. Section 735(c)(5)(A) of the Act instructs that we are not to calculate an all-others rate using any zero or *de minimis* margins or any margins based entirely on facts available. Section 735(c)(5)(B) of the Act also provides that, where all margins are zero rates, *de minimis* rates, or rates based entirely on facts available, we may use "any reasonable method" for assigning the rate to non-selected respondents. In this instance, we have calculated a *de minimis* rate for the sole mandatory respondent, Hilltop.

In exercising this discretion to determine a non-examined rate, the Department considers relevant the fact that section 735(c)(5) of the Act: (a) Is explicitly applicable to the determination of an all-others rate in an investigation; and (b) articulates a preference that the Department avoid zero, *de minimis* rates or rates based entirely on facts available when it determines the all others rate. The statute's statement that averaging of zero/*de minimis* margins and margins based entirely on facts available may be a reasonable method, and the Statement of Administrative Action's ("SAA") indication that such averaging may be the expected method, should be read in the context of an investigation. *See* SAA accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103–316 at 872 (1994), reprinted in 1994 U.S.C.C.A.N. 4040, 4200. First, if there are only zero or *de minimis* margins determined in the investigation (and there is no other entity to which a facts available margin has been applied), the investigation would terminate and no order would be issued. Thus, the provision necessarily only applies to circumstances in which there are either both zero/*de minimis* and total facts available margins, or only total facts available margins. Second, when such rates are the only rates determined in an investigation, there is little information on which to rely to determine an appropriate all-others rate. In this

[7] *See Brake Rotors From the People's Republic of China: Preliminary Results and Partial Rescission of the Fourth New Shipper Review and Rescission of the Third Antidumping Duty Administrative Review,* 66 FR 1303, 1306 (January 8, 2001), unchanged in *Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of Fourth New Shipper Review and Rescission of Third Antidumping Duty Administrative Review,* 66 FR 27063 (May 16, 2001); *Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate From the People's Republic of China,* 64 FR 71104 (December 20, 1999).

[8] Those companies are: Shantou Yelin Frozen Seafood Co., Ltd., d.b.a. Shantou Yelin Quick-Freeze Marine Products Co., Ltd.; Yangjiang City Yelin Hoitat Quick Frozen Seafood Co., Ltd.; Fuqing Yihua Aquatic Food Co., Ltd.; and Fuqing Minhua Trading Co., Ltd.

[9] Those companies are: Asian Seafoods (Zhanjiang) Co., Ltd.; Beautiful Lighting Co., Ltd.; Beihai Qinguo Frozen Foods Co., Ltd.; Capital Prospect; Century Distribution Systems (Shenz); Dafu Foods Industry; Daishan Baofa Aquatic Product Co.; Elaite Group Co., Ltd.; Everflow Ind. Supply; Flags Wins Trading Co., Ltd.; Fuchang Aquatic Products; Fujian Haiding Global Foods; Fujian Provincial Meihua Aquat.; Fuqing Maowang Seafood Development; Fuqing Xuhu Aquatic Food Trdg.; Gallant Ocean (Nanhai), Ltd.; Geelong Sales; Guangdong Jiahuang Foods; Guangdong Jinhang Foods Co., Ltd.; Guangdong Wanya Foods Fty. Co., Ltd.; Hai Li Aquatic Co., Ltd.; Hainan Hailisheng Food Co., Ltd.; Hainan Seaberry Seafoods; Hainan Siyuan Foods Co., Ltd.; Hainan Zhongyu Seafood Co., Ltd.; Huasheng Aquatic Pro. Factory; Huian County Import & Export and Trading Co.; Innovative Aluminum; Intecs Service; Jet Power International Ltd.; JetStar Co.; Leizhou Yunyuan Aquatic Products Co., Ltd.; Liang Hsin Lighting Shenzhen; Maoming Changxing Foods; Maoming Jiahui Foods Co., Ltd.; New Peak Service; North Seafood Group Co.; Panasonic Mfg. Xiamen Co.; Phoenix Intl.; Rizhao Smart Foods; Ruian Huasheng Aquatic Products Fac.; Savvy Seafood Inc.; Sea Trade International Inc.; Second Aquatic Food; Shandong Huashijia Foods; Shanghai Apa International Trading; Shanghai Smiling Food Co., Ltd.; Shantou Jin Cheng Food Co.; Shantou Longfen Foodstuff Co.; Shantou Longsheng Aquatic Product Foodstuff Co., Ltd.; Shantou Red Garden Foodstuff Co., Ltd. and/or Shantou Red Garden Food Processing Co., Ltd.; Shantou Wanya Foods Fty. Co., Ltd. (Branch Factory); Shantou Xinwanya Aquatic Product Ltd.; Shantou Yue Xiang Commercial Trading Co., Ltd.; Shenzhen Pingyue Trading Co., Ltd.; SLK Hardware; Sysgration; Thai Royal Frozen Food Zhanjiang Co., Ltd.; Tianjin Dongjiang Food Co., Ltd.; Tongwei Hainan Aquatic Products Co., Ltd.; Top One Intl.; Wenling Xingdi Aquatic Product; Yangcheng Seahorse Foods; Yangjiang Wanshida Seafood Co., Ltd.; Zhangjiang Bo Bo Go Ocean; Zhanjiang Evergreen Aquatic Products; Zhanjiang Fuchang Aquatic Product Freezing Plant; Zhanjiang Go-harvest Aquatic Products Co., Ltd.; Zhanjiang Haizhou Aquatic Product; Zhanjiang Huibaoye Trading Co., Ltd.; Zhanjiang Jebshin Seafood; Zhanjiang Jinguo Marine Foods Company Limited; Zhanjiang Longwei Aquatic Product; Zhejiang Daishan Baofa Aquatic Products Co., Ltd.; Zhejiang Industrial Group Co., Ltd.; Zhj Jinguo Marine Foods; Zhoushan Corp. for Intl. Economic and Technical Cooperation; Zhoushan Haohai Aquatic Products; Zhoushan Putuo Huafa Sea Products Co., Ltd.; and Zhoushan Qiangren Imp. & Exp.

context, therefore, the SAA's stated expected method is reasonable: The zero/*de minimis* and facts available margins may be the only or best data the Department has available to apply to non-selected companies.

We note that the Department has sought other reasonable means to assign separate-rate margins to non-reviewed companies in instances with calculated zero rates, *de minimis* rates, or rates based entirely on facts available for the mandatory respondents. *See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review,* 74 FR 47191, 47194 (September 15, 2009) ("*Vietnam Shrimp AR3 Final*").

In *Vietnam Shrimp AR3 Final,* the Department assigned to those separate rate companies with no history of an individually calculated rate the margin calculated for cooperative separate rate respondents in the underlying investigation. However, for those separate rate respondents that had received a calculated rate in a prior segment, concurrent with or more recent than the calculated rate in the underlying investigation, the Department assigned that calculated rate as the company's separate rate in the review at hand.

Thus, we find that a reasonable method in the instant review is to assign to the non-reviewed company, Regal, its most recent calculated rate. Pursuant to this method, we are preliminarily assigning a rate of zero to Regal, its calculated rate in the previous administrative review. *See Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 75 FR 49460, 49463 (August 13, 2010) ("*PRC Shrimp AR4*"). In assigning this separate rate, the Department did not impute the actions of any other companies to the behavior of the non-individually examined company, but based this determination on record evidence that may be deemed reasonably reflective of the potential dumping margin for the non-individually examined company, Regal, in this administrative review.

PRC-Wide Entity

We have preliminarily determined that 80 companies did not demonstrate their eligibility for a separate rate and are properly considered part of the PRC-wide entity. As explained above in the *Separate Rates* section, all companies within the PRC are considered to be subject to government control unless they are able to demonstrate an absence of government control with respect to their export activities. Such companies are thus assigned a single antidumping duty rate distinct from the separate rate(s) determined for companies that are found to be independent of government control with respect to their export activities. We consider the influence that the government has been found to have over the economy to warrant determining a rate for the entity that is distinct from the rates found for companies that have provided sufficient evidence to establish that they operate freely with respect to their export activities. *See Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China,* 71 FR 53079, 53080 (September 8, 2006). Therefore, we are assigning as the entity's current rate 112.81 percent, the only rate ever determined for the PRC-wide entity in this proceeding.

Surrogate Country

When the Department investigates imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's FOPs, valued in a surrogate market economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more market economy countries that are at a level of economic development comparable to that of the NME country and significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the *Normal Value* section below and in the Memorandum to the File through Catherine Bertrand, Program Manager, Office 9, from Kabir Archuletta, Case Analyst, Office 9, "Fifth Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Surrogate Factor Valuations for the Preliminary Results," dated concurrently with this notice ("Surrogate Value Memo").

As discussed in the *NME Country Status* section, above, the Department considers the PRC to be an NME country. The Department determined that India, Indonesia, the Philippines, Thailand, Ukraine and Peru are countries comparable to the PRC in terms of economic development. *See* the Department's letter to all interested parties, dated July 20, 2010. Moreover, it is the Department's practice to select an appropriate surrogate country based on the availability and reliability of data from these countries. *See* Department Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process, dated March 1, 2004. The Department finds India to be a reliable source for surrogate values because India is at a comparable level of economic development pursuant to 773(c)(4) of the Act, is a significant producer of comparable merchandise, and has publicly available and reliable data. Furthermore, the Department notes that India has been the primary surrogate country in past segments. As noted above, Hilltop and domestic parties submitted surrogate value data for FOPs for India, and Petitioner submitted surrogate value data for certain FOPs for Thailand on September 10, 2010. Given the above facts, the Department has selected India as the primary surrogate country for this review. *See* Surrogate Value Memo.

U.S. Price

Constructed Export Price

For Hilltop's sales, we based U.S. price on constructed export price ("CEP") in accordance with section 772(b) of the Act, because sales were made on behalf of Hilltop by its U.S. affiliate to unaffiliated purchasers in the United States. For these sales, we based CEP on prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign movement expenses, international movement expenses, U.S. movement expenses, and appropriate selling expenses, in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act, we also deducted those selling expenses associated with economic activities occurring in the United States. We deducted, where appropriate, commissions, inventory carrying costs, credit expenses, and indirect selling expenses. Where foreign movement expenses, international movement expenses, or U.S. movement expenses were provided by Chinese service providers or paid for in Chinese renminbi, we valued these services using surrogate values. *See* Surrogate Value Memo for details regarding the surrogate values for movement expenses. For those expenses that were provided by a market-economy provider and paid for in market-economy currency, we used the reported expense. Due to the proprietary nature of certain adjustments to U.S. price, for a detailed description of all adjustments made to U.S. price for Hilltop, *see* Surrogate Value Memo.

Normal Value

Methodology

Section 773(c)(1)(B) of the Act provides that the Department shall determine the NV using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases NV on the FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies.

Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on FOP data reported by the respondents for the POR. To calculate NV, we multiplied the reported per-unit factor-consumption rates by publicly available surrogate values (except as discussed below).

In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. We added to each Indian import surrogate value a surrogate freight cost calculated from the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory, where appropriate. *See Sigma Corp.* v. *United States,* 117 F.3d 1401, 1407–1408 (Fed. Cir. 1997). Where we could not obtain publicly available information contemporaneous to the POR with which to value FOPs, we adjusted the surrogate values, where appropriate, using the Indian Wholesale Price Index ("WPI") as published in the International Monetary Fund's *International Financial Statistics. See* Surrogate Value Memo.

The Department used Indian import statistics from Global Trade Atlas to value the raw material and packing material inputs that Hilltop used to produce subject merchandise during the POR, except where listed below.

To value shrimp larvae, the Department used the 2008–2009 annual report of Sharat Industries Ltd. We find this to be the best source on the record because it is contemporaneous with the POR and is based on actual market prices. *See* Surrogate Value Memo.

We valued electricity using the updated electricity price data for small, medium, and large industries, as published by the Central Electricity Authority, an administrative body of the Government of India, in its publication titled *Electricity Tariff & Duty and Average Rates of Electricity Supply in India,* dated March 2008. These electricity rates represent actual country-wide, publicly-available information on tax-exclusive electricity rates charged to small, medium, and large industries in India. Because the resulting value is not contemporaneous with the POR, we inflated the rates using the WPI. *See* Surrogate Value Memo.

On May 14, 2010, the Court of Appeals for the Federal Circuit ("CAFC") in *Dorbest Ltd.* v. *United States,* 604 F.3d 1363, 1372 (Fed. Cir. 2010), found that the "{regression-based} method for calculating wage rates {as stipulated by 19 CFR 351.408(c)(3)} uses data not permitted by {the statutory requirements laid out in section 773 of the Act (*i.e.,* 19 U.S.C. § 1677b(c))}." The Department is continuing to evaluate options for determining labor values in light of the recent CAFC decision. However, for these preliminary results, we have calculated an hourly wage rate to use in valuing the respondents' reported labor input by averaging industry-specific earnings and/or wages in countries that are economically comparable to the PRC and that are significant producers of comparable merchandise.

For the preliminary results of this administrative review, the Department is valuing labor using a simple average industry-specific wage rate using earnings or wage data reported under Chapter 5B by the International Labor Organization ("ILO"). To achieve an industry-specific labor value, we relied on industry-specific labor data from the countries we determined to be both economically comparable to the PRC, and significant producers of comparable merchandise. A full description of the industry-specific wage rate calculation methodology is provided in the Surrogate Value Memo. The Department calculated a simple average industry-specific wage rate of $1.36 for these preliminary results. Specifically, for this review, the Department has calculated the wage rate using a simple average of the data provided to the ILO under Sub-Classification 15 of the ISIC–Revision 3 standard by countries determined to be both economically comparable to the PRC and significant producers of comparable merchandise. The Department finds the two-digit description under ISIC–Revision 3 ("Manufacture of Food Products and Beverages") to be the best available wage rate surrogate value on the record because it is specific and derived from industries that produce merchandise comparable to the subject merchandise. Consequently, we averaged the ILO industry-specific wage rate data or earnings data available from the following countries found to be economically comparable to the PRC and significant producers of comparable merchandise: Ecuador, Egypt, Indonesia, Jordan, Peru, the Philippines, Thailand, and Ukraine. For further information on the calculation of the wage rate, *see* Surrogate Value Memo.

To value water, the Department used data from the Maharashtra Industrial Development Corporation (*http://www.midcindia.org*) since it includes a wide range of industrial water tariffs. This source provides industrial water rates within the Maharashtra province for "inside industrial areas" and "outside industrial areas" from April 2009 through December 2009. *See* Surrogate Value Memo.

We valued diesel using data from the International Energy Agency publication *Energy Prices & Taxes, Quarterly Statistics* (Fourth Quarter 2009), which uses 2008 data that is tax and duty exclusive. *See* Surrogate Value Memo.

To value truck freight expenses, we used a per-unit average rate calculated from data on the Info Banc Web site: *http://www.infobanc.com/logistics/logtruck.htm.* The logistics section of this Web site contains inland freight truck rates between many large Indian cities.

We valued brokerage and handling using a price list of export procedures necessary to export a standardized cargo of goods in India. The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport in India that is published in *Doing Business 2010: India,* published by the World Bank.

To value factory overhead, sales, general and administrative expenses, and profit, we relied upon publicly available information in the 2008–2009 annual report of Falcon Marine Exports Ltd., an integrated Indian producer of subject merchandise. *See* Surrogate Value Memo.

Where appropriate, we made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Preliminary Results of the Review

The Department has determined that the following preliminary dumping margins exist for the period February 1, 2009, through January 31, 2010:

Exporter	Margin
Hilltop International [10]	0.14% (*de minimis*)
Zhanjiang Regal Integrated Marine Resources Co., Ltd..	0.00% (zero)
PRC-Wide Entity [11] ...	112.81%

As stated above in the *Rate for Non-Selected Companies* section of this notice, Regal qualified for a separate rate in this review. Moreover, as stated above in the *Respondent Selection* section of this notice, we limited this review by selecting the largest exporter and did not select Regal as a mandatory respondent. Therefore, we have preliminarily assigned to Regal a dumping margin based on its most recently calculated rate in *PRC Shrimp AR4* because the mandatory respondent in this review received a *de minimis* rate and it is not the Department's practice to assign separate rates based on rates that are *de minimis* or zero, or based entirely on facts available.

The Department will disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results of this administrative review, interested parties may submit publicly available information to value FOPs within 20 days after the date of publication of these preliminary results. Interested parties must provide the Department with supporting documentation for the publicly available information to value each FOP. Additionally, in accordance with 19 CFR 351.301(c)(1), for the final results of this administrative review, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally cannot accept the submission of additional, previously absent-from-the-record alternative surrogate value information pursuant to 19 CFR 351.301(c)(1). *See Glycine From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part,* 72 FR 58809 (October 17, 2007) and accompanying Issues and Decision Memorandum at Comment 2.

Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments may be filed no later than five days after the deadline for filing case briefs. *See* 19 CFR 351.309(d). The Department urges interested parties to provide an executive summary of each argument contained within the case briefs and rebuttal briefs.

The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by these reviews. The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. In accordance with 19 CFR 351.212(b)(1), for the mandatory respondent, we calculated an exporter/importer (or customer)-specific assessment rate for the merchandise subject to this review. Where the respondent has reported reliable entered values, we calculated importer (or customer)-specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to each importer (or customer) and dividing this amount by the total entered value of the sales to each importer (or customer). *See* 19 CFR 351.212(b)(1). Where an importer (or customer)-specific *ad valorem* rate is greater than *de minimis,* we will apply the assessment rate to the entered value of the importer's/customer's entries during the POR. *See* 19 CFR 351.212(b)(1).

Where we do not have entered values for all U.S. sales, we calculated a per-unit assessment rate by aggregating the antidumping duties due for all U.S. sales to each importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer). *See* 19 CFR 351.212(b)(1). To determine whether the duty assessment rates are *de minimis,* in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer (or customer)-specific *ad valorem* ratios based on the estimated entered value. Where an importer (or customer)-specific *ad valorem* rate is zero or *de minimis,* we will instruct CBP to liquidate appropriate entries without regard to antidumping duties. *See* 19 CFR 351.106(c)(2).

For the companies receiving a separate rate that were not selected for individual review, we will assign an assessment rate based on the cash deposit rate calculated pursuant to section 735(c)(5)(B) of the Act. Where the weighted average *ad valorem* rate is zero or *de minimis,* we will instruct CBP to liquidate appropriate entries without regard to antidumping duties. *See* 19 CFR 351.106(c)(2).

For those companies for which this review has been preliminarily rescinded,[12] the Department intends to assess antidumping duties at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(2), if the review is rescinded for these companies in the final results.

Cash Deposit Requirements

The following cash-deposit requirements will be effective upon publication of the final results for shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results, as provided by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be that established in the final results of review (except, if the rate is zero or *de minimis,* no cash deposit will be required); (2) for all other PRC exporters of subject merchandise which have not been found to be entitled to a separate rate and, thus, are a part of the PRC-wide entity, the cash-deposit rate will be the PRC-wide rate established in the final results of review; and (3) for all non-PRC exporters of subject merchandise, the cash-deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit requirements shall remain in effect until further notice.

[10] This rate shall also apply to the single entity consisting of Hilltop International, Yelin Enterprise Co., Ltd., Ocean Beauty Corporation, and Ever Hope International Co., Ltd.

[11] The PRC-wide entity includes the 80 companies under review that are referenced above in footnote 9, as well as any company that does not have a separate rate.

[12] These include Shantou Yelin Frozen Seafood Co., Ltd. (d.b.a. Shantou Yelin Quick-Freeze Marine Products Co., Ltd.); Yangjiang City Yelin Hoitat Quick Frozen Seafood Co., Ltd.; Fuqing Yihua Aquatic Food Co., Ltd.; and Fuqing Minhua Trading Co., Ltd.

Notification of Interested Parties

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and this notice are in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.213 and 351.221(b)(4).

Dated: February 7, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–3246 Filed 2–11–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–836]

Notice of Final Results of Expedited Sunset Review of the Antidumping Duty Order: Glycine From the People's Republic of China

Correction

In notice document 2011–2883 on page 7150 in the issue of Wednesday, February 9, 2011, make the following correction:

On page 7150, in the third column, in the signature block, "Dated: January 31, 2010" should read "Dated: January 31, 2011".

[FR Doc. C1–2011–2883 Filed 2–11–11; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–602, A–588–602, A–583–605, A–549–807, A–570–814]

Certain Carbon Steel Butt-Weld Pipe Fittings From Brazil, Japan, Taiwan, Thailand, and the People's Republic of China: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders

Correction

In notice document 2011–2884 appearing on pages 7151–7152 in the issue of Wednesday, February 9, 2011, make the following correction:

On page 7152, in the first column, in the signature block, "Dated: January 31, 2010" should read "Dated: January 31, 2011".

[FR Doc. C1–2011–2884 Filed 2–11–11; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA130

Endangered and Threatened Species; Recovery Plan Module for Columbia River Estuary Salmon and Steelhead

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

ACTION: Notice of availability; recovery plan module for Columbia River estuary salmon and steelhead.

SUMMARY: NMFS announces the adoption of the Columbia River Estuary Endangered Species Act (ESA) Recovery Plan Module for Salmon and Steelhead (Estuary Module). The Estuary Module addresses the estuary recovery needs of all ESA-listed salmon and steelhead in the Columbia River Basin. All Columbia Basin salmon and steelhead ESA recovery plans will incorporate the Estuary Module by reference.

ADDRESSES: For additional information about the Estuary Module, contact Patty Dornbusch, NMFS, 1201 NE Lloyd Boulevard, Suite 1100, Portland, OR 97232. Electronic copies of the Estuary Module and a response to public comments on the Proposed Estuary Module are available online at *http://www.nwr.noaa.gov/Salmon-Recovery-Planning/ESA–Recovery-Plans/Estuary-Module.cfm.* For a CD–ROM of these documents, call Joanna Donnor at (503) 736–4721 or e-mail a request to *joanna.donnor@noaa.gov* with the subject line "CD–ROM Request for Final Estuary Recovery Plan Module."

FOR FURTHER INFORMATION CONTACT: Patty Dornbusch, (503) 230–5430.

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. *et seq.*) requires that a recovery plan be developed and implemented for species listed as endangered or threatened under the statute, unless such a plan would not promote the recovery of the species. Recovery plans must contain (1) objective, measurable criteria which, when met, would result in a determination that the species is no longer threatened or endangered; (2) site-specific management actions necessary to achieve the plan's goals; and (3) estimates of the time required and costs to implement recovery actions. NMFS is the agency responsible for developing recovery plans for salmon and steelhead, and we will use the plans to guide efforts to restore endangered and threatened Pacific salmon and steelhead to the point that they are again self-sustaining in their ecosystems and no longer need the protections of the ESA.

In the Columbia River basin, the following salmon evolutionarily significant units (ESUs) and steelhead distinct population segments (DPSs) are listed as threatened or endangered under the ESA: Snake River Sockeye salmon, Snake River spring/summer Chinook salmon, Snake River fall Chinook salmon, Snake River steelhead, Upper Columbia River spring Chinook salmon, Upper Columbia River steelhead, Middle Columbia River steelhead, Lower Columbia River Chinook salmon, Lower Columbia River coho salmon, Columbia River chum salmon, Lower Columbia River steelhead, Upper Willamette River spring Chinook salmon, and Upper Willamette River steelhead. Recovery plans are either complete or in development for these 13 salmon ESUs and steelhead DPSs.

Because we believe that local support for recovery plans is essential, we have approached recovery planning collaboratively, with strong reliance on existing state, regional, and tribal planning processes. For instance, in the Columbia Basin, recovery plans have been or are being developed by regional recovery boards convened by Washington State, by the State of Oregon in conjunction with stakeholder teams, and by NMFS in Idaho with the participation of local agencies. We review locally developed recovery plans, ensure that they satisfy ESA requirements, and make them available for public review and comment before formally adopting them as ESA recovery plans.

Recovery plans must consider the factors affecting species survival throughout the entire life cycle. The salmonid life cycle includes spawning and rearing in the tributaries, migrating through the mainstem Columbia River and estuary to the ocean, and returning to the natal stream. In the estuary, juvenile and adult salmon and steelhead undergo physiological changes needed to make the transition to and from saltwater. They use the varying sub-habitats of the estuary—the shallows,

side channels, deeper channels, and plume of freshwater extending offshore—at varying times of the year.

While local recovery planners appropriately focus on the tributary conditions within their jurisdictions and domains, NMFS recognized the need for consistent treatment of the factors in the estuary that affect all of the listed salmon and steelhead in the Columbia Basin. The Estuary Module addresses limiting factors, threats, and needed actions in the Columbia River estuary for the 13 ESUs and DPSs of salmon and steelhead listed in the basin. Each locally developed recovery plan will incorporate by reference the Estuary Module as its estuary component.

This approach will ensure consistent treatment across locally developed recovery plans of the effects of the Columbia River estuary as well as a system-wide approach to evaluating and implementing estuary recovery actions. The planning area of the Estuary Module overlaps to some extent with the planning areas for locally developed plans for lower Columbia River tributaries. This overlap occurs in the tidally influenced portions of the tributaries, and in such instances the local plans will reflect the Estuary Module but may specify actions at a higher level of detail.

The Estuary Module was developed for NMFS by the Lower Columbia River Estuary Partnership (Estuary Partnership), contractor, and PC Trask & Associates, Inc., sub-contractor. The Estuary Partnership was established in 1995 as part of the Environmental Protection Agency's National Estuary Program. The Estuary Partnership's major roles are to convene common interests, help integrate conservation efforts, increase public awareness and involvement, and promote information-based problem solving. The Estuary Partnership is one of the primary organizations focused on conserving and improving the environment of the Columbia River estuary. The Partnership's expertise in assessment, planning, and stakeholder connections made it uniquely suited to develop this Estuary Module. PC Trask & Associates, Inc., is an environmental planning and project management firm with a focus on projects related to the Columbia River estuary. The firm also works with Federal, state, and local project sponsors to identify and implement ecosystem-related restoration projects in the estuary.

NMFS made the draft Estuary Module available for public review as a Proposed Estuary Recovery Plan Module. A notice of availability soliciting public comments on the Proposed Estuary Module was published in the **Federal Register** on January 8, 2008 (73 FR 161). We conducted public meetings at the following locations, dates, and times:

- Astoria, OR, January 29, 2008, at the Columbia River Maritime Museum, 6:30–8:30 p.m.
- Vancouver, WA, January 31, 2008, at the Water Resources Education Center, 6:30–8:30 p.m.

We received nine comment letters by mail, fax, or e-mail on the proposed recovery plan module from a variety of sources, including local, state, and Federal Government entities, nonprofit organizations, and interested individuals. A summary of the comments, responses, and changes made in the Estuary Module is available online at *http://www.nwr.noaa.gov/Salmon-Recovery-Planning/ESA–Recovery-Plans/Estuary-Module.cfm.* The final Estuary Module is also available online at *http://www nwr.noaa.gov/Salmon-Recovery-Planning/ESA–Recovery-Plans/Estuary-Module.cfm.* This final version constitutes the Columbia River Estuary Endangered Species Act (ESA) Recovery Plan Module for Salmon and Steelhead.

We are committed to implementing the actions in the Estuary Module for which we have the authority, to working cooperatively on implementation of other actions, and to encouraging other Federal agencies to implement Estuary Module actions for which they have responsibility and authority. We will also encourage the states of Washington and Oregon to seek similar implementation commitments from state agencies and local governments.

We expect the Estuary Module to help us and other Federal agencies take a more consistent approach to future section 7 consultations and other ESA decisions. For example, the Estuary Module will provide greater biological context for the effects that a proposed action may have on a listed ESU or DPS. Science summarized in the Estuary Module will become a component of the "best available information" for section 7 consultations as well as for section 10 habitat conservation plans and other ESA decisions.

The Estuary Module

The purpose of the Estuary Module is to identify and prioritize management actions that, if implemented, would reduce the impacts of limiting factors, meaning the physical, biological, or chemical conditions that impede salmon and steelhead survival during their migration through and rearing in the estuary and plume ecosystems. The module first identifies and prioritizes limiting factors by summarizing the changes that have occurred in the estuary since European settlement and evaluating the potential of current physical, biological, or chemical conditions to affect salmon and steelhead. The module next describes the underlying causes of these limiting factors. These causes are referred to as threats and can be either human or environmental in origin. For example, the limiting factor of flow-related estuary habitat changes is caused by a combination of threats including water withdrawals, flow regulation, natural climate cycles, and human contributions to global climate change. The module prioritizes the threats based on the significance of the limiting factor to which they contribute and the relative contribution of each threat to one or more limiting factors. Finally, the module identifies management actions intended to reduce the threats and increase the survival of salmon and steelhead during estuarine rearing and migration. Costs are included for each of the actions.

The Estuary Module synthesizes diverse scientific sources and information provided by scientists who were consulted by the author. Three key documents informed the Estuary Module: *Mainstem Lower Columbia River and Columbia River Estuary Subbasin Plan and Supplement* (Northwest Power and Conservation Council, 2004); *Salmon at River's End: The Role of the Estuary in Decline and Recovery of Columbia River Salmon* (Bottom *et al.*, 2005); and *Role of the Estuary in the Recovery of Columbia River Basin Salmon and Steelhead* (Fresh *et al.*, 2005). Other sources, including staff from the NMFS Northwest Fisheries Science Center and Northwest Regional Office, Estuary Partnership, and the Washington Lower Columbia Fish Recovery Board, supplemented these key documents. Additionally, interactions with the Northwest Power and Conservation Council, the Mid-Columbia Sounding Board, the Upper Willamette Stakeholder Team, and the Oregon Lower Columbia River Stakeholder Team influenced the module.

Planning Area and ESUs and DPSs Addressed

For the purposes of the Estuary Module, the estuary includes the entire continuum where tidal forces and river flows interact, regardless of the extent of saltwater intrusion (Fresh *et al.,* 2005; Northwest Power and Conservation Council, 2004). The upstream boundary of the planning area is Bonneville Dam,

and the downstream boundary includes the Columbia River plume.

During their life cycles, all listed salmon and steelhead in the Columbia River basin rely for some period on the Columbia River estuary. The Estuary Module is therefore intended to address all eight listed ESUs and all five listed DPSs.

Recovery Goals, Objectives, and Criteria

Because the Estuary Module addresses only a portion of the species' life cycles and will be incorporated into locally developed recovery plans that NMFS will adopt as ESA recovery plans, it does not contain recovery goals and objectives or de-listing criteria. The domain-specific recovery plans into which this Estuary Module is incorporated will contain those elements.

Causes for Decline and Current Threats

The estuary and plume are considerably degraded from their historical condition. The Estuary Module identifies these changes, evaluates their potential effects on salmon and steelhead, and discusses their underlying causes (referred to as threats). The threats that have caused changes in the estuary can be broadly classified as habitat-related threats, threats related to the food web and species interactions, and other threats.

Habitat: The estuary is about 20 percent smaller than it was historically (Northwest Power and Conservation Council, 2004). This reduction is due mostly to diking and filling used to convert the floodplain to agricultural, industrial, commercial, and residential uses. Flows entering the estuary also have changed dramatically: spring freshets have decreased and other aspects of the historical hydrograph have been altered. These changes are the result of flow regulation by the hydropower system, water withdrawal for irrigation and water supplies, and climate fluctuations.

Flow alterations and diking and filling practices have affected salmon and steelhead in several ways. Access to and use of floodplain habitats by ocean-type ESUs (salmonids that typically rear for a shorter time in tributaries and a longer time in the estuary) have been severely compromised through alterations in the presence and availability of these important habitats. Shifts in timing, magnitude, and duration of flows have also changed erosion and accretion processes, resulting in changes to in-channel habitat availability and connectivity.

Elevated temperatures of water entering the estuary are also a threat to salmon and steelhead. Degradation of tributary riparian habitat by land-use practices, in addition to reservoir heating, has caused these increased temperatures. Toxic contaminants in the estuary and plume have also degraded water quality. Contaminants found in the estuary and plume include agricultural pesticides, fertilizers, and industrial chemicals. Contaminants can kill salmon and steelhead immediately, can alter their behavior in ways that increase their mortality (such as making them more susceptible to predation), and can accumulate over time and cause increased mortality (for example by suppressing the fishes' immune system).

Food Web and Species Interactions: Limiting factors related to the food web and species interactions result from many of the threats to salmon and steelhead in the estuary. Examples include relatively recent increases in Caspian tern and pinniped predation on salmonids, due at least in part to human alterations of the ecosystem, as well as the more complex and less understood shift from macrodetritus-based primary plant production to phytoplankton production. The introduction of exotic species is another ecosystem alteration whose impacts are not clearly understood.

Other Threats: The estuary also is influenced by thousands of over-water and instream structures, such as jetties, pilings, pile dikes, rafts, docks, breakwaters, bulkheads, revetments, groins, and ramps. These structures alter river circulation patterns, sediment deposition, and light penetration, and they form microhabitats that often benefit predators. In some cases, structures reduce juvenile access to low-velocity habitats. Ship wake stranding is an example of another threat to salmon and steelhead in the estuary whose full impact is not well understood.

Recovery Strategies and Actions

The Estuary Module identifies 23 management actions to improve the survival of salmon and steelhead migrating through and rearing in the estuary and plume environments. Table 1 identifies these management actions and shows their relationship to threats.

TABLE 1—MANAGEMENT ACTIONS TO ADDRESS THREATS

	Threat	Management action
Flow-related threats	Climate cycles and global climate change [2].	CRE[1]–1: Protect intact riparian areas in the estuary and restore riparian areas that are degraded.[2] CRE–2: Operate the hydrosystem to reduce the effects of reservoir surface heating, or conduct mitigation measures.[2] CRE–3: Protect and/or enhance estuary instream flows influenced by Columbia River tributary/mainstem water withdrawals and other water management actions in tributaries.[2]
	Water withdrawal	CRE–3: Protect and/or enhance estuary instream flows influenced by Columbia River tributary/mainstem water withdrawals and other water management actions in tributaries.
	Flow regulation	CRE–4: Adjust the timing, magnitude, and frequency of hydrosystem flows (especially spring freshets) entering the estuary and plume to better reflect the natural hydrologic cycle, improve access to habitats, and provide better transport of coarse sediments and nutrients in the estuary and plume. CRE–3: Protect and/or enhance estuary instream flows influenced by Columbia River tributary/mainstem water withdrawals and other water management actions in tributaries.
Sediment-related threats	Entrapment of fine sediment in reservoirs.	CRE–5: Study and mitigate the effects of entrapment of fine sediment in reservoirs, to improve nourishment of the estuary and plume.

TABLE 1—MANAGEMENT ACTIONS TO ADDRESS THREATS—Continued

	Threat	Management action
	Impaired transport of coarse sediment	CRE–6: Reduce the export of sand and gravels via dredge operations by using dredged materials beneficially. CRE–8: Remove or modify pilings and pile dikes with low economic value when removal or modification would benefit juvenile salmonids and improve ecosystem health. CRE–4: Adjust the timing, magnitude, and frequency of hydrosystem flows (especially spring freshets) entering the estuary and plume to better reflect the natural hydrologic cycle, improve access to habitats, and provide better transport of coarse sediments and nutrients in the estuary and plume.
	Dredging	CRE–7: Reduce entrainment and habitat effects resulting from main- and side-channel dredge activities and ship ballast intake in the estuary.
Structural threats	Pilings and pile dike structures	CRE–8: Remove or modify pilings and pile dikes with low economic value when removal or modification would benefit juvenile salmonids and improve ecosystem health.
	Dikes and filling	CRE–9: Protect remaining high-quality off-channel habitat from degradation and restore degraded areas with high intrinsic potential for high-quality habitat. CRE–10: Breach, lower, or relocate dikes and levees to establish or improve access to off-channel habitats.
	Reservoir-related temperature changes	CRE–2: Operate the hydrosystem to reduce the effects of reservoir surface heating, or conduct mitigation measures.
	Over-water structures	CRE–11: Reduce the square footage of over-water structures in the estuary.
	Increased phytoplankton production	CRE–10: Breach, lower, or relocate dikes and levees to establish or improve access to off-channel habitats.
Food web-related threats	Altered predator/prey relationships	CRE–13: Manage pikeminnow and other piscivorous fish, including introduced species, to reduce predation on salmonids. CRE–14: Identify and implement actions to reduce salmonid predation by pinnipeds. CRE–15: Implement education and monitoring projects and enforce existing laws to reduce the introduction and spread of invasive plants. CRE–16: Implement projects to redistribute part of the Caspian tern colony currently nesting on East Sand Island. CRE–17: Implement projects to reduce double-crested cormorant habitats and encourage dispersal to other locations. CRE–18: Reduce the abundance of shad in the estuary. CRE–8: Remove or modify pilings and pile dikes with low economic value when removal or modification would benefit juvenile salmonids and improve ecosystem health.
	Ship ballast practices	CRE–19: Prevent new introductions of aquatic invertebrates and reduce the effects of existing infestations. CRE–7: Reduce entrainment and habitat effects resulting from main- and side-channel dredge activities and ship ballast intake in the estuary.
Water quality-related threats	Agricultural practices	CRE–20: Implement pesticide and fertilizer best management practices to reduce estuarine and upstream sources of nutrients and toxic contaminants entering the estuary.[3] CRE–1: Protect intact riparian areas in the estuary and restore riparian areas that are degraded. CRE–9: Protect remaining high-quality off-channel habitat from degradation and restore degraded areas with high intrinsic potential for high-quality habitat.
	Urban and industrial practices	CRE–21: Identify and reduce terrestrially and marine-based industrial, commercial, and public sources of pollutants. CRE–22: Restore or mitigate contaminated sites. CRE–23: Implement stormwater best management practices in cities and towns.[3] CRE–1: Protect intact riparian areas in the estuary and restore riparian areas that are degraded. CRE–9: Protect remaining high-quality off-channel habitat from degradation and restore degraded areas with high intrinsic potential for high-quality habitat.
Other threats	Riparian practices	CRE–1: Protect intact riparian areas in the estuary and restore riparian areas that are degraded.
	Ship wakes	CRE–12: Reduce the effects of vessel wake stranding in the estuary.

[1] CRE = Columbia River estuary.

[2] Study of the impacts of global climate change is an evolving field, and additional research is needed to understand the phenomenon's likely effects on estuarine habitats and processes with specificity. At this time, the Independent Scientific Advisory Board of the Northwest Power and Conservation Council expects that the regional effects of global climate change in the next century will include more precipitation falling as rain rather than snow, reduced snow pack, and late-summer/early-fall stream flows, and associated rises in stream temperature (Independent Scientific Advisory Board 2007). The climate-related management actions in Table 1 reflect these expected impacts. Although the management actions clearly would not change the threat of global climate change itself, they have the potential to lessen its impact on salmonids in the estuary. Even if climate cycles and global climate change have effects different from those assumed in this document, the management actions that Table 1 associates with climate would provide benefits to salmonids by addressing other threats, such as water withdrawal, urban and industrial practices, and reservoir heating. All three of the management actions associated with climate in Table 1 are associated with other threats listed in Table 1.

[3] Unless otherwise noted, the term best management practices is used in the Estuary Module to indicate general methods or techniques found to be most effective in achieving an objective. NMFS envisions that in implementation, specific best management practices would be developed or recommended.

Note: Italics indicate an action's second occurrence in the table, in connection with a different threat.

Identifying management actions that could reduce threats to salmon and steelhead as they rear in or migrate through the estuary is an important step toward improving conditions for salmonids during a critical stage in their life cycles. However, actual implementation of management actions is constrained by a variety of factors, such as technical, economic, and private property considerations. In some cases, it will be impossible to realize an action's full potential because its implementation is constrained by past societal decisions that are functionally irreversible. An important assumption of the Estuary Module is that the implementation of each of the 23 management actions is constrained in some manner.

The Estuary Module makes another important assumption about implementation: although implementation of actions is constrained, even constrained implementation can make important contributions to the survival of salmonids in the estuary and plume.

Within the context of these two fundamental assumptions, the Estuary Module evaluates the costs and potential benefits of recovery actions.

Potential Survival Benefits

To help characterize potential survival improvements, the Estuary Module uses a planning exercise that involves distributing a plausible survival improvement target of 20 percent across the actions to hypothesize the portion of that total survival improvement target that might result from each action. The primary purpose of the survival improvement target is to help compare the relative potential benefits of different management actions. The survival improvement target does not account for variation at the ESU, population, and subpopulation scales, and is not intended for use in life cycle modeling, except as a starting point in the absence of more rigorous data.

Time and Cost Estimates

Each action in the Estuary Module is broken down into a number of specific projects or units, and per-unit costs for each project are identified. The costs reflect assumptions about the constraints to implementation and the degree to which it is possible to reduce those constraints.

Given those constraints, the Estuary Module estimates that the cost of implementing all 23 actions and associated research and monitoring over a 25-year time period is $592.15 million. Costs of tributary actions and the total estimated time and cost of recovery for each affected ESU or DPS will be provided in ESU- and DPS-level recovery plans.

Monitoring and Adaptive Management

Research, monitoring, and evaluation (RME) within an adaptive management framework is a critical element of recovery planning for ESA-listed species. Monitoring for the Estuary Module will build on ongoing efforts. In particular, the *Federal Columbia River Estuary Research, Monitoring, and Evaluation Program* (Johnson *et al.*, 2008) is an appropriate monitoring plan on which to base RME for the Estuary Module, particularly because it links Estuary Module RME to RME for the 2008 Federal Columbia River Power System Biological Opinion and its 2010 Supplement (NMFS, 2008 and 2010). The Estuary Module also identifies other applicable monitoring plans and guidance documents as well as additional monitoring needs, particularly in the area of action effectiveness monitoring.

Conclusion

The Estuary Module contributes to all the Columbia Basin salmon and steelhead recovery plans by analyzing limiting factors and threats related to survival of listed salmon and steelhead in the Columbia River estuary, identifying site-specific management actions related to those limiting factors and threats, and estimating the cost and time to implement those actions. NMFS will incorporate the Estuary Module by reference into all Columbia Basin salmon and steelhead recovery plans. We conclude that the Estuary Module provides information that helps to meet the requirements for recovery plans under ESA section 4(f), and adopt it as a component of Columbia Basin ESA recovery plans.

References

A complete list of all references cited herein is available upon request (*see* **FOR FURTHER INFORMATION CONTACT** section).

Authority: 16 U.S.C. 1531 *et seq.*

Dated: February 9, 2011.

Therese Conant,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–3243 Filed 2–11–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2011–OS–0016]

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Office of the Assistant Secretary of Defense for Health Affairs announces a proposed new public information collection and seeks public comment on the provisions thereof. 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 information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by April 15, 2011.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Defense Health Information Management System (DHIMS), *Attn:* COL DaCosta Barrow, 5109 Leesburg Pike, Skyline 6, Suite 100, Falls Church, VA 22041, or call DHIMS at 703–998–6900.

Title; Associated Form; and OMB Number: Enterprise Blood Management System (EBMS); OMB Control Number 0720–TBD.

Needs and Uses: EBMS is a commercial-off-the-shelf (COTS) automated information system (AIS) software application that provides the Military Health System (MHS) with a comprehensive enterprise wide Blood Donor Management System (DBMS) and Blood Transfusion Management System (BTMS) with capabilities to manage blood donors (both in-house and at mobile collection sites), including Theater and VA; manage blood products both fresh and frozen throughout the collection, processing, testing, storing, and shipping procedures; interface with testing instrumentation for enterprise (Global) results management; shipping blood with in-transit visibility and shipping data transmit and receive; automate, enterprise-wide "lookback" for donors, patients, and products; automated, blood order issue, and transfusion records; manage enterprise inventory (Global). It has built-in safeguards to limit access and visibility of personal or sensitive information in accordance with the Privacy Act of 1974. The application will account for everyone that donates blood and receives blood transfusions in the MHS—Active Duty, Reserves, National Guard, government civilian, contractors and volunteers assigned or borrowed—this also includes non-appropriated fund employees and foreign nationals.

Affected Public: Contractors, civilians, and foreign nationals donating to the Military Health Systems.

Annual Burden Hours: 766.

Number of Respondents: 4,600.

Responses per Respondent: 1.

Average Burden per Response: 10 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

In order to attain standardization, ensure a safe blood product, and comply with Federal law, all Military blood facilities are licensed and/or registered by the Food and Drug Administration (FDA) and must operate according to Title 21, Code of Federal Regulations, Part 211, Current Good Manufacturing Practices for Finished Pharmaceuticals, Part 610 series, Biologics, and Part 820 series, Medical Devices.

EBMS is a commercial-off-the-shelf (COTS) FDA 510K cleared Medical Device automated information system (AIS) software application that provides the Military Health System (MHS) with a comprehensive enterprise wide Blood Donor Management System (DBMS) and Blood Transfusion Management System (BTMS) with capabilities to manage blood donors (both in-house and at mobile collection sites), including Theater and VA; manage blood products both fresh and frozen throughout the collection, processing, testing, storing, and shipping procedures; interface with testing instrumentation for enterprise (Global) results management; shipping blood with in-transit visibility and shipping data transmit and receive; automate, enterprise-wide "lookback" for donors, patients, and products; automated, blood order issue, and transfusion records; manage enterprise inventory (Global). It has built-in safeguards to limit access and visibility of personal or sensitive information in accordance with the Privacy Act of 1974. The application will account for everyone that donates blood and receives blood transfusions in the MHS—Active Duty, Reserves, National Guard, government civilian, contractors and volunteers assigned or borrowed—this also includes non-appropriated fund employees and foreign nationals.

EBMS is a n-tier enterprise solution. The solution will use COTS products, installed at a Central Server location. EBMS which is delineated in several DoD issuances, including DoD Directive 6000.12, DoD Instruction 6480.4, and AR10–64, has applicability at the headquarters level allowing Armed Services Blood Program (ASBP) and Service Blood Program Office (SBPO) to use this product to conduct its own day-to-day blood inventory management. This comprehensive tool provides the capability to manage inventory, monitor adverse trends, review lookback case, manage donor deferrals and develop standard operation procedure. Deciding to implement EBMS within MHS, provides an enterprise solution for transfusion and donor processing that can be applied to enterprise-wide blood inventory, and traceability through out patient and donor life.

The information in EBMS is personal or sensitive; therefore, it contains built-in safeguards to limit access and visibility of this information. EBMS uses role-based security so a user sees only the information for which permission has been granted. It uses state-of-the-market 128-bit encryption security for our transactions. It is DITSCAP certified having been subjected to and passed thorough security testing and evaluation by independent parties. It meets safeguards specified by the Privacy Act of 1974 in that it maintains a published DoD Privacy Impact Assessment and System of Record covering Active Duty Military, Reserve, National Guard, and government civilian employees, to include non-appropriated fund employees and foreign nationals, DoD contractors, and volunteers. EBMS is hosted in a secure facility managed by the Defense Information Systems Agency.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–3208 Filed 2–11–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Federal Advisory Committee Meeting

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: Under the provision of the Federal Advisory Committee Act of 1972 (5 U.S.C., appendix as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b as amended), and

41 CFR 102–3.150, the Department of Defense announces that the following federal advisory committee meeting of the DoD Board of Actuaries will take place:

DATES: July 14–15, 2011, from 1 p.m.–5 p.m. on July 14, 2011, and 10 a.m.–1 p.m. on July 15, 2011.

ADDRESSES: 4040 N. Fairfax Drive, Suite 250, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Inger Pettygrove at the DoD Office of the Actuary, 4040 N. Fairfax Drive, Suite 308, Arlington, VA 22203.

SUPPLEMENTARY INFORMATION: *Purpose of the meeting:* The purpose of the meeting is to review actuarial methods and assumptions to be used in the valuations of the Education Benefits Fund, the Military Retirement Fund, and the Voluntary Separation Incentive Fund, in accordance with the provisions of Section 183, Section 2006, Chapter 74 (10 U.S.C. 1464 *et seq.*), and Section 1175 of Title 10.

Agenda: Education Benefits Fund (July 14, 1 p.m.–5 p.m.)
Meeting Objective for Today
Board Approval of Proposed Economic Assumptions for September 30, 2010 Valuations
Board Approval of Proposed Methods and Assumptions for September 30, 2010 Valuation of Reserve Programs (FY 2013 Per Capita Amounts and Amortization Payments)
Board Approval of Proposed Methods and Assumptions for September 30, 2010 Valuation of Active Duty Programs (FY 2013 Per Capita Amounts and Amortization Payments)
Board Approval of Proposed FY 2012 Post-Funding Amounts for Voluntary and Involuntary Separatees
Briefing on Investment Experience
Developments in Education Benefits
September 30, 2010 Valuation—Economic Assumptions
  Presentation
  Board Decision
September 30, 2010 Valuation—Reserve Programs
  Presentation
  Board Decision
September 30, 2010 Valuation—Active Duty Programs
  Presentation
  Board Decision
FY 2012 Post-Funding Amounts for Voluntary and Involuntary Separatees
  Presentation
  Board Decision

Agenda: Military Retirement Fund (July 15, 10 a.m.–1 p.m.)
Meeting Objective for Today
Board Approval of Proposed FY 2012 Military Retirement Fund Unfunded Liability Amortization Payment (September 30, 2010 Valuation of the Military Retirement System)
Board Approval of Proposed Economic and Non-Economic Methods and Assumptions for September 30, 2011 Valuation of the Military Retirement System (FY 2013 Normal Cost Percentages)
Board Approval of Proposed Economic and Non-Economic Methods and Assumptions for December 31, 2010 Valuation of the Voluntary Separation Incentive (VSI) Fund (FY 2013 Amortization Payment)
Briefing on Investment Experience
Recent and Proposed Legislation
September 30, 2010 Valuation of the Military Retirement System (MRS) and FY 2012 Unfunded Liability Amortization Payment
  Presentation
  Board Decision
September 30, 2011 Valuation of the MRS (FY 2013 Normal Cost Percentages)
  Presentation
  Board Decision
December 31, 2010 Valuation of the VSI Fund (FY 2013 Amortization Payment)
  Presentation
  Board Decision

Public's accessibility to the meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is on a first come basis.

Committee's Designated Federal Officer or Point of Contact: Persons desiring to attend the DoD Board of Actuaries meeting or make an oral presentation or submit a written statement for consideration at the meeting must notify Inger Pettygrove at 703–696–7413 by June 9, 2011.

Dated: February 8, 2011.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–3201 Filed 2–11–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Defense Department Advisory Committee on Women in the Services (DACOWITS)

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: Pursuant to Section 10(a), Public Law 92–463, as amended, notice is hereby given of a forthcoming meeting of the Defense Department Advisory Committee on Women in the Services (DACOWITS). The meeting is open to the public, subject to the availability of space.

DATES: March 4, 2011, from 8 a.m.–4 p.m.

ADDRESSES: Residence Inn Marriott, 550 Army Navy Dr, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: MSgt Robert Bowling, USAF, or DACOWITS, 4000 Defense Pentagon, Room 2C548A, Washington, DC 20301–4000, E-mail: *Robert.bowling@osd.mil*, telephone (703) 697–2122, fax (703) 614–6233.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: The purpose of the meeting is for the Committee to approve and finalize the 2010 report. The Committee will review and discuss 2011 study topics, protocols, and installation visits. The Committee will also receive a briefing from Health Affairs on Reserve and National Guard wellness. Additionally the Army and Air Force will give an update on their sexual assault prevention programs.

Meeting Agenda:
Friday, March 4, 2011, 8 a.m.–4 p.m.
—Welcome, introductions, and announcements.
—Finalize the 2010 report.
—Receive briefing from Health Affairs.
—Finalize 2011 study topics, protocols, and installation visits.
—Receive briefings from Army & Air Force on sexual assault prevention programs.
—Public Forum.

Written Statements: Interested persons may submit a written statement for consideration by the Defense Department Advisory Committee on Women in the Services. Individuals submitting a written statement must submit their statement to the Point of Contact listed above at the address detailed above NLT 5 p.m., Wednesday, March 2, 2011. If a written statement is not received by Wednesday, March 2, 2011, prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the Defense Advisory Committee on Women in the Services until its next open meeting. The Designated Federal Officer will review all timely submissions with the Defense Advisory Committee on Women in the Services Chairperson and ensure they are provided to the members of the Defense Advisory Committee on Women in the Services.

Oral Statements: If members of the public are interested in making an oral

statement, a written statement must be submitted as above. After reviewing the written comments, the Chairperson and the Designated Federal Officer will determine who of the requesting persons will be able to make an oral presentation of their issue during an open portion of this meeting or at a future meeting. Determination of who will be making an oral presentation will depend on time available and if the topics are relevant to the Committee's activities. Two minutes will be allotted to persons desiring to make an oral presentation. Oral presentations by members of the public will be permitted only on Friday March 4, 2011 from 3 p.m. to 4 p.m. before the full Committee. Number of oral presentations to be made will depend on the number of requests received from members of the public.

Dated: February 8, 2011.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–3202 Filed 2–11–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Closed Meetings of the Department of Defense Wage Committee

AGENCY: Department of Defense.

ACTION: Notice of closed meetings.

SUMMARY: Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that closed meetings of the Department of Defense Wage Committee will be held on Tuesday, March 8, 2011, and Tuesday, March 22, 2011.

DATES: Tuesday, March 8, 2011, and Tuesday, March 22, 2011, at 10 a.m.

ADDRESSES: 1400 Key Boulevard, Level A, Room A101, Rosslyn, Virginia 22209.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the meetings may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301–4000.

SUPPLEMENTARY INFORMATION: Under the provisions of section 10(d) of Public Law 92–463, the Department of Defense has determined that the meetings meet the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data to be considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Dated: February 8, 2011.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–3203 Filed 2–11–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of a Federal Advisory Committee

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the following federal advisory committee meeting of the DoD Medicare-Eligible Retiree Health Care Board of Actuaries will take place:

DATES: Friday, July 29, 2011, from 1 p.m.–5 p.m.

ADDRESSES: 4040 N. Fairfax Drive, Suite 250, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Margot Kaplan at the DoD Office of the Actuary, 4040 N. Fairfax Drive, Suite 308, Arlington, VA 22203.

SUPPLEMENTARY INFORMATION: *Purpose of the Meeting:* The purpose of the meeting is to execute the provisions of Chapter 56, Title 10, United States Code (10 U.S.C. 1114 *et seq.*). The Board shall review DoD actuarial methods and assumptions to be used in the valuation of benefits under DoD retiree health care programs for Medicare-eligible beneficiaries.

Agenda:

Meeting Objective

Board Approval of Proposed Methods and Assumptions for September 30, 2010 Valuation, For Calculating:

FY 2013 Per Capita Full-Time and Part-Time Normal Cost Amounts

September 30, 2010 Unfunded Liability (UFL)

October 2011 (FY 2012) Treasury UFL Amortization Payment

Briefing on Investment Experience

Medicare-Eligible Retiree Health Care Fund Update

September 30, 2009 Valuation Results

September 30, 2010 Valuation Presentation

Board Decisions

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165 and the availability of space, this meeting is open to the public. Seating is on a first-come basis.

Committee's Designated Federal Officer or Point of Contact: Persons desiring to attend the DoD Medicare-Eligible Retiree Health Care Board of Actuaries meeting or make an oral presentation or submit a written statement for consideration at the meeting, must notify Margot Kaplan at 703–696–7404 by June 24, 2011.

Dated: February 8, 2011.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–3205 Filed 2–11–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2011–OS–0012]

Privacy Act of 1974; System of Records

AGENCY: Defense Information Systems Agency, DoD.

ACTION: Notice to delete three systems of records.

SUMMARY: The Defense Information Systems Agency is deleting three systems of records notices in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on March 16, 2011 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by dock number and/RIN number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, Room 3C843, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other

submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Jeanette M. Weathers-Jenkins at (703) 681–2103, or Defense Information Systems Agency, 5600 Columbia Pike, Room 933–I, Falls Church, VA 22041–2705.

SUPPLEMENTARY INFORMATION: The Defense Information Systems Agency systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the **FOR FURTHER INFORMATION CONTACT** address above.

The Defense Information Systems Agency proposes to delete three systems of records notices from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: February 8, 2011.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletions:

K240.01

Personnel Security Investigative Dossier File (PSIDF) (August 23, 1995, 60 FR 43777).

REASON:

The personnel security investigative Dossier (PSIDF) files are not stored at DISA. PSIDF are stored at military central adjudication facilities, U.S. Office of Personnel Management, Defense Intelligence Agency, Washington headquarters adjudication facility, Defense Security Service, and Defense Industrial Security Clearance Office.

K240.04

Identification Badge System (February 22, 1993, 58 FR 10562).

REASON:

The identification badge system does not contain Personally Identifiable Information that is directly solicited, collected, and under the control of a Federal agency or component from which there is specific retrieval of information using a personal identifier (*i.e.,* the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual such as SSN, date of birth, symbol, etc.).

K240.07

Vehicle and Parking Registration Card (February 22, 1993, 58 FR 10562).

REASON:

The vehicle and parking registration card function is now managed by Department of Army, Fort Meade.

[FR Doc. 2011–3204 Filed 2–11–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Positioning Systems Directorate Will Be Hosting an Interface Control Working Group (ICWG) Meeting for Document ICD–GPS–870

AGENCY: Interface Control Working Group (ICWG) meeting for document ICD–GPS–870.

ACTION: Meeting Notice.

SUMMARY: This notice informs the public that the Global Positioning Systems Directorate will be hosting an Interface Control Working Group (ICWG) meeting for document ICD–GPS–870, Navstar Next Generation GPS Operational Control Segment (OCX) to User Support Community Interfaces. This document captures the same interface as ICD–GPS–240 (Navstar GPS Control Segment to User Support Community Interfaces), but for the OCX era. Therefore, the meeting will only address the OCX data formats definition and the OCX information assurance requirements for data integrity. The ICWG is open to the general public. For those who would like to attend and participate in this ICWG meeting, you are requested to register to attend the meeting no later than 26 March 2011. Please send the registration to *Jaime.valdivia.ctr@losangeles.af.mil* and provide your name, organization, telephone number, address, and country of citizenship. More information, including Comments Resolution Matrix (CRM) form, Was/Is Matrix and Redlined ICD, will be posted at: *http://www.gps.gov/technical/ICWG/*& *http://www.navcen.uscg.gov/* (under the News and Notices section) If you have any comments, please provide them in the CRM form and limit your comments to the Was/Is Matrix and the redlined areas of the ICDs which key on changes to the OCX data formats and IA requirements only. Submit your CRM comments to Jaime Valdivia by 26 March 2011.

Date/Time: 28 April 11/8 a.m.–5 p.m.

DIAL–IN INFO and LOCATION:

Phone Number: 1–800–366–7242 Code: 1745510.

Address: SAIC Facility*, 300 N. Sepulveda Blvd, El Segundo, CA 90245, 2nd Floor, CR–2060, * Identification will be required at the entrance of the SAIC facility (Passport, State ID or Federal ID). SAIC facility phone number: 1–310–416–8300.

FOR FURTHER INFORMATION CONTACT: *Jaime.valdivia.ctr@losangeles.af.mil* 1–310–416–8375 or Captain Walter Miller *walter.miller@losangeles.af.mil* 1–310–653–3524

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. 2011–3264 Filed 2–11–11; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Information for Additional NEPA Public Scoping Meetings for the Great Lakes and Mississippi River Interbasin Study ("GLMRIS")

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

ACTION: Notice.

SUMMARY: In a November 16, 2010, **Federal Register** Notice (75 FR 69983), the U.S. Army Corps of Engineers (USACE), Chicago District announced in a notice of intent that it will prepare a feasibility report and an environmental impact statement (EIS) for GLMRIS, and it will host a public scoping meeting in Chicago, Illinois, on December 15, 2010. In a December 8, 2010, **Federal Register** Notice (75 FR 76447), USACE announced the metropolitan locations where USACE would be hosting nine (9) additional public scoping meetings for GLMRIS but did not include specific meeting details. In a January 4, 2010, **Federal Register** Notice (76 FR 336), USACE announced the meeting details for the nine (9) additional public scoping meetings. The January 4, 2010 notice also announced USACE's intent to host two (2) additional public scoping meetings in Milwaukee, WI and New Orleans, LA, but it did not include meeting details. This notice announces the meeting details for these locations. This notice also announces the rescheduled meeting date and location for the Ann Arbor, MI public scoping meeting.

USACE, in consultation with other federal agencies, Native American tribes, state agencies, local governments

and non-governmental organizations, is conducting a feasibility study of the options and technologies that could be applied to prevent aquatic nuisance species (ANS) transfer between the Great Lakes and Mississippi River basins through aquatic pathways.

DATES: USACE will be accepting public comments on the scope of GLMRIS until March 31, 2011. Please refer to the "*Scoping and Public Involvement*" section below for instructions on how to submit public comments, the dates of the Milwaukee, WI, New Orleans, LA and rescheduled Ann Arbor, MI public scoping meetings and other meeting information.

FOR FURTHER INFORMATION CONTACT: For further information and/or questions about GLMRIS, please contact USACE, Chicago District, Project Manager, Mr. David Wethington, *by mail:* USACE, Chicago District, 111 N. Canal, Suite 600, Chicago, IL 60606, or *by e-mail: david.m.wethington@usace.army.mil.*

For media inquiries, please contact the USACE, Chicago District, Public Affairs Officer, Ms. Lynne Whelan, *by mail:* USACE, Chicago District, 111 N. Canal, Suite 600, Chicago, IL 60606, *by phone:* (312)846–5330 or *by e-mail: lynne.e.whelan@usace.army.mil.*

SUPPLEMENTARY INFORMATION:

1. *Background.* USACE, in consultation with other federal agencies, Native American tribes, state agencies, local governments and non-governmental organizations, is conducting GLMRIS. For GLMRIS, USACE will explore options and technologies, collectively known as ANS controls, that could be applied to prevent ANS transfer between the basins through aquatic pathways. Potential ANS controls may include, but are not limited to, hydrologic separation of the basins, waterway modifications, selective barriers, etc.

USACE will conduct a comprehensive analysis of ANS controls and will analyze the effects an ANS control or combination of ANS controls may have on current uses of: (1) The Chicago Area Waterway System (CAWS), the only known continuous aquatic pathway between the Great Lakes and Mississippi River basins; and (2) other aquatic pathways between these basins. For the CAWS, current waterway uses include, but are not limited to: flood risk management; commercial and recreational navigation; recreation; water supply; hydropower; and conveyance of effluent from wastewater treatment plants and other industries. Additionally, this study will identify mitigation measures or alternative facilities necessary to offset and address impacted waterway uses and current significant natural resources.

USACE will conduct GLMRIS in accordance with NEPA and with the *Economic and Environmental Principles and Guidelines for Water and Related Land Resource Implementation Studies,* Water Resources Council, March 10, 1983.

2. *Scoping and Public Involvement.* USACE will accept comments related to GLMRIS until March 31, 2011. Note, USACE will only consider comments that disclose the first name, last name and zip code of the commenter.

All forms of comments received during the scoping period will be weighted equally. Using input obtained during the scoping period, USACE will refine the scope of GLMRIS to focus on significant issues, as well as eliminate issues that are not significant from further detailed study.

Comments may be submitted in the following ways:

- *GLMRIS project Web site:* Use the web comment function found at *http://www.glmris.anl.gov;*
- *NEPA Scoping Meeting:* USACE is hosting scoping meetings and asks those who want to make oral comments to register on the GLMRIS project Web site at *http://www.glmris.anl.gov.* Those registering to make oral comments through the project website may be given a preference over those that register to make oral comments at the meeting. The on-line registration for each individual meeting will close one (1) day prior to that meeting date. Each individual wishing to make oral comments shall be given three (3) minutes, and a stenographer will document oral comments;
- *Mail:* Mail written comments to GLMRIS Scoping, 111 N. Canal, Suite 600, Chicago, IL 60606. Comments must be postmarked by March 31, 2011; and
- *Hand Delivery:* Comments may be hand delivered to the Chicago District, USACE office located at 111 N. Canal St., Suite 600, Chicago, IL 60606 between 8 a.m. and 4:30 p.m. Comments must be received by March 31, 2011.

At the scoping meetings, USACE will provide informational materials about the study's authorities and USACE study process. The meetings will begin with a presentation regarding the study followed by an oral comment period. During each meeting, USACE will also collect written comments on comment cards and computer terminals.

Due to weather conditions, USACE rescheduled the February 3, 2011 public scoping meeting in Ann Arbor, MI. The purpose of this notice is to announce the meeting information for (i) the rescheduled public scoping meeting in Ann Arbor, MI and (ii) the public scoping meetings scheduled in Milwaukee, WI and New Orleans, LA. USACE will host NEPA public scoping meetings from 2 p.m. to 8 p.m. at the following locations:

1. *Tuesday, February 15, 2011:* The Miller Room of the O'Donnell Park Complex, 910 E. Michigan St., Milwaukee, WI.

2. *Thursday, February 17, 2011:* Port of New Orleans Administration Building, Auditorium, 1350 Port of New Orleans Place, New Orleans, LA.

3. *Tuesday, March 8, 2011:* Ann Arbor Marriott Ypsilanti at Eagle Crest 1275 S. Huron St., Ypsilanti, MI.

Please see the GLMRIS project Web site at *http://www.glmris.anl.gov* if you wish to register to make an oral comment at one of these meetings, and for more information regarding the meeting including a meeting agenda.

Comments received during the scoping period will be posted on the GLMRIS project website and will become a part of the EIS. You may indicate that you do not wish to have your name or other personal information made available on the website. However, USACE cannot guarantee that information withheld from the website will be maintained as confidential. Requests for disclosure of collected information will be handled through the Freedom of Information Act. Comments and information, including the identity of the submitter, may be disclosed, reproduced, and distributed. Submissions should not include any information that the submitter seeks to preserve as confidential.

If you require assistance under the Americans with Disabilities Act, please contact Ms. Lynne Whelan via e-mail at *lynne.e.whelan@usace.army.mil* or phone at (312) 846–5330 at least seven (7) working days prior to the meeting to request arrangements.

3. *Significant Issues.* Issues associated with the proposed study are likely to include, but will not be limited to: Significant natural resources such as ecosystems and threatened and endangered species, commercial and recreational fisheries; current recreational uses of the lakes and waterways; ANS effects on water users; effects of potential ANS controls on current waterway uses such as flood risk management, commercial and recreational navigation, recreation, water supply, hydropower and conveyance of effluent from wastewater treatment plants and other industries; and statutory and legal responsibilities relative to the lakes and waterways.

4. *Availability of the Draft Environmental Impact Statement.* The date that the draft EIS will be made available is contingent upon sufficient allocation of funding for the study. Draft EIS availability will be announced to the public in the **Federal Register** in compliance with 40 CFR 1506.9 and 1506.10.

5. *Authority.* This action is being undertaken pursuant to the Water Resources and Development Act of 2007, Section 3061, Pub. L. 110–114, 121 STAT. 1121, and the National Environmental Policy Act of 1969, 42 U.S.C. 4321, *et seq.,* as amended.

Dated: February 4, 2011.

Susanne J. Davis,

Chief Planning Branch Chicago District, Corps of Engineers.

[FR Doc. 2011–3221 Filed 2–11–11; 8:45 am]

BILLING CODE 3720–58–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 April 15, 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: February 8, 2011.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: Revision.

Title of Collection: Federal Family Education Loan Program and William D. Ford Federal Direct Loan Program Unpaid Refund Loan Discharge Application.

OMB Control Number: 1845–0058.

Agency Form Number(s): N/A.

Frequency of Responses: On occasion.

Affected Public: Individuals or households.

Total Estimated Number of Annual Responses: 400.

Total Estimated Number of Annual Burden Hours: 200.

Abstract: This form serves as the means by which eligible borrowers in the Federal Family Education Loan Program and William D. Ford Federal Direct Loan Program apply for discharge of the portion of a loan that a school failed to return to the loan holder in accordance with federal regulations.

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 4517. 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. 2011–3227 Filed 2–11–11; 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 April 15, 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: February 8, 2011.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Revision.

Title of Collection: Integrated Postsecondary Education Data System (IPEDS) Web-based Data Collection 2011–12 through 2013–14.

OMB Control Number: 1850–0582.

Agency Form Number(s): N/A.

Frequency of Responses: Annually.

Affected Public: Businesses or other for-profit; not-for-profit institutions; State, Local, or Tribal Government, State Educational Agencies or Local Educational Agencies.

Total Estimated Number of Annual Responses: 64,800.

Total Estimated Number of Annual Burden Hours: 819,932.

Abstract: Integrated Postsecondary Education Data System (IPEDS) is a system of surveys designed to collect basic data from approximately 7,000 Title IV postsecondary institutions in the United States and other jurisdictions. The IPEDS provides information on numbers of students enrolled, degrees completed, other awards earned, dollars expended, staff employed at postsecondary institutions, and cost and pricing information. The amendments to the Higher Education Act of 1998, Part C, Sec. 131, specify the need for the "redesign of relevant data systems to improve the usefulness and timeliness of the data collected by such systems." As a consequence, in 2000 IPEDS began to collect data through a web-based data collection system. The data collection is now entirely web-based, and is required for those institutions participating in Title IV federal student aid programs; other institutions participate on a voluntary basis. IPEDS data are available to the public through the College Navigator and IPEDS Data Center Web sites. This clearance package seeks authorization from OMB to continue IPEDS data collection through 2014, describes revisions to the currently approved (2010–11) IPEDS burden estimates, and includes a number of proposed changes to the data collection.

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 4507. 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. 2011–3233 Filed 2–11–11; 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 April 15, 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: February 8, 2011.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: New.

Title of Collection: U.S. Department of Education, Institute of Education Sciences Research Performance Progress Report (RPPR).

OMB Control Number: Pending.

Agency Form Number(s): N/A.

Frequency of Responses: Annually.

Affected Public: Businesses or other for-profit; not-for-profit institutions; State, Local, or Tribal Government, State Educational Agencies or Local Educational Agencies.

Total Estimated Number of Annual Responses: 766.

Total Estimated Number of Annual Burden Hours: 16.

Abstract: The Research Performance Progress Report (RPPR) format and instructions are used in order for Institute of Education Sciences' (IES) grantees to meet the established due dates for submission of performance

reports for IES discretionary grant programs. Recipients of multi-year discretionary grants must submit an annual performance report for each year funding has been approved in order to receive a continuation award. The annual performance report should demonstrate whether substantial progress has been made toward meeting the approved goals and objectives of the project. The Institute also requires recipients of "forward funded" grants that are awarded funds for their entire multi-year project up-front in a single grant award to submit the RPPR on an annual basis. In addition, the Institute will require recipients to use the ED 524B to submit their final performance reports to demonstrate project success, impact and outcomes. In both the annual and final performance reports, grantees are required to provide data on established performance measures for the grant program (e.g., Government Performance and Results Act measures) and on project performance measures that were included in the grantee's approved grant application. The RPPR will contain research and related (total federal and non-federal) budgetary forms that will be used to collect budgetary data from the recipient organization. The information submitted will be used to conduct periodic administrative/budgetary reviews. Performance reporting requirements are found in 34 CFR 74.51, 75.118, 75.253, 75.590 and 80.40 of the Education Department General Administrative Regulations.

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 4514. 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. 2011–3232 Filed 2–11–11; 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 April 15, 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: February 8, 2011.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: Revision.

Title of Collection: Federal Direct PLUS Loan Request for Supplemental Information.

OMB Control Number: 1845–0103.

Agency Form Number(s): N/A.

Frequency of Responses: On occasion.

Affected Public: Individuals or households.

Total Estimated Number of Annual Responses: 1,230,000.

Total Estimated Number of Annual Burden Hours: 615,000.

Abstract: The Federal Direct PLUS Loan Request for Supplemental Information serves as the means by which a Direct PLUS Loan applicant (parent or graduate/professional student) may provide certain information to a school that will assist the school in originating the borrower's Direct PLUS Loan award, and as an alternative to providing this information to the school by other means established by the school.

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 4512. 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. 2011–3230 Filed 2–11–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Biological and Environmental Research Advisory Committee

AGENCY: Department of Energy; Office of Science.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Biological and Environmental Research Advisory Committee (BERAC). 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: Wednesday, March 9, 2011, 9 a.m. to 5 p.m. and Thursday, March 10, 2011, 9 a.m. to 12 p.m.

ADDRESSES: Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC 20008.

FOR FURTHER INFORMATION CONTACT: Dr. David Thomassen, Designated Federal Officer, U.S. Department of Energy, Office of Biological and Environmental Research, SC–23/Germantown Building, 1000 Independence Avenue, SW., Washington, DC 20585–1290; phone: (301) 903–9817; fax (301) 903–5051 or e-mail: *david.thomassen@science.doe.gov.* The most current information concerning this meeting can be found on the Web site: *http://www.science.doe.gov/ober/berac/announce.html.*

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: To provide advice on the many complex scientific and technical issues that arise in the development and implementation of the Biological and Environmental Research Program.

Tentative Agenda Topics

- Report from the Office of Biological and Environmental Research
- News from the Biological Systems Science and Climate and Environmental Sciences Divisions
- Discussions on the Climate and Environmental Sciences Division Committee of Visitors Response and the Biological and Environmental Research Long-Term Vision Response
- Joint Genome Institute Update and ARM review outbrief
- 2012 Budget briefing
- New Business
- Public Comment

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact David Thomassen at the address or telephone number listed above. You must make your request for an oral statement at least five business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 45 days at the BERAC Web site: *http://www.science.doe.gov/ober/berac/Minutes.html.*

Issued at Washington, DC on February 8, 2011.

LaTanya Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2011–3234 Filed 2–11–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

DOE/NSF High Energy Physics Advisory Panel

AGENCY: Department of Energy, Office of Science.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the DOE/NSF High Energy Physics Advisory Panel (HEPAP). 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, March 17, 2011, 10 a.m.–6 p.m., and Friday, March 18, 2011, 8:30 a.m.–2 p.m.

ADDRESSES: Hotel Palomar, 2121 P Street, NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: John Kogut, Executive Secretary; High Energy Physics Advisory Panel; U.S. Department of Energy; SC–25/Germantown Building, 1000 Independence Avenue, SW., Washington, DC 20585–1290; Telephone: (301) 903–1298 or email: *John.Kogut@science.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice and guidance on a continuing basis to the Department of Energy and the National Science Foundation on scientific priorities within the field of high energy physics research.

Tentative Agenda: Agenda will include discussions of the following:

- Discussion of Department of Energy High Energy Physics Program
- Discussion of National Science Foundation Elementary Particle Physics Program
- Reports on and Discussions of Topics of General Interest in High Energy Physics
- Public Comment (10-minute rule)

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact John Kogut at (301) 903–1298 or by e-mail at *John.Kogut@science.doe.gov.* You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Panel will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of the meeting will be available on the U.S. Department of Energy's Office of High Energy Physics Web site at *http://www.science.doe.gov/hep/panels/hepap.shtml.*

LaTanya Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2011–3236 Filed 2–11–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Basic Energy Sciences Advisory Committee

AGENCY: Department of Energy, Office of Science.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Basic Energy Sciences Advisory Committee (BESAC). 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, March 17, 2011; 10 a.m.–5 p.m. and Friday, March 18, 2011; 9 a.m.–12 p.m.

ADDRESS: Bethesda North Hotel and Conference Center, 5701 Marinelli Road, Bethesda, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Katie Perine; Office of Basic Energy Sciences; U.S. Department of Energy; Germantown Building, 1000 Independence Avenue, SW., Washington, DC 20585; Telephone: (301) 903–6529.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: The purpose of this meeting is to provide advice and guidance with respect to the basic energy sciences research program.

Tentative Agenda: Agenda will include discussions of the following:

- News from Office of Science/DOE.
- News from the Office of Basic Energy Sciences.

• Discussion on the FY 2012 Budget.
• New charge to BESAC—Mesoscale Science.
• Follow-up on the Science for Energy Technologies Report.

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Katie Perine at 301–903–6594 (fax) or *katie.perine@science.doe.gov* (e-mail). Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of this meeting will be available on the Basic Energy Science Advisory Committee's Web site at *http://www.science.doe.gov/bes/BESAC/meetings.html.*

Issued at Washington, DC on February 8, 2011.

LaTanya Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2011–3287 Filed 2–11–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Portsmouth

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Portsmouth. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, March 3, 2011, 6 p.m.–8 p.m.

ADDRESSES: Ohio State University, Endeavor Center, 1862 Shyville Road, Piketon, Ohio 45661.

FOR FURTHER INFORMATION CONTACT: Joel Bradburne, Deputy Designated Federal Officer, Department of Energy, Portsmouth/Paducah Project Office, Post Office Box 700, Piketon, Ohio 45661, (740) 897–3822; e-mail: *Joel.Bradburne@lex.doe.gov*.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management and related activities.

Tentative Agenda

• Call to Order, Introductions, Review of Agenda.
• Approval of January Minutes.
• Deputy Designated Federal Officer's Comments.
• Federal Coordinator's Comments.
• Liaisons' Comments.
• Plant Tour Safety Procedures.
• Administrative Issues:
○ Subcommittee Updates.
○ Discussion on Top 3 Issues, Accomplishments, and Major Board Activity.
○ Discussion on Nevada Site-Specific Advisory Board Recommendation: Using Rail Transport for Moving Waste.
• Public Comments.
• Final Comments.
• Adjourn.

Public Participation: The meeting is open to the public. The EM SSAB, Portsmouth, 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 Joel Bradburne in advance of the meeting at the phone number listed above. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Issued at Washington, DC on February 8, 2011.

LaTanya Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2011–3237 Filed 2–11–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

DOE/NSF Nuclear Science Advisory Committee

AGENCY: Department of Energy, Office of Science.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the DOE/NSF Nuclear Science Advisory Committee (NSAC). Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, March 2, 2011, 9 a.m.–5 p.m.

ADDRESSES: Hilton Washington DC/Rockville Hotel & Executive Meeting Center, 1750 Rockville Pike, Rockville, Maryland 20852, (301) 468–1100.

FOR FURTHER INFORMATION CONTACT: Brenda L. May, U.S. Department of Energy; SC–26/Germantown Building, 1000 Independence Avenue, SW., Washington, DC 20585–1290; telephone: (301) 903–0536 or e-mail: *Brenda.May@science.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice and guidance on a continuing basis to the Department of Energy and the National Science Foundation on scientific priorities within the field of basic nuclear science research.

Tentative Agenda: Agenda will include discussions of the following:

Wednesday, March 2, 2011

• Perspectives from Department of Energy and National Science Foundation.
• Update from the Department of Energy and National Science Foundation's Nuclear Physics Office.
• Status of the Isotopes Program.
• Update on the Activities of the Neutron Charge Subcommittee.
• Public Comment (10-minute rule).

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact Brenda L. May at (301) 903–0536 or *Brenda.May@science.doe.gov* (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of the meeting will be available on the U.S. Department of Energy's Office of Nuclear Physics Web site for viewing at: *http://www.sc.doe.gov/np/nsac/index.shtml.*

Issued at Washington, DC on February 8, 2011.

LaTanya Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2011–3235 Filed 2–11–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Boulder Canyon Project

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed base charge and rates.

SUMMARY: The Western Area Power Administration (Western) is proposing an adjustment to the Boulder Canyon Project (BCP) electric service base charge and rates. The current base charge and rates expire September 30, 2011, under Rate Schedule BCP–F8. The current base charge is not sufficient to cover all annual costs including operation, maintenance, replacements, and interest expense, and to repay investment obligations within the required period. The proposed base charge will provide sufficient revenue to cover all annual costs and to repay investment obligations within the allowable period. A detailed rate package that identifies the reasons for the base charge and rates adjustment will be available in March 2011. The proposed base charge and rates are scheduled to become effective on October 1, 2011, and will remain in effect through September 30, 2012. This **Federal Register** notice initiates the formal process for the proposed base charge and rates.

DATES: The consultation and comment period will begin today and will end May 16, 2011. Western will present a detailed explanation of the proposed base charge and rates at a public information forum on April 6, 2011, beginning at 10:30 a.m. MST, in Phoenix, Arizona. Western will accept oral and written comments at a public comment forum on April 27, 2011, beginning at 10:30 a.m. MST, at the same location. Western will accept written comments any time during the consultation and comment period.

ADDRESSES: The public information forum and public comment forum will be held at the Desert Southwest Customer Service Regional Office, located at 615 South 43rd Avenue, Phoenix, Arizona, on the dates cited above. Written comments should be sent to Darrick Moe, Regional Manager, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, e-mail *moe@wapa.gov.* Written comments may also be faxed to (602) 605–2490, *Attention:* Jack Murray. Western will post information about the rate processes on its Web site at *http://www.wapa.gov/dsw/pwrmkt/BCP/RateAdjust.htm.* Western will post official comments received via letter, fax, and e-mail to its Web site. Western must receive written comments by the end of the consultation and comment period to ensure they are considered in Western's decision process.

As access to Western facilities is controlled, any U.S. citizen wishing to attend any meeting held at Western must present an official form of picture identification, such as a U.S. driver's license, U.S. passport, U.S. Government ID, or U.S. Military ID, at the time of the meeting. Foreign nationals should contact Western 30 days in advance of the meeting to obtain the necessary form for admittance to Western.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Murray, Rates Manager, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, (602) 605–2442, e-mail *jmurray@wapa.gov.*

SUPPLEMENTARY INFORMATION: The proposed base charge and rates for BCP electric service are designed to recover an annual revenue requirement that includes the investment repayment, interest, operation and maintenance, replacements, payments to states, visitor services, and uprating payments. The total costs are offset by the projected revenue from water sales, visitor center, water pumping energy sales, facilities use charges, regulation, reactive supply, spinning reserve services, miscellaneous leases, and late fees. The annual revenue requirement is the base charge for electric service and is divided equally between capacity dollars and energy dollars. Annual energy dollars are divided by annual energy sales, and annual capacity dollars are divided by annual capacity sales to determine the proposed energy rate and the proposed capacity rate.

Rate Schedule BCP–F8, Rate Order No. WAPA–150, was approved on an interim basis by the Deputy Secretary of Energy on September 23, 2010 for a five-year period beginning on October 1, 2010, ending September 30, 2015,[1] and received final approval from the Federal Energy Regulatory Commission on December 9, 2010.[2] Western's existing rate formula for electric service requires recalculation of the base charge and rate annually based on updated financial and hydrology data. The proposed base charge for fiscal year (FY) 2012 under Rate Schedule BCP–F8 is $82,308,519, the forecasted energy rate is 11.08 mills per kilowatthour (mills/kWh), the forecasted capacity rate is $2.00 per kilowattmonth (kWmonth), and the proposed composite rate is 22.16 mills/kWh.

The proposed rates for BCP electric service will result in an overall composite rate increase of approximately 12 percent. The following Table 1 compares the existing and proposed base charge and rates. The Proposed Base Charge and Rates effective October 1, 2011, are preliminary and are subject to change upon publication of final formula rates.

Comparison of Existing and Proposed Base Charge and Rates

	Existing October 1, 2010 through September 30, 2011	Proposed October 1, 2011 through September 30, 2012	Percent change
Base Charge ($)	75,182,522	82,308,519	9
Composite Rate (mills/kWh)	19.73	22.16	12
Energy Rate (mills/kWh)	9.86	11.08	12
Capacity Rate ($/kWmonth)	1.90	2.00	5

The increase in the proposed base charge and rates is due to increases in the annual operation and maintenance costs, visitor center costs, and the uprating program principal payments. Since there is no projected year-end carryover from FY 2011, the result is an overall increase in the base charge for FY 2012. Another factor contributing to the increase in the energy rate is the decrease in energy sales associated with continued poor hydrology in the region

[1] 75 FR 57912.

[2] 133 FERC ¶ 62,229.

resulting in lower than normal Lake Mead water elevations. Although the capacity sales are projected to be slightly higher in FY 2012 than in FY 2011, the increase in the base charge results in an increase in the capacity rate.

Legal Authority

Since the proposed rates constitute a major rate adjustment as defined by 10 CFR part 903, Western will hold both a public information forum and a public comment forum. After review of public comments, Western will take further action on the Proposed Base Charge and Rates consistent with 10 CFR parts 903 and 904.

Western is establishing an electric service base charge and rates for BCP under the Department of Energy Organization Act (42 U.S.C. 7152); the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), and other acts that specifically apply to the project involved.

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to Western's Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand or to disapprove such rates to FERC. Existing Department of Energy (DOE) procedures for public participation in power rate adjustments (10 CFR part 903) were published on September 18, 1985.

Availability of Information

All brochures, studies, comments, letters, memorandums, or other documents that Western initiates or uses to develop the proposed rates are available for inspection and copying at the Desert Southwest Customer Service Regional Office, Western Area Power Administration, 615 South 43rd Avenue, Phoenix, Arizona. Many of these documents and supporting information are also available on Western's Web site at *http://www.wapa.gov/dsw/pwrmkt/BCP/RateAdjust.htm.*

Ratemaking Procedure Requirements

Environmental Compliance

In compliance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321–4347); Council on Environmental Quality Regulations (40 CFR 1500–1508); and DOE NEPA Regulations (10 CFR 1021), Western has determined this action is categorically excluded from preparing an environmental assessment or an environmental impact statement.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866. Accordingly, no clearance of this notice by the Office of Management and Budget is required.

Dated: February 3, 2011.

Timothy J. Meeks,

Administrator.

[FR Doc. 2011–3225 Filed 2–11–11; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2003–0013; FRL–9266–3]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Comment Request: Title IV of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002: Drinking Water Security and Safety (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA)(44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments must be submitted on or before March 16, 2011.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OW–2003–0013, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by email to *OW-Docket@epa.gov,* or by mail to: EPA Docket Center, EPA Water Docket, Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Karen Edwards, Water Security Division, Office of Ground Water and Drinking Water, Mailcode: 4608T, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–564–3797; fax number: 202–566–0055; e-mail address: *Edwards.Karen@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On August 25, 2010 (75 FR 52326), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments during the comment period. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OW–2003–0013, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Water Docket is 202–566–2426.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: Title IV of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002: Drinking Water Security and Safety (Renewal).

ICR numbers: EPA ICR No. 2103.04, OMB Control No. 2040–0253.

ICR Status: This ICR is scheduled to expire on February 28, 2011. Under

OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The Bioterrorism Act requires each community water system serving a population of more than 3,300 people to conduct a vulnerability assessment of its water system and to prepare or revise an emergency response plan that incorporates the results of the vulnerability assessment. These requirements are mandatory under the statute. EPA will use the information collected under this ICR to determine whether community water systems have conducted vulnerability assessments and prepared or revised emergency response plans in compliance with that Act. EPA is required to protect all vulnerability assessments and all information derived from them from disclosure to unauthorized parties and has established an Information Protection Protocol describing how that will be accomplished.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 237 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Community Water Systems serving a population of more than 3,300 people.

Estimated Number of Respondents: 80.

Frequency of Response: Once.

Estimated Total Annual Hour Burden: 8,994.

Estimated Total Annual Cost: $710,460, which includes $710,166 in labor and $294 in operation and maintenance costs.

Changes in the Estimates: There is no change in the total estimated respondent burden compared with that identified in the OMB Inventory of Approved Burdens.

Dated: February 8, 2011.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2011–3274 Filed 2–11–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2010–0352; FRL–9266–5]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request NESHAP for Clay Ceramics Manufacturing, Glass Manufacturing and Secondary Nonferrous Metals Processing Area Sources (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before March 16, 2011.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2010–0352 to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attention:* Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; *telephone number:* (202) 564–4113; *fax number:* (202) 564–0050; *e-mail address: williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 2, 2010 (75 FR 30813), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2010–0352, which is available for public viewing online at *http://www.regulations.gov,* or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov,* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: NESHAP for Clay Ceramics Manufacturing, Glass Manufacturing and Secondary Nonferrous Metals Processing Area Sources (Renewal).

ICR Numbers: EPA ICR Number 2274.03, OMB Control Number 2060–0606.

ICR Status: This ICR is scheduled to expire on March 31, 2011. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR Part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR Part 9.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the Provisions specified at 40 CFR part 63, subparts RRRRRR, SSSSSS, and TTTTTT. Owners or operators of the affected facilities must submit a one-time-only report of any physical or operational changes, initial performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 126 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners or operators of clay ceramics manufacturing, glass manufacturing, and secondary nonferrous metals processing area sources.

Estimated Number of Respondents: 82.

Frequency of Response: Initially, on-occasion and annually.

Estimated Total Annual Hour Burden: 1,763.

Estimated Total Annual Cost: $178,380, which includes $165,416 in labor costs, no capital/startup costs, and $12,964 in operation and maintenance (O&M) costs.

Changes in the Estimates: There is an adjustment increase in the total estimated labor hour burden as currently identified in the OMB Inventory of Approved ICR Burdens because the rule is now fully implemented. This increase is not due to any program changes.

The previous ICR covered the initial phase of standard implementation which occurred over a three-year period. Hence, the average number of respondents during the initial phase is less than the number of respondents when the standard is fully implemented. This ICR shows the labor hour and cost burden after full implementation.

The increase in cost to Respondents and the Agency is due to full implementation of the rule and use of current labor rates.

Dated: February 7, 2011.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2011–3224 Filed 2–11–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–SFUND–2004–0006; FRL–9266–1]

Agency Information Collection Activities; Proposed Collection; Comment Request; Community Right-to-Know Reporting Requirements Under Sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on July 31, 2011. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before April 15, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–SFUND–2004–0006, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: superfund.docket@epa.gov.*
- *Fax:* 202–566–0224.
- *Mail:* Superfund Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–SFUND–2004–0006. EPA's policy is that all comments received 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 information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Sicy Jacob, Office of Emergency Management, 5104A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8019; fax number: (202) 564–2625; e-mail address: *jacob.sicy@epa.gov.*

SUPPLEMENTARY INFORMATION:

How can I access the docket and/or submit comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–2004–0006, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Superfund Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Superfund Docket is 202–566–0276.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified in this document.

What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) 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;

(ii) 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;

(iii) 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 appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES**.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and Federal Register citation.

What information collection activity or ICR does this apply to?

Docket ID No. EPA–HQ–2004–0006.

Affected entities: Entities potentially affected by this action are manufacturers and non-manufacturers.

Title: Community Right-to-Know Reporting Requirements under Sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA).

ICR number: EPA ICR No. 1352.12, OMB Control No. 2050–0072.

ICR status: This ICR is currently scheduled to expire on July 31, 2011. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The authority for these requirements is sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 1986 (42 U.S.C. 11011, 11012). EPCRA Section 311 requires owners and operators of facilities subject to OSHA Hazard Communication Standard to submit a list of chemicals or MSDSs (for those chemicals that exceed thresholds, specified in 40 CFR Part 370) to the State Emergency Response Commission (SERC), Local Emergency Planning Committee (LEPC) and the local fire department (LFD) with jurisdiction over their facility. This is a one-time requirement unless a new facility becomes subject to the regulations or updating the information by facilities that are already covered by the regulations. EPCRA Section 312 requires owners and operators of facilities subject to OSHA HCS to submit an inventory form (for those chemicals that exceed the thresholds, specified in 40 CFR Part 370) to the SERC, LEPC, and LFD with jurisdiction over their facility. This form is to be submitted on March 1 of each year, on the inventory of chemicals in the previous calendar year.

Burden Statement: The average burden for MSDS reporting under 40 CFR 370.21 is estimated at 1.6 hours for new and newly regulated facilities. For existing facilities, the average burden is 0.6 hours for submitting new or revised MSDSs to SERC, LEPC and the local fire department. For new and newly regulated facilities, this burden includes the time required to read and understand the regulations, to determine which chemicals meet or exceed reporting thresholds, and to submit MSDSs or lists of chemicals to SERC, LEPCs, and local fire departments. For existing facilities, this burden includes the time required to submit revised MSDSs and new MSDSs to these entities. The average reporting burden for facilities to submit Tier I or Tier II inventory report under 40 CFR 370.25 is estimated to be approximately 3.1 hours per facility. There are no recordkeeping requirements for facilities under EPCRA sections 311 and 312.

The average burden for state and local governments to respond to requests for MSDSs or Tier II information under 40 CFR 370.30 is estimated to be 0.17 hours per request. The average burden for state and local governments for managing and maintaining the reports is estimated to be 32.25 hours. The burden hours indicated here are from the current approved ICR. EPA may revise the burden before submitting this ICR package to OMB.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology

and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 564,132.

Frequency of response: Annual.

Estimated total average number of responses for each respondent: 1.

Estimated total annual burden hours: 2,031,859.

Estimated total annual costs: $96 million.

This includes capital investment or maintenance and operational costs.

As stated earlier in this document, EPA may revise the burden based on current information on the number of respondents before submitting the ICR package to OMB for approval. The cost will be adjusted based on current wage rates.

What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another Federal Register notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: February 7, 2011.

Maryann Petrole,

Acting Director, Office of Emergency Management.

[FR Doc. 2011–3284 Filed 2–11–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2010–0357, FRL–9266–4]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for Equipment Leaks of VOC in Petroleum Refineries (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before March 16, 2011.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2010–0357, to (1) EPA online using *www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050, e-mail address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 2, 2010 EPA published a notice in the **Federal Register** (75 FR 30813) seeking comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2010–0357, which is available for public viewing online at *http://www.regulations.gov,* or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov,* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: NSPS for Equipment Leaks of VOC in Petroleum Refineries (Renewal).

ICR Numbers: EPA ICR Number 0983.12, OMB Control Number 2060–0067.

ICR Status: This ICR is scheduled to expire on March 31, 2011. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This ICR is for the New Source Performance Standards (NSPS) for Equipment Leaks of VOC (Volatile Organic Compounds) in Petroleum Refineries in 40 CFR part 60, subparts GGG and GGGa. The NSPS in subpart GGG were proposed on January 4, 1983,

and promulgated on May 30, 1984. These standards apply to the following facilities in petroleum refineries: compressors and the group of all equipment (*e.g.,* valves, pumps, flanges, *etc.*) within a process unit in VOC service, commencing construction, modification or reconstruction after the date of proposal. Amendments that would have added new standards and compliance requirements to subpart GGG were proposed on November 7, 2006. In response to public comments, all new requirements are being incorporated in a new subpart GGGa that applies to sources that commence construction, reconstruction, or modification after November 7, 2006. The final amendments to subpart GGG involve only clarifications and additional compliance options.

Owners or operators of the affected facilities described must make one-time-only notifications. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Monitoring requirements specific to Equipment Leaks of VOC in Petroleum Refineries provide information on which components are leaking VOCs. NSPS Subpart GGG references the compliance requirements of NSPS subpart VV; and NSPS subpart GGGa references the compliance requirements of NSPS subpart VVa. Periodically, owners or operators are required to record information identifying leaking equipment, repair methods used to stop the leaks, and dates of repair. The time period for this recordkeeping varies and depends on equipment type and leak history. Semiannual reports are required to measure compliance with the standards of NSPS Subparts VV and VVa, as referenced by NSPS subparts GGG and GGGa. These notifications, reports, and records are essential in determining compliance and in general, are required of all sources subject to NSPS. Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least two years following the date of such measurements, maintenance reports, and records.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 77 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Petroleum refineries.

Estimated Number of Respondents: 160.

Frequency of Response: 2 times per year.

Estimated Total Annual Hour Burden: 24,525.

Estimated Total Annual Cost: $2,319,816, which includes $2,319,816 exclusively in labor costs, with neither capital/startup costs nor operation and maintenance (O&M) costs.

Changes in the Estimates: There is an overall decrease in the number of burden labor hours and an increase in the labor hour cost. The burden hours have decreased because we anticipate that no new refineries will be built in the in the United States over the next three years. This results in a decrease in the number of labor burden hours. We also refined our estimate of the number of major refineries, which reduced the number of affected facilities.

The increase in labor hour cost is due to a recalculation of burden using current labor rates and the correction of a mathematical error.

There are no annual capital and O&M costs to the regulated entities. Capital and O&M costs are not applicable because this is a leak detection and repair program with no continuous monitoring equipment.

Dated: February 7, 2011.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2011–3275 Filed 2–11–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL- 9266–6]

Science Advisory Board Staff Office; Request for Nominations; SAB Environmental Justice Technical Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office is requesting public nominations of experts to serve on the SAB Environmental Justice Technical (EJT) Panel.

DATES: Nominations should be submitted by March 7, 2011 per instructions below.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding this Notice and Request for Nominations may contact Dr. Suhair Shallal, Designated Federal Officer (DFO), SAB Staff Office, by telephone/voice mail at (202) 564–2057; by fax at (202) 565–2098 or via e-mail at *shallal.suhair@epa.gov* General information concerning the EPA Science Advisory Board can be found at the EPA SAB Web site at *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION:

Background: The SAB was established pursuant to the Environmental Research, Development, and Demonstration Authorization Act (ERDAA), codified at 42 U.S.C. 4365, to provide independent scientific and technical advice to the Administrator. The SAB is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

In July 2010, the Environmental Protection Agency (EPA) released the *Interim Guidance on Considering Environmental Justice During the Development of an Action.* This guidance provides agency analysts and decision-makers with information on when to consider environmental justice in rule making. As a complement to this document, EPA is currently developing the *Technical Guidance for Incorporating Environmental Justice into Rulemaking Activities* (Environmental Justice Technical Guidance or EJTG). This document will provide Agency staff with guidance on how to assess disproportionate environmental and public health impacts of proposed rules and actions on minority, low income and indigenous populations in a variety of regulatory contexts. EPA is seeking a SAB review of the draft EJTG document to assess the appropriateness and scientific soundness of the technical guidance.

Request for Nominations: The SAB Staff Office is seeking nominations of nationally and internationally recognized experts with experience and

expertise in the following disciplines, especially as they relate to minorities, low-income, and other disproportionately affected populations: environmental exposure, fate and transport, human health risk assessment, toxicology, epidemiology, public health, biostatistics, economics, social and behavioral sciences, and risk communication. We are specifically seeking experts with expertise and experience in assessing cumulative and comparative risk, public health benefits and impacts, equity and disparity impacts, social impacts, and regulatory impacts.

Availability of the review materials: The review materials will be made available on the SAB Web site. For questions concerning the review materials, please contact Kelly Maguire at (202) 566–2273 or *maguire.kelly@epa.gov.*

Process and Deadline for Submitting Nominations: Any interested person or organization may nominate qualified individuals in the areas of expertise described above for possible service on this expert *ad hoc* Panel. Nominations should be submitted in electronic format (which is preferred over hard copy) following the instructions for "Nominating Experts to Advisory Panels and Ad Hoc Committees Being Formed" provided on the SAB Web site. The instructions can be accessed through the "Nomination of Experts" link on the blue navigational bar on the SAB Web site at *http://www.epa.gov/sab.* To receive full consideration, nominations should include all of the information requested.

EPA's SAB Staff Office requests: contact information about the person making the nomination; contact information about the nominee; the disciplinary and specific areas of expertise of the nominee; the nominee's curriculum vita; sources of recent grant and/or contract support; and a biographical sketch of the nominee indicating current position, educational background, research activities, and recent service on other national advisory committees or national professional organizations.

Persons having questions about the nomination procedures, or who are unable to submit nominations through the SAB Web site, should contact Dr. Suhair Shallal, DFO, as indicated above in this notice. Nominations should be submitted in time to arrive no later than March 7, 2011. EPA values and welcomes diversity. In an effort to obtain nominations of diverse candidates, EPA encourages nominations of women and men of all racial and ethnic groups.

The EPA SAB Staff Office will acknowledge receipt of nominations. The names and biosketches of qualified nominees identified by respondents to this Federal Register notice, and additional experts identified by the SAB Staff, will be posted in a List of Candidates on the SAB Web site at *http://www.epa.gov/sab.* Public comments on this List of Candidates will be accepted for 21 calendar days. The public will be requested to provide relevant information or other documentation on nominees that the SAB Staff Office should consider in evaluating candidates.

For the EPA SAB Staff Office, a balanced subcommittee or review panel includes candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the charge. In the SAB EJT Panel, the SAB Staff Office will consider public comments on the List of candidates, information provided by the candidates themselves, and background information independently gathered by the SAB Staff Office. Selection criteria to be used for Panel membership include: (a) Scientific and/or technical expertise, knowledge, and experience (primary factors); (b) availability and willingness to serve; (c) absence of financial conflicts of interest; (d) absence of an appearance of a lack of impartiality; and (e) skills working in committees, subcommittees and advisory panels; and, for the Panel as a whole, (f) diversity of expertise and viewpoints.

The SAB Staff Office's evaluation of an absence of financial conflicts of interest will include a review of the "Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency" (EPA Form 3110–48). This confidential form allows Government officials to determine whether there is a statutory conflict between that person's public responsibilities (which includes membership on an EPA Federal advisory committee) and private interests and activities, or the appearance of a lack of impartiality, as defined by Federal regulation. The form may be viewed and downloaded from the following URL address at *http://www.epa.gov/sab/pdf/epaform3110-48.pdf.*

The approved policy under which the EPA SAB Office selects subcommittees and review panels is described in the following document: *Overview of the Panel Formation Process at the Environmental Protection Agency Science Advisory Board* (EPA–SAB–EC–02–010), which is posted on the SAB Web site at *http://www.epa.gov/sab/pdf/ec02010.pdf.*

Dated: February 7, 2011.

Anthony F. Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2011–3278 Filed 2–11–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notice

AGENCY: Federal Election Commission.

DATE AND TIME: Wednesday, February 16, 2011, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shawn Woodhead Werth,

Secretary and Clerk of the Commission.

[FR Doc. 2011–3269 Filed 2–10–11; 11:15 am]

BILLING CODE 6715–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notice

AGENCY: Federal Election Commission.

DATE AND TIME: Thursday, February 17, 2011 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of the Minutes for the Meeting of February 3, 2011

Draft AO 2011–01: Robin Carnahan for Senate by Mark Elias, Jonathan S. Berkon, and Ezra W. Reese

Draft AO 2011–02: Senator Scott Brown and Brown for U.S. Senate Committee by Daniel Winslow

Kucinich for President, Inc.—Statement of Reasons—Repayment Determination upon Administrative Review

Audit Division Recommendation Memorandum on the Kansas Republican Party

Management and Administrative Matters.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Shawn Woodhead Werth, Commission Secretary and Clerk, at (202) 694–1040, at least 72 hours prior to the hearing date.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer. Telephone: (202) 694–1220.

Shawn Woodhead Werth,

Secretary and Clerk of the Commission.

[FR Doc. 2011–3374 Filed 2–11–11; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL ELECTION COMMISSION

[Notice 2011–01]

Price Index Adjustments for Contribution and Expenditure Limits and Lobbyist Bundling Disclosure Threshold

AGENCY: Federal Election Commission.

ACTION: Notice of adjustments to contribution and expenditure limits and lobbyist bundling disclosure threshold.

SUMMARY: As mandated by provisions of the Federal Election Campaign Act of 1971, as amended ("FECA" or "the Act"), the Federal Election Commission ("FEC" or "the Commission") is adjusting certain contribution and expenditure limits and the lobbyist bundling disclosure threshold set forth in the Act, to index the amounts for inflation. Additional details appear in the supplemental information that follows.

DATES: *Effective Date:* The effective date for the limit at 2 U.S.C. 441a(a)(1)(A) is November 3, 2010. The effective date for the limits at 2 U.S.C. 434(i)(3)(A), 441a(a)(1)(B), 441a(a)(3), 441a(d), and 441a(h) is January 1, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. Greg J. Scott, Information Division, 999 E Street, NW., Washington, DC 20463; (202) 694–1100 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: Under the Federal Election Campaign Act of 1971, 2 U.S.C. 431 *et seq.,* as amended by the Bipartisan Campaign Reform Act of 2002 [1] and the Honest Leadership and Open Government Act of 2007,[2] coordinated party expenditure limits (2 U.S.C. 441a(d)(2) and (3)(A) and (B)), certain contribution limits (2 U.S.C. 441a(a)(1)(A) and (B), (a)(3) and (h)), and the disclosure threshold for contributions bundled by lobbyists (2 U.S.C. 434(i)(3)(A)) are adjusted periodically to reflect changes in the consumer price index. *See* 2 U.S.C. 434(i)(3) and 441a(c)(1); 11 CFR 109.32 and 110.17(a) and (f). The Commission is publishing this notice to announce the adjusted limits and disclosure threshold.

Coordinated Party Expenditure Limits for 2011

Under 2 U.S.C. 441a(c), the Commission must adjust the expenditure limits established by 2 U.S.C. 441a(d) (the limitations on expenditures by national party committees, state party committees, or their subordinate committees in connection with the general election campaign of candidates for Federal office) annually to account for inflation. This expenditure limit is increased by the percent difference between the price index, as certified to the Commission by the Secretary of Labor, for the 12 months preceding the beginning of the calendar year and the price index for the base period (calendar year 1974).

1. Coordinated Expenditure Limit for House of Representatives in States With More Than One Congressional District.

Both the national and state party committees have a coordinated expenditure limit for each general election held to fill a seat in the House of Representatives in states with more than one congressional district. This limit also applies to those states that elect individuals to the office of Delegate or Resident Commissioner.[3] The formula used to calculate the expenditure limit in such states multiplies the base figure of $10,000 by the difference in the price index (4.42246), rounding to the nearest $100. *See* 2 U.S.C. 441a(c)(1)(B) and 441a(d)(3)(B); 11 CFR 109.32(b) and 110.17. Based upon this formula, the coordinated expenditure limit for 2011 general elections for House candidates in these states is $44,200.

2. Coordinated Expenditure Limit for Senate and for House of Representatives in States With Only One Congressional District.

Both the national and state party committees have a coordinated expenditure limit for a general election held to fill a seat in the Senate or in the House of Representatives in states with only one congressional district. The formula used to calculate this expenditure limit considers not only the price index but also the voting age population ("VAP") of the state. The VAP of each state is published annually in the **Federal Register** by the Department of Commerce. 11 CFR 110.18. The general election expenditure limit is the greater of: The base figure ($20,000) multiplied by the difference in the price index, 4.42246 (which totals $88,400); or $0.02 multiplied by the VAP of the state, multiplied by 4.42246. Amounts are rounded to the nearest $100. *See* 2 U.S.C. 441a(c)(1)(B) and 441a(d)(3)(A); 11 CFR 109.32(b) and 110.17. The chart below provides the state-by-state breakdown of the 2011 general election coordinated expenditure limit for Senate elections. The coordinated expenditure limit for 2011 House elections in states with only one congressional district [4] is $88,400.

[1] Public Law 107–155, 116 Stat. 81 (Mar. 27, 2002).

[2] Public Law 110–81, 121 Stat. 735 (Sept. 14, 2007).

[3] Currently, these states are the District of Columbia, the Commonwealth of Puerto Rico, and the territories of American Samoa, Guam, the United States Virgin Islands and the Northern Mariana Islands. *See http://www.house.gov/house/MemberWWW_by_State.shtml* and *http://about.dc.gov/statehood.asp.*

[4] Currently, these states are: Alaska, Delaware, Montana, North Dakota, South Dakota, Vermont and Wyoming. *See http://www.house.gov/house/MemberWWW_by_State.shtml.*

SENATE GENERAL ELECTION COORDINATED EXPENDITURE LIMITS—2011 ELECTIONS

State	Voting age population (VAP)	VAP × .02 × the price index (4.42246)	Senate expenditure limit (the greater of the amount in column 3 or $88,400)
Alabama	3,599,303	$318,400	$318,400
Alaska	527,205	46,600	88,400
Arizona	4,940,296	437,000	437,000
Arkansas	2,195,465	194,200	194,200
California	27,795,779	2,458,500	2,458,500
Colorado	3,865,036	341,900	341,900
Connecticut	2,727,907	241,300	241,300
Delaware	685,978	60,700	88,400
Florida	14,616,271	1,292,800	1,292,800
Georgia	7,324,792	647,900	647,900
Hawaii	1,006,338	89,000	89,000
Idaho	1,143,651	101,200	101,200
Illinois	9,777,437	864,800	864,800
Indiana	4,861,307	430,000	430,000
Iowa	2,313,538	204,600	204,600
Kansas	2,133,356	188,700	188,700
Kentucky	3,323,606	294,000	294,000
Louisiana	3,397,965	300,600	300,600
Maine	1,048,523	92,700	92,700
Maryland	4,385,947	387,900	387,900
Massachusetts	5,203,385	460,200	460,200
Michigan	7,623,767	674,300	674,300
Minnesota	4,038,685	357,200	357,200
Mississippi	2,194,892	194,100	194,100
Missouri	4,589,980	406,000	406,000
Montana	764,058	67,600	88,400
Nebraska	1,359,656	120,300	120,300
Nevada	1,977,693	174,900	174,900
New Hampshire	1,043,155	92,300	92,300
New Jersey	6,691,782	591,900	591,900
New Mexico	1,514,872	134,000	134,000
New York	15,167,513	1,341,600	1,341,600
North Carolina	7,188,327	635,800	635,800
North Dakota	511,050	45,200	88,400
Ohio	8,840,340	781,900	781,900
Oklahoma	2,796,489	247,300	247,300
Oregon	2,986,164	264,100	264,100
Pennsylvania	9,880,374	873,900	873,900
Rhode Island	833,168	73,700	88,400
South Carolina	3,515,754	311,000	311,000
South Dakota	620,912	54,900	88,400
Tennessee	4,847,129	428,700	428,700
Texas	18,210,592	1,610,700	1,610,700
Utah	1,951,049	172,600	172,600
Vermont	500,054	44,200	88,400
Virginia	6,103,947	539,900	539,900
Washington	5,170,543	457,300	457,300
West Virginia	1,439,342	127,300	127,300
Wisconsin	4,372,515	386,700	386,700
Wyoming	417,319	36,900	88,400

Limitations on Contributions by Individuals, Non-Multicandidate Committees and Certain Political Party Committees Giving to U.S. Senate Candidates for the 2011–2012 Election Cycle

BCRA amended the Act to extend inflation indexing to: (1) The limitations on contributions made by persons under 2 U.S.C. 441a(a)(1)(A) (contributions to candidates) and 441a(a)(1)(B) (contributions to national party committees); (2) the biennial aggregate contribution limits applicable to individuals under 2 U.S.C. 441a(a)(3); and (3) the limitation on contributions made to U.S. Senate candidates by certain political party committees at 2 U.S.C. 441a(h). *See* 2 U.S.C. 441a(c). These contribution limits are increased by multiplying the respective statutory contribution amount by 1.23152, the percent difference between the price index, as certified to the Commission by the Secretary of Labor, for the 12 months preceding the beginning of the calendar year and the price index for the base period (calendar year 2001). The resulting amount is rounded to the nearest multiple of $100. *See* 2 U.S.C. 441a(c); 11 CFR 110.17(b). Contribution limits shall be adjusted accordingly:

Statutory provision	Statutory amount	2011–2012 Limit
2 U.S.C. 441a(a)(1)(A)	$2,000	$2,500.
2 U.S.C. 441a(a)(1)(B)	$25,000	$30,800.
2 U.S.C. 441a(a)(3)(A)	$37,500	$46,200.
2 U.S.C. 441a(a)(3)(B)	$57,500 (of which no more than $37,500 may be attributable to contributions to political committees that are not political committees of national political parties).	$70,800 (of which no more than $46,200 may be attributable to contributions to political committees that are not political committees of national political parties). The overall biennial limit for 2011–12 is $117,000.
2 U.S.C. 441a(h)	$35,000	$43,100.

The increased limit at 2 U.S.C. 441a(a)(1)(A) is to be in effect for the two-year period beginning on the first day following the date of the general election in the preceding year and ending on the date of the next regularly scheduled election. Thus, the $2,500 figure above is in effect from November 3, 2010, to November 6, 2012. The limits under 2 U.S.C. 441a(a)(1)(B), 441a(a)(3)(A) and (B), and 441a(h), shall be in effect beginning January 1st of the odd-numbered year and ending on December 31st of the next even-numbered year. Thus the new contribution limits under 2 U.S.C. 441a(a)(1)(B), 441a(a)(3)(A) and (B), and 441a(h) are in effect from January 1, 2011, to December 31, 2012. *See* 11 CFR 110.17(b)(1).

Lobbyist Bundling Disclosure Threshold for 2011

The Act, as amended by HLOGA, requires certain political committees to disclose contributions bundled by lobbyists/registrants and lobbyist/registrant political action committees once the contributions exceed a specified threshold amount. The Commission must adjust this threshold amount annually to account for inflation. The disclosure threshold is increased by multiplying the $15,000 statutory disclosure threshold by 1.08163, the difference between the price index, as certified to the Commission by the Secretary of Labor, for the 12 months preceding the beginning of the calendar year and the price index for the base period (calendar year 2006). The resulting amount is rounded to the nearest multiple of $100. *See* 2 U.S.C. 434(i)(3)(A) and (B) and 441a(c)(1)(B); 11 CFR 104.22(g). Based upon this formula ($15,000 × 1.08163), the lobbyist bundling disclosure threshold for calendar year 2011 is $16,200.

Dated: February 9, 2011.

On behalf of the Commission.

Cynthia L. Bauerly,

Chair, Federal Election Commission.

[FR Doc. 2011–3231 Filed 2–11–11; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 2, 2011.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *D. Vaughn Gangwish, Albuquerque, New Mexico* and Karin Walsh, Shelton, Nebraska, in an individual capacity; and Lois Gangwish, Shelton, Nebraska, as a member of the family group acting in concert, to retain and acquire shares of Shelton Enterprises, Inc., parent of First State Bank of Shelton, both in Shelton, Nebraska.

Board of Governors of the Federal Reserve System, February 9, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–3213 Filed 2–11–11; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Interest Rate on Overdue Debts

Section 30.18 of the Department of Health and Human Services' claims collection regulations (45 CFR part 30) provides that the Secretary shall charge an annual rate of interest, which is determined and fixed by the Secretary of the Treasury after considering private consumer rates of interest on the date that the Department of Health and Human Services becomes entitled to recovery. The rate cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the "Schedule of Certified Interest Rates with Range of Maturities" unless the Secretary waives interest in whole or part, or a different rate is prescribed by statute, contract, or repayment agreement. The Secretary of the Treasury may revise this rate quarterly. The Department of Health and Human Services publishes this rate in the **Federal Register**.

The current rate of 11%, as fixed by the Secretary of the Treasury, is certified for the quarter ended December 31, 2010. This interest rate is effective until the Secretary of the Treasury notifies the Department of Health and Human Services of any change.

Dated: February 2, 2011.

Molly P. Dawson,

Director, Office of Financial Policy and Reporting, (202) 690–6201.

[FR Doc. 2011–3212 Filed 2–11–11; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Toxicology Program (NTP); Office of Liaison, Policy and Review; Meeting of the NTP Board of Scientific Counselors

AGENCY: National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health.

ACTION: Meeting announcement and request for comments.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a meeting of the NTP Board of Scientific Counselors (BSC). The BSC is a federally chartered, external advisory group composed of scientists from the

public and private sectors that provides primary scientific oversight to the NTP Director and evaluates the scientific merit of the NTP's intramural and collaborative programs.

DATES: The BSC meeting will be held on April 13, 2011. The deadline for submission of written comments is March 30, 2011, and for pre-registration to attend the meeting, including registering to present oral comments, is April 6, 2011. Persons needing interpreting services in order to attend should contact 301–402–8180 (voice) or 301–435–1908 (TTY). For other accommodations while on the NIEHS campus, contact 919–541–2475 or e-mail *niehsoeeo@niehs.nih.gov.* Requests should be made at least 7 business days in advance of the event.

ADDRESSES: The BSC meeting will be held in the Rodbell Auditorium, Rall Building at the NIEHS, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709. Public comments on all agenda topics and any other correspondence should be submitted to Dr. Lori White, Designated Federal Officer for the BSC, NTP Office of Liaison, Policy and Review, NIEHS, P.O. Box 12233, K2–03, Research Triangle Park, NC 27709; telephone: 919–541–9834; fax: 919–541–0295; *whiteld@niehs.nih.gov.* Courier address: NIEHS, 530 Davis Drive, Room K2136, Morrisville, NC 27560.

FOR FURTHER INFORMATION CONTACT: Dr. Lori White (telephone: 919–541–9834 or *whiteld@niehs.nih.gov*).

SUPPLEMENTARY INFORMATION:

Preliminary Agenda Topics and Availability of Meeting Materials

- Report of the NIEHS/NTP Director
- Report of the NTP Associate Director
- Contract Concept: Potential for Environmental and Therapeutic Agents to Induce Immunotoxicity
- NTP's Modified One-Generation Reproduction Study Design
- Statistical Methods used in NTP Technical Reports
- Research Concept: Nanomaterials Exposure Assessment
- NTP Initiative—Strategies to Support Exposure Assessments
- Center for the Evaluation of Risks to Human Reproduction Concept: Folic Acid Workshop
- Weight of Evidence Criteria

The updated agenda, roster of BSC members, background materials, public comments, and any additional information, when available, will be posted on the BSC meeting website (*http://ntp.niehs.nih.gov/go/165*) or may be requested in hardcopy from the Designated Federal Officer for the BSC (*see* **ADDRESSES** above). Following the meeting, summary minutes will be prepared and made available on the BSC meeting Web site.

Attendance and Registration

The meeting is scheduled for April 13, 2011, beginning at 8 a.m. (Eastern Standard Time) and continuing to adjournment. This meeting is open to the public with attendance limited only by the space available. Individuals who plan to attend are encouraged to register online at the BSC meeting Web site (*http://ntp.niehs.nih.gov/go/165*) by April 6, 2011, to facilitate planning for the meeting. Registered attendees are encouraged to access the meeting website to stay abreast of the most current information regarding the meeting. The NTP is making plans to videocast the meeting through the Internet at *http://www.niehs.nih.gov/news/video/live.*

Request for Comments

Written comments submitted in response to this notice should be received by March 30, 2011. Comments will be posted on the BSC meeting Web site and persons submitting them will be identified by their name and affiliation and/or sponsoring organization, if applicable. Persons submitting written comments should include their name, affiliation (if applicable), phone, email, and sponsoring organization (if any) with the document.

Time will be allotted during the meeting for the public to present oral comments to the BSC on the agenda topics. In addition to in-person oral comments at the meeting at the NIEHS, public comments can be presented by teleconference line. There will be 50 lines for this call; availability will be on a first-come, first-served basis. The available lines will be open from 8 AM until adjournment, although public comments will be received only during the formal public comment periods, which are indicated on the preliminary agenda. Each organization is allowed one time slot per agenda topic. At least 7 minutes will be allotted to each speaker, and if time permits, may be extended to 10 minutes at the discretion of the BSC chair. Persons wishing to present oral comments are encouraged to pre-register on the NTP meeting website, indicate whether they will present comments in-person or via the teleconference line, and list the topic(s) on which they plan to comment. The access number for the teleconference line will be provided to registrants by email prior to the meeting. Registration for oral comments will also be available on both meeting days, although time allowed for presentation by these registrants may be less than that for pre-registered speakers and will be determined by the number of persons who register at the meeting.

Persons registering to make oral comments are asked to send a copy of their statement or PowerPoint slides to the Designated Federal Officer for the BSC (*see* **ADDRESSES** above) by April 6, 2011. Written statements can supplement and may expand the oral presentation. If registering on-site and reading from written text, please bring 40 copies of the statement for distribution to the BSC and NTP staff and to supplement the record.

Background Information on the NTP Board of Scientific Counselors

The BSC is a technical advisory body comprised of scientists from the public and private sectors that provides primary scientific oversight to the NTP. Specifically, the BSC advises the NTP on matters of scientific program content, both present and future, and conducts periodic review of the program for the purpose of determining and advising on the scientific merit of its activities and their overall scientific quality. Its members are selected from recognized authorities knowledgeable in fields such as toxicology, pharmacology, pathology, biochemistry, epidemiology, risk assessment, carcinogenesis, mutagenesis, molecular biology, behavioral toxicology, neurotoxicology, immunotoxicology, reproductive toxicology or teratology, and biostatistics. Members serve overlapping terms of up to four years. The BSC usually meets biannually.

Dated: February 2, 2011.

John R. Bucher,

Associate Director, National Toxicology Program.

[FR Doc. 2011–3273 Filed 2–11–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice Correction; Generic Submission of Technology Transfer Center (TTC) External Customer Satisfaction Surveys (NCI)

The **Federal Register** notice published on December 23, 2010 (75 FR 80830) announcing the submission to OMB of the project titled, "Technology Transfer Center (TTC) External Customer Satisfaction Survey (NCI)" was submitted with errors. The submission

is now being presented as a generic submission which will include multiple customer satisfaction surveys over the course of three years. At this time, only the initial survey has been developed and the subsequent surveys have yet to be envisioned. Once subsequent surveys and populations have been identified and finalized, NCI will submit generic information collections (Gen ICs) to OMB for review and approval. The original burden total presented in the 60-day **Federal Register** Notice is correct however it will be used over the period of three years.

Dated: February 7, 2011.

Vivian Horovitch-Kelley,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 2011–3242 Filed 2–11–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Risk Genes and Environment Interactions in NTDs.

Date: March 14, 2011.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Neelakanta Ravindranath, Ph.D., Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–435–6889, *ravindrn@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: February 8, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–3240 Filed 2–11–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, "VULVODYNIA".

Date: March 14, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Dennis E. Leszczynski, PhD, Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–435–6884, *leszczyd@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: February 8, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–3239 Filed 2–11–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, National Children's Study—Vanguard Center.

Date: March 16, 2011.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 2A01, Rockville, MD 20852, 301–435–0862 (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, PhD, Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–435–6680, *skandasa@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: February 8, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–3241 Filed 2–11–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2011–0070]

Commercial Fishing Safety Advisory Committee; Meeting

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: The Commercial Fishing Safety Advisory Committee (CFSAC) will meet in Portsmouth, Virginia to discuss various issues relating to safety in the commercial fishing industry. This meeting will be open to the public.

DATES: The Committee will meet on March 1–3, 2011, from 8 a.m. to 5 p.m. This meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before February 23, 2011.

ADDRESSES: The Committee will meet at the Renaissance Portsmouth Hotel and Waterfront Conference Center, 425 Water Street, Portsmouth, Virginia 23705.

Please send written material, comments, and requests to make oral presentations to Mr. Jack Kemerer, Assistant to the Designated Federal Official (DFO) of CFSAC, by one of the submission methods described below. All materials, comments, and requests must be identified by docket number [USCG–2011–0070].

Submission Methods: Please use only one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: jack.a.kemerer@uscg.mil.* Include the docket number in the subject line of the message.
- *Fax:* (202) 372–1917.
- *Mail:* Mr. Jack Kemerer, COMDT (CG–54221), 2100 2nd Street, SW., Stop 7581, Washington, DC 20593.

Instructions: All submissions received must include the words "U.S. Coast Guard" and docket number [USCG–2011–0070]. All submissions received will be posted without alteration at *www.regulations.gov,* including any personal information provided. 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).

Docket: For access to the docket to read background documents or submissions received by the CFSAC, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Jack Kemerer, Assistant to DFO of CFSAC, by telephone at 202–372–1249, fax 202–372–1917, email: *jack.a.kemerer@uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463). The CFSAC is authorized by 46 U.S.C. 4508 and the Committee's purpose is to provide advice and recommendations to the U.S. Coast Guard and the Department of Homeland Security on matters relating to the safety of commercial fishing industry vessels.

Agenda of Meeting

The agenda for the CFSAC meeting is as follows:

(1) Review of Fishing Vessel Safety Requirements changes from the Coast Guard Authorization Act of 2010.

(2) Status of Commercial Fishing Vessel Safety Rulemaking.

(3) Commercial Fishing Vessel Safety District Coordinators updates.

(4) Industry Representatives updates.

(5) Presentation on research and safety related projects by the National Institute for Occupational Safety and Health.

(6) Presentation on safety standards by the National Oceanic and Atmospheric Administration, National Marine Fisheries Service.

(7) Subcommittee sessions on: Communications and outreach; risk management; operator training; vessel construction and standards; safety and survival equipment; safety examinations; and safety program strategies, future plans, and long range goals.

(8) Opportunity for public to comment will be provided each day.

Procedural

This meeting is open to the public. Please note that the meeting may close early if all business is finished. Members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Designated Federal Officer no later than February 23, 2011. Written material for distribution at the meeting should reach the Coast Guard no later than February 18, 2011. Copies of all material that is received will be distributed to each member of the committee in advance of the meeting. Please submit a copy to the DFO for distribution to committee members no later than February 23, 2011.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at a meeting, contact the Designated Federal Officer as soon as possible, but no later than February 23, 2011.

Dated: February 9, 2011.

J. G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. 2011–3338 Filed 2–10–11; 11:15 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

United States Immigration and Customs Enforcement

Agency Information Collection Activities: Revision of an Existing Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection for Review; Student and Exchange Visitor Information System (SEVIS); OMB Control No. 1653–0038,

* * * * *

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (ICE), will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Notice of this information collection was previously published in the **Federal Register** on November 10, 2010 Vol. 75 No. 217, 69095, allowing for a 60 day public comment period. No comments were received during this period.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted for thirty days until April 15, 2011.

Written comments and suggestions from the public and affected agencies regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to OMB Desk Officer, for United States Immigration and Customs Enforcement, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved information collection.

(2) *Title of the Form/Collection:* Student and Exchange Visitor Information System (SEVIS)

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Forms I–17 and I–20; U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Not-for-profit institutions and individuals or households.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

No. of respondents	Form name/form number	Avg. burden per response (in hours)
280,000	Certificate of Eligibility for Nonimmigrant (F–1) Student Status—For Academic and Language Students/ICE Form I–20 (Students).	0.5
90,000	Certificate of Eligibility for Nonimmigrant (M–1) Student Status—For Academic and Language Students/ICE Form I–20 (Spouse/Dependents).	0.5
280,000	Optional Practical Training 12 Month Request/No Form	0.083
12,000	Optional Practical Training 17 Month Extension Request/No Form.	0.083
5,525	Maintenance of SEVP Certification/ICE Form I–17	4

(6) *An estimate of the total public burden (in hours) associated with the collection:* 557,816 annual burden hours.

Requests for a copy of the proposed information collection instrument, with instructions; or inquiries for additional information should be directed to: Office of the Chief Financial Officer/OAA/Records Branch, U.S. Immigration and Customs Enforcement, 500 12th Street SW., STOP 5705 Washington, DC 20536–5705.

Dated: February 2, 2011.

John Ramsay,

Forms Program Manager, Office of Asset Administration, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 2011–3238 Filed 2–11–11; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–ES–2011–N021; 60120–1113–0000–D2]

Endangered and Threatened Wildlife and Plants; Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permits.

SUMMARY: We announce our receipt of applications to conduct certain activities pertaining to enhancement of survival of endangered species. The Endangered Species Act requires that we invite public comment on these permit applications.

DATES: Written comments on this request for a permit must be received by March 16, 2011.

ADDRESSES: Submit written data or comments to the Assistant Regional Director-Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, CO 80225–0486; facsimile 303–236–0027.

SUPPLEMENTARY INFORMATION:

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal indentifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Document Availability

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552), by any party who submits a request for a copy of such documents within 30 days of the date of publication of this notice to Kris Olsen, by mail (*see* **ADDRESSES**) or by telephone at 303–236–4256. All comments we receive from individuals become part of the official public record.

Applications

The following applicant has requested an issuance of enhancement of survival permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*):

Applicant: Scott Gangle, North Dakota Game and Fish Department, Bismarck, North Dakota, TE–34128A. The applicant requests a permit to take pallid sturgeon (*Scaphirhynchus albus*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing its survival and recovery.

Dated:January 28, 2011.

Noreen E. Walsh,

Deputy Regional Director, Denver, Colorado.

[FR Doc. 2011–3286 Filed 2–11–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal-State Class III Gaming Compact.

SUMMARY: This notice publishes an extension of the Gaming Compact between the Oglala Sioux Tribe and the State of South Dakota.

DATES: *Effective Date:* February 14, 2011.

FOR FURTHER INFORMATION CONTACT: Paula L. Hart, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. This amendment allows for the extension of the current Tribal-State Compact until June 30, 2011.

Dated: February 1, 2011.

George Skibine,

Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 2011–3179 Filed 2–11–11; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–12467, AA–8104–02; LLAK962000–L14100000–KC0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision will be issued by the Bureau of Land Management (BLM) to Ahtna, Incorporated. The decision approves conveyance of the surface and subsurface estates in the lands described below pursuant to the Alaska Native Claims Settlement Act. The lands are in the vicinity of Mentasta Lake, Alaska, and are located in:

Copper River Meridian, Alaska

T. 11 N., R. 7 E.,
Secs. 1 to 18, inclusive;
Secs. 19 to 24, inclusive, those lands lying north of the highway right-of-way.
Containing approximately 14,143 acres.

T. 12 N., R. 7 E.,
Secs. 5 to 8, inclusive;
Secs. 15 to 22, inclusive;
Secs. 27 to 36, inclusive.
Containing approximately 13,846 acres.

T. 12 N., R. 8 E.,
Secs. 19, 30, 31, and 32.
Containing approximately 2,452 acres.
Aggregating approximately 30,441 acres.

Notice of the decision will also be published four times in the *Anchorage Daily News.*

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until March 16, 2011 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

3. Notices of appeal transmitted by electronic means, such as facsimile or e-mail, will not be accepted as timely filed.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The BLM by phone at 907–271–5960, by e-mail at *ak.blm.conveyance@blm.gov,* or by telecommunication device (TTD) through the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

Dina L. Torres,

Land Transfer Resolution Specialist, Land Transfer Adjudication II Branch.

[FR Doc. 2011–3197 Filed 2–11–11; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAZ956000.L14200000.BJ0000.241A]

Notice of Filing of Plats of Survey; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey; Arizona.

SUMMARY: The plats of survey of the described lands were officially filed in the Arizona State Office, Bureau of Land Management, Phoenix, Arizona, on dates indicated.

SUPPLEMENTARY INFORMATION:

The Gila and Salt River Meridian, Arizona:

The plat representing the establishment of the southwest and northwest township corners, Township 30 North, Range 6 East, accepted September 9, 2010, and officially filed September 15, 2010, for Group 1059, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the establishment of the corner of sections 1, 2, 35 and 36, and the corner of sections 5, 6, 31 and 32, on the boundary between Townships. 31 and 32 North, Range 6 East and an electronic control monument, Township 31 North, Range 6 East, accepted September 9, 2010, and officially filed September 15, 2010, for Group 1059, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat of Township 32 North, Range 6 East, representing the establishment of the corner of sections 1, 6, 7 and 12, on the boundary between Townships 32 North, Ranges 5 and 6 East, accepted September 9, 2010, and officially filed September 15, 2010, for Group 1059, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the establishment of the northwest township corner, Township 32 ½ North, Range 6 East, accepted October 29, 2010, and officially filed November 24, 2010, for Group 1059, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat of Township 33 North, Range 6 East, representing the establishment of the northwest township corner and an electronic control monument, and the

corner of sections 19, 24, 25 and 30, on the boundary between Townships 33 North, Ranges 5 and 6 East, accepted October 29, 2010, and officially filed November 24, 2010, for Group 1059, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the establishment of the northeast and northwest township corners and an electronic control monument, Township 30 North, Range 7 East, accepted September 9, 2010, and officially filed September 15, 2010, for Group 1059, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat of Township 31 North, Range 7 East, representing the establishment of the northeast township corner and an electronic control monument, and the corner of sections 5, 6, 31 and 32, on the boundary between Townships 31 and 32 North, Range 7 East, accepted September 9, 2010, and officially filed September 15, 2010, for Group 1059, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the establishment of the northeast and northwest township corners and an electronic control monument, Township 32 North, Range 7 East, accepted September 9, 2010, and officially filed September 15, 2010, for Group 1059, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the establishment of the northwest township corner, Township 32 ½ North, Range 7 East, accepted October 29, 2010, and officially filed November 24, 2010, for Group 1059, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the establishment of the southwest and northwest township corners and an electronic control monument, Township 33 North, Range 7 East, accepted October 29, 2010, and officially filed November 24, 2010, for Group 1059, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the dependent resurvey of a portion of the west boundary, a portion of the subdivisional lines and a portion of the subdivision of section 7, the subdivision of section 18 and metes-and-bounds surveys in sections 7 and 18, Township 39 North, Range 7 East, accepted August 19, 2010, and officially filed August 24, 2010, for Group 1052, Arizona.

This plat was prepared at the request of the Bureau of Land Management.

The plat representing the establishment of the southwest and northwest township corners and an electronic control monument, Township 30 North, Range 8 East, accepted September 9, 2010, and officially filed September 15, 2010, for Group 1059, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the establishment of the northwest township corner and an electronic control monument, Township 31 North, Range 8 East, accepted September 9, 2010, and officially filed September 15, 2010, for Group 1059, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the establishment of the northwest township corner and an electronic control monument, Township 32 North, Range 8 East, accepted September 9, 2010, and officially filed September 15, 2010, for Group 1059, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the establishment of the northwest township corner, Township 32 ½ North, Range 8 East, accepted October 29, 2010, and officially filed November 24, 2010, for Group 1059, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the establishment of the southeast, southwest, northeast and northwest township corners and an electronic control monument, Township 33 North, Range 8 East, accepted September 9, 2010, and officially filed September 15, 2010, for Group 1059, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the establishment of the northwest township corner and an electronic control monument, Township 33 North, Range 9 East, accepted October 29, 2010, and officially filed November 24, 2010, for Group 1059, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the establishment of the northeast township corner, Township 33 ½ North, Range 9 East, accepted October 29, 2010, and officially filed November 24, 2010, for Group 1059, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the establishment of the northwest township corner and an electronic control monument, Township 34 North, Range 9 East, accepted January 24, 2011, and officially filed January 27, 2011, for Group 1059, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the establishment of the northwest township corner and an electronic control monument, Township 35 North, Range 9 East, accepted January 24, 2011, and officially filed January 27, 2011, for Group 1059, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the establishment of the northwest township corner and an electronic control monument, Township 36 North, Range 9 East, accepted January 24, 2011, and officially filed January 27, 2011, for Group 1059, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the establishment of the northeast township corner, Township 33 ½ North, Range 10 East, accepted January 3, 2011, and officially filed January 7, 2011, for Group 1059, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the establishment of the northeast and northwest township corners and an electronic control monument, Township 34 North, Range 10 East, accepted January 3, 2011, and officially filed January 7, 2011, for Group 1059, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the establishment of the northeast and northwest township corners and an electronic control monument, Township 35 North, Range 10 East, accepted January 3, 2011, and officially filed January 7, 2011, for Group 1059, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the establishment of the northeast and northwest township corners and an electronic control monument, Township 36 North, Range 10 East, accepted January 3, 2011, and officially filed January 7, 2011, for Group 1059, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the establishment of an electronic control monument, Township 33 North, Range 11 East, accepted January 24, 2011, and officially filed January 27, 2011, for Group 1059, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the geographic positions of township corners, Township 33½ North, Range 11 East, accepted January 24, 2011, and officially filed January 27, 2011, for Group 1059, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the establishment of an electronic control monument, Township 34 North, Range 11 East, accepted January 24, 2011, and officially filed January 27, 2011, for Group 1059, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the establishment of an electronic control monument, Township 35 North, Range 11 East, accepted January 24, 2011, and officially filed January 27, 2011, for Group 1059, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the establishment of an electronic control monument, Township 36 North, Range 11 East, accepted January 24, 2011, and officially filed January 27, 2011, for Group 1059, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the establishment of the northeast and northwest township corners and an electronic control monument, Township 33 North, Range 12 East, accepted November 29, 2010, and officially filed December 1, 2010, for Group 1059, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the establishment of the northeast and northwest township corners, Township 33½ North, Range 12 East, accepted November 29, 2010, and officially filed December 1, 2010, for Group 1059, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the establishment of the northeast and northwest township corners and an electronic control monument, Township 34 North, Range 12 East, accepted November 29, 2010, and officially filed December 1, 2010, for Group 1059, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the establishment of the northeast and northwest township corners and an electronic control monument, Township 35 North, Range 12 East, accepted November 29, 2010, and officially filed December 1, 2010, for Group 1059, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the establishment of the northeast and northwest township corners and an electronic control monument, Township 36 North, Range 12 East, accepted November 29, 2010, and officially filed December 1, 2010, for Group 1059, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the establishment of the southeast and northeast township corners, Township 33 North, Range 12½ East, accepted November 29, 2010, and officially filed December 1, 2010, for Group 1059, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the establishment of the northeast township corner, Township 33½ North, Range 12½ East, accepted January 3, 2011, and officially filed January 7, 2011, for Group 1059, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the establishment of the northeast township corner, Township 34 North, Range 12½ East, accepted January 3, 2011, and officially filed January 7, 2011, for Group 1059, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the establishment of the northeast township corner, Township 35 North, Range 12½ East, accepted January 3, 2011, and officially filed January 7, 2011, for Group 1059, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the geographic positions of the township corners, Township 36 North, Range 12 ½ East, accepted January 3, 2011, and officially filed January 7, 2011, for Group 1059, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the dependent resurvey of the south and east boundaries and a portion of the subdivisional lines and the subdivision of sections 1 through 3 and 5 through 36, Township 22 North, Range 21 East, accepted June 8, 2010, and officially filed June 11, 2010, for Group 1064, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the dependent resurvey of the Ninth Standard Parallel North (south boundary) and the east, west and north boundaries and the survey of the subdivisional lines, Township 37 North, Range 30 East, accepted July 20, 2010, and officially filed July 23, 2010, for Group 1062, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat (in 2 sheets) representing the dependent resurvey of the Ninth Standard Parallel North (south boundary) and the north boundary and the survey of the subdivisional lines and the subdivision of section 19 and a metes-and-bounds survey, Township 37 North, Range 31 East, accepted July 20, 2010, and officially filed July 23, 2010, for Group 1062, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat (in 4 sheets) representing the dependent resurvey of a portion of the Gila and Salt River Principal Meridian (the east boundary), a portion of the south boundary, portions of General Survey Nos. 12 (Lot 39), 187 (Lot 50), 267 (Lot 49), portions of Mineral Survey Nos. 853 (Lot 52), 1058 (Lot 55), 1111, 1318, 1713, 1827, 1980, 2414, 2863,

2908, 3032 and 3764, the survey of a portion of the subdivisional lines and a metes-and-bounds survey, Township 10 North, Range 1 West, accepted August 5, 2010, and officially filed August 11, 2010, for Group 1063, Arizona.

This plat was prepared at the request of the United States Forest Service.

The plat representing the dependent resurvey of a portion of the subdivisional lines, Township 41 North, Range 15 West, accepted January 4, 2011, and officially filed January 20, 2011, for Group 1088, Arizona.

This plat was prepared at the request of the Bureau of Land Management.

The plat representing the dependent resurvey of the Base Line and a portion of the subdivisional lines and the survey of a metes-and-bounds survey in section 36, Township 1 North, Range 24 West, accepted November 15, 2010, and officially filed November 17, 2010, for Group 1084, Arizona.

This plat was prepared at the request of the Bureau of Land Management.

The plat representing the dependent resurvey of a portion of the northeast boundary of the Gila River Indian Reservation, a portion of the subdivisional lines, a portion of the subdivision of section 1 and Tract 37, and the subdivision of section 1, Township 1 South, Range 1 East, accepted December 2, 2010, and officially filed December 7, 2010, for Group 1072, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Western Regional Office.

The plat representing the dependent resurvey of a portion of the subdivisional lines, Township 4 South, Range 12 East, accepted August 3, 2010, and officially filed August 6, 2010, for Group 1040, Arizona.

This plat was prepared at the request of the Bureau of Land Management.

A person or party who wishes to protest against any of these surveys must file a written protest with the Arizona State Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed.

FOR FURTHER INFORMATION CONTACT: These plats will be available for inspection in the Arizona State Office, Bureau of Land Management, One North Central Avenue, Suite 800, Phoenix, Arizona 85004–4427.

Dated: February 7, 2011.

Stephen K. Hansen,

Chief Cadastral Surveyor of Arizona.

[FR Doc. 2011–3263 Filed 2–11–11; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–AKR–DENA] [9924–PYS]

National Park Service Alaska Region's Subsistence Resource Commission (SRC) Program

AGENCY: National Park Service, Interior.

ACTION: Notice of public meeting for the National Park Service Alaska Region's Subsistence Resource Commission (SRC) program.

SUMMARY: The Denali National Park SRC will meet to develop and continue work on National Park Service (NPS) subsistence hunting program recommendations and other related subsistence management issues. The NPS SRC program is authorized under Title VIII, Section 808 of the Alaska National Interest Lands Conservation Act, Public Law 96–487, to operate in accordance with the provisions of the Federal Advisory Committee Act.

Public Availability of Comments: This meeting is open to the public and will have time allocated for public testimony. The public is welcome to present written or oral comments to the SRC. This meeting will be recorded and meeting minutes will be available upon request from the park superintendent for public inspection approximately six weeks after each meeting. Before including your address, telephone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment-including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Denali National Park SRC Meeting Date and Location: The Denali National Park SRC will meet at the Cantwell Community Center (Phone: 907–768–2591) in Cantwell, Alaska on Saturday, February 26, 2011, from 9 a.m. to 5 p.m. The meeting maybe rescheduled to occur on Tuesday, February 22, 2011, at the same time and location should a quorum not be available on Saturday, February 26, 2011. If the meeting date and location are changed, a notice will be published in local newspapers and announced on local radio stations prior to the meeting date. SRC meeting location and dates may need to be changed based on lack of quorum, inclement weather or local circumstances.

For Further Information On the Denali National Park SRC Meeting Contact: Philip Hooge, Assistant Superintendent and Amy Craver, Subsistence Manager, (907) 683–2231, Denali National Park and Preserve, P.O. Box 9, Denali Park, Alaska 99755, or Clarence Summers, Subsistence Manager, NPS Alaska Regional Office, at (907) 644–3603.

Proposed SRC Meeting Agenda

The proposed meeting agenda includes the following:

1. Call to order
2. SRC Roll Call and Confirmation of Quorum
3. Welcome and Introductions
4. Approval of Minutes
5. Administrative Announcements
6. Approve Agenda
7. Review SRC Purpose and Status of Membership
8. SRC Member Reports
9. Public and Other Agency Comments
10. Federal Subsistence Board Update
11. Alaska Board of Game Update
12. Old Business
    a. Subsistence Uses of Horns, Antlers, Bones and Plants EA Update
    b. SRC Chair's Workshop 2010
13. New Business
    a. Subsistence Manager Report
    b. Ranger Report
    c. Resource Management Program Update
14. Public and other Agency Comments
15. SRC Work Session
16. Set Time and Place for next SRC Meeting
17. Adjournment

Victor W. Knox,

Deputy Regional Director, Alaska.

[FR Doc. 2011–3258 Filed 2–11–11; 8:45 am]

BILLING CODE 4310–PF–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2280–665]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before January 8, 2011. Pursuant to §§ 60.13 or 60.15 of 36 CFR

part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St., NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by March 1, 2011.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Alexandra Lord,

Acting Chief, National Register of Historic Places/National Historic Landmarks Program.

ARIZONA

Maricopa County

Temple Beth Israel, 122 E Culver St, Phoenix, 11000043

Pima County

Vail Post Office, Old, 13105 E Colossal Cave Rd, Vail, 11000044

ARKANSAS

Chicot County

Lake Village Commercial Historic District, Roughly bounded by Lakeshore Dr, Jackson St, Chicot St, and Church St, Lake Village, 11000025

DELAWARE

New Castle County

Johnson—Morris House, 41 Upper Pike Creek Rd, Newark, 11000036

ILLINOIS

Coles County

Roytek, Richard, House, 3420 Richmond Ave, Mattoon, 11000030

Cook County

Brown, Roger, Home and Studio, 1926 N Halsted St, Chicago, 11000029

Schurz, Carl, High School, 3601 N Milwaukee Ave, Chicago, 11000031

MASSACHUSETTS

Worcester County

Athol High School, 494 School St, Athol, 11000022

South Union School, 21 Highland St, Southborough, 11000021

Thule—Plummer Buildings, 180 and 184 Main St, Worcester, 11000019

MISSOURI

Jackson County

Burnette—Berry House, 1030 W 65th St, Kansas City, 11000023

Johnson County

Jones Brothers Mule Barn, 101 N College Ave, Warrensburg, 11000045

St. Louis Independent City

Castle Ballroom, 2839–2845 Olive St, St. Louis (Independent City), 11000024

NEW MEXICO

Bernalillo County

Immanuel Presbyterian Church, (Buildings Designed by John Gaw Meem MPS) 114 Carlisle Boulevard SE, Albuquerque, 11000032

NEW YORK

Rensselaer County

Chapel and Cultural Center, 2125 Burdett Ave, Troy, 11000041

Tompkins County

Telluride House, 217 West Ave, Ithaca, 11000042

Westchester County

Booth, Evangeline, House, 101 N Central Ave, Hartsdale, 11000040

Witthoefft House, 11 Tallwood Rd, Armonk, 11000039

PENNSYLVANIA

Bucks County

Shelly School, (Educational Resources of Pennsylvania MPS) 130 Richlandtown Pike (SR 212), Richland Township, 11000037

VIRGINIA

Arlington County

Winslow, Earle Micajah, House, (Streamline Modern Houses in Arlington County, Va 1936–1945 MPS) 2333 N Vernon St, Arlington, 11000028

Loudoun County

Crednal, 34500 Welbourne Rd, Middleburg, 11000034

Virts, William, House, 38670 Old Wheatland Rd, Waterford, 11000027

Lynchburg Independent City

Diamond Hill Baptist Church, 1415 Grace St, Lynchburg (Independent City), 11000026

Virginia University of Lynchburg, 2058 Garfield Ave, Lynchburg (Independent City), 11000035

Washington County

Baker—St. John House, 18254 Providence Rd (Route 611), Abingdon, 11000033

WISCONSIN

Fond Du Lac County

Tygert Street Historic District, Tygert St and Spaulding Ave, generally bounded by Scott St and E Lane St, Ripon, 11000020

OTHER ACTIONS: In the interest of preservation, the comment period for the following resource has been shortened to (3) three days.

MICHIGAN

Washtenaw County

Chelsea Commercial Historic District, Main St and adjacent sections of Middle, Park, Jackson, East, and Orchard Sts, Chelsea, 11000046

[FR Doc. 2011–3193 Filed 2–11–11; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Meeting of the CJIS Advisory Policy Board

AGENCY: Federal Bureau of Investigation (FBI), Justice.

ACTION: Meeting notice.

SUMMARY: The purpose of this notice is to announce the meeting of the Criminal Justice Information Services (CJIS) Advisory Policy Board (APB). The CJIS APB is a federal advisory committee established pursuant to the Federal Advisory Committee Act (FACA). This meeting announcement is being published as required by Section 10 of the FACA.

The CJIS APB is responsible for reviewing policy issues and appropriate technical and operational issues related to the programs administered by the FBI's CJIS Division, and thereafter, making appropriate recommendations to the FBI Director. The programs administered by the CJIS Division are the Integrated Automated Fingerprint Identification System, Interstate Identification Index, Law Enforcement Online, National Crime Information Center, National Instant Criminal Background Check System, National Incident-Based Reporting System, Law Enforcement National Data Exchange, and Uniform Crime Reporting.

The meeting will be open to the public on a first-come, first-seated basis. Any member of the public wishing to file a written statement concerning the CJIS Division's programs or wishing to address this session should notify the CJIS Designated Federal Officer, R. Scott Trent at (304) 625–5263 at least 24 hours prior to the start of the session. The notification should contain the requestor's name, corporate designation, and consumer affiliation or government designation along with a short statement describing the topic to be addressed and the time needed for the presentation. A requestor will ordinarily be allowed no more than 15 minutes to present a topic.

DATES AND TIMES: The APB will meet in open session from 8:30 a.m. until 5 p.m., on June 2–3, 2011.

ADDRESSES: The meeting will take place at The Hyatt Regency Crown Center, 2345 McGhee Street, Kansas City, Missouri 64108, telephone (816) 421–1234.

FOR FURTHER INFORMATION CONTACT: Inquiries may be addressed to Ms. Skeeter J. Murray; Management and Program Assistant; Training and Systems Education Unit, Resources Management Section; FBI CJIS Division, Module C3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306–0149; telephone (304) 625–3518, facsimile (304) 625–5090.

Dated: January 31, 2011.

R. Scott Trent,

CJIS Designated Federal Officer, Criminal Justice Information Services Division, Federal Bureau of Investigation.

[FR Doc. 2011–3103 Filed 2–11–11; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF JUSTICE

National Institute of Corrections

Advisory Board Meeting

TIME AND DATE: 8 a.m. to 4:30 p.m. on Monday, March 7, 2011.

8 a.m. to 4:30 p.m. on Tuesday, March 8, 2011.

PLACE: National Institute of Corrections, 500 First Street, NW., Washington, DC 20534, 1 (800) 995–6423.

STATUS: Open.

MATTERS TO BE CONSIDERED: Briefing on NIC Reports; Agency Reports; Quarterly Report by Office of Justice Programs.

CONTACT PERSON FOR MORE INFORMATION: Thomas Beauclair, Deputy Director, 202–307–3106, ext. 44254.

Morris L. Thigpen,

Director.

[FR Doc. 2011–3097 Filed 2–11–11; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act; Native American Employment and Training Council

AGENCY: Employment and Training Administration, U. S. Department of Labor.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (FACA) (Pub. L. 92–463), as amended, and Section 166(h)(4) of the Workforce Investment Act (WIA) [29 U.S.C. 2911(h)(4)], notice is hereby given of the next meeting of the Native American Employment and Training Council (Council), as constituted under WIA.

DATES: The meeting will begin at 1:30 p.m. (Eastern Time) on Wednesday, March 2, 2011, and continue until 4:30 p.m. that day. The meeting will reconvene at 9 a.m. on Thursday, March 3, 2011, and adjourn at 4:30 p.m. that day. The period from 2:30 p.m. to 4:30 p.m. on March 2, 2011, will be reserved for participation and presentations by members of the public.

ADDRESSES: The meetings will be held at the U.S. Bureau of Labor Statistics, Postal Square Building, 2 Massachusetts Avenue, NE., Washington, DC 20212.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Members of the public not present may submit a written statement on or before March 1, 2011, to be included in the record of the meeting. Statements are to be submitted to Mrs. Evangeline M. Campbell, Designated Federal Official (DFO), U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–4209, Washington, DC 20210. Persons who need special accommodations should contact Mr. Craig Lewis at (202) 693–3384, at least two business days before the meeting. The formal agenda will focus on the following topics: (1) U.S. Department of Labor, Employment and Training Program Year 2011 One Year Training and Employment Guidance Letter; (2) U.S. Department of Labor Tribal Consultation Policy; (3) Native American Employment and Training Council Charter; (4) Transfer of Grants Management Duties to the Regions Proposal; (5) Education Measure Report and Recommendations; (6) Election of Council Chair and Vice-Chair; (7) New Council Member Introduction and Briefing; (8) Council Update; (9) Council Workgroup Reports; and (10) Council Recommendations.

FOR FURTHER INFORMATION CONTACT: Mrs. Campbell, DFO, Indian and Native American Program, Employment and Training Administration, U.S. Department of Labor, Room S–4209, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone number (202) 693–3737 (VOICE) (this is not a toll-free number).

Signed at Washington, DC, this 8th day of February 2011.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2011–3189 Filed 2–11–11; 8:45 am]

BILLING CODE 4510–FR–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (11–114)]

NASA Advisory Council; Science Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Science Committee of the NASA Advisory Council (NAC). This Committee reports to the NAC. The Meeting will be held for the purpose of soliciting from the scientific community and other persons scientific and technical information relevant to program planning.

DATES: DATES: Thursday, March 3, 2011, 8:30 a.m. to 5 p.m., and Friday, March 4, 2011, 8:30 a.m. to 2 p.m., Local Time.

ADDRESSES: NASA Headquarters, 300 E Street, SW., Rooms 9H40 and 3H46 consecutively, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–4452, fax (202) 358–4118, or *mnorris@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. This meeting is also available telephonically and by WebEx. Any interested person may call the USA toll free conference call number 888–972–6406, pass code Science Committee, to participate in this meeting by telephone. The WebEx link is *https://nasa.webex.com/,* meeting number on March 3 is 992 389 193, and password $C2011Mar; the meeting number on March 4 is 994 542 061, and password $C2011Mar. The agenda for the meeting includes the following topics:

—Fiscal Year 2012 Budget Request
—Launch Vehicle Costs
—Program and Subcommittee Updates

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide a copy of their

passport, visa, or resident alien card in addition to providing the following information no less than 10 working days prior to the meeting: Full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee. To expedite admittance, attendees with U.S. citizenship can provide identifying information 3 working days in advance by contacting Marian Norris via e-mail at *mnorris@nasa.gov* or by telephone at (202) 358–4452.

Dated: February 7, 2011.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2011–3180 Filed 2–11–11; 8:45 am]

BILLING CODE P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting

TIME AND DATE: 10 a.m., Thursday, February 17, 2011.

PLACE: Board Room, 7th Floor, Room 7047. 1775 Duke Street (All visitors must use Diagonal Road Entrance) Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Final Interpretive Ruling and Policy Statement 11–02, Corporate Federal Credit Union Chartering Guidelines.
2. Proposed Rule, Parts 741 and 751 of NCUA's Rules and Regulations, Incentive-Based Compensation Arrangements.
3. Proposed Rule, Parts 703, 704, 709 and 742 of NCUA's Rules and Regulations, Replacement or Removal of References to Credit Ratings in NCUA Regulations.
4. Interest Rate Ceiling Determination.
5. Insurance Fund Report.

RECESS: 11:15 a.m.

TIME AND DATE: 11:30 a.m., Thursday, February 17, 2011.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Creditor Claim and Insurance Appeals (4). Closed pursuant to some or all of the following: Exemptions (4) and (6).
2. Consideration of Supervisory Activities (2). Closed pursuant to some or all of the following: Exemptions (5), (8), (9)(A)(ii) and 9(B).

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, Telephone: 703–518–6304.

Mary Rupp,

Board Secretary.

[FR Doc. 2011–3381 Filed 2–10–11; 4:15 pm]

BILLING CODE P

NATIONAL SCIENCE FOUNDATION

Proposal Review for Physics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Proposal Review for the Center for Magnetic Self-Organization in Laboratory and Astrophysical Plasmas (CMS0) Site Visit (1208).

Dates/Time: February 22, 2011, 8 a.m.–6 p.m.; February 23, 2011, 8:30 a.m.–5 p.m.

Place: University of Wisconsin, Madison.

Type of Meeting: Partially open.

Contact Person: Dr. C. Denise Caldwell, Deputy Division Director (MPS/PHY), Rm. 1015, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230 (703) 292–7371.

Purpose of Meeting: To provide advice and recommendations concerning progress of the Center for Magnetic Self-Organization in Laboratory and Astrophysical Plasmas (CMS0).

Agenda:

Feb. 22, 2011 8 a.m.–2:45 p.m. Open Sessions

Refreshments & greetings (Pyle Center)
Introduction (Ellen Zweibel, Denise Caldwell)
Overview of CMSO (Ellen Zweibel)
Dynamos (Cary Forest/Fausto Cattaneo)
Momentum Transport (Hui Li/Mark Nornberg)
Reconnection (Amitava Bhattacharjee/Masaaki Yamada)
Lunch with students & postdocs at Pyle Center
Turbulence (Paul Terry, Leonid Malyshkin)
MSO Outreach Programs (Ella Braden)

Feb. 22, 2011 2:45 p.m.–4 p.m. Closed Executive Session

Feb. 22, 2011 2:45 p.m.–6 p.m. Open Sessions

Poster Session (Home of Plasma Dynamo Experiment, Sterling Hall)
Tour of experiments (Chamberlin Hall)

February 23, 2011 8:30 a.m.–5 p.m. Closed Executive Session

Reason for Late Notice: Due to administrative complications and the necessity to proceed with the review.

Reason for Closing: The work being reviewed may include information of a proprietary or confidential nature, including technical information; financial data such as salaries; and personal information concerning individuals associated with the center. These matters are exempt under (4) and (6) of 5 U.S.C. 552b(c), of the Government in the Sunshine Act.

Dated: February 9, 2011.

Suzanne H. Plimpton,

Reports Clearance Officer.

[FR Doc. 2011–3228 Filed 2–11–11; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

National Science Board; Sunshine Act Meetings; Impromptu Notice of Time & Location Change

The National Science Board's Committee on Program and Plans, pursuant to NSF regulations (45 CFR Part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice of an Impromptu Change in regard to the scheduling of a meeting for the transaction of National Science Board business and other matters specified, as follows:

ORIGINAL DATE AND TIME: Open Session, Monday, February 14, at 1 p.m. to 3:30 p.m. Closed Session, Monday, February 14, at 3:30 p.m. to 4:15 p.m.

NEW DATE AND TIME: Open Session, Monday, February 14, at 12:15 p.m. to 2:45 p.m. Closed Session, Monday, February 14, at 5:15 p.m. to 6:15 p.m.

SUBJECT MATTER: No change.

STATUS: No change.

ORIGINAL LOCATION: Room 1295 or 1235, National Science Foundation, 4201Wilson Blvd., Arlington, VA 22230.

NEW LOCATION: Room 1295. Public overflow room for the open session will be located in room 130, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

VISITOR BADGE REQUIREMENTS: All visitors must report to the NSF visitor desk at the 9th and N. Stuart Streets entrance to receive a visitor's badge. Public visitors must arrange for a visitor's badge in advance. Call 703–292–7000 or e-mail *NationalScienceBrd@nsf.gov* and leave your name and place of business to

request your badge, which will be ready for pick-up at the visitor's desk on the day of the meeting.

UPDATES AND POINT OF CONTACT: Please refer to the National Science Board website *http://www.nsf.gov/nsb* for additional information and schedule updates (time, place, subject matter or status of meeting) may be found at *http://www.nsf.gov/nsb/notices/.* Point of contact for this meeting is: Elizabeth Strickland, National Science Foundation, 4201Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–7000.

Daniel A. Lauretano,

Counsel to the National Science Board.

[FR Doc. 2011–3359 Filed 2–10–11; 4:15 pm]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 04000341; NRC–2009–0539]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact For License Amendment to Source Materials License No. STC–133 for Unrestricted Release of The Defense Logistics Agency, DLA Strategic Materials Depot, in New Haven, IN

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Environmental Assessment and Finding of No Significant Impact for License Amendment.

FOR FURTHER INFORMATION CONTACT: Dennis Lawyer, Health Physicist, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region 1, 475 Allendale Road, King of Prussia, Pennsylvania; telephone 610–337–5366; fax number 610–337–5269 or by e-mail: *Dennis.Lawyer@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Source Materials License No. STC–133. This license is held by Defense Logistics Agency, DLA Strategic Materials (the Licensee), for its Depot located on State Route 14 in New Haven, Indiana (the Facility). Issuance of the amendment would authorize release of the Facility for unrestricted use. The Licensee requested this action in a letter dated February 24, 2009. The NRC has prepared an Environmental Assessment (EA) in support of this proposed action in accordance with the requirements of Title 10, Code of Federal Regulations (CFR), Part 51 (10 CFR Part 51). Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate with respect to the proposed action. The amendment will be issued to the Licensee following the publication of this FONSI and EA in the **Federal Register**.

II. Environmental Assessment

Identification of Proposed Action

The proposed action would approve the Licensee's February 24, 2009, license amendment request, resulting in release of the Facility for unrestricted use. License No. STC–133 was issued on February 14, 1957, pursuant to 10 CFR Part 40, and has been amended periodically since that time. This license authorized the Licensee to have unsealed source material for purposes of storage, sampling, repackaging, and transfer.

The Facility is situated on 268 acres and consists of warehouses and other office and support buildings. The Facility is located in a mixed rural and industrial area. Within the Facility, use of licensed materials was confined to the locations as described in the Licensee's Final Status Survey Report dated January 2009. Locations included outside storage areas covering 2300 square meters; warehouses 210–215 covering 16,054 square meters; and support buildings 136, 141, 145, and 146.

On September 24, 2004, the Licensee ceased licensed activities and initiated a survey and decontamination of the Facility. Based on the Licensee's historical knowledge of the site and the conditions of the Facility, the Licensee determined that only routine decontamination activities, in accordance with their NRC-approved, operating radiation safety procedures, were required. The Licensee was not required to submit a decommissioning plan to the NRC because worker cleanup activities and procedures were consistent with those approved for routine operations (*i.e.,* these procedures could not increase the potential health and safety impacts to workers or the public). The Licensee conducted surveys of the Facility and provided information to the NRC to demonstrate that it meets the criteria in Subpart E of 10 CFR Part 20 for unrestricted release.

Need for the Proposed Action

The Licensee has ceased conducting licensed activities at the Facility, and seeks the unrestricted use of its Facility.

Environmental Impacts of the Proposed Action

The historical review of licensed activities conducted at the Facility shows that such activities involved use of the following radionuclides with half-lives greater than 120 days: natural uranium and thorium mixtures. Prior to performing the final status survey, the Licensee conducted decontamination activities, as necessary, in the areas of the Facility affected by these radionuclides.

The Licensee conducted final status surveys during October and November 2006; June, August, and September 2007; and February 2008. These surveys covered the affected areas of the facility. The final status survey report was attached to the Licensee's amendment request dated February 24, 2009. The Licensee elected to demonstrate compliance with the radiological criteria for unrestricted release as specified in 10 CFR 20.1402 by developing derived concentration guideline levels (DCGLs) for its Facility. The Licensee conducted site-specific dose modeling using input parameters specific to the Facility, which included the soil's site-specific physical properties. The Licensee thus determined the maximum amount of residual radioactivity on building surfaces, equipment, materials and soils that will satisfy the NRC requirements in Subpart E of 10 CFR Part 20 for unrestricted release. The NRC previously reviewed the Licensee's methodology and proposed DCGLs, and concluded that the proposed DCGLs are acceptable for use as release criteria at the Facility. The NRC's approval of the Licensee's proposed DCGLs was published in the **Federal Register** on December 8, 2009 (74 FR 64762). The Licensee's final status survey results were below these DCGLs, and are thus acceptable.

The NRC staff had confirmatory surveys conducted during October 5–8, 2009. Some of the area results indicated a need to perform further investigation sampling. The Licensee completed additional sampling and mitigation and final surveys during July 2010. The NRC staff conducted a follow up confirmatory survey on July 22 and 23, 2010, and performed an inspection of the licensee's sampling, mitigation, and final status survey. None of the final confirmatory sample results exceeded the DCGLs established for the Facility. Based on its review, the staff has determined that the affected environment and any environmental impacts associated with the proposed action are bounded by the impacts

evaluated by the "Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC–Licensed Nuclear Facilities" (NUREG–1496) Volumes 1–3 (ML042310492, ML042320379, and ML042330385). Because the GEIS found that there were no significant impacts for the facility that bounds the Facility, the staff finds there were no significant environmental impacts from the use of radioactive material at the Facility. The NRC staff reviewed the docket file records and the final status survey report to identify any non-radiological hazards that may have impacted the environment surrounding the Facility. No such hazards or impacts to the environment were identified. The NRC has identified no other radiological or non-radiological activities in the area that could result in cumulative environmental impacts.

The NRC staff finds that the proposed release of the Facility for unrestricted use and the termination of the NRC materials license is in compliance with 10 CFR 20.1402. Based on its review, the staff considered the impact of the residual radioactivity at the Facility and concluded that the proposed action will not have a significant effect on the quality of the human environment.

Environmental Impacts of the Alternatives to the Proposed Action

Due to the largely administrative nature of the proposed action, its environmental impacts are small. Therefore, the only alternative the staff considered is the no-action alternative, under which the staff would leave things as they are by simply denying the amendment request. This no-action alternative is not feasible because it conflicts with 10 CFR 40.42, requiring that decommissioning of source material facilities be completed and approved by the NRC after licensed activities cease. The NRC's analysis of the Licensee's final status survey data confirmed that the Facility meets the requirements of 10 CFR 20.1402 for unrestricted release and the NRC has no reason not to approve release of the Facility. Additionally, denying the amendment request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the no-action alternative are therefore similar, and the no-action alternative is accordingly not further considered.

Conclusion

The NRC staff has concluded that the proposed action is consistent with the NRC's unrestricted release criteria specified in 10 CFR 20.1402 and that the proposed action will not significantly impact the quality of the human environment.

Agencies and Persons Consulted

NRC provided a draft of this Environmental Assessment to the Indiana State Department of Health for review on January 7, 2011. On January 12, 2011, Indiana State Department of Health, Radiological Health Program responded by electronic mail. The State agreed with the conclusions of the EA and otherwise had no comments.

The NRC staff has determined that the proposed action is of a procedural nature, and will not affect listed species or critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. The NRC staff has also determined that the proposed action is not the type of activity that has the potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act.

III. Finding of No Significant Impact

The NRC staff has prepared this EA in support of the proposed action. On the basis of this EA, the NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a Finding of No Significant Impact is appropriate.

IV. Further Information

Documents related to this action, including the application for license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents related to this action are listed below, along with their ADAMS accession numbers.

1. NUREG–1757, "Consolidated NMSS Decommissioning Guidance;"
2. Title 10 Code of Federal Regulations, Part 20, Subpart E, "Radiological Criteria for License Termination;"
3. Title 10, Code of Federal Regulations, Part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions;" and
4. NUREG–1496, "Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC–Licensed Nuclear Facilities."
5. Defense Logistics Agency request letter dated February 24, 2009 [ML090630138]
6. Defense Logistics Agency deficiency response letter dated May 19, 2009 [ML091410397]
7. Defense Logistics Agency deficiency response letter dated July 27, 2009 [ML092110028]
8. Oak Ridge Institute for Science and Education Report dated February 2010 [ML092800227]
9. Defense Logistics Agency deficiency response letter dated April 8, 2010 [ML101030841]
10. Defense Logistics Agency additional information letter dated October 21, 2010 [ML102950429]
11. Defense Logistics Agency additional information letter dated November 10, 2010 [ML103200071]
12. Oak Ridge Institute for Science and Education letter dated August 20, 2010 [ML102430288]

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* These documents may also be viewed electronically on the public computers located at the NRC's PDR, O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Region 1, 475 Allendale Road, King of Prussia this 2nd day of February 2011.

For the Nuclear Regulatory Commission.

James P. Dwyer,

Chief, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region 1.

[FR Doc. 2011–3226 Filed 2–11–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0031]

Office of New Reactors; Interim Staff Guidance on Impacts of Construction of New Nuclear Power Plants on Operating Units at Multi-Unit Sites

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Solicitation of public comment.

SUMMARY: The NRC staff is soliciting public comment on its proposed Interim Staff Guidance (ISG) COL–ISG–022 entitled "Impacts of Construction of

New Nuclear Power Plants on Operating Units at Multi-Unit Sites" (Agencywide Documents Access and Management System (ADAMS) Accession No. ML093440252). Through this ISG, the NRC staff provides guidance for assessing combined license (COL) applicant compliance with the requirements of Title 10 of the *Code of Federal Regulations,* Section 52.79(a)(31) (10 CFR 52.79(a)(31)). This regulation requires applicants for a COL intending to construct and operate new nuclear power plants (NPPs) on multi-unit sites to provide an evaluation of the potential hazards to structures, systems, and components (SSCs) important to safety for the operating units resulting from construction activities. The NRC staff issues COL–ISGs to facilitate timely implementation of current staff guidance and to facilitate activities associated with review of applications for COLs by the Office of New Reactors (NRO). This ISG supplements the guidance contained in Regulatory Guide (RG) 1.206, Revision 0, "Combined License Applications for Nuclear Power Plants (LWR Edition)." In addition, this ISG supplements the guidance provided for NRC staff review of COL applications contained in NUREG–0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants (SRP)," Chapter 1.0, dated November 2007. The NRC staff intends to incorporate the final approved COL–ISG–022 into the next revision of RG 1.206 and NUREG–0800 SRP Chapter 1.0.

DATES: Comments must be filed no later than 30 days from the date of publication of this notice in the **Federal Register**. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please include Docket ID: NRC–2011–0031 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site at *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID: NRC–2011–0031. Address questions about NRC dockets to Carol Gallagher at 301–492–3668; e-mail at *Carol.Gallagher@nrc.gov.*

Mail comments to: Cindy Bladey, Chief, Rules, Announcements and Directives Branch (RADB), Division of Administrative Services, Office of Administration, *Mail Stop:* TWB–05–01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to RADB at 301–492–3446.

The NRC ADAMS provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC Public Document Room reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail at *pdr.resource@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. William F. Burton, Chief, Rulemaking and Guidance Development Branch, Division of New Reactor Licensing, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone at 301–415–6332 or e-mail at *William.Burton@nrc.gov.*

SUPPLEMENTARY INFORMATION: The agency posts its issued staff guidance in the agency external web page (*http://www.nrc.gov/reading-rm/doc-collections/isg/*).

The NRC staff is issuing this notice to solicit public comments on the proposed COL–ISG–022. After the NRC staff considers any public comments, it will make a determination regarding the proposed COL–ISG–022.

Dated at Rockville, Maryland, this 26th day of January 2011.

For the Nuclear Regulatory Commission.

William F. Burton,

Chief, Rulemaking and Guidance Development Branch, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2011–3223 Filed 2–11–11; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

1. *Title and Purpose of information collection:* Financial Disclosure Statement: OMB 3220–0127. Under Section 10 of the Railroad Retirement Act and Section 2(d) of the Railroad Unemployment Insurance Act, the RRB may recover overpayments of annuities, pensions, death benefits, unemployment benefits, and sickness benefits that were made erroneously. An overpayment may be waived if the beneficiary was not at fault in causing the overpayment and recovery would cause financial hardship. The regulations for the recovery and waiver of erroneous payments are contained in 20 CFR part 255 and CFR part 340.

The RRB utilizes Form DR–423, Financial Disclosure Statement, to obtain information about the overpaid beneficiary's income, debts, and expenses if that person indicates that (s)he cannot make restitution for the overpayment. The information is used to determine if the overpayment should be waived as wholly or partially uncollectible. If waiver is denied, the information is used to determine the size and frequency of installment payments. The beneficiary is made aware of the overpayment by letter and is offered a variety of methods for recovery. One response is requested of each respondent. Completion is voluntary. However, failure to provide the requested information may result in a denial of the waiver request.

The RRB is proposing revisions to Form DR–423 for clarification purposes that include the addition of items related to employment, income,

monthly household expenses, and summaries of debts and assets. The new items are intended to provide a more accurate view of each respondent's financial circumstance. Non-burden impacting formatting and editorial changes are also proposed.

THE ESTIMATED ANNUAL RESPONDENT BURDEN IS AS FOLLOWS: ESTIMATE OF ANNUAL RESPONDENT BURDEN

Form No.(s)	Annual responses	Time (min)	Burden (hrs)
DR–423	1,200	105	2,100

2 *Title and Purpose of information collection:* Statement Regarding Contributions and Support of Children: OMB 3220–0195.

Section 2(d)(4) of the Railroad Retirement Act (RRA), provides, in part, that a child is deemed dependent if the conditions set forth in Section 202(d)(3),(4) and (9) of the Social Security Act are met. Section 202(d)(4) of the Social Security Act, as amended by Public Law 104–121, requires as a condition of dependency, that a child receives one-half of his or her support from the stepparent. This dependency impacts upon the entitlement of a spouse or survivor of an employee whose entitlement is based upon having a stepchild of the employee in care, or on an individual seeking a child's annuity as a stepchild of an employee. Therefore, depending on the employee for at least one-half support is a condition affecting eligibility for increasing an employee or spouse annuity under the social security overall minimum provisions on the basis of the presence of a dependent child, the employee's natural child in limited situations, adopted children, stepchildren, grandchildren and step-grandchildren and equitably adopted children. The regulations outlining child support and dependency requirements are prescribed in 20 CFR 222.50–57.

In order to correctly determine if an applicant is entitled to a child's annuity based on actual dependency, the RRB uses Form G–139, Statement Regarding Contributions and Support of Children, to obtain financial information needed to make a comparison between the amount of support received from the railroad employee and the amount received from other sources. Completion is required to obtain a benefit. One response is required of each respondent. The RRB proposes no changes to Form G–139.

THE ESTIMATED ANNUAL RESPONDENT BURDEN IS AS FOLLOWS: ESTIMATE OF ANNUAL RESPONDENT BURDEN

Form No.(s)	Annual responses	Time (min)	Burden (hrs)
G–139	500	60	500

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363 or send an e-mail request to *Charles.Mierzwa@RRB.GOV.*

Comments regarding the information collection should be addressed to Patricia A. Henaghan, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or *Patricia.Henaghan@rrb.gov* and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Charles Mierzwa,

Clearance Officer.

[FR Doc. 2011–3289 Filed 2–11–11; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request; Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 173, OMB Control No. 3235–0618, SEC File No. 270–557.

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 approval.

Securities Act Rule 173 (17 CFR 230.173) provides a notice of registration to investors who purchased securities in a registered offering under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). A Rule 173 notice must be provided by underwriter or dealer to each investor who purchased securities from the underwriter or dealer. The Rule 173 notice is not publicly available. We estimate that it takes approximately 0.01 hour per response to provide the information required under Rule 173 and that the information is filed by approximately 5,338 respondents approximately 43,546 times a year for a total of 232,448,548 responses. We estimate that the total annual reporting burden for Rule 173 is 2,324,485 hours (0.01 hours per response × 232,448,548 responses).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the 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 collections 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 comment to Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, C/O Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: February 7, 2011.

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–3187 Filed 2–11–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request; Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 433, OMB Control No. 3235–0617, SEC File No. 270–558.

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 collections of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for approval.

Rule 433 (17 CFR 230.433) governs the use and filing of free writing prospectuses under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). The purpose of Rule 433 is to reduce the restrictions on communications that a company can make to investors during a registered offering of its securities, while maintaining a high level of investor protection. A free writing prospectus meeting the conditions of Rule 433(d)(1) must be filed with the Commission and is publicly available. We estimate that it takes approximately 1.3 burden hours per response to prepare a free writing prospectus and that the information is filed by 2,906 respondents approximately 1.25 times a year for a total of 3,633 responses. We estimate that 25% of the 1.3 burden hours per response (0.32 hours) is prepared by the company for total annual reporting burden of 1,163 hours (0.32 hours × 3,633 responses).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the 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 comment to Thomas A. Bayer, Chief Information Officer, Securities and Exchange Commission, C/O Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: February 7, 2011.

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–3188 Filed 2–11–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63855; File No. SR–NYSE–2011–02]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Forms of Broker Letters Set Forth in Exchange Rule 451 and Sections 905.02 and 905.03 of the Exchange's Listed Company Manual

February 7, 2011.

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 January 26, 2011, New York Stock Exchange LLC ("NYSE" or "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 Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 451 and Sections 905.02 and 905.03 of the Exchange's Listed Company Manual (the "Manual") to amend the forms of letters contained in those rules to reflect the recent amendments to the Exchange's broker voting rules in relation to executive compensation proposals. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

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 recently amended Exchange Rule 452 and Section 402.08 of the Manual to provide that brokers which are record holders of shares held in client accounts will no longer be permitted to vote those shares on matters relating to executive compensation.[3] This amendment was made in accordance with the requirements of Section 957 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act").

Supplementary Material .20 to Exchange Rule 451 and Sections 905.01, 905.02 and 905.03 contain specimens of letters containing the information and instructions required pursuant to the proxy rules to be given by NYSE member organizations to clients where the member organization is the record holder of shares beneficially owned by those clients in the circumstances where a broker (i) may vote on all proposals without voting instructions (Section 905.01), (ii) may not vote on any proposals without instructions (Section 905.02), and (iii) may vote on certain but not all proposals without instructions (Section 905.03). These letters are shown as examples and not as prescribed forms. Member organizations are permitted to adapt the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 62874 (September 9, 2011) 75 FR 56152 (September 15, 2011) (SR–NYSE–2011–59).

form of these letters for their own purposes provided all of the required information and instructions are clearly enumerated in letters to clients.

The Exchange is concerned that many shareholders receiving proxy materials from their brokers for meetings scheduled after effectiveness of the amendments to the NYSE broker voting rules in relation to executive compensation proposals will not be aware of those amendments and may therefore assume that the broker as record holder will vote their shares on such proposals if they do not return voting instructions to their broker. The NYSE believes it is important for as many shares as possible to be voted on such proposals and, therefore, believes it is important to educate retail investors with respect to the implications of their failure to return voting instructions under the amended rules. Consequently, the Exchange proposes to amend the forms of letters provided for use in connection with meetings where the broker may vote on none of the proposals before the meeting and meetings where the broker may vote on some but not all of the proposals before the meeting. The proposed amendments will insert language in those forms to alert beneficial holders that brokers will no longer be able to vote uninstructed shares on executive compensation matters. To limit the length of the letters, the Exchange proposes to modify language previously added with respect to the fact that brokers could no longer vote uninstructed shares on the election of directors for meetings scheduled after January 1, 2010.[4] References to the new treatment of executive compensation proposals and director elections will be combined.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[5] of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act,[6] in particular in that it is designed to promote just and equitable principles of trade, to 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, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes that the proposed amendments are consistent with the investor protection objectives of the Act in that their sole purpose is to explain to shareholders the implications of failing to provide voting instructions to their brokers, thereby enabling them to make a more informed decision with respect to the exercise of their voting rights.

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

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, 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,[7] the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Exchange Act[8] and Rule 19b–4(f)(6) thereunder.[9]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is 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 change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2011–02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2011–02. 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 Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2011–02 and should be submitted on or before March 7, 2011.

[4] *See* Securities Exchange Act Release No. 61046 (November 20, 2009), 74 FR 62849 (December 1, 2009) (SR–NYSE–2009–114).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] The Commission notes that the Exchange has satisfied the five-day pre-filing requirement.

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–3177 Filed 2–11–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63856; File No. SR–NYSEArca–2010–117]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change To List and Trade Shares of the Grail Western Asset Ultra Short Duration ETF

February 7, 2011.

I. Introduction

On December 13, 2010, NYSE Arca, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares ("Shares") of the Grail Western Asset Ultra Short Duration ETF ("ETF" or "Fund") under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the **Federal Register** on December 28, 2010.[3] The Commission received no comments on the proposal. This order grants approval of the proposed rule change.

II. Description of the Proposal

The Exchange proposes to list and trade the Shares of the Fund under NYSE Arca Equities Rule 8.600. The ETF will be an actively managed exchange traded fund and is a series of Grail Advisors ETF Trust ("Trust"). The Trust is registered with the Commission as an investment company.[4] Grail Advisors, LLC is the Fund's investment manager ("Manager"). Western Asset Management Company is the sub-adviser ("Western Asset" or "Sub-Adviser") of the ETF. The Bank of New York Mellon Corporation is the administrator, Fund accountant, transfer agent and custodian for the ETF. ALPS Distributors, Inc. serves as the distributor of Creation Units for the Fund on an agency basis.

The investment objective of the ETF is maximum current income, consistent with preservation of capital and daily liquidity. Under normal circumstances, the ETF will invest primarily in short-term, investment grade fixed income securities. Typically, the ETF will invest in money market securities and short-term debt securities, including U.S. treasuries and agencies, corporate and bank obligations, asset backed and mortgage backed instruments, commercial paper and other highly rated, short maturity securities. While the ETF may invest in securities of any maturity, under normal circumstances, the average duration of the portfolio is typically expected to be one year or less. Duration is a measure of the underlying portfolio's price sensitivity to changes in interest rates.

The ETF invests primarily in investment grade securities (Baa or higher by Moody's; BBB or higher by Standard & Poor's) that are rated by at least one nationally recognized statistical rating organization rating that security or, if unrated, determined by Western Asset to be of comparable quality. The ETF may invest only in U.S. dollar-denominated securities.

The ETF may invest in derivative instruments, such as futures and interest rate, total return and credit default swaps.[5] The ETF will not invest in non-U.S. equity securities.

The ETF may not invest more than 15% of its net assets in: (1) Illiquid securities; [6] and (2) unregistered securities, including Rule 144A securities (which include time deposits and repurchase agreements that mature in more than seven days).[7]

The ETF may invest in mortgage- or other asset-backed securities. Mortgage backed securities in which the Fund invests will be investment grade. Mortgage-related securities include mortgage pass-through securities, collateralized mortgage obligations ("CMOs"), commercial mortgage-backed securities, mortgage dollar rolls, CMO residuals, stripped mortgage-backed securities and other securities that directly or indirectly represent a participation in, or are secured by and payable from, mortgage loans on real property.

Additional information regarding the Fund and the Shares, the investment strategies, risks, creation and redemption procedures, fees, portfolio holdings and disclosure policies, distributions and taxes, availability of information, trading rules and halts, and surveillance procedures, among other things, can be found in the Registration Statement and in the Notice, as applicable.[8]

III. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act [9] and the rules and regulations thereunder applicable to a national securities exchange.[10] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[11] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600 to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[12] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association. In addition, an estimated value, defined in NYSE Arca Equities Rule 8.600 as the Portfolio Indicative Value ("PIV") that reflects an estimated intraday value of the ETF's portfolio, will be updated and disseminated by

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 63581 (December 20, 2010), 75 FR 81692 ("Notice").

[4] *See* Preliminary Prospectus on Form N–1A for the Trust, dated August 31, 2010 (File Nos. 333–148082 and 811–22154) ("Registration Statement"). The descriptions of the ETF and the Shares contained herein are based on information in the Registration Statement.

[5] Investments in derivatives must be consistent with the ETF's investment objective and may only be used to manage risk and not to enhance leverage.

[6] For this purpose, "illiquid securities" are securities that the ETF may not sell or dispose of within seven days in the ordinary course of business at approximately the amount at which the ETF has valued the securities.

[7] *See* e-mail from Michael Cavalier, Chief Counsel, NYSE Euronext, to Christopher W. Chow, Special Counsel, and Andrew Madar, Senior Special Counsel, Commission, dated February 2, 2011.

[8] *See* Notice and Registration Statement, *supra* notes 3 and 4.

[9] 15 U.S.C. 78f.

[10] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 17 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78k–1(a)(1)(C)(iii).

one or more major market data vendors at least every 15 seconds during the NYSE Arca Core Trading Session of 9:30 a.m. to 4 p.m. Eastern Time ("ET"). On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Trust will disclose on its Web site the identities and quantities of the portfolio of securities and other assets ("Disclosed Portfolio") held by the ETF that will form the basis for the ETF's calculation of the net asset value ("NAV") at the end of the business day.[13] The Web site and information will be publicly available at no charge. Information regarding market price and volume of the Shares is and will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. The previous day's closing price and trading volume information will be published daily in the financial section of newspapers.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, if the Exchange becomes aware that the NAV or the Disclosed Portfolio is not disseminated to all market information as the NAV is available to all market participants.[14] In addition, if the PIV is not being disseminated as required, the Exchange may halt trading during the day in which an interruption to the dissemination to the PIV occurs; if the interruption to the dissemination of the PIV persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.[15] Moreover, the Exchange represents that the Manager and the Sub-Adviser each is affiliated with a broker-dealer and has implemented a "fire wall" with respect to the affiliated broker-dealer regarding access to information concerning the composition and/or changes to the Fund's portfolio. Any additional Fund sub-advisers that are affiliated with a broker-dealer will be required to implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio. Further, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the portfolio.[16]

The Exchange has represented that the Shares are deemed to be equity securities subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

(1) The Fund will meet the initial and continued listing requirements under NYSE Arca Equities Rule 8.600(d).

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable Federal securities laws.

(4) Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated PIV will not be calculated or publicly disseminated; (d) how information regarding the PIV is disseminated; (e) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(5) For initial and/or continued listing, the Shares must be in compliance with Rule 10A–3 [17] under the Exchange Act, as provided by NYSE Arca Equities Rule 5.3.

(6) The ETF will not invest in non-U.S. equity securities.

(7) A minimum of 100,000 Shares of the Fund will be outstanding as of the start of trading on the Exchange.

This approval order is based on the Exchange's representations.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act [18] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (SR–NYSEArca–2010–117), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–3182 Filed 2–11–11; 8:45 am]

BILLING CODE 8011–01–P

[13] On a daily basis, the ETF will disclose on the ETF's Web site for each portfolio security or other financial instrument of the ETF the following information: Ticker symbol (if applicable), name of security or financial instrument, number of shares or dollar value of financial instruments held in the portfolio, and percentage weighting of the security or financial instrument in the portfolio.

[14] *See* NYSE Arca Equities Rule 8.600(d)(2)(D).

[15] *See id.* Trading may also be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in securities comprising the Disclosed Portfolio and/or the financial instruments of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

[16] *See* NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

[17] *See* 17 CFR 240.10A–3.

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63858; File No. SR–EDGA–2011–04]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGA Exchange, Inc. Fee Schedule

February 7, 2011.

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 February 4, 2011, the EDGA Exchange, Inc. (the "Exchange" or the "EDGA") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fees and rebates applicable to Members [3] of the Exchange pursuant to EDGA Rule 15.1(a) and (c). All of the changes described herein are applicable to EDGA Members. The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.directedge.com.*

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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In SR–EDGA–2011–01,[4] the Exchange filed for immediate effectiveness a rule filing to amend Rule 11.9 to add its routing strategies, which were contained in its fee schedule, to the rule and to introduce additional routing strategies to the rule. One of the routing strategies that was added was the IOCM strategy in Rule 11.9(b)(3)(s). The Exchange defined this as a routing strategy under which an order checks the System for available shares and then is sent to EDGX Exchange, Inc. ("EDGX") as an immediate or cancel (IOC) Mid-Point Match ("MPM") order.[5] If there is no liquidity at EDGX to execute at the midpoint, the order is subsequently cancelled.

The Exchange proposes to add the "MT" flag to its fee schedule to be yielded when an order is routed to EDGX MPM using the IOCM routing strategy. The Exchange also proposes to assess a fee of $0.0010 per share to reflect a pass through of the EDGX MPM fee.

EDGA Exchange proposes to implement this amendment to the Exchange fee schedule on February 4, 2011.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[6] in general, and furthers the objectives of Section 6(b)(4),[7] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The fee of $0.0010 per share for the MT flag represents a pass through of the EDGX fee for removing liquidity from MPM, as indicated in the EDGX fee schedule for flag MT.

The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. The Exchange believes that the proposed rates are equitable in that they apply uniformly to all Members. The Exchange believes the fees and credits remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not 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 has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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) of the Act [8] and Rule 19b–4(f)(2) [9] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–EDGA–2011–04 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–EDGA–2011–04. 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,[10] 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

[3] A Member is any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange.

[4] *See* SR–EDGA–2011–01 (January 21, 2011).

[5] EDGX Rule 11.5(c)(7) defines a Mid-Point Match (MPM) order as an order with an instruction to execute it at the midpoint of the NBBO. A MPM order may be a Day Order, Fill-or-Kill Order, or IOC Order. The Exchange noted that members can send in a MPM order directly to EDGX without routing through the EDGA platform as an IOCM routing option.

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 19b–4(f)(2).

[10] The text of the proposed rule change is available on Exchange's Web site at *http://www.directedge.com,* on the Commission's Web site at *http://www.sec.gov,* at EDGA, and at the Commission's Public Reference Room.

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–EDGA–2011–04 and should be submitted on or before March 7, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–3183 Filed 2–11–11; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 63859; File No. SR–BX–2011–007]

Self-Regulatory Organizations; NASDAQ OMX BX LLC; Notice of Filing of Proposed Rule Change Relating to Permanent Approval of the BX and NES Inbound Routing Relationship

February 7, 2011.

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 January 28, 2011, NASDAQ OMX BX LLC ("BX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, pursuant to Section 19(b)(1) of the Act [3] and Rule 19b–4 thereunder,[4] proposes request permanent approval of the Exchange's pilot program to permit the Exchange to accept inbound orders that Nasdaq Execution Services, LLC ("NES") routes in its capacity as a facility of NASDAQ (with the attendant obligations and conditions).

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 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 the proposed rule change is to request permanent approval of the Exchange's pilot program to permit the Exchange to accept inbound orders that NES routes in its capacity as a facility of NASDAQ (with the attendant obligations and conditions). Currently, NES is the approved outbound routing facility of the NASDAQ Stock Market LLC ("NASDAQ") for cash equities, providing outbound routing from NASDAQ to other market centers.[5] BX also has been previously approved to receive inbound routes of equities orders by NES in its capacity as an order routing facility of NASDAQ on a pilot basis.[6] On January 19, 2011, the Exchange filed a proposal to extend the current pilot program until June 15, 2011, with further understanding that the Exchange would file a separate proposal with the Commission seeking permanent approval of the BX and NES routing relationship.[7] The Exchange hereby seeks permanent approval to permit the Exchange to accept inbound orders that NES routes in its capacity as a facility of NASDAQ (with the attendant obligations and conditions).

In the initial Order, the Commission granted the BX and NES inbound routing relationship on a pilot basis. During this pilot period, BX committed to the following conditions:

1. The Exchange and FINRA will enter into a regulatory services agreement ("Regulatory Contract"), as well as an agreement pursuant to Rule 17d–2 under the Act ("17d–2 Agreement").[8] Pursuant to the Regulatory Contract and the 17d–2 Agreement, FINRA will be allocated regulatory responsibilities to review NES's compliance with certain Exchange rules.[9] Pursuant to the Regulatory Contract, however, BX retains ultimate responsibility for enforcing its rules with respect to NES;

2. FINRA will monitor NES for compliance with the Exchange's trading rules, and will collect and maintain certain related information; [10]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(1).

[4] 17 CFR 240.19b–4.

[5] *See* Securities Exchange Act Release Nos. 50311 (September 3, 2004), 69 FR 54818 (September 10, 2004) (Order Granting Application for a Temporary Conditional Exemption Pursuant To Section 36(a) of the Exchange Act by the National Association of Securities Dealers, Inc. Relating to the Acquisition of an ECN by The Nasdaq Stock Market, Inc.) and 52902 (December 7, 2005), 70 FR 73810 (December 13, 2005) (SR–NASD–2005–128) (Order Approving a Proposed Rule Change To Establish Rules Governing the Operation of the INET System). *See also* SR–NASDAQ–2011–004 (January 14, 2011); Securities Exchange Act Release Nos. 63083 (October 13, 2010), 75 FR 64370 (October 19, 2010) (SR–NASDAQ–2010–127); 62736 (August 17, 2010), 75 FR 51861 (August 23, 2010) (SR–NASDAQ–2010–100); 61682 (March 10, 2010), 75 FR 12592 (March 16, 2010) (SR–NASDAQ–2010–030); 61460 (February 1, 2010), 75 FR 6077 (February 5, 2010) (SR–NASDAQ–2010–018); 60039 (June 3, 2009), 74 FR 27365 (June 9, 2009) (SR–NASDAQ–2009–050); 59875 (May 6, 2009), 74 FR 22794 (May 14, 2009) (SR–NASDAQ–2009–043); 59807 (April 21, 2009), 74 FR 19251 (April 28, 2009) (SR–NASDAQ–2009–036); 59153 (December 23, 2008), 73 FR 80485 (December 31, 2008) (SR–NASDAQ–2008–098); 58752 (October 8, 2008), 73 FR 61181 (October 15, 2008) (SR–NASDAQ–2008–079); 58135 (July 10, 2008), 73 FR 40898 (July 16, 2008) (SR–NASDAQ–2008–061); 58069 (June 30, 2008), 73 FR 39360 (July 9, 2008) (SR–NASDAQ–2008–054); 56708 (October 26, 2007), 72 FR 61925 (November 1, 2007) (SR–NASDAQ–2007–078); 56867 (November 29, 2007), 72 FR 69263 (December 7, 2007) (SR–NASDAQ–2007–065); 55335 (February 23, 2007), 72 FR 9369 (March 1, 2007) (SR–NASDAQ–2007–005); 54613 (October 17, 2006), 71 FR 62325 (October 24, 2006) (SR–NASDAQ 2006–043); 54271 (August 3, 2006), 71 FR 45876 (August 10, 2006) (SR–NASDAQ–2006–027); and 54155 (July 14, 2006), 71 FR 41291 (July 20, 2006) (SR–NASDAQ–2006–001).

[6] *See* Securities Exchange Act Release Nos. 59154 (December 23, 2008), 73 FR 80468 (December 31, 2008) (SR–BX–2008–048); 61271 (December 31, 2009), 75 FR 1102 (January 8, 2010) (SR–BX–2009–085); 61782 (March 25, 2010), 75 FR 16534 (April 1, 2010) (SR–BX–2010–021); 62528 (July 19, 2010), 75 FR 43210 (July 23, 2010) (SR–BX–2010–048). *See also* Securities Exchange Act Release No. 63769 (January 26, 2011)(SR–BX–2011–003).

[7] *See* Securities Exchange Act Release No. 63769 (January 26, 2011)(SR–BX–2011–003).

[8] 17 CFR 240.17d–2.

[9] The Exchange also states that NES is subject to independent oversight by FINRA, its Designated Examining Authority, for compliance with financial responsibility requirements. *See* Securities Exchange Act Release No. 58927 (November 10, 2008), 73 FR 69685, 69689 (November 19, 2008) ("Notice").

[10] Pursuant to the Regulatory Contract, both FINRA and the Exchange will collect and maintain all alerts, complaints, investigations and enforcement actions in which NES (in its capacity as a facility of Nasdaq routing orders to the Exchange) is identified as a participant that has potentially violated applicable Commission or Exchange rules. The Exchange and FINRA will retain these records in an easily accessible manner in order to facilitate any potential review conducted

Continued

3. FINRA will provide a report to the Exchange's chief regulatory officer ("CRO"), on a quarterly basis, that: (i) Quantifies all alerts (of which FINRA is aware) that identify NES as a participant that has potentially violated Commission or Exchange rules, and (ii) lists all investigations that identify NES as a participant that has potentially violated Commission or Exchange rules; [11]

4. adopt Rule 2140(c), which requires NASDAQ OMX, as the holding company owning both the Exchange and NES, to establish and maintain procedures and internal controls reasonably designed to ensure that NES does not develop or implement changes to its system, based on non-public information obtained regarding planned changes to the Exchange's systems as a result of its affiliation with the Exchange, until such information is available generally to similarly situated Exchange members, in connection with the provision of inbound order routing to the Exchange; [12] and

5. That the routing of orders from NES to the Exchange, in NES's capacity as a facility of Nasdaq, be authorized for a pilot period of twelve months.[13]

The Exchange has met all the above-listed conditions. By meeting the above-conditions, the Exchange has set up mechanisms that protect the independence of the Exchange's regulatory responsibility with respect to NES, as well as demonstrate that NES cannot use any information advantage it may have because of its affiliation with the Exchange. Since the Exchange has met all the above-listed conditions, it now seeks permanent approval of the BX and NES inbound routing relationship. The Exchange will continue to comply with the conditions 1–4 stated above.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[14] in general, and with Section 6(b)(5) of the Act,[15] 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. Specifically, the proposed rule change will allow the Exchange to continue receiving inbound routes of equities orders from NES, acting in its capacity as a facility of NASDAQ, in a manner consistent with prior approvals and established protections. The Exchange believes that having met the commitments established during the pilot program demonstrates that the Exchange has mechanisms that protect the independence of the Exchange's regulatory responsibility with respect to NES, as well as demonstrate that NES cannot use any information advantage it may have because of its affiliation with the Exchange.

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 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 Exchange 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–BX–2011–007 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–2011–007. 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 on official business days between the hours of 10 a.m. and 3 p.m. Copies 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–2011–007 and should be submitted on or before March 7, 2011.

by the Commission's Office of Compliance Inspections and Examinations. *Id.*

[11] *Id.*

[12] *See* Equity Rule 2140(c). *See also* Notice, *supra* note 7, 73 FR at 69689–69690.

[13] *See* Amendment No. 2 to Notice, filed December 23, 2008. In Amendment No. 2, the Exchange clarified that its proposal, as opposed to Nasdaq's corresponding proposal, be approved on a twelve-month pilot basis. *See also* Notice, *supra* note 7, n.15 and accompanying text.

See e-mail from Arlinda J. Clark, Assistant General Counsel, NASDQ OMX BX, to Jennifer Dodd, Special Counsel, Office of Market Supervision, Division of Trading and Markets, Commission, dated February 3, 2011 (requesting corrections to this footnote).

[14] 15 U.S.C. 78f.

[15] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–3186 Filed 2–11–11; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before March 16, 2011. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Form of detached assignment for U.S. Small Business Administration (Loan Pool or Guaranteed).

Frequency: On occasion.

SBA Form Number: 1088.

Description of Respondents: Secondary market participants.

Responses: 6,500.

Annual Burden: 9,750.

Title: Secondary market for Section 504 First Mortgage Loan Pool.

Frequency: On occasion.

SBA Form Numbers: 2401, 2402, 2403, 2404.

Description of Respondents: Secondary market participants.

Responses: 12,400.

Annual Burden: 33,075.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 2011–3185 Filed 2–11–11; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

Interagency Task Force on Veterans Small Business Development

AGENCY: U.S. Small Business Administration.

ACTION: Notice of open Federal Interagency Task Force meeting.

SUMMARY: The SBA is issuing this notice to announce the location, date, time, and agenda for the second public meeting of the Interagency Task Force on Veterans Small Business Development. The meeting will be open to the public.

DATES: Friday, February 25, 2011, from 9 a.m. to 12 Noon in the Eisenhower Conference Room, Side A & B, located on the 2nd floor.

ADDRESSES: U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), SBA announces the meeting of the Interagency Task Force on Veterans Small Business Development. The Task Force is established pursuant to Executive Order 13540 and focused on coordinating the efforts of Federal agencies to improve capital, business development opportunities and pre-established Federal contracting goals for small business concerns owned and controlled by veterans (VOB's) and service-disabled veterans (SDVOSB'S). Moreover, the Task Force shall coordinate administrative and regulatory activities and develop proposals relating to "six focus areas": (1) Access to capital (loans, surety bonding and franchising); (2) Ensure achievement of pre-established contracting goals, including mentor protégé and matching with contracting opportunities; (3) Increase the integrity of certifications of status as a small business; (4) Reducing paperwork and administrative burdens in accessing business development and entrepreneurship opportunities; (5) Increasing and improving training and counseling services; and (6) Making other improvements to support veteran's business development by the Federal Government.

The Interagency Task Force on Veterans Small Business Development shall submit to the President, no later than one year after its first meeting, a report on the performance of its functions and any proposals developed pursuant to the "six focus areas" identified above. The purpose of the meeting is scheduled as a full Task Force meeting. The agenda will include presentations and discussion from the Task Force Subcommittees on their progress regarding the "six focus areas" of the Task Force. In addition, the Task Force will allow time for obtaining public comment from individuals and representatives of organizations regarding the areas of focus.

FOR FURTHER INFORMATION CONTACT: The meeting is open to the public; however, advance notice of attendance is requested. Anyone wishing to attend and/or make a presentation to the Task Force must contact Raymond B. Snyder, by February 21, 2011, by e-mail in order to be placed on the agenda. Comments for the Record should be applicable to the "six focus areas" of the Task Force and e-mailed prior to the meeting for inclusion in the public record; verbal presentations, however, will be limited to five minutes in the interest of time and to accommodate as many presenters as possible.

Written comments should be e-mailed to Raymond B. Snyder, Deputy Associate Administrator, Office of Veterans Business Development, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416, at the e-mail address for the Task Force, *vetstaskforce@sba.gov.*

Additionally, if you need accommodations because of a disability or require additional information, please contact Raymond B. Snyder, Designated Federal Official for the Task Force at (202) 205–6773; or by e-mail at: *raymond.snyder@sba.gov,* SBA, Office of Veterans Business Development, 409 3rd Street, SW., Washington, DC 20416. For more information, please visit our Web site at *http://www.sba.gov/vets.*

Dated: February 7, 2011.

Dan Jones,

SBA Committee Management Officer.

[FR Doc. 2011–3181 Filed 2–11–11; 8:45 am]

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[16] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions to and an extension of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, e-mail, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB), Office of Management and Budget, *Attn:* Desk Officer for SSA, *Fax:* 202–395–6974, *E-mail address: OIRA_Submission@omb.eop.gov;*

(SSA), Social Security Administration, DCBFM, *Attn:* Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, *Fax:* 410–965–6400, *E-mail address: OPLM.RCO@ssa.gov.*

I. The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than April 15, 2011. Individuals can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–8783 or by writing to the above e-mail address.

1. Medicare Modernization Act Outreach Mailer—20 CFR 418—0960–0773. To promote awareness of the Medicare Part D subsidy program and encourage potentially eligible Medicare beneficiaries to complete Form SSA–1020 (OMB No. 0960–0696, the Application for Extra Help with Medicare Prescription Drug Plan Costs), SSA uses an outreach brochure that includes a mailer. Pharmacies, doctors' offices, and medical clinics display and distribute copies of the brochure/mailer to encourage eligible Medicare beneficiaries to request and complete Form SSA–1020. Using a recorded, automated message telephone call that will not require any conversation with respondents, SSA follows up with beneficiaries who use the mailer to request an SSA–1020 but do not submit it to the agency. The respondents are Medicare beneficiaries who are potentially eligible for Part D subsidy benefits and who request a copy of Form SSA–1020, using the SSA–1023 mailer.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 75,000.

Frequency of Response: 1.

Average Burden Per Response: 1 minute.

Estimated Annual Burden: 1,250.

2. Medicare Income-Related Monthly Adjustment Amount—Life-Changing Event Form—0960–0784. Per the Medicare Modernization Act of 2003, reductions in the Federal subsidy for Medicare medical coverage (Medicare Part B) result in selected Medicare Part B recipients paying an income-related monthly adjustment amount (IRMAA). The Internal Revenue Service transmits income tax return data to SSA for SSA to determine the IRMAA. SSA uses Form SSA–44 to determine if a recipient qualifies for a reduction in the IRMAA. If affected Medicare recipients believe SSA should use more recent tax data because of a life-changing event that significantly reduces their income, they can report these changes to SSA and ask for a new initial determination of their IRMAA.

In November 2010, we requested emergency OMB clearance for a new SSA–44 to fulfill the provisions of the Affordable Care Act (Pub. L. 111–148), which mandates reductions in the Federal Medicare Part D prescription drug coverage subsidies, resulting in higher premiums for those who have this coverage and who have income above a specific threshold. The provisions of the law became effective January 1, 2011, and we obtained emergency clearance for this form on November 23, 2010. We are now seeking full OMB clearance for this form. The respondents are Medicare Part B and prescription drug coverage recipients and enrollees with modified adjusted gross income over a high-income threshold who experience one of the eight significant life-changing events.

Type of Request: Extension of an OMB-approved information collection.

Method of collection	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
Personal Interview (SSA field office)	147,000	1	30	73,500
Paper Form (mailed)	39,000	1	45	29,250
Totals	186,000			102,750

II. SSA has submitted the information collection listed below to OMB for clearance. Your comments on the information collection would be most useful if OMB and SSA receive them within 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than March 16, 2011. You can obtain a copy of the OMB clearance package by calling the SSA Reports Clearance Officer at 410–965–8783 or by writing to the above e-mail address.

State Death Match Collections—20 CFR 404.301, 404.310–404.311, 404.316, 404.330–404–341, 404.350–404.352, 404.371; 416.912—0960–0700. SSA uses the State Death Match Collections to ensure the accuracy of payment files by detecting unreported or inaccurate deaths of beneficiaries. Under the *Social Security Act,* entitlement to retirement, disability, wife's, husband's, or parent's benefits terminate when the beneficiary dies. The States furnish death certificate information to SSA via the manual registration process or the Electronic Death Registration (EDR) process. Both death match processes are automated electronic transfers between the States and SSA. The respondents are the States' bureaus of vital statistics.

Method of collection	Number of respondents	Frequency of responses (per state)	Average cost per record request	Estimated annual cost burden
State Death Match—Manual Process	23	50,000	.80	$920,000
State Death Match—EDR	30	50,000	2.86	4,290,000
Totals				*5,210,000

* Please note that both data matching processes are fully electronic and there is no hourly burden for the respondent to provide this information.

Dated: February 8, 2011.

Faye Lipsky,

Reports Clearance Officer, Center for Reports Clearance, Social Security Administration.

[FR Doc. 2011–3171 Filed 2–11–11; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 7334]

Issuance of a Presidential Permit Authorizing the Expansion, Renovation, Operation, and Maintenance of the Commercial and Pedestrian Border Crossing Called "Nogales-Mariposa" in the Vicinity of Nogales, AZ, at the International Boundary Between the United States and Mexico

SUMMARY: The Department of State issued a Presidential permit to the General Services Administration on January 18, 2011, authorizing that agency to expand, renovate, operate, and maintain the commercial and pedestrian border crossing called "Nogales-Mariposa" in the vicinity of Nogales, Arizona, at the International Boundary between the United States and Mexico. In making this determination, the Department complied with the procedures required under Executive Order 11423, as amended.

FOR FURTHER INFORMATION CONTACT: Stewart Tuttle, U.S.-Mexico Border Affairs Coordinator, via e-mail at *WHA–BorderAffairs@state.gov;* by phone at 202–647–9894; or by mail at Office of Mexican Affairs—Room 3909, Department of State, 2201 C St. NW., Washington, DC 20520. Information about Presidential permits is available on the Internet at *http://www.state.gov/p/wha/rt/permit/.*

SUPPLEMENTARY INFORMATION: Following is the text of the issued permit: By virtue of the authority vested in me as Under Secretary of State for Economic, Energy, and Agricultural Affairs under Executive Order 11423, 33 FR 11741 (1963), as amended by Executive Order 12847 of May 17, 1993, 58 FR 29511 (1993), Executive Order 13284 of January 23, 2003, 68 FR 4075 (2003), and Executive Order 13337 of April 30, 2004, 69 FR 25299 (2004) and Department of State Delegation of Authority number 118–2 of January 26, 2006; having considered the environmental effects of the proposed action consistent with the National Environmental Policy Act of 1969, as amended (83 Stat. 852, 42 U.S.C. 4321 *et seq.*) and other statutes relating to environmental concerns; having considered the proposed action consistent with the National Historic Preservation Act of 1966, as amended (80 Stat. 917, 16 U.S.C. 470f *et seq.*); and having requested and received the views of various of the federal departments and other interested persons; I hereby grant permission, subject to the conditions herein set forth, to the United States General Services Administration (GSA) (hereinafter referred to as the "permittee"), to expand, renovate, operate and maintain a commercial and pedestrian land border crossing (hereinafter referred to as "Nogales-Mariposa"), in Nogales, AZ.

* * * * *

The term "facilities" as used in this permit means the facilities to be constructed at the Nogales-Mariposa border crossing near Nogales, Arizona, consisting of the following improvements and structures:

- Inspection and X-Ray Facilities
- Containment Areas and Docks
- Commercial Inspection Building with Import and Export Docks
- Export Inspection
- Main Administrative Building
- Entry and Exit Control Booths
- Roadways and related Infrastructure, Pathways, Parking Lots, and related Lots
- Landscaping
- Ancillary Support Facilities
- Commercial Cargo lanes
- Non-commercial Inspection facilities and lanes
- Pedestrian Crossing
- Pedestrian inspection facilities
- Related Improvements and Infrastructure

These facilities are the subject of a Finding Of No Significant Impact approved by the State Department Director of the Office of Mexican Affairs, Edward Alexander Lee on December 10, 2010. 75 FR 78336 (December 15, 2010).

This permit is subject to the following conditions:

Article 1. The facilities herein described, and all aspects of their operation, shall be subject to all the conditions, provisions and requirements of this permit and any amendment thereof. This permit may be terminated upon a determination of the Executive Branch that the Nogales-Mariposa border crossing shall be closed. This permit may be amended by the Secretary of State or the Secretary's delegate in consultation with the permittee and, as appropriate, other Executive Branch agencies; the permittee's obligation to implement such an amendment is subject to the availability of funds. The permittee shall make no substantial change in the location of the facilities or in the operation authorized by this permit until such changes have been approved by the Secretary of State or the Secretary's delegate.

Article 2. The permittee shall comply with all applicable federal laws and regulations regarding the construction, operation and maintenance of the facilities. Further, the permittee shall comply with nationally recognized codes to the extent required under 40 U.S.C. 3312(b). The permittee shall cooperate with state and local officials to the extent required under 40 U.S.C. 3312(d).

Article 3. In the event that the Nogales-Mariposa Port of Entry is permanently closed and is no longer used as an international crossing, this permit shall terminate and the permittee may manage, utilize, or dispose of the facilities in accordance with its statutory authorities.

Article 4. The permittee is a federal agency that is responsible for managing and operating the Nogales-Mariposa Port of Entry, as authorized by applicable federal laws and regulations. This permit shall continue in full force and effect for only so long as the permittee shall continue the operations hereby authorized.

Article 5. This Article applies to transfer of the facilities or any part thereof as an operating land border crossing. The permittee shall immediately notify the United States Department of State of any decision to transfer custody and control of the facilities or any part thereof to any other any agency or department of the United States Government. Said notice shall identify the transferee agency or department and seek the approval of the United States Department of State for the transfer of the permit. In the event of approval by the Department of State of such transfer of custody and control to another agency or department of the United States Government, the permit shall remain in force and effect, and the facilities shall be subject to all the conditions, permissions and requirements of this permit and any amendments thereof. The permittee may transfer ownership or control of the facilities to a non-federal entity or individual only upon the prior express approval of such transfer by the United States Department of State, which approval may include such conditions, permissions and requirements that the Department of State, in its discretion, determines are appropriate and necessary for inclusion in the permit, to be effective on the date of transfer.

Article 6. (1) The permittee or its agent shall acquire such right-of-way grants or easements and permits as may become necessary and appropriate.

(2) The permittee shall maintain the facilities and every part thereof.

Article 7. (1) The permittee shall take or cause to be taken all appropriate measures to prevent or mitigate adverse environmental impacts or disruption of significant archeological resources in connection with the construction, operation and maintenance of the facilities, including those mitigation measures adopted by the permittee in connection with issuance of the FONSI.

(2) Before issuing the notice to proceed for construction, the permittee shall obtain the concurrence of the U.S. Section of the International Boundary and Water Commission.

Article 8. The permittee shall comply with all agreed actions and obligations set forth in the FONSI.

Article 9. The permittee shall file any applicable statements and reports that might be required by applicable federal law in connection with this project.

Article 10. The permittee shall not issue a notice to proceed for construction work until the Department of State has provided notification to the permittee that the Department has completed its exchange of diplomatic notes with the Government of Mexico regarding authorization of construction. The permittee shall provide written notice to the Department of State at such time as the construction authorized by this permit is begun, and again at such time as construction is completed, interrupted for more than ninety days or discontinued.

Article 11. This permit is not intended to, and does not, create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or in equity, by any party against the United States, its departments, agencies, instrumentalities or entities, its officers or employees, in their individual or official capacities, or any other person.

In Witness Whereof, I, Robert D. Hormats, Under Secretary of State for Economic, Energy, and Agricultural Affairs of the United States, have hereunto set my hand this day of January 3, 2011, in the City of Washington, District of Columbia.

End Permit text.

Dated: February 8, 2011.

Alex Lee,

Director, Office of Mexican Affairs, Department of State.

[FR Doc. 2011–3253 Filed 2–11–11; 8:45 am]

BILLING CODE 4710–29–P

DEPARTMENT OF STATE

[Public Notice: 7335]

Notice of Availability of Report Commissioned by Department of Energy Entitled "Keystone XL Assessment" Regarding the Proposed TransCanada Keystone XL Project

Notice is hereby given that the Department of State received on January 31, 2011, a report commissioned by the Department of Energy entitled "Keystone XL Assessment." The report examines the possible effect of the proposed Keystone XL Pipeline on U.S. and global oil markets. We will consider this report, as well as contributions from the public and other interested agencies, in our decision-making process on TransCanada Keystone Pipeline, LP's (TransCanada) application for a Presidential permit for the Keystone XL Project. We will be requesting public comment on this report at an appropriate time. The report is available under "Petroleum Market Impacts of the Keystone XL Pipeline Project" on the "State Dept. Documents" page of our Web site at *http://www.keystonepipeline-xl.state.gov.*

On September 19, 2008, TransCanada filed an application for a Presidential permit for the construction, operation, and maintenance of pipeline facilities at the border of the U.S. and Canada for the transport of crude oil across the U.S.-Canada international boundary. The Secretary of State is designated and empowered to receive all applications for Presidential permits, under Executive Order 13337, as amended, for the construction, connection, operation, or maintenance, at the borders of the United States, of facilities for the exportation or importation of petroleum, petroleum products, coal, or other fuels to or from a foreign country. TransCanada has requested authorization to construct and operate border crossing facilities at the U.S.-Canadian border in Phillips County, near Morgan, Montana, in connection with its proposed international pipeline project (the Keystone XL Pipeline Project) that is designed to transport Canadian crude oil production from the Western Canadian Sedimentary Basin (WCSB) to destinations in the south central United States, including to an existing oil terminal in Cushing, Oklahoma, and to existing delivery points in the Port Arthur and East Houston areas of Texas.

On April 20, 2010, the State Department published a draft Environmental Impact Statement (EIS) and provided for public comment on that draft EIS until July 2, 2010. The State Department is currently reviewing the comments received in response to that notice and will not make a decision related to the Keystone XL pipeline until it has completed that review. A final decision on whether the Department will approve or not approve the Keystone XL pipeline will only be made after the Department has completed all of its review processes.

DATES: The Department of State will be requesting public comment on this report at an appropriate time.

FOR FURTHER INFORMATION CONTACT: For information regarding environmental concerns and permitting, contact Alexander Yuan at (202) 647–4284; or by email at *YuanAW@State.gov.*

Dated: February 3, 2011.

Willem H. Brakel,

Director, Office of Environmental Policy, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State.

[FR Doc. 2011–3251 Filed 2–11–11; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Environmental Impact Statement for the Chicago, IL to St. Louis, MO High Speed Rail Program Corridor

AGENCY: Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: FRA is issuing this notice to advise the public that FRA with the Illinois Department of Transportation (IDOT) will jointly prepare a Tier 1 Environmental Impact Statement (EIS) for the Chicago, IL to St. Louis, MO High Speed Rail Corridor Program in compliance with the National Environmental Policy Act of 1969 (NEPA). This study will analyze a range of reasonable corridor-level route alternatives between Chicago and Joliet, and will examine additional improvements between Joliet and St. Louis to support additional passenger trains. The EIS will consider increasing the number of frequencies of high-speed passenger rail service, as well as increasing the currently planned maximum speed of such service, in the Chicago to St. Louis Corridor (Corridor). FRA is issuing this notice to solicit public and agency input into the development of the scope of the EIS and to advise the public that outreach activities conducted by FRA and IDOT will be considered in the preparation of the EIS. Alternatives under consideration include taking no action, as well as several build alternatives between Chicago and Joliet, IL, through the City of Springfield, and for the approach to St. Louis, MO.

DATES: Two agency scoping meetings and five public scoping meetings will be held during March, 2011. Public scoping meetings will be advertised locally and are scheduled for the following cities on the dates indicated below from 4 p.m.–7 p.m.

- March 1, 2011: Joliet, IL
- March 2, 2011: Bloomington-Normal, IL
- March 3, 2011: Springfield, IL
- March 8, 2011: Carlinville, IL
- March 9, 2011: Alton, IL

Agency scoping meetings will be held March 1, 2011 in Joliet, IL and March 3, 2011 in Springfield, IL at 10 a.m. Detailed information on the meeting locations is available on the following Web site: *http://www.idothsr.org.* Persons interested in providing written comments on the scope of the EIS should do so by March 18, 2011. Written comments on the scope of the EIS should be provided to IDOT by March 18, 2011 at the address below.

ADDRESSES: Written comments on the scope of this study should be sent to Mr. George Weber, Acting Deputy Director, Department of Intermodal and Public Transit, Illinois Department of Transportation, 100 West Randolph Street, Suite 6–600, Chicago, Illinois 60601, telephone (312) 793–4222.

FOR FURTHER INFORMATION CONTACT: Ms. Wendy Messenger, Office of Railroad Development, Federal Railroad Administration, 1200 New Jersey Avenue, SE., (Mail Stop 20), Washington, DC 20590, telephone (202) 493–6396; or Mr. George Weber, telephone (312) 793–4222 at the above address. Information and documents regarding the environmental review process will be made available through the following Web site: *http://www.idothsr.org.*

SUPPLEMENTARY INFORMATION: FRA, in cooperation with IDOT, will prepare a Tier 1 EIS for the High Speed Rail program from Chicago, IL to St. Louis, MO. The objectives of the proposed Project are to meet current and future regional travel needs through significant improvements to the level and quality of passenger rail service along the Corridor. Specifically, the EIS will consider increasing the frequency of high-speed passenger trains between Chicago and St. Louis and will consider increasing train speeds above the 110 mph maximum speed currently planned in the Corridor. The proposed service improvements examined in this EIS will build upon the approximately $1.1 billion of improvements currently being completed in the Corridor by IDOT and FRA pursuant to a grant/cooperative agreement funded by the American Recovery and Reinvestment Act (ARRA) (this work is based upon a 2003 EIS for the Corridor and a 2004 Record of Decision). Those improvements, which include infrastructure improvements, communications and signaling installation, stations improvements, and rolling stock equipment procurement, will increase passenger rail speeds from 79 mph to 110 mph for the existing Corridor services.

The proposed Tier 1 EIS described in this notice will examine a range of reasonable corridor-level alternative routes between Chicago and Joliet, and will examine additional improvements between Joliet and St. Louis to support additional passenger trains while accommodating the anticipated growth in freight rail traffic. The EIS will assess: Changing the existing rail corridor from one track to two tracks; increasing the number of high-speed passenger trains; potential corridor route alternatives between Chicago and Joliet, IL, through the City of Springfield, and for the approach to St. Louis, MO; and the associated transportation and environmental impacts. Train speed increases above the 110 mph maximum speed currently planned in the Corridor may be considered in the alternatives analysis. It is anticipated that the EIS will examine the viability of Chicago-Joliet corridors utilizing the Canadian National (CN) and Metra Rock Island District (RID), as well as other reasonable corridors between Chicago and Joliet that could support high speed rail passenger service.

IDOT and FRA propose to not examine the Norfolk Southern-Canadian National alignment between Dwight and Chicago in the Tier 1 EIS. This alignment was considered in the 2003 EIS for the Corridor to serve a proposed South Suburban Airport. IDOT and FRA propose to not examine this alignment because it would divert intercity passenger rail service from the larger populations currently served in the Chicago-Joliet corridor, and the South Suburban Airport area is served by an existing commuter rail service to Chicago. Additionally, the Norfolk Southern Railroad does not support the introduction of high-speed passenger rail to its facilities because of limited existing infrastructure and a limited ability to expand capacity in the corridor. The agencies have concluded that it is not a reasonable alternative for meeting the Project purpose and need. Elimination of the Norfolk Southern-Canadian National alignment will result in a single corridor to be studied between Dwight and Joliet utilizing the Union Pacific (UP) Railroad.

The No-Build Alternative will represent the no action alternative and will be used as a baseline for comparison of all alternatives. The No-Build Alternative represents other transportation modes, such as auto, air travel, intercity bus, and existing rail, and the physical characteristics and capacities as they exist at the time of the Tier 1 EIS, with planned and funded improvements that will be in place at the time the Project would become operational.

Environmental Review Process: The EIS will be developed in accordance with Council on Environmental Quality (CEQ) regulations (40 CFR part 1500 *et seq.*) implementing the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), and FRA's Procedures for Considering Environmental Impacts (64 FR 28545; May 26, 1999). The FRA and IDOT will

use a tiered process, as provided for in 40 CFR 1508.28 and in accordance with FRA guidance, in the completion of the environmental review of the Project. "Tiering" is a staged environmental review process applied to environmental reviews for complex projects. The Tier 1 EIS will address broad corridor-level issues and alternatives. Subsequent phases or tiers will analyze site-specific component projects and alternatives based on the decisions made in Tier 1.

Tier 1: The Tier 1 assessment will result in a NEPA document with the appropriate level of detail for corridor-level decisions and will address broad overall issues of concern, including but not limited to:

- Confirm the purpose and need for the proposed action.
- Define the study area appropriate to assess reasonable alternatives.
- Identify a comprehensive set of goals and objectives for the corridor in conjunction with Project stakeholders. These goals and objectives will be crafted to allow comprehensive evaluation of all aspects of the Project necessary to achieve the goals, including train operations, vehicles, and infrastructure.
- Identify the range of reasonable alternatives to be considered, consistent with the current and planned use of the corridor and the existing services within and adjacent to the study area, including changing the existing rail corridor from one track to two tracks, considering alternative corridors between Chicago and Joliet and in the St. Louis area, and considering a no action/no build alternative.
- Develop alternatives evaluation criteria to identify alternatives that meet the purpose and need of the proposed action and those that do not.
- Identify the general alignment(s) of the reasonable alternatives.
- Identify right-of-way requirements for the reasonable alternatives.
- Identify the infrastructure and equipment investment requirements for the reasonable alternatives.
- Identify the operational changes required for the reasonable alternatives.
- Describe the environmental impacts associated with the proposed changes in passenger rail train frequency, speed, and on-time performance.
- Characterize the environmental consequences of the reasonable alternatives.
- Establish the timing and sequencing of independent actions to maintain a state of good repair and to implement the proposed action.
- Evaluate and consider the potential for environmental impacts associated with the reasonable alternatives.
- Identify a preferred alternative for corridor route alignment.
- Address component projects for Tier 2 NEPA documentation as described below.

Tier 2: The second tier assessment(s) will address component projects to be implemented within the overall rail corridor improvement alternative selected in the Tier 1 EIS, and will incorporate by reference the data and evaluations included in the Tier 1 EIS. The Springfield Rail Corridor is the only current activity presently identified as a Tier 2 level evaluation to be included in this Tier 1 EIS; it will be combined with the Tier 1 EIS but may be separately actionable to determine site-specific as well as corridor-level improvements within its study limits and is described below.

Springfield Railroad Corridor: Freight traffic through Springfield is expected to increase significantly over the next several years, and IDOT's plans for increasing the number of frequencies of high-speed passenger train service between Chicago and St. Louis as well as the maximum speed of the passenger train service would also have an impact on Springfield. This study will analyze alternatives for accommodating the growing freight and passenger rail traffic through Springfield.

There are currently three north-south railroad corridors through Springfield. Generally, these corridors exist along Third Street (Union Pacific), Tenth Street (primarily Norfolk Southern), and Nineteenth Street (primarily Canadian National). There are 73 at-grade crossings along these three corridors in the study area, which create traffic congestion and safety issues when trains traverse the city. The Union Pacific Railroad is constructing a new intermodal rail yard near Joliet, Illinois, which is anticipated to generate increased freight traffic on the Third Street corridor. The combination of increased passenger trains and increased Union Pacific freight trains would likely require a second track on the Third Street corridor to accommodate the greater number of trains per day.

Build alternatives to accommodate this increase in rail traffic will be studied. In addition, the No-Build Alternative will represent the no action alternative and will be used as a baseline for comparison of all alternatives. One build alternative involves adding a second track on the Third Street corridor to handle up to 40 freight and passenger trains per day. Another build alternative will consider moving the Third Street corridor trains, and possibly the Nineteenth Street corridor trains, to the Tenth Street corridor, where additional tracks would be built, which would consolidate Springfield's rail traffic into one corridor. Other reasonable alternatives will also be considered, such as relocating rail traffic to other or new corridors.

Related Projects: There are three ongoing rail improvement programs that relate to the Project being studied in this EIS and may be considered for indirect or cumulative impacts on the region.

The Chicago Region Environmental and Transportation Efficiency Program (CREATE) is a cooperative effort between the U.S. Department of Transportation, the State of Illinois, the City of Chicago, the Metropolitan Rail Corporation (Metra), the National Railroad Passenger Corporation (Amtrak), and six freight railroads to improve freight and passenger rail efficiency and to reduce rail/highway traffic conflicts. There are six projects specifically identified by CREATE (P1, P2, P3, EW2, P5 and P6) that may involve and affect high speed rail service within the Chicago-Joliet portion of the corridor, depending on the corridor recommendations of this EIS study. More information is available at the CREATE Web site at *http://www.createprogram.org/.*

The Chicago-St. Louis 220 mph High Speed Rail Express is a project concept being pursued by IDOT. This service, at speeds up to 220 mph, may utilize existing rail corridors, a new corridor, or a combination of both, and could serve different travel markets. The 220 mph concept is intended as a complementary service to the Chicago-St. Louis high speed rail service that is being evaluated by this EIS. A feasibility study was prepared in 2009 by the Midwest High Speed Rail Association; this study indicated that a completely grade-separated route could be established by modifying existing rail corridors to connect Chicago, Champaign, Decatur and Springfield, Illinois with St. Louis, Missouri, with a one-way terminal-to-terminal trip time of approximately two hours, utilizing a maximum speed of 220 mph. Also in 2009, an Expression of Interest was prepared by the French National Railways (SNCF) in response to the FRA's Request for Expression of Interest dated December 11, 2008. The SNCF proposed a high-speed rail route to be located adjacent to existing rail corridors and sharing existing rail corridors in urban approaches at lower speeds. IDOT intends to further study the 220 mph project concept, including

development of an investment-grade business plan and the preparation of a separate Tier 1 EIS.

The Midwest Regional Rail Initiative (MWRRI) is an effort led by the Wisconsin Department of Transportation and supported by eight other Midwestern States to upgrade Amtrak service in those States, with maximum speeds of 79 to 110 mph depending on the level of improvements made. A Chicago-St. Louis corridor is included in MWRRI's September 2004 Executive Report and November 2006 Benefit Cost and Economic Analysis. Additional corridors proposed by MWRRI include: Chicago-Green Bay, Wisconsin; Chicago-Minneapolis, Minnesota; St. Louis-Kansas City, Missouri; Chicago-Cincinnati, Ohio; Chicago-Cleveland, Ohio; Chicago-Detroit, Michigan; Chicago-Port Huron, Michigan; Chicago-Carbondale, Illinois; Chicago-Quincy, Illinois; and Chicago-Omaha, Nebraska. Several other feeder corridors connecting smaller municipalities to the primary corridors are also included. More information is available at *http://www.dot.wisconsin.gov/projects/rail.htm.*

Public Involvement: Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A minimum of two public informational meetings will be held during the study. In addition, a public hearing will be held on the Draft EIS. Public notice will be given of the time and place of the meetings and of the hearing. The Draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and that all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to IDOT or FRA at the addresses provided above.

Scoping and Comments: FRA encourages broad participation in the EIS process during scoping and review of the resulting environmental documents. Comments are invited from all interested agencies and the public to ensure the full range of issues related to the proposed action, and the reasonable alternatives, are addressed and all significant issues are identified. In particular, FRA is interested in identifying areas of environmental concern where there might be a potential for significant impacts. Public agencies with jurisdiction are requested to advise FRA and IDOT of the applicable permit and environmental review requirements of each agency, and the scope and content of the environmental information that is germane to the agency's statutory responsibilities in connection with the proposed Project. Public agencies are requested to advise FRA if they anticipate taking a major action in connection with the proposed Project and if they wish to cooperate in the preparation of the EIS. Public scoping meetings have been scheduled as an important component of the scoping process for both the State and Federal environmental review. The scoping meetings described in this Notice will also be the subject of additional public notification.

FRA is seeking participation and input of all interested Federal, State, and local agencies, Native American groups, and other concerned private organizations and individuals on the scope of the EIS. This Project is a federal undertaking with the potential to affect historic properties. As such, it is subject to the requirements of section 106 of the National Historic Preservation Act of 1966 (NHPA) (16 U.S.C. 470(f)). In accordance with regulations issued by the Advisory Council on Historic Preservation, 36 CFR part 800, FRA intends to coordinate compliance with section 106 of the NHPA with the preparation of the EIS, beginning with the identification of consulting parties through the scoping process, in a manner consistent with the standards set out in 36 CFR 800.8.

Issued in Washington, DC, on February 9, 2011.

Mark E. Yachmetz,

Associate Administrator for Railroad Policy and Development.

[FR Doc. 2011–3248 Filed 2–11–11; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on September 2, 2010 (75 FR 54000). The agency received no comments.

DATES: Comments must be submitted on or before March 16, 2011.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Mazyck at the National Highway Traffic Safety Administration, Office of International Policy, Fuel Economy and Consumer Programs, 1200 New Jersey Avenue, SE., West Building, Room W43–443, Washington, DC 20590. Ms. Mazyck's telephone number is (202–366–4139).

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: 49 CFR Part 583—Automobile Parts Content Labeling.

OMB Number: 2127–0573.

Type of Request: Request for public comment on a previously approved collection of information.

Abstract: Part 583 establishes requirements for the disclosure of information relating to the countries of origin of the equipment of new passenger motor vehicles. This information will be used by NHTSA to determine whether manufacturers are complying with the American Automobile Labeling Act (49 U.S.C. 32304). The American Automobile Labeling Act requires all new passenger motor vehicles (including passenger

cars, certain small buses, all light trucks and multipurpose passenger vehicles with a gross vehicle weight rating of 8,500 pounds or less), to bear labels providing information about domestic and foreign content of their equipment. With the affixed label on the new passenger motor vehicles, it serves as an aid to potential purchasers in the selection of new passenger motor vehicles by providing them with information about the value of the U.S./Canadian and foreign parts of each vehicle, the countries of origin of the engine and transmission, and the site of the vehicle's final assembly.

NHTSA anticipates approximately 22 vehicle manufacturers will be affected by these reporting requirements. NHTSA does not believe that any of these 22 manufacturers are a small business (*i.e.,* one that employs less than 500 persons) since each manufacturer employs more than 500 persons. Manufacturers of new passenger motor vehicles, including passenger cars, certain small buses, and light trucks with a gross vehicle weight rating of 8,500 pounds or less, must file a report annually.

Affected Public: Vehicle manufacturers.

Estimated Total Annual Burden: NHTSA estimates that the vehicle manufacturers will incur a total annual reporting hour and cost burden of 52,962 hours and $2,355,150. The amount includes annual burden hours incurred by multi-stage manufacturers and motor vehicle equipment suppliers.

There is a decrease in the annual reporting and recordkeeping hour burden from 55,484 to 52,962 because the number of respondents decreased from 22 to 21. There is a decrease in annual reporting and recordkeeping cost burden from $2,467,300 to $2,355,150 because there will be fewer responses. The hour burden and cost burden published in the **Federal Register** are different due to errors in the preliminary information provided.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued on: February 8, 2011.

Joseph S. Carra,

Acting Associate Administrator for Rulemaking.

[FR Doc. 2011–3194 Filed 2–11–11; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Vehicle Theft Prevention Standard; Mitsubishi Motors

AGENCY: National Highway Traffic Safety Administration (NHTSA) Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the Mitsubishi Motors R&D of America's (Mitsubishi) petition for exemption of the Outlander Sport vehicle line in accordance with 49 CFR Part 543, *Exemption from the Theft Prevention Standard.* This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR Part 541). Mitsubishi requested confidential treatment for some of the information and attachments it submitted in support of its petition. The agency addressed Mitsubishi's request for confidential treatment by letter dated January 11, 2011.

DATES: The exemption granted by this notice is effective beginning with the 2012 model year.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Mazyck, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, West Building, W43–443, 1200 New Jersey Avenue, SE., Washington, DC 20590. Ms. Mazyck's phone number is (202) 366–0846. Her fax number is (202) 493–2990.

SUPPLEMENTARY INFORMATION: In a petition dated November 30, 2010, Mitsubishi requested exemption from the parts-marking requirements of the Theft Prevention Standard (49 CFR Part 541) for the Mitsubishi Outlander Sport vehicle line, beginning with MY 2012. The petition requested an exemption from parts-marking pursuant to 49 CFR Part 543, *Exemption from Vehicle Theft Prevention Standard,* based on the installation of an antitheft device as standard equipment for the entire vehicle line.

Under § 543.5(a), a manufacturer may petition NHTSA to grant an exemption for one vehicle line per model year. In its petition, Mitsubishi provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the Outlander Sport vehicle line. Mitsubishi will install a passive, transponder-based, electronic engine immobilizer device as standard equipment on its Outlander Sport vehicle line beginning with MY 2012. Features of the antitheft device will include a transponder key, electronic control unit (ECU), and a passive immobilizer. Mitsubishi will also incorporate an audible and visual alarm system as standard equipment on all trimline vehicles. Mitsubishi's submission is considered a complete petition as required by 49 CFR 543.7, in that it meets the general requirements contained in 543.5 and the specific content requirements of 543.6.

Mitsubishi stated that its entry models for the Outlander Sport vehicle line will be equipped with a Wireless Control Module (WCM). Mitsubishi stated that this is a keyless entry system in which the transponder is located in a traditional key that must be inserted into the key cylinder in order to activate the ignition. All other models of the Outlander Sport vehicle line are equipped with a One-touch Starting System (OSS), which utilizes a keyless system that allows the driver to press a button located on the instrument panel to activate and deactivate the ignition (instead of using a traditional key in the key cylinder) as long as the transponder is located in close proximity to the driver. Mitsubishi stated that the performance of the immobilizer will be the same in all models whether the vehicle has a WCM or OSS entry system. Mitsubishi further stated that the only difference between the two keyless entry systems is the "key" and the method used to transmit the information from the key to the immobilizer.

Once the ignition switch is pushed to the "on" position, the transceiver module reads the specific ignition key code for the vehicle and transmits an encrypted message containing the key code to the electronic control unit (ECU). The immobilizer receives the key code signal transmitted from either type of key (WCM or OSS) and verifies that the key code signal is correct. The immobilizer then sends a separate encrypted start-code signal to the engine ECU to allow the driver to start the vehicle. The engine only will function

if the key code matches the unique identification key code previously programmed into the ECU. If the codes do not match, the engine and fuel system will be disabled.

In addressing the specific content requirements of 543.6, Mitsubishi provided information on the reliability and durability of its proposed device. To ensure reliability and durability of the device, Mitsubishi conducted tests based on its own specified standards. Mitsubishi provided a detailed list of the tests conducted and believes that the device is reliable and durable since the device complied with its specific requirements for each test. Mitsubishi additionally stated that its immobilizer system is further enhanced by several factors making it very difficult to defeat. Specifically, Mitsubishi stated that communication between the transponder and the ECU are encrypted. The WCM has over 4.2 billion and the OSS has over 2.4 million different possible key codes that make successful key code duplication virtually impossible. Mitsubishi also stated that its immobilizer system and the ECU share security data during vehicle assembly that make them a matched set. These matched modules will not function if taken out and reinstalled separately on other vehicles. Mitsubishi also stated that it is impossible to mechanically override the system and start the vehicle because the vehicle will not be able to start without the transmission of the specific code to the electronic control module. Lastly, Mitsubishi stated that the antitheft device is extremely reliable and durable because there are no moving parts, nor does the key require a separate battery.

Mitsubishi informed the agency that the Outlander Sport vehicle line was first equipped with the proposed device beginning with its MY 2011 vehicles. Additionally, Mitsubishi informed the agency that its Eclipse vehicle line has been equipped with the device beginning with its MY 2000 vehicles. Mitsubishi stated that the theft rate for the MY 2000 Eclipse decreased by almost 42% when compared with that of its MY 1999 Mitsubishi Eclipse (unequipped with an immobilizer device). Mitsubishi also revealed that the Galant, Endeavor, Outlander and Lancer vehicle lines have been equipped with a similar type of immobilizer device since January 2004, April 2004, September 2006 and March 2007 respectively. The Mitsubishi Galant, Endeavor, Outlander and Lancer vehicle lines have all been granted parts-marking exemptions by the agency and the average theft rates using 3 MY's data are 4.8061, 2.5410, 0.9507 and 3.1547 respectively. Therefore, Mitsubishi has concluded that the antitheft device proposed for its vehicle line is no less effective than those devices in the lines for which NHTSA has already granted full exemption from the parts-marking requirements.

Based on the supporting evidence submitted by Mitsubishi on the device, the agency believes that the antitheft device for the Outlander Sport vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR Part 541). The agency concludes that the device will provide the five types of performance listed in § 543.6(a)(3): Promoting activation; attract attention to the efforts of an unauthorized person to enter or move a vehicle by means other than a key; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

Pursuant to 49 U.S.C. 33106 and 49 CFR 543.7(b), the agency grants a petition for an exemption from the parts-marking requirements of Part 541 either in whole or in part, if it determines that, based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of Part 541. The agency finds that Mitsubishi has provided adequate reasons for its belief that the antitheft device for the Mitsubishi Outlander Sport vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR Part 541). This conclusion is based on the information Mitsubishi provided about its device.

For the foregoing reasons, the agency hereby grants in full Mitsubishi's petition for exemption for the Outlander Sport vehicle line from the parts-marking requirements of 49 CFR Part 541, beginning with the 2012 model year vehicles. The agency notes that 49 CFR Part 541, Appendix A–1, identifies those lines that are exempted from the Theft Prevention Standard for a given model year. 49 CFR Part 543.7(f) contains publication requirements incident to the disposition of all Part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts-marking requirements of the Theft Prevention Standard.

If Mitsubishi decides not to use the exemption for this line, it must formally notify the agency. If such a decision is made, the line must be fully marked as required by 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Mitsubishi wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions "to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption."

The agency wishes to minimize the administrative burden that § 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis.* Therefore, NHTSA suggests that if the manufacturer contemplates making any changes, the effects of which might be characterized as *de minimis,* it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: February 8, 2011.

Joseph S. Carra,

Acting Associate Administrator for Rulemaking.

[FR Doc. 2011–3195 Filed 2–11–11; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket: PHMSA–2010–0355]

Pipeline Safety: Agency Information Collection Activities: Notice of Request for Extension of Currently Approved Information Collections

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), U.S. Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comments. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published in the **Federal Register** on December 7, 2010 (75 FR 76077) under Docket No. PHMSA–2010–0355. No comments were received. The purpose of this notice is to allow the public an additional 30 days to submit comments to OMB on the information collection described below.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attn: Desk Officer for DOT/PHMSA, 725 17th Street, NW., Washington, DC 20503.

DATES: Interested persons are invited to submit comments on or before March 16, 2011.

FOR FURTHER INFORMATION CONTACT: Angela Dow by telephone at 202–366–1246, by e-mail at *angela.dow@dot.gov,* or by mail at U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue, SE., PHP–30, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Title: Pipeline Safety: Periodic Underwater Inspections.

OMB Control Number: 2137–0618.

Type of Request: Renewal of a currently approved information collection.

Abstract: The Federal pipeline safety regulations (49 CFR parts 190–199) require operators to conduct appropriate underwater inspections in the Gulf of Mexico. If an operator finds that its pipeline is exposed on the seabed floor or constitutes a hazard to navigation, the operator must contact the National Response Center by telephone within 24 hours of discovery to report the location of the exposed pipeline.

Affected Public: Operators of underwater pipeline facilities.

Estimated number of responses: 82.

Estimated annual burden hours: 1,312 hours.

Frequency of collection: On occasion.

Comments are invited on: The need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility; 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; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques. A comment to OMB is most effective if OMB receives it within 30 days of the date of publication in the **Federal Register.**

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR part 1.

Issued in Washington, DC, on February 8, 2011.

Linda Daugherty,

Deputy Associate Administrator for Policy and Programs.

[FR Doc. 2011–3184 Filed 2–11–11; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF VETERANS AFFAIRS

Public Availability of the Department of Veterans Affairs FY 2010 Service Contract Inventory

AGENCY: Department of Veterans Affairs.

ACTION: Notice of public availability of FY 2010 service contract inventories.

SUMMARY: In accordance with Section 743 of Division C of the Consolidated Appropriations Act of 2010 (Pub. L. 111–117), Department of Veterans Affairs (VA) is publishing this notice to advise the public of the accessibility of VA's FY 2010 service contract inventory available at *http://www1.va.gov/oamm/rlib/scainventory.cfm.* This inventory provides information on service contract actions over $25,000 that were made in FY 2010. The information is organized by function to show how contracted resources are distributed throughout the department. The inventory has been developed in accordance with guidance issued on November 5, 2010, by the Office of Management and Budget's Office of Federal Procurement Policy (OFPP). OFPP's guidance is available at *http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/service-contract-inventories-guidance-11052010.pdf.*

FOR FURTHER INFORMATION CONTACT: Questions regarding the service contract inventory should be directed to Marilyn Harris, Director of Acquisition Policy, Office of Acquisition and Logistics (Policy 001AL–P2) at 202–461–6929 or *Marilyn.harris2@va.gov.*

Approved: February 7, 2010.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

[FR Doc. 2011–3220 Filed 2–11–11; 8:45 am]

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FEDERAL REGISTER

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Part II

Department of Agriculture

Rural Business-Cooperative Service
Rural Utilities Service

7 CFR Parts 4279 and 4287
Biorefinery Assistance Guaranteed Loans; Final Rule

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Rural Utilities Service

7 CFR Parts 4279 and 4287

RIN 0570–AA73

Biorefinery Assistance Guaranteed Loans

AGENCY: Rural Business-Cooperative Service and Rural Utilities Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule establishes a guaranteed loan program for the development and construction of commercial-scale biorefineries and for the retrofitting of existing facilities using eligible technology for the development of advanced biofuels.

DATES: This interim rule is effective March 16, 2011. Comments must be received on or before April 15, 2011.

ADDRESSES: You may submit comments to this rule by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Submit written comments via the U.S. Postal Service to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, STOP 0742, 1400 Independence Avenue, SW., Washington, DC 20250–0742.
- *Hand Delivery/Courier:* Submit written comments via Federal Express Mail or other courier service requiring a street address to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, 300 7th Street, SW., 7th Floor, Washington, DC 20024.

All written comments will be available for public inspection during regular work hours at the 300 7th Street, SW., 7th Floor address listed above.

FOR FURTHER INFORMATION CONTACT: Kelley Oehler, Energy Branch, Biorefinery Assistance Program, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Stop 3225, Washington, DC 20250–3201; telephone (202) 720–6819. E-mail: *kelley.oehler@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This interim rule has been reviewed under Executive Order (EO) 12866 and has been determined to be economically significant by the Office of Management and Budget. The EO defines a "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this EO.

The Agency conducted a benefit-cost analysis to fulfill the requirements of Executive Order 12866. In this analysis, the Agency identified potential benefits and costs of the Biorefinery Assistance Guaranteed Loan Program to lenders, borrowers, and the Agency. The analysis contains both quantitative estimates and qualitative descriptions of the expected benefits and costs of the Biorefinery Assistance Guaranteed Loan Program. The environmental and energy impacts associated with the Biorefinery Assistance Guaranteed Loan Program were qualitatively assessed.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, Rural Development generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires Rural Development to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This interim rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Environmental Impact Statement

This renewable energy program under Section 9003 of the Farm Security and Rural Investment Act of 2002 (FSRIA) (as amended by Section 9001 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill)) has been operating on an interim basis through the issuance of a Notice of Funds Availability (NOFA). During this initial round of applications, the Agency conducted National Environmental Policy Act (NEPA) reviews on each individual application for funding. No significant environmental impacts were reported, and Findings of No Significant Impact (FONSI) were issued for each approved application. Taken collectively, the applications show no potential for significant adverse cumulative effects.

The Agency has prepared a programmatic environmental assessment (PEA), pursuant to 7 CFR part 1940, subpart G, analyzing the environmental effects to air, water, and biotic resources; land use; historic and cultural resources; and greenhouse gas emissions affected by the Biorefinery Assistance Guaranteed Loan Program proposed rule. The purpose of the PEA is to assess the overall environmental impacts of the programs related to the Congressional goal of advancing biofuels production for the purposes of energy independence and greenhouse gas emission reductions. The impact analyses are national in scope, but draw upon site-by-site analysis for each application to the program. Site-specific NEPA documents prepared for those facilities funded under Sections 9003 and 9004 of the FSRIA in FY 2008 and/or 2009 were utilized, as well, to forecast likely impacts under the interim rule. The draft PEA was made available to the public for comment on the USDA Rural Business-Cooperative Service's Web site on May 3, 2010. No comments were received on the draft PEA, and the Agency is preparing to publish a Finding of No Significant Impact (FONSI) for the program.

Executive Order 12988, Civil Justice Reform

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this rule: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given this rule; and (3) administrative proceedings in accordance with the regulations of the Department of Agriculture's National Appeals Division (7 CFR part 11) must be exhausted before bringing suit in

court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

Executive Order 13132, Federalism

It has been determined, under Executive Order 13132, Federalism, that this interim rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in the rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various government levels.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have an economically significant impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

In compliance with the RFA, Rural Development has determined that this action will not have an economically significant impact on a substantial number of small entities. The burden for applying for a Biorefinery Assistance Guaranteed Loan Program loan to any one borrower is estimated to be less than 0.1 percent of the estimated cost of the average construction or reconstruction project funded under this program. Further, this regulation only impacts those who choose to participate in the program.

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

The regulatory impact analysis conducted for this interim rule meets the requirements for Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use, Executive Order No. 13211, which states that an agency undertaking regulatory actions related to energy supply, distribution, or use is to prepare a Statement of Energy Effects. This analysis finds that this rule will not have any adverse impacts on energy supply, distribution, or use.

Executive Order 12372, Intergovernmental Review of Federal Programs

Rural Development guaranteed loans are subject to the Provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. Rural Development will conduct intergovernmental consultation in the manner delineated in RD Instruction 1940–J, "Intergovernmental Review of Rural Development Programs and Activities," available in any Rural Development office and on the Internet at *http://www.rurdev.usda.gov/regs,* and in 7 CFR part 3015, subpart V.

Executive Order 13175

United States Department of Agriculture (USDA) will undertake, within 6 months after this rule becomes effective, a series of regulation Tribal consultation sessions to gain input by elected Tribal officials or their designees concerning the impact of this rule on Tribal governments, communities, and individuals. These sessions will establish a baseline of consultation for future actions, should any be necessary, regarding this rule. Reports from these sessions for consultation will be made part of the USDA annual reporting on Tribal Consultation and Collaboration. USDA will respond in a timely and meaningful manner to all Tribal government requests for consultation concerning this rule and will provide additional venues, such as webinars and teleconferences, to periodically host collaborative conversations with Tribal leaders and their representatives concerning ways to improve this rule in Indian country.

The policies contained in this rule would not have Tribal implications that preempt Tribal law.

Programs Affected

The Biorefinery Assistance Guaranteed Loan Program is listed in the Catalog of Federal Domestic Assistance Program under Number 10.865.

Paperwork Reduction Act

The information collection requirements contained in the Notice of Funding Availability for the Section 9003 Biorefinery Assistance Guaranteed Loan Program published on November 20, 2008, were approved by the Office of Management and Budget (OMB) under emergency clearance procedures and assigned OMB Control Number 0570–0055. In accordance with the Paperwork Reduction Act of 1995, the Agency is now seeking standard OMB approval of the reporting requirements contained in this interim rule. In the publication of the proposed rule on April 16, 2010, the Agency solicited comments on the estimated burden. The Agency received one comment in response to this solicitation. This information collection requirement will not become effective until approved by OMB. Upon approval of this information collection, the Agency will publish a rule in the **Federal Register**.

Title: Biorefinery Assistance Guaranteed Loan Program.

OMB Number: 0570–NEW.

Type of Request: New collection.

Abstract: The collection of information is vital for Rural Development to make wise decisions regarding the eligibility of projects and borrowers in order to ensure compliance with the regulations and to ensure that the funds obtained from the Government are used appropriately (i.e., are used for the purposes for which the guaranteed loans were awarded). Persons seeking loan guarantees under this program will have to submit applications that include specified information including, but not limited to, the lender's analysis and credit evaluation, financial statements on the borrower, a feasibility study, a business plan, a technical assessment, an economic analysis, and a description of the borrower's bioenergy experience. The information included in applications for loan guarantee will be used to determine applicant and project eligibility and to ensure that funds are used for projects that are likely to be financially sound.

Once a project has been approved and the loan has been guaranteed, lenders must submit certain reports. Some of these reports are associated with the performance of the lender's loan portfolio and include both periodic reports on the status of that portfolio and, when applicable, monthly default reports. Other reports are associated with individual projects and include quarterly construction reports and, once a project has been completed, annual reports through the life of the guaranteed loan. In addition, lenders are required to conduct annual inspections of each completed project.

The estimated information collection burden hours has not changed from the proposed rule, remaining at 2,920 hours.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 4.6 hours per response.

Respondents: Individuals, entities, Indian tribes, units of State or local government, corporations, farm cooperatives, farmer cooperative organizations, associations of

agricultural producers, National Laboratories, institutions of higher education, rural electric cooperatives, public power entities, and consortia of any of these entities.

Estimated Number of Respondents: 23.

Estimated Number of Responses per Respondent: 27.4.

Estimated Number of Responses: 630.

Estimated Total Annual Burden on Respondents: 2,920.

E-Government Act Compliance

Rural Development is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

I. Background

Rural Development administers a multitude of Federal programs for the benefit of rural America, ranging from housing and community facilities to infrastructure and business development. Its mission is to increase economic opportunity and improve the quality of life in rural communities by providing the leadership, infrastructure, venture capital, and technical support that enables rural communities to prosper. To achieve its mission, Rural Development provides financial support (including direct loans, grants, and loan guarantees) and technical assistance to help enhance the quality of life and provide the foundation for economic development in rural areas.

Section 9003 of the Farm Security and Rural Investment Act of 2002 (FSRIA) (as amended by Section 9001 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill)) provides for financial assistance in the form of grants and loan guarantees to assist in the development of new and emerging technologies for the development of advanced biofuels. At this time, Congress has not appropriated any discretionary funding, which would be necessary to fund program grants. Therefore, the interim rule only addresses loan guarantees. If and when funds for grants are appropriated and received by the Agency, it will be necessary for the Agency to promulgate a separate regulation for program grants.

The interim rule establishes the Biorefinery Assistance Guaranteed Loan Program to provide loan guarantees for the development, construction, or retrofitting of commercial biorefineries using eligible technology, where eligible technology is defined as:

(a) Any technology that is being adopted in a viable commercial-scale operation of a biorefinery that produces an advanced biofuel, and

(b) any technology not described in paragraph (a) above that has been demonstrated to have technical and economic potential for commercial application in a biorefinery that produces an advanced biofuel.

On April 16, 2010 [75 FR 20044], the Agency published a proposed rule for the Biorefinery Assistance Guaranteed Loan Program. Comments were requested on the proposed rule, which are summarized in Section III of this preamble. Most of the proposed rule's provisions have been carried forward into 7 CFR part 4279, subpart C, and 7 CFR part 4287, subpart D, although there have been several significant changes. Changes to the proposed rule are summarized in Section II of this preamble.

Interim rule. USDA Rural Development is issuing this regulation as an interim rule, effective March 16, 2011. All provisions of this regulation are adopted on an interim final basis, are subject to a 60-day comment period, and will remain in effect until the Agency adopts the final rule.

II. Summary of Changes to the Proposed Rule

This section presents changes from the April 16, 2010, proposed rule. Most of the changes were the result of the Agency's consideration of public comments on the proposed rule. Some changes, however, are being made to clarify proposed provisions. Unless otherwise indicated, rule citations refer to those in the interim rule.

A. Highlighted Changes

The following highlight significant changes to the rule:

- Revised the maximum percent guarantee provisions, including adding provisions to allow for a 90 percent guarantee for loan amounts of $125 million or less under certain conditions.
- Added refinancing as an eligible project purpose under certain conditions.
- Removed location in a rural area as a requirement for project eligibility; however, it is included in a scoring criterion in order to receive points for that criterion.
- Removed the citizenship requirement for borrowers.
- Revised the minimum retention requirement to 7.5 percent of total loan amount.

B. Section Specific Changes

1. Definitions

A number of definitions were added, revised, or removed.

The Agency added one definition:

"Biobased product" was added in order to further clarify the biorefinery definition.

The Agency revised several definitions as follows:

- *Business plan.* The Agency clarified the wording of this definition.
- *Existing businesses.* The Agency clarified the wording of this definition.
- *Farm cooperative.* The Agency revised the definition to be generally consistent with the definition being used in the value-added producer grant program.
- *Feasibility study.* The Agency replaced "capabilities" with "feasibility" to clarify the definition.
- *Local owner.* The Agency revised the rule to remove the reference to the feedstock supply area and now defines local owner as "an individual who owns any portion of an eligible advanced biofuel biorefinery and whose primary residence is located within a certain distance from the biorefinery as specified by the Agency in a Notice published in the **Federal Register**."
- *Material adverse change.* The Agency revised the definition by replacing "might" with "would likely" jeopardize loan performance.
- *Project.* The Agency corrected the term "biobased byproduct" to "biobased product."
- *Technical and economic potential.* The Agency added to the definition the phrase "successfully completed" when referring to the 12-month operating cycle.

Lastly, the Agency revised several definitions associated with capital ratios to refer to the Federal Deposit Insurance Corporation regulations in general.

The Agency removed several definitions—Agency, byproduct, future recovery, immediate family, regulated or supervised lender, and surety.

- The term "Agency" was removed from the definitions because it is defined in § 4279.2 and does not need to be repeated in the interim rule.
- The term "future recovery" was removed because the term is not used in the interim rule.
- The term "immediate family" was removed because the term was only used for the citizenship requirement, which has been removed. Thus, the term is no longer used in the rule.
- The term "regulated or supervised lender" was removed because of the revision made to identify eligible lenders.

• The specific definition for the term "surety" was removed; the rule now refers to how the term is commonly used in the industry.

2. Lender Eligibility Requirements

The Agency modified § 4279.202(c)(1) to make the definition of eligible lender similar, but not identical, to the definition of traditional lender in the Business and Industry Guaranteed Loan Program. The Agency notes that, under the interim rule, savings and loan associations, mortgage lenders, and other lenders (those that are not regulated lenders) are not eligible to participate in this program.

The Agency modified the rule to require that the lender meet acceptable levels of capital at the time of application and at the time of issuance of loan note guarantee, thereby removing the requirement of maintaining acceptable capital levels at all times.

The Agency also clarified that, if the information to calculate these levels of capital is not identified in the Call Reports or Thrift Financial Reports, the lender will be required to calculate these levels and provide them to the Agency.

Lastly, the Agency added a provision addressing lenders that are under a cease and desist order from a Federal agency. In such instances, the Agency will evaluate the lender's eligibility on a case-by-case basis given the risk of loss posed by the cease and desist order.

3. Independent Credit Risk Analysis

The Agency revised "$100,000" to "$125,000,000."

4. Conditions of Guarantee

The Agency revised the rule to indicate that both the guaranteed and unguaranteed portions of the entire loan must be secured by a first lien and that the Agency may consider a subordinate lien position on inventory and accounts receivable for working capital loans if certain conditions are met.

The Agency also clarified that the lender remains bound by all obligations under the loan note guarantee, Lender's Agreement, and Agency program regulations even if all or a portion of the loan note guarantee has been sold to a holder.

Lastly, the Agency incorporated provisions associated with rights and liabilities specific to this program, rather than relying on the corresponding provisions in the Business and Industry Guaranteed Loan program found at § 4279.72(b), to clarify that having a holder purchase part of the loan note guarantee does not increase the coverage provided to the lender under the loan note guarantee.

5. Sale or Assignment

The Agency revised the sale or assignment provisions to rely solely of the sale or assignment provisions of the Business and Industry Guaranteed Loan program found at § 4279.75.

6. Minimum Retention

The Agency revised the minimum retention provisions to rely on the minimum retention provisions of the Business and Industry Guaranteed Loan program found at § 4279.77, except that the lender is required to hold 7.5 percent (rather than 5 percent) of the total loan amount in its own portfolio.

7. Ineligible Purposes

As proposed, projects in excess of $1 million that would likely result in the transfer of jobs from one area to another and increase direct employment by more than 50 employees and projects in excess of $1 million that would increase direct employment by more than 50 employees, if the project would result in an increase in the production of goods for which there is not sufficient demand, or if the availability of services or facilities is insufficient to meet the needs of the business, would have been ineligible purposes, as they are in the Business and Industry Guaranteed Loan program. The Agency has removed these types of projects as ineligible; that is, such projects would be eligible for a guaranteed loan under this program. The Agency has determined that to continue excluding such projects is unnecessary for this program because the program's primary focus is on the development of renewable energy technologies and not on job creation.

8. Fees

The Agency removed the cross-reference to the Business and Industry Guaranteed Loan program and replaced it with provisions specific to this program. The only substantive change is the elimination of reference to the option to lower the guarantee fee to 1 percent, which was never intended to be part of this program.

The Agency has added provisions that allow it to adjust the guarantee fee and the annual renewal fee through the publication of a **Federal Register** notice.

The Agency has added a 3 percent guarantee fee for loans with a 90 percent guarantee.

9. Borrower Eligibility

The Agency removed the citizenship requirement. In addition, the Agency clarified that the borrower must have or obtain legal authority prior to loan closing.

10. Project Eligibility

Changes made to project eligibility include:

• Replacing the requirement that the project must be located in a rural area with the requirement that the project must be located in a State. Note that the project must be located in a rural area to receive points under the "potential for rural economic development" scoring criterion.

• Clarifying that the project must use an eligible feedstock for the production of advanced biofuels and biobased products (at proposal, only advanced biofuels was identified) to be consistent with the authorizing legislation.

• Revising the proposed requirement that "more than 70 percent of the revenue generated by the biorefinery must be from the sale of advanced biofuel" to now require that the majority of the production generated by the biorefinery must be advanced biofuels. If the biorefinery produces biobased products and, if applicable, byproduct(s) with an established BTU content, majority biofuel production will be based on BTU content of the advanced biofuel, the biobased product, and byproduct. Alternatively, if there is no established BTU value for the biobased product or the byproduct produced, then majority biofuel production would be based on output volume of the advanced biofuel, the biobased product, and, if applicable, the byproduct.

• Adding a provision that the advanced biofuel must be sold as a biofuel unless otherwise approved by the Agency and determined to be in the best financial interests of the government.

• Revising the rule to include any organic matter that is available on a renewable or recurring basis from non-Federal land or eligible tribal land, including municipal solid waste consisting of renewable biomass, biosolids, treated sewage sludge, and byproducts of the pulp and paper industry, as eligible feedstock.

• Clarifying that an advanced biofuel that is converted to another form of energy for sale will still be considered an advanced biofuel.

11. Guaranteed Loan Funding

The Agency has made several changes in this section, including:

• Clarifying that the borrower needs to provide the remaining 20 percent from other non-Federal sources to complete the project.

• Revising the loan guarantee amounts associated with the maximum percent guarantees;

• Allowing a maximum guarantee of 90 percent for loan requests of $125 million or less and identifying the conditions under which the Agency may issue a 90 percent guarantee.

• Adding a provision that loans made with the proceeds of any obligation the interest on which is excludable from income under the Internal Revenue Code are ineligible.

12. Subordination of Lien Position

The Agency moved this provision to the servicing section and corrected the cross-reference (from § 4279.123 to § 4287.123).

13. Interest Rates

In addition to removing the proposed provisions associated with blended rates and the 1 percent interest rate cap from the interim rule, the Agency has significantly revised this section to now rely on the interest provisions found in the Business and Industry Guaranteed Loan program at § 4279.125, with several exceptions:

• The rate on the unguaranteed portion of the loan cannot exceed the rate on the guaranteed portion of the loan by more than 500 basis points;

• Variable rate loans will not provide for negative amortization nor will they give the borrower the ability to choose its payment among various options; and

• Both the guaranteed and unguaranteed portions of the loan must be amortized over the same term.

In addition, the interest rates provisions found in the Business and Industry Guaranteed Loan program at § 4287.112 also apply to this program.

14. Terms of Loan

The maximum repayment period has been revised from "20 years or 85 percent of the useful life of the project, as determined by the Agency, whichever is less" to "20 years or the useful life of the project, as determined by the lender and confirmed by the Agency, whichever is less."

The Agency also removed the cross-reference to § 4279.126(d) and inserted corresponding text specific to this program (see § 4279.232(d)).

15. Credit Evaluation

The Agency made several changes to the provisions for demonstrating the borrower's equity. One change allows equipment and qualified intellectual project (in addition to real property as was proposed) to be used to meet the equity requirement, but clarifying that this provision applies to only existing biorefineries and not to new biorefineries. In addition, the Agency clarified that equity cannot include other direct Federal funding.

The Agency clarified that the project equity must be demonstrated at the time the loan is closed.

With regard to collateral, the Agency added provisions that it may consider, for both existing and new biorefineries, the value of qualified intellectual property, arrived at in accordance with GAAP standards and subject to discounting. The value of intellectual property may not exceed 30 percent of the total value of all collateral.

16. Guarantee Applications

i. *Application submittal, deadlines, and process.* Reference to paper copies has been replaced with reference to the use of the annual Federal Register notice to identify the applicable method(s) of application submittal.

ii. *Lender's analysis and credit analysis.* The Agency added a provision requiring the lender to identify whether the loan note guarantee is requested prior to construction or after completion of the construction of the project; revised the requirement that the required personal credit report be from an "acceptable" credit reporting company to an "Agency-approved" credit reporting company; added a requirement that personal credit reports are required from key employees of the borrower; added a provision to allow the Agency to obtain personal credit reports when the borrower is a corporation listed on a major stock exchange; and deleted the provision that stated credit reports are not required for elected and appointed officials when the borrower is a public body or non-profit corporation.

iii. *Feasibility study.* Several changes were made to the contents of the feasibility study as summarized in the following table. Note that only elements that were changed are shown in the table.

Feasibility area	Change(s)
Economic	• Added feedstock risks. • Revised documentation of woody biomass feedstock to apply only to woody biomass feedstock sourced from National Forest system lands or public lands. • Added "or sold to" when referring to biobased by-products and producer associations and cooperatives.
Market	• Redefined risks to address competitive threats and advantages and specific market risks.
Technical	• Removed "any constraints or limitations in the financial projections and any other facility or design-related factors that might affect the success of the enterprise." • Under Risk Related to: added "Design-related factors that may affect project success."
Financial	• Added reference to "uses of project capital." • Revised the provision of project balance sheets, income and expense statement, and cash flow statements from 3 years to over the useful life of the project.
Management	• Added biofuel production, acquisition of feedstock, and marketing and sale of off-take to the list of areas to be covered when describing the borrower and management's previous experience. • Added risks related to management strengths and weaknesses.

Note: No changes were made to: Executive Summary and Qualifications.

iv. *Economic analysis.* The elements of the economic analysis have been incorporated in the economic feasibility and financial feasibility sections of the feasibility study and proposed § 4279.261(i) has been removed from the rule as a separate provision.

V. *Scoring information.* The Agency added a paragraph requiring that the application must contain information in a format that is responsive to the scoring criteria.

17. Lender Certification

The lender is now required to certify that "the lender concludes that the project has technical merit" rather than certify that "the project is able to demonstrate technical merit."

18. Scoring Criteria

The Agency revised the date it will score each completed application it receives from June 1 to May 1 in the fiscal year in which the application is received.

The Agency also made numerous changes to the criteria it will use to score applications. These changes are summarized in the following table. Note that only criteria that were changed are shown in the table.

Criterion	Change(s)
Borrower has established a market	• Added requirement for the advanced biofuel to meet an applicable renewable fuel standard in order to be awarded points. • Reduced the percent commitment from 60 to 50 percent. • Increased points from 5 to 10.
Location of biorefinery relative other similar biorefineries.	• Revised to read "any other similar advanced biofuel facilities."
Use of feedstock not previously used in the production of advanced biofuels.	• No changes were made to this criterion.
Working with producer associations and cooperatives.	• Corrected example. • Instituted a two-tier system that begins awarding points at a 30 percent threshold. • To be awarded points, must meet one of the three provisions, not all three as proposed. • Replaced "advanced biobased byproducts" with "biobased products".
Level of financial participation by the borrower.	• Reduced points from 20 to 15.
Impacts on resource conservation, public health, and environment.	• Increased maximum points from 5 to 10 and redistributed the points. • Added examples to each of the three impact areas. • Added provision to deduct 5 points if feedstock can be used for human or animal consumption.
Significant negative impacts on existing facilities.	• Increased points from 5 to 10. • Added provision that if the feedstock is wood pellets, no points would be awarded under this criterion.
Rural economic development potential	• Added provision that the project be located in a rural area to be awarded points under this criterion. • Removed reference to the median household wage in the State such that only the County median household wage is used in awarding points. • Increased points from 5 to 10.
Level of local ownership	• Decreased points from 15 to 5.
Project replication	• Increased points from 5 to 10.
Use of feedstock for human or animal consumption deduction.	• Removed as a separate criterion and incorporated provision for deducting points under the "Impact on resource conservation, public health, and environment" criterion.
Use of technology, system, or process not in operation in the fiscal year.	• Decreased points from 15 to 5.
Applications that promote partnerships and other activities that further the purpose of the program as stated in the authorizing legislation.	• Added provision to award Administrator bonus points.

19. Ranking of Applications

The Agency modified when it will rank applications and when applications are due for each of the two rankings. The Agency also modified slightly the process that will be used to rank applications, which includes allowing an application to be competed in two consecutive competitions. This has the effect of allowing applications submitted during the second application period of a fiscal year to be carried over to the next fiscal year. Conforming changes were made in the section addressing ranked applications not funded.

20. Conditions Precedent to Issuance of Loan Note Guarantee

The Agency added to the introductory text that the lender can request the guarantee prior to construction, but must still certify to all conditions in this section. The Agency also added a new requirement that the lender certify that the borrower has provided the equity in the project identified in the conditional commitment.

21. Requirements After Project Construction

The Agency added a requirement to report on the actual amount of biobased product and, if applicable, byproducts produced.

22. Servicing

The Agency is allowing the financial statements to be submitted within 180 days rather than the 120 days required under § 4287.107(d).

The Agency made a conforming change in § 4287.307(d) that, for working capital loans, the Agency may consider a subordinate lien provided it is consistent with the conditional provisions specified in § 4279.202(i)(1).

The Agency determined that the interest rate adjustment provisions of § 4287.112(a)(2) should not apply to this program and has revised the rule to exclude those provisions.

As noted earlier, the Agency moved the provisions concerning subordination of lien position to this section (see § 4287.307(g)).

The Agency revised the transfer and assumption provisions to cross-reference this rule rather than the Business and Industry Guaranteed Loan rule.

The Agency revised the default by borrower provisions by removing the cross-reference to the corresponding Business and Industry Guaranteed Loan program provisions and inserting text specific to this program. This change was made to correct an incorrect cross-reference.

The Agency revised the liquidation provisions to correct an incorrect cross-reference in § 4287.157(d)(13) concerning appraisals.

23. Fiscal Year 2009 and Fiscal Year 2010 Loan Guarantees

Prior to this interim rule, applications were processed and guaranteed loans were serviced according to the provisions in the November 20, 2008 (73 FR 70544), March 12, 2010 (75 FR 11840), or the May 6, 2010 (75 FR

25076) **Federal Register** notice, as applicable. Because of the changes the Agency has made to the servicing of loans guaranteed under the Biorefinery Assistance Guaranteed Loan Program, there may be entities that would prefer to have a guaranteed loan serviced under the provisions of the interim rule rather than under the provisions in the three **Federal Register** notices pursuant to which their guaranteed loans were made. The Agency has determined that such entities should be afforded the opportunity to access the servicing provisions of the interim rule. Therefore, the Agency has added a new provision to this effect in the interim rule.

III. Summary of Comments and Responses

The proposed rule was published in the **Federal Register** on April 16, 2010 (75 FR 20044) with a 60-day comment period that ended June 15, 2010. Comments were received from 42 commenters yielding 352 individual comments on the proposed rule, which have been grouped into categories based on similarity. Commenters included biorefinery owner/operators, community development groups, industry and trade associations, investment banking institutions, Rural Development personnel, and individuals. As a result of some of the comments, the Agency made changes in the rule. The Agency sincerely appreciates the time and effort of all commenters. Responses to the comments on the proposed rule are discussed below.

Requested Comments—
a. Preapplications

Comment: Two commenters state that a preapplication process that serves as a screening process could be very helpful to all parties. One of the commenters states that considerable effort is required to develop an application package that may ultimately not score high enough to meet eligibility requirements. In addition, lenders have to commit to the application process with no reference as to how the Agency will view the project. One option would be to move the feasibility study (§ 4279.261) and the evaluation scoring (§ 4279.265) into a preapplication process. Screening and filtering out ineligible or otherwise low scoring projects would streamline the overall process and improve program efficiencies.

One commenter states that the application requirements, which appear to be rather lengthy and burdensome, contain elements that should be required by any prudent commercial loan committee reviewing the loan itself. The commenter believes a preapplication process for the program will only be of benefit to lenders and borrowers if it includes a sign-off by the Agency as to completeness of the application. The commenter believes it would be a waste of time to review a project for acceptability and then review it again for guarantee issuance; the review of a partial and then complete application would only serve to slow down a process that we are seeking to expedite.

One commenter believes that a preapplication process would only add another step in the program and would not further the intent and effectiveness of the program. Similarly, another commenter states that a preapplication should not be required as it increases the burden of required paperwork.

One commenter recommends that, rather than preapplications, specialists be available to assist in evaluating how a given project application would likely score against the program criteria.

One commenter encourages the Agency to consider a pre-application process similar to the two-phase process employed by the Department of Energy in its current solicitation (DE–FOA–0000140) for Title XVII loan guarantees, the lack of which the commenter identifies as an obstacle for applying for assistance. This process would be beneficial to the extent the "preapplication process" is similar to the two-phase process that the U.S. Department of Energy (DOE) is using in its current solicitation for Title XVII loan guarantees. Requiring less than a "full-blown" application in Phase I so that the Agency can determine eligibility and "invite" those applicants with a reasonable likelihood of success to apply in Phase II would relieve some burdens from applicants. Phase I could include a basic application, a letter commitment from the borrower to pursue Phase II if invited to apply and the applicant (lender) to lend a specified amount to the project if the Agency agrees to guarantee the loan (subject to other customary conditions precedent), along with an overview of the project reflective of the scoring criteria. This would reduce the level of diligence that lenders would have to conduct for Phase I and shift this diligence to Phase II when the success of an application is more likely. This may entice additional qualified lenders to participate and result in the Agency receiving more Phase I applications. A phased application process would also reduce the burden on the borrower, who, prior to issuance of the loan (or a greater likelihood as evidenced by an invitation to submit a Phase II application), may choose not to apply and instead allocate limited personnel resources to other tasks.

Response: The Agency has decided not to implement a preapplication requirement. Because the information that would be required in the preapplication would be similar to that in a formal application, a preapplication would be duplicative and add further burden to the lender and Agency. The Agency can meet with the lender/potential borrower prior to application submission to discuss the scoring criteria and informally review the proposal and application material completed to date.

Comment: One commenter suggests that a qualification form be written and posted on the Agency Web site that would be accessible to all. The commenter recommends that such a form would contain, at a minimum, scoring criteria; equity requirements and detailed examples of allowable equity; eligible borrowers; eligible technologies; eligible uses of loan proceeds; and approval timelines. The commenter also suggests that a blog page be implemented to make available questions and answers, new information, comments, and suggestions on an interactive basis.

Response: The rule provides applicable eligibility criteria and so no changes were made to the rule based on this comment. The Agency is currently revising the USDA Web site and will consider the suggestions offered by the commenter. The Agency will also consider preparing an application guide.

Comment: One commenter recommends implementing a pre-application process that does not require a lender-of-record. The first hurdle for participation in the section 9003 program is convincing a lender to commit resources to a project for due diligence, feasibility studies, term sheet development, and filing of an application. The program requirements are not conducive to lenders, particularly in light of the inherent risks associated with first-of-kind commercial advanced biofuel projects. Applications from several companies are being held back simply because a lender-of-record could not be found to begin the process. The structure that the Agency has created is counter to how private debt transactions are generally arranged. Typically, an investment bank represents the company/project and approaches lenders to underwrite the loans. Then, the lender will conduct extensive due diligence on the project and decide whether or not to lend and

on what terms. The proposed structure, however, requires the lender to be identified from the beginning, without any indication from the Agency as to whether or not there will be a guarantee from the Agency.

The commenter recommends phasing in applications in two parts as follows:

Part I (Pre-application)—The investment bank representing the project submits an application (similar to the current application) along with the project company. The Part I application contains the level of due diligence required by the Agency and gives the Agency comfort that an accredited, U.S. Securities and Exchange Commission (SEC)-regulated entity is representing the project and attesting to the project's attributes and risks. The Agency reviews that application and makes a determination, based on its review, whether a project should receive a "Letter of Intent" to proceed to Part II.

Part II—Once a Letter of Intent is issued, the project then seeks a lender for the guaranteed portion of the debt and a lender/investor for the unguaranteed portion of the debt. The latter is going to be the key participant and the one who will conduct a significant amount of due diligence to decide whether or not to take the risk on investing/lending for the unguaranteed portion of the debt. The result of that due diligence and a decision to invest should then be submitted to the Agency as a Part II "application," which is really more of a collection of due diligence findings. The company and the original investment bank could even certify as to its accurateness and then the Agency can review that final deliverable prior to issuing a guarantee and closing the transaction.

The commenter recognizes that a potential Agency concern is that the appropriate level of due diligence would not be conducted unless a lender is on the hook for some portion of the unguaranteed portion of the loan. However, the fact that there is an unguaranteed note means that an investor or lender will do a tremendous amount of due diligence prior to agreeing to lend/invest in the unguaranteed portion, which is a condition precedent for the Agency to issue a final loan guarantee and close a deal. If the Agency's concern is that proper due diligence is being done, the Agency should be confident that it will be done prior to the closing of the transaction and the issuance of a loan guarantee, because there is an unguaranteed portion of the debt that has to be placed. But by requiring the "Lender of Record," as defined to mean the holder of a portion of the unguaranteed debt, to conduct all of that due diligence up front is both unnecessary and unfeasible in this market. To protect the Agency from outstanding conditional commitments, without the ability to close on the guarantee, a 6-month time limit could be placed on submitting a Part II application.

Response: With regard to a pre-application process, for the reasons noted in an earlier response, the Agency is not implementing a pre-application process.

As a matter of practice, the Agency is available to meet with potential borrowers and/or lenders prior to the submittal of an application for a specific project.

The Agency further requires that a formal application be submitted from an eligible lender. From the formal application forward, the eligible lender will be the primary point of contact for the project with the Agency.

Requested Comments—b. Feedstock

Comment: One commenter recommends removing the restriction, "no corn feedstock," from tandem USDA and DOE programs in the instance of biobased chemicals, products, and materials only. The commenter states that corn has long given the U.S. a competitive advantage in the biofuel industry and that it may be our country's only advantage in the clean energy sector. The Agency should not eliminate the advantage of a highly efficient industrial product, engineered specifically for use in industry and not for food consumption. The Agency should, instead, advocate for any advantage in reaching our country's goals to achieve both renewable fuel standards and U.S. government biobased product procurement program goals.

One commenter believes that feedstock currently used for the production of food, other on-site energy production, and in other industries should not be diverted to new energy production, and that the current proposal to exclude cellulosic feedstock and "corn kernel starch" is sound and reasonable, and fits within the Agency's guidelines, purpose, and intent.

Response: The Agency notes that the exclusion of corn kernel starch is a statutory requirement and cannot be changed by this regulation. However, cellulosic feedstock is eligible under this program.

Comment: One commenter believes that all biorefineries using any eligible feedstock should be eligible for the program because the purpose of this program is the creation of advanced biofuel biorefineries and limiting feedstock eligibility would not further the program's purposes.

One commenter recommends allowing byproducts from pulp and paper if they can be upgraded to higher value products compared to power generation, and scoring them equally to other feedstock. Another commenter also recommends that byproducts from the paper and pulp industry be eligible, if the byproducts meet the criteria of not being consumed in a higher value use.

Response: The program allows for a variety of feedstock. The feedstock must be renewable biomass, other than corn kernel starch, as defined in the statute. The statute requires that the materials, pre-commercial thinnings, or invasive species from National Forest System land or public lands cannot be used for higher value products. This "higher value" criterion does not apply to byproducts of the paper and pulp industry.

Comment: Six commenters note that the proposed rule limits the types of feedstock that can be used to produce biofuels under the program. The House Conference Report for the 2008 Farm Bill—House Report 110–627, p. 1048, lines 3–8—specifically provides that: "Examples of lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis include dedicated energy crops and trees, wood and wood residues, plants, grasses, agricultural residues, fibers, animal wastes and other waste materials, and municipal solid wastes." The commenters believe that the Conference Managers undoubtedly intended that municipal solid waste can be used as a feedstock and state that the Agency has chosen to ignore this letter. Instead, the Agency notes in the proposed rule: "The Agency believes that the statute clearly defines eligible feedstock and no further clarification is needed in the proposed rule."

The commenters believe that the public interest is not served by limiting the number and types of technologies that can be used to build biorefineries, or in limiting the types of feedstock that are available for use and can provide an economic benefit to rural America. The commenters urge the Agency to modify the proposed rule to specifically state that municipal solid waste can be used as a feedstock, in conformity with the express intent of the House Conference Report for the 2008 Farm Bill.

One commenter also recommends stating that municipal solid waste can be used as a feedstock and treating municipal solid waste materials as a

homogeneous feedstock eligible to be used in biofuels production, consistent with standard recycling practices.

One commenter recommends including biosolids, or treated sewage sludge and its byproducts, as an eligible feedstock, and that facilities producing advanced biofuels, solid and liquid, from biosolids be allowed to apply for program funds.

One commenter recommends including all biodegradable solid wastes to further expand the types of feedstock that can be utilized.

One commenter recommends expanding the traditional definition of biomass to take advantage of new technologies that convert additional organic matters into energy—such as biosolids. Such an expanded definition of "renewable biomass" would take account of population growth in our rural communities and the environmental impacts of the traditional methods of biosolids disposal on such rural communities. Additionally, the Agency would be encouraging the recycling and reuse of a substantial renewable organic feedstock—biosolids, further expanding our nation's sources of energy. Specifically, the commenter proposes that the definition of "renewable biomass" be expanded as follows to include: "(iii) Renewable waste materials and byproducts resulting from the treatment of sewage, including biosolids, fats, oils, and grease and other byproducts."

Similarly, one commenter recommends expanding the definition of "Advanced biofuel" as follows to include: "(iii) Biofuel (solid or liquid) derived from waste material, including crop residue, other vegetative waste material, animal waste, food waste, yard waste, and treated sewage waste, residues and byproducts." According to the commenter, specifically including biosolids in the definition of "renewable biomass" as an eligible feedstock, and qualifying the definition of "advanced biofuels" to include treated human sewage waste materials, will encourage the wide-spread adoption of sewage-to-energy technologies and further efforts by Congress and the Administration to develop all sources of renewable energy and create jobs in green technologies.

One commenter states there should be no restriction on feedstock used and that the definition of feedstock needs to be expanded to include municipal sludge as an acceptable feedstock. The commenter states that, with the current need and demand for biofuels, it is imperative that there should not be a restriction on the type of feedstock used. In addition to producing advanced biofuels in a sustainable, efficient manner, it is imperative that waste materials be used to produce other advanced products and be utilized in the greatest way to achieve energy production and reduce greenhouse gases (GHG).

Response: The Agency partially agrees with the commenters. The Agency has revised the rule to clarify that municipal solid waste is an eligible feedstock, but only to the extent that it meets the statutory definition of renewable biomass. It is unlikely that homogeneous, unsegregated municipal solid waste would meet this definition. The Agency has also revised the rule to include as eligible feedstock any organic matter that is available on a renewable or recurring basis from non-Federal land or eligible tribal land, including biosolids, treated sewage sludge, and byproducts of the pulp and paper industry. The Agency notes that "black liquor," a byproduct of the pulp and paper industry, is not an eligible feedstock, because it includes inorganic material and, therefore, does not meet the definition of renewable biomass.

Comment: One commenter states that their technology is complementary to recycling and will not use paper that is commonly recycled. However, if paper is mixed with municipal solid waste instead of being collected separately, it cannot be recycled and should, thus, be considered a waste material for the production of biofuels. Therefore, the commenter urges the Agency to broadly define waste material, consistent with common recycling practices. Further, the commenter requests that the Agency not establish separate compliance obligations for various component parts of the waste stream, such as paper. The commenter, instead, recommends that the Agency provide additional guidance on the eligibility of paper, so that soiled paper, which is not recyclable, be included in the definition of waste material.

Response: The Agency considers soiled paper mixed with other organic municipal solid waste to be eligible renewable biomass. In § 4279.228(c), the phrase "consisting of renewable biomass" was added after the term "municipal solid waste" in the description of eligible feedstocks.

Comment: One commenter encourages the Agency to refrain from limiting feedstock eligibility for the program unless a particular feedstock is prohibited by Section 9003. The commenter agrees that "the statute clearly defines eligible feedstock and no further clarification is required." The commenter states that both Section 9001(3) and 9001(12) of the 2008 Farm Bill contain lists of feedstock that are included, but that these lists should not be construed as limiting these definitions to those feedstock listed, but rather as examples of the term being defined.

The commenter asserts that any fuel derived from algae, whether blue-green, cyanobacteria, or seaweeds, meets the definition of "advanced biofuel" in all respects, perhaps limited only by Section 9001(12)(B). Algae are not corn starch, and it is explicitly included as an example of "renewable biomass." The commenter would object to any efforts by the Agency or other stakeholders to exclude algae by administrative discretion. This would be contrary to clear Congressional support for the inclusion of algae as "renewable biomass" and, therefore, an eligible feedstock. The commenter believes the Agency views algae as an important feedstock to meeting the mandates imposed by the Renewable Fuel Standard (RFS) as evidenced by the loan guarantee issued to Sapphire Energy in 2009. The commenter applauds the Agency for taking the leading role in supporting the development of the algae industry as a vital sector of the broader agricultural industry poised to play an important role in securing America's energy independence and rural job growth. In sum, the commenter suggests that the Agency resist excluding feedstock as being "eligible" if such feedstock would qualify under section 9003.

Response: The Agency agrees and considers the list provided by statute to be illustrative, but not exclusive. No change was made to the rule in response to this comment.

Comment: Two commenters urge the Agency to exercise caution when considering limitations on feedstock for use in biorefineries. The commenters encourage the Agency to support feedstock that increase the overall potential of the biomass industry through widespread applicability, creation of jobs, and a positive impact on national security, while excluding support for feedstock that compete with food or harm the environment. Outside of these specific areas, however, the commenters encourage the Agency to remain as feedstock neutral as possible in order to allow both the feedstock and biofuels industry to innovate freely. In the notice of proposed rulemaking (NPRM), the Agency notes: "At this stage in the development of the biofuels industry, it is impossible to know what technologies will become the most effective." The same is true of feedstock.

Another commenter also encourages the Agency to remain as feedstock-neutral as possible in order to allow the

feedstock and biofuels industry to innovate freely. The commenter believes the Federal government has a dubious track record when it attempts to pick winners and losers in the energy space, and the advanced biofuels sector should be no exception. The commenter warns against excessive limitations on feedstock for use in biorefineries. Concerns over competition with food or harm to the environment are legitimate and should be addressed; however, the Agency should also take into account the overall potential of the biomass industry through widespread applicability, creation of jobs, and a positive impact on national security.

A third commenter states that the regulations need to provide sufficient flexibility so that the refinery can minimize the cost of its biofeedstock. To accomplish this, it is essential that the rules be feedstock-neutral. The commenter understands that there are as many as 3,200 potential biofeedstock and that the economic viability of a given feedstock is likely to vary significantly by region. The commenter believes it is inappropriate at this stage to single out one or more specific feedstock or those with specific characteristics that would disqualify their use in a biorefinery supported by the section 9003 program. That decision should be made in concert with the Agency when an application is being evaluated based on all relevant sustainability issues. The commenter also believes that it will be necessary to provide the ability to utilize alternative feedstock on an opportunistic basis in the event that they are economically advantageous to use.

Response: The Agency agrees with the commenters and is not trying to exclude any eligible feedstock. The Agency notes, however, that it wants to encourage all advanced biofuels, except in very limited specific instances (e.g., feedstock that can be used for human or animal consumption) and that, beyond such instances, it does not want to limit specific feedstock from participation in the program.

Comment: One commenter states that any exclusion to the definition of feedstock should be based solely upon GHG life-cycle emissions. For example, if a specific feedstock is estimated to produce fuel that causes no significant reduction in life-cycle GHGs compared to conventional fuels, or causes more emissions than conventional fuels, the Agency should consider excluding such feedstock from the list on that basis.

One commenter states that conversion technologies, on a life-cycle basis, are among the cleanest methods available for the production of advanced biofuels and green power.

Response: The Agency disagrees with the recommendation to exclude any feedstock based solely on the basis of GHG life-cycle emissions of the resulting advanced biofuel. The feedstock must be renewable biomass, other than corn kernel starch, as defined in the statute. However, to help address such environmental considerations as GHG life-cycle emissions, the Agency has revised the scoring criteria such that an advanced biofuel must meet an applicable renewable fuel standard as identified by the U.S. Environmental Protection Agency (EPA) in order to receive points under the first scoring criterion.

The Agency is currently considering various models related to life-cycle analysis and has not identified an appropriate model at this time. Should a model be selected by the Agency, the rule will be amended accordingly.

Requested Comments—c. Rural Area Requirement

Comment: Four commenters recommend not restricting a biorefinery to a rural area. Restricting the location of a biorefinery to a rural area is, in theory, a logical extension of an already established value-added agriculture industry. At first blush, it serves the purpose of the 2008 Farm Bill to boost the rural economy. However, as the economic crisis continues, more flexibility of site selection, not less, should be installed in these programs. The commenters believe that restricting these vital programs to rural areas is not only impractical and illogical, but fundamentally unfair to urban communities in desperate need of economic revitalization and job creation. The Agency, therefore, should enable biorefineries to develop wherever there is market potential regardless of whether that area is rural.

One commenter further states that the siting of biofuel facilities will be dependent on available feedstock, infrastructure, logistics, and other factors. Undoubtedly, many advanced biofuel facilities will be located in rural areas due to feedstock availability. However, to the extent that qualifying renewable biomass is located in other areas, the Agency should not discourage utilization of these resources by excluding non-rural facilities from eligibility for the payments program. Additionally, the scoring criteria in Section 9003(e)(1)(C) also demonstrate that "the potential for rural economic development" is merely one of ten factors that the Agency is directed to consider. While this scheme indicates that Congress intended that the Agency grant some level of preference to rural development, it does not support an interpretation that would preclude the issuance of loans to facilities in non-rural areas. The commenter states that, as with citizenship requirements, if Congress intended that rural development be a prerequisite, it would have explicitly stated so.

One commenter states that the rural location requirement will unfairly exclude biorefineries that make quality fuels, utilize domestic feedstock, and benefit American farmers and their communities. The commenter believes that any biorefinery constructed in the U.S. that provides jobs for U.S. workers and utilizes domestic agricultural feedstock produced by American farmers should be eligible for a loan guarantee under the program. The commenter believes that this was the intent of Congress, and is consistent with the national renewable energy and energy security goals. The commenter recommends removing the proposed rural location requirement in the final rule for biomass grant, loan, and loan guarantee programs.

One commenter states that, given that feedstock availability and reliability is paramount to success, any location that can support a successful project should be allowed, especially if the site was chosen in order to achieve feedstock availability and reliability. The same could be said for off-take agreements if the chosen feedstock can be brought to the proposed site easily, yet the off-take requirements necessitate a non-rural location. For example, for a project with Fisher-Tropsch output to make economic sense, the biorefinery would need to be co-located with an existing fossil fuel refinery, which may not be in a rural area. As another example, in order to have access to the largest possible geography for off-take, if a project must be located in a port facility that is in a non-rural area, this should be equally allowed.

The commenter also states that the program will only succeed in the event that proposed projects can minimize overall risk as much as possible. Project location can have a huge impact on this issue. Rather than citing "consistency with other programs" as a justification for a proposed rule, the criteria should be tailored to the needs of this specific program. In this case, any location that makes it easier to achieve project financing should be allowed without exception. There should be no restrictions on location for this program. It could make sense for a different program targeted at the scale-up of commercially proven technologies, but

in this context adds unnecessary additional burdens to achieving already challenging lender financing criteria.

One commenter opposes the rural area requirement, stating that biorefineries located in nonrural areas should be eligible. Nowhere in the authorizing legislation for this proposed rule did Congress even suggest that the section 9003 program be limited to rural areas. For the Agency to go outside the statute and make such a recommendation is puzzling at the very least, given the difficulty companies already face in opening biorefineries. The commenter states that the Agency should encourage biorefineries to develop wherever there is market potential, regardless of whether that area is rural, in order to meet the Agency's goal for an overall Federal renewable energy strategy designed to foster the development of a strong, expanding, and sustainable group of renewable energy industries in the U.S. to supply an increasing share of the country's energy needs.

One commenter, while recognizing the importance for the Agency to increase economic opportunity and improve the quality of life in rural communities, cautions against defining "rural area" with too much restriction, potentially disqualifying ideal sites for biorefineries that would, in fact, meet the program goals and increase economic opportunity in rural communities, but may be located in areas that do not fit the program definition. Offering eligibility to facilities in non-rural communities is critical to the success of the program goals and the advanced biofuels industry. Restricting the location of these facilities is not necessary to maintain the spirit of enhancing rural development and the geographic diversity of advanced biofuels production. More flexibility of site selection, not less, should be installed in these programs.

The commenter further states that having a consistent, cost-competitive regional supply of feedstock is key to the success of any project. Non-rural plants that use agricultural feedstock will most certainly rely on the surrounding rural communities to produce, harvest, store, and handle feedstock needs. With feedstock cost representing the largest operational cost of a biorefinery this, in turn, means that most of what the plant spends goes to the rural community in paying for that feedstock. This should demonstrate that the biorefinery does not need to be in a rural area to fulfill program goals. Excluding plants that are not in rural areas denies the supporting rural community significant opportunity.

One commenter states that winter barley from the rural community is key to the success of their project. According to the commenter, an independent economic analysis determined that their project will create an additional $100 million in revenue to rural farmers and create 450 farm jobs, clearly demonstrating that the biorefinery does not need to be in a rural area to fulfill program goals. In some circumstances, the decision of where to site a facility will be based on infrastructure often not available in rural areas (power, natural gas, transportation modes). Excluding facilities that are not within a strict definition of a rural area denies the supporting rural community significant opportunity.

One commenter states that their research indicates that biofuel refinery business plans will produce biofuels that cost substantially more than JetA and diesel. The commenter believes it is vital to minimize biofuel costs where airlines are supporting development of biofuel refineries by long-term cost plus purchase contracts. The commenter states that early research suggests that biofuel costs would be reduced by using as much existing infrastructure as possible throughout the entire supply chain (this includes delivery pipelines, refinery facilities, and agricultural infrastructure) and that requiring a biorefinery to be located in a rural area is likely to make it impossible to use some existing infrastructure, most particularly at refineries. The commenter recognizes that the purpose of the program is to support business development in rural areas, and proposes that biorefineries that are not located in rural areas, but obtain more than 75 percent of the dollar value of their raw materials from rural America, should qualify for the program.

One commenter states that, to maximize the rural economic benefits of the section 9003 program in furtherance of the Agency mission, a project's location in a "rural area" be removed as a threshold eligibility requirement and, instead, that a project's rural economic benefits be added as an evaluation criterion to proposed § 4279.265(d). Rural Development's mission to enhance the quality of life and economic foundation of rural communities would be furthered by a more comprehensive evaluation of a project's potential rural economic benefits. A project's rural economic impact is not only determined by the location of the biorefinery, but by the origin of the feedstock as well. Awarding points to projects based on their level of economic impact to a rural community is consistent with the Agency's mission and allows maximum opportunity for the commercialization of domestic advanced biofuels in the U.S. Dedicated energy crops, such as carnelian, are grown in rural areas. Thus, the commenter encourages Rural Development to consider a project's location in a rural area or its feedstock's rural origins as plus factors in the evaluation criteria. Many non-rural advanced biofuel refining projects can yield substantial economic benefits for rural America, in addition to increasing energy independence, decreasing greenhouse gas emissions, and diversifying agricultural markets. Thus, a more inclusive approach would maximize the impact of the section 9003 program.

One commenter believes that, while the definition of a rural area should be included, the definition proposed is too broad. The commenter requests deleting the wording "and the contiguous and adjacent urbanized area" through the remainder of the paragraph ending with the words "otherwise considered not in a rural area under this definition." The use of "not more than 2 census blocks," and "contiguous and adjacent urbanized area" appears intended to make the definition of rural as broad as possible, which is unwarranted and inappropriate. The Agency's scarce funding dollars should focus on truly rural areas particularly those further away from larger cities and more densely populated areas. The benefits of job creation should go to actual rural areas, not simply those areas that are adjacent to rural areas.

One commenter states that, while the proposed rule states that projects that are located in areas determined to be "rural in character" will be eligible, it does not explain how this nebulous determination will be made except to say in the same manner as in the business and industry (B&I) guaranteed loan program. The commenter believes that this terminology is far too broad and should not be allowed for determining rural areas. B&I guaranteed loans are much smaller than those envisioned in this program and the commenter believes the program should truly serve rural areas. Allowing rural areas to be defined in the manner stated is completely arbitrary and could open the program to abuse and unnecessary criticism.

One commenter states that the rural area requirement needs to be amended because many of these facilities have to be located where there are essential infrastructure, land available and

specialized jobs, which is usually in the larger communities. Facilities should be allowed to be located in communities larger than 50,000 if they are proposing to obtain a certain percentage (like greater than 25 percent) of their feedstock from rural areas. This will help farmers, rural businesses and rural cities find markets for their feedstock (solid waste, grease, crops, etc). By allowing them to be located in urban areas, it will increase the number of sites available to locate these facilities but at the same time increase feedstock markets for rural residents. Until these types of energy projects are well developed and mature, the commenter believes that all barriers that they may be encountering should be mitigated.

One commenter believes that, for new projects, implementing the rural area requirement will help the Agency fulfill its mission to improve economic conditions of rural America. However, with regard to retrofitting of existing biodiesel facilities, this requirement may not be practical as many existing facilities are no longer in production and are not all located in rural areas and an exception should be considered if the viability of the project is otherwise strong.

One commenter supports the requirement that the program only be used for biorefineries in rural areas. The commenter believes that the program should be targeted to rural economies.

Response: In consideration of all of the associated comments reflected above on rural area, the Agency has, as a matter of policy, reconsidered the proposed rural area requirement. The beneficial impacts of the program will generally be in rural areas even if the biorefinery is located in an area that does not meet the proposed rural area definition, because biomass production is expected to occur largely in rural areas and, thus, rural economies will benefit from the increased use of biomass. The Agency is, therefore, removing the proposed rural area requirement from the rule as an eligibility criterion.

The Agency notes, however, two provisions of the interim rule. First, the project must still be located in a State in order to participate in this program. Therefore, the Agency has modified the location requirement so the project must be located in a State, as defined in § 4279.2. Second, the project must be located in a rural area in order to receive points under the potential for rural economic development criterion (see § 4279.265(d)(8)).

Comment: One commenter recommends redefining the definition of the "location population" classification of eligible and ineligible areas for the purpose of including companies that are located in cities. The commenter states that they would be eliminated solely due to the Agency's classification of location population. Presently, the Agency defines a City to be greater than 50,000 persons. The City of Erie holds approximately 102,036 persons and the Borough of Wesleyville holds approximately 3,617 persons. Therefore, according to the Agency eligibility map, both the City of Erie and the Borough of Wesleyville are deemed ineligible areas.

The commenter requests expanding the boundaries that define the location population to define a city as a populace of over 500,000 to 1,000,000 persons versus 50,000 persons.

Due to the present classification by the Agency, the commenter is not qualified to apply for any Agency funding programs (grants or loans) because the commenter is located in an area that encompasses the City of Erie and its outlying areas, even though they have low population.

The commenter states that their plant has the versatility to run on various feedstock from non-vegetable oils to animal fats to agricultural feedstock such as soy. It is also located on Lake Erie where it has access to shipping, two interconnected railroads (CSX and Norfolk Southern), I–90 and I–79. Thus, it can easily bring in feedstock and ship out finished biodiesel. The commenter states that, if they could be deemed located in an applicable area, then they could apply for Agency funding and build on relationships with local/domestic farm institutions.

Response: As noted in the previous response, the Agency has reconsidered the proposed rural area requirement and has removed it from the rule as an eligibility criterion. Thus, the applicant's facility would be eligible for participation in this program. The Agency notes that the definition of "rural area" is broader than previously used by the Agency and includes provisions for allowing urbanized areas to qualify for being "rural in character."

Requested Comments—d. Foreign Ownership

Comment: Numerous commenters recommend eliminating the 51 percent U.S. citizen ownership requirement in biomass grant, loan, and loan guarantee programs. U.S. government grants, loans, and loan guarantees are a large piece of incentivizing private financing for large-scale commercial projects. This incentive is diminished by requiring at least 51 percent domestic ownership. It presents the green business world with a conundrum. The commenters note that they need government grants, loans, and loan guarantees to attract investors who understand green investment. The investors who understand green investment are often foreign, where the clean tech investment framework is readily understood. Yet, the U.S. loan guarantees put a 49 percent limitation on foreign investment. In the age of a global economy, this citizenship requirement is impractical and ineffective. It inhibits the purpose of the program to incentivize private equity investment in the sector and may lead to job outsourcing. An increase in private equity in this sector is the key to multiple goals of current U.S. domestic policy. Green job creation, reduced dependence on foreign oil and reaching climate change reduction goals all benefit the country and taxpayers irrespective of funding sources.

As a regulatory matter, a 51 percent determination of domestic investors is untenable. An investor's domicile often cannot be discerned as foreign or domestic. A successful, ready to scale biochemical company is usually funded by a number of sources, both foreign and domestic, often made up of venture funds with investment from around the world, funds of funds, and independent investors alike. To discern whether or not the individual owners or investors of a fund, that owns a fund, that is invested in a particular portfolio company has 51 percent U.S. ownership, is not only impractical, it is impossible.

Additionally, the citizenship requirement is hurting rural America. The policy is delaying the administration's ability to reach its economic goals for rural America and energy independence goals for the country. The commenters hope that the Agency will use all of the resources available to help the administration reach its energy independence goals by removing all citizenship requirements. Rural Americans that benefit from the jobs created by these biorefineries do not care about the ownership of the biorefineries. The jobs provide much needed economic stability for local economies. The commenters state that Congress did not include eligibility restrictions as part of the program and the Agency's decision is a significant departure from Congressional intent. Rural Development regulations were implemented when our rural economy looked significantly different from today's rural economy. The commenters believe that the creation of biorefineries should be promoted in rural America, regardless of ownership.

One commenter further states that Congress specifically outlined the

definition of "eligible entity" and chose not to include any citizenship requirements. Had Congress intended to do so, it would have done so explicitly.

Another commenter states that to impose such a restriction without being mandated to do so by statute is counterproductive and will delay the development of new technologies and thwart achievement of the section 9003 program's purpose. To the extent the Agency considers citizenship of the borrower, it should be limited to the requirements of section 9003 and consider it only as one of many factors in evaluating and scoring an application.

Two commenters recommend considering foreign ownership in the context of all of the benefits of any given project and make decisions on a case-by-case basis rather than establishing an inflexible limit on the percentage of foreign investment.

One commenter offers this provision: The proposed rulemaking requires that, if the borrower is an entity other than an individual, it must be at least 51 percent owned or controlled by individuals who are either citizens or legally admitted permanent residents residing in the U.S. When an entity owns an interest in the borrower, that entity's citizenship will be determined by the citizenship of the individuals who own an interest in the entity or any subentity based on their ownership interest. Similarly, if the borrower is a subsidiary, the parent entity or the entities that have an ownership interest in that borrower must also be at least 51 percent owned by individuals who are either citizens or nationals or legally admitted permanent residents residing in the U.S.

One commenter recommends that non-U.S. ownership be permitted and that, if points are awarded for local ownership, the Agency consider awarding points based on estimated job creation. On the whole, the commenter supports rational requirements for new technologies that will foster rural development as those industries have a chance to grow.

One commenter recommends that, as long as the ownership of the project has at least 25 percent U.S. citizenship, the project be equally eligible. Given the challenges to achieve funding sources to date, the program should be open to the widest possible sources of funding.

One commenter recommends allowing borrowers that are entities that are other than individuals to be owned or controlled by less than 51 percent of either citizens or legally admitted for permanent residence. The percentage could be 34 percent of U.S. ownership or legally admitted for permanent residence instead of 51 percent. It will allow for additional investment from non-U.S. investors that may have a higher comfort level in investing in these types of energy projects. These types of energy projects are more advanced in other countries, so foreign investors are more familiar with the technology and are willing to invest in these projects. Banks in Europe are also more familiar with financing these types of projects, so they may feel more comfortable to finance a project in the U.S. if one of their existing customers in Europe is investing and developing an energy project in the U.S.

One commenter believes that the foreign ownership requirement should be strengthened to eliminate the automatic presumption that companies traded on U.S. stock exchanges are 51 percent owned by persons who are either citizens or legally admitted permanent residents residing in the U.S.

One commenter states that the proposed rule makes eligibility parameters extremely broad as almost any U.S. citizen or corporation with majority U.S. ownership is eligible. The commenter agrees with the citizenship requirements as one way to partially limit the scope of those eligible for loan funding.

Response: The Agency has determined that it is in the best interests of furthering the Administration's goal of increasing the production of advanced biofuels to broaden the Biorefinery Assistance Guaranteed Loan Program applicability to include making loans to eligible domestic or foreign-owned advanced biofuel refineries.

Requested Comments—e. Program Obstacles

The Agency received numerous comments on program obstacles and ways to improve the program. Please note that for those comments received under this section that are the same or similar to comments made on specific provisions within the rule, the Agency has grouped such comments with those comments made on the specific rule section rather than presenting them below in this section.

Total Loan Guarantee Amount

Comment: Several commenters recommend publishing the total loan guarantee amount, not just the monetary fiscal appropriation. With all USDA loan guarantee programs, there is a multiplier risk calculation that is set by OMB for each annual appropriation, which allows the total of the loan guarantees awarded to be greater than the actual cash appropriation. The commenter state that transparency is needed from USDA and OMB in advance to know what the lending authority is at the beginning of the fiscal year. Without that information, applicants do not want to apply, and lending institutions do not want to take the time to support the application if there is not adequate funding for the programs.

Response: The Agency will provide, by Notice, the available program level funding for a specific fiscal year. No change was made to the rule in response to this comment.

Evaluation and Approval Process

Comment: One commenter believes that the evaluation and approval process may be an obstacle. The evaluation process must be transparent and clearly stated with established timelines for the approval process.

Several commenters state that the evaluation process must be transparent, clearly stated, with established timelines for the approval process. These commenters recommend holding a pre-application and post-application meeting at the state office, at a minimum, to discuss the procedure and the requirements with the applicant and the lending facility. Large projects take intense coordination, management, and incur the up-front expense of permitting, detailed engineering, and other development costs. The financing program must be implemented within the same schedule as the other tasks to properly complete the project on time and under budget.

Response: With regard to establishing timelines for the approval process, the Agency disagrees that this is possible because timing varies dependent on the unique characteristics of applications submitted. With regard to transparency, the Agency is satisfied that the evaluation and approval process is transparent and, for those applications that are denied, the Agency advises the lenders accordingly and provides them appeal rights.

Lastly, with regard to the suggested meetings, as noted in an earlier response, the Agency can meet with the lender/potential borrower prior to application submission to discuss the scoring criteria and informally review the proposal and application material completed to date. Further, Agency personnel are always available to answer questions.

Guarantee During Construction

Comment: Several commenters state that it is imperative that the section 9003 loan guarantee continue to cover the construction period. No other

funding mechanism currently exists that could fund during the construction period without the loan guarantee in place.

One commenter states that, to be a complete program, the loan guarantees must include the construction period.

One commenter states that one of the greatest needs in renewable energy financing is construction financing. The commenter recommends setting up the section 9003 program to provide its guarantee at the outset of the project's construction so that the guarantee covers the construction risk. It appears this may be the case based on the reference in § 4279.256(e), but this should be made expressly clear that such coverage is to be available routinely.

Response: The rule allows the Agency to guarantee the project prior to construction or after completion of the construction. The Agency has revised the rule in §§ 4279.261 and 4279.281 to clarify this.

Forms

Comment: Several commenters recommend that the Agency prepare and provide fillable servicing reporting forms for lending institutions to provide the lender with a manageable, easy to use format for fulfilling the section 9003 reporting requirements. One of the main concerns that lenders face is the possibility of losing the Agency guarantee through improper or misunderstood reporting requirements. The Agency should provide actual forms and a section 9003 program reporting guidance document to all lenders, as well as post the documents on the Agency Web site for full review. An Agency primary contact person should also be provided to the lender during the application process as well as throughout the loan servicing process.

Response: The Agency will take this comment into consideration as it develops the forms for the implementation of the regulation. Applicants may always consult the Agency's National Office Energy Division with any questions they may have during the application process and loan servicing process.

Technical Reports

Comment: Several commenters recommend modifying the technical report to include elements of a project management plan that can be used by the applicant, lender, EPC (engineering, procurement, and construction) contractor, and the Agency to properly evaluate, benchmark, and complete the project within the time frames and budgets as proposed. Every major EPC contractor has software programs and policies and procedures in place that would provide this kind of reporting and which has previously been used for government contracting projects. This would also assist in organizing the application to become a living document that could then be utilized to begin the construction process and used throughout the life of the project, thereby saving time and resources.

Response: The Agency does not object to the incorporation of elements of a project management plan in the technical report. However, the Agency is neutral on the use or brand of project management software.

Total Project Guarantee

Comment: One commenter recommends utilizing the program to guarantee the full cost of a project, not just the biofuels portion.

Response: The authorizing legislation does not allow the Agency to guarantee the full cost of a project.

Comment: Several commenters recommend utilizing the loan guarantee to purchase, build, and operate all the collateral necessary to develop the total project, not just the biofuels portion. Because of the nature of biomass-to-biofuel production, there can be, and usually is, a significant portion of waste fiber material that is best utilized by gasifying, burning, or converted in some form that is usually ultimately manufactured into renewable electricity or another power product. Alternatively, the waste material is utilized in the production of animal feed or fertilizer. These products are also vitally important in providing sustainable, long-term profitability and production for the project and can greatly enhance the production capabilities of the region. The loan guarantee should cover all of the expenses of the entire project. Other expenses that are not listed in this rule but should be included are the cost of buildings, engineering fees, utility interconnect studies and infrastructure, vehicles, natural gas and electricity infrastructure costs, road upgrades or construction, and bonding and insurance costs.

Response: The Agency disagrees with the recommendation to cover all of the expenses of the entire project. The Agency anticipates an over-subscription of the program. Therefore, the Agency's intent is to focus the program's limited funding resources on core project costs, which are identified in the interim rule as eligible project costs (see § 4279.229(e)). As the program matures, the Agency may consider whether to expand the list of eligible project costs, which is provided for in the interim rule (see § 4279.229(e)(7)).

Bond Financing

Comment: One commenter advocates the Bond Loan Model as the most efficient financing mechanism for renewable energy projects and states it can be executed in a more cost-effective and timely manner than conventional financing transactions utilizing the Conventional Loan Model, particularly in light of the lack of commercial banks' willingness to commit to loans of 15 to 20 years.

Three commenters recommend financing through the use of corporate bonds. One commenter states that they recently reviewed a proposed corporate bond structure that would allow companies to issue 15 to 25 year non-amortizing bonds that would have the Agency guarantee attached. This would significantly reduce the cost of borrowing and provide a creative alternative to conventional commercial bank financing. The commenter believes using the loan guarantee program in support of this type of structure would provide a very viable financing source for these projects and would help achieve the overall objectives of creating a biorefinery industry.

One commenter states that, because they are recognized as a more freely tradable instrument than loan participations, the interest cost to borrowers (bond issuers) is often lower with bonds than with traditional loans. By not recognizing the predominant method for financing large commercial projects, the section 9003 program will likely not attract the larger producers of advanced biofuels and, equally important, will likely not attract the investment banking firms that are needed to facilitate these complex financings. The commenter suggested language for allowing the use of corporate bonds.

Three commenters recommend allowing borrowers to issue notes or bonds directly to accredited investors by way of capital markets offerings for both the guaranteed and unguaranteed portions. Two of the commenters point out that the proposed rule allows only for the sale of indirect "participations" in the unguaranteed portions, with the original lender retaining title to the notes, and does not contemplate the sale of notes or bonds in the capital markets (except with respect to the sale of the guaranteed portion to accredited investors).

The commenters state that banks are unwilling to fund the unguaranteed portion of the loans. The commenters point out that, in the current market,

only institutional investors are able, through capital markets transactions, to assume the perceived level of risk on the unguaranteed portion of the loans. Efficient capital markets transactions, including the sale of bonds, will require the direct sale by the borrower of notes or bonds to investors. As is market practice, a trustee would act on behalf of the bond investors as a class with the original lender performing the role of Collateral, Inter-creditor and Administrative Agent on behalf of all lenders, investors and the Agency. In that role, the original lender will perform all of the servicing duties contemplated under the proposed rule.

One commenter encourages the Agency to consider utilization of bond financing mechanisms in order to expand opportunities for debt finance where traditional credit markets are tight as one way to reduce program obstacles. The commenter believes that the currently proposed requirements dramatically reduce the number of lenders that will be willing to work with the program due to the current bank market and high-risk associated with this new industry. The Agency can address this problem by expanding the definition of eligible lender to enable utilization of the bond market in addition to the bank market. The bond market is favorable at this time because it is largely untapped in comparison with the bank market, it is more flexible than traditional commercial lending, and it eliminates a substantial portion of the risk for the lender. This can be accomplished by permitting a corporate trustee and investment bank to, collectively, function as an "eligible lender" for purposes of taxable corporate bond transactions.

One commenter states that the regulation needs to clearly state if bonds are allowed, what type of bonds should be allowed, who can issue the bonds, who can purchase the bonds, and how they are to be serviced.

Response: The Agency is authorized to guarantee loans, which in certain circumstances may include bonds as described below, under this program. The Agency considers that this requires a lender to make the loan from its resources and then service that loan itself. While the Agency will permit the lender to secure limited servicing responsibilities from third parties, the lender must remain responsible for the servicing.

The Agency considers this as distinct from the typical investment banking scenario, where an investment bank secures the financing from outside investors. After the funding is secured, the investment bank has no further involvement with the transaction. Servicing is handled by a trustee who reports to and is controlled by the investors. The Agency considers that this is an investment instead of a loan and that its current authority is insufficient to guarantee investments.

Recognizing the current difficulties in securing funding, the Agency has been approving certain bond transactions. The Agency considers that, under the limitations contained in this regulation, guaranteeing these bonds is in keeping with its authority. In order to be more transparent of its willingness to guarantee certain bond transactions, the Agency has modified this regulation accordingly.

Specifically, the lender is required to provide the loan proceeds and service the loan. The Agency will allow a trustee to provide limited servicing only if the trustee is fully under the control of the lender. Holders' rights are limited to receiving payments under the note or bond and if those payments are delinquent making demand for payment on the lender and the government as provided in the regulation. In certain cases where the lender and borrower desire to change the loan terms, the holder is also required to consent to any changes. Loans providing holders any other rights are ineligible for guarantee under this program.

Comment: Several commenters recommend including the option to utilize bond financing. The section 9003 program has already established a precedent in funding a project through the use of bonds. The need for lender participation through the section 9003 program can be met through use of an appropriately structured bond program to achieve effective financing in today's capital markets.

The commenters recommend expanding the section 9003 program to (1) permit treatment of large commercial banks or investment banks with substantial corporate trust practices as "eligible lenders" when acting as a bond trustee and (2) find that the "minimum retention" requirements are met if the bank, in its capacity as bond trustee, holds 100 percent of the legal title to the underlying corporation debt obligation and to related mortgage and security interests, even if the beneficial interests are participated out and held by a controlled number of sophisticated, institutional investors.

For purposes of the section 9003 program, the commenters advocate the expansion of the lending criteria to include a structured bond financing approach, which will assure the Agency of safety and soundness in the lending activity it guaranties, including high quality loan servicing, as well as the involvement of knowledgeable, professional investors well-qualified to evaluate and manage risks.

Response: The Agency can only consider bond financing where the lender purchases all bonds and sells and/or participates thereafter. In all scenarios, the lender is responsible and controls the servicing of the loan. In addition, the lender would be required to fully control any trustee related to the bond financing.

Regarding eligible lenders, the rule reflects requirements that are similar to the requirements for a traditional lender under the Business and Industry guaranteed loan program. The Agency has determined that its current authority would not permit using an investment bank bond model. Unlike the authority given to the Department of Energy that permits the guarantee of debt obligations in addition to loans for several of its programs, the authority for this program is limited to guaranteeing loans.

Comment: One commenter states that several banks have noted the limitation on the participation of noncommercial bank lenders. Given the size of the loan required to construct a commercial cellulosic ethanol facility, noncommercial bank participants will likely be critical to any effort in completing financing of a project. The commenter states that they are aware of discussions to use the loan guarantee program to guarantee bonds sold to accredited investors. Given the apparent lack of appetite in the debt markets, expanding the program to cover the bond market will increase potential financing options for cellulosic projects.

One commenter states that they have contacted numerous banks and insurance companies and have been unable to locate a commercial lender to finance the debt portion of a project despite the section 9003 program. Although the financial market conditions of the past 18 months have contributed to some degree to this challenge, the lack of available lenders has less to do with the recent debt crisis and more to do with structural issues with the program. The section 9003 program today is modeled after the B&I guaranteed loan program and requires a commercial lender to apply for the guarantee. This model has worked fine for the B&I guaranteed loan program because the typical loan size is sufficiently small. There are hundreds, if not thousands, of small rural banks that can fund small guaranteed loans. The section 9003 program, targeted at much larger projects with debt components that start at $70 million and

go up from there, quickly outstrips the capabilities of rural and even regional banks. The remaining lenders are "too big to fail" sized banks that have little, if any, experience with USDA programs. The only way for Wells Fargo, and even Rabo Bank, to fund one of these loans requires a high level executive decision to create a whole new line of business. So far that has not happened and expectations are that not much progress will be made in this arena.

As a result, the commenter states that they have been working with the Agency, specifically Undersecretary Tonsager and his team, to determine how best to adapt the program to the use of the commercial bond market which is a far better solution for the following reasons:

1. Bond investors provide "patient" capital that provides term lengths that match the project life better than a commercial loan.
2. Bonds do not include "sweep" provisions whereby the commercial bank lender "sweeps" any excess cash generated to reduce the principal of the loan. When this happens, it reduces the returns to equity investors and thereby makes it much more difficult to attract equity capital.
3. The bond market is 10 times larger than the commercial debt market.
4. Higher levels of due diligence are performed than is true with small lenders because a professional investment bank performs the underwriting and the bond investors also does similar due diligence.
5. Loan servicing is performed by a trustee that has a higher level of professionalism and process technology to assure greater compliance and overall loan processing. In the worst case scenario of liquidation, these trustees are far more capable of making debt holders whole than is a small lender.

The commenter proposes the bond market alternative because of the challenges with loans of the size needed for section 9003 projects and the lack of availability of lenders willing to participate. The additional minimum criteria in the proposed rule will make it even more difficult to find lenders willing to participate. The commenter believes that the bond market approach not only meets the criteria of the program as provided by the statute, but provides benefits in terms of lower risk to the Agency and better screening of projects.

Response: For the reasons previously stated, the Agency can only consider bond financing where the lender purchases all bonds and sells and/or participates thereafter. In all scenarios, the lender is responsible and controls the servicing of the loan. In addition, the lender would be required to fully control any trustee related to the bond financing. In addition to other provisions, the Agency has tried to make the program more attractive to commercial lenders by revising the rule to allow either 20 years or useful life of the project (removing the "85 percent" provision associated with useful life), whichever is less, to allow more flexible terms for loans.

Special Program

Comment: Several commenters recommend implementing a special section 9003 advanced biofuels guaranteed loan-bond program for the Gulf Coast and Eastern seaboard region to stimulate the economy ravaged by the recent Gulf oil spill crisis. The Go-Zone Bond funding and other business stimulus programs were vitally instrumental to getting these regions additional financial support that stimulated business creation and the rebuilding of the region. For the advanced biofuels industry, the primary feedstock that is the most reliable to date "woody biomass" is found in this same region in greater volumes than anywhere else in the country.

Response: The Agency understands the commenters' concerns. However, the Agency wants to encourage the geographic distribution of projects throughout the U.S. and its territories and not tailor the program to specific events. The Agency notes that there are other methods to address specific events described by the commenter (*e.g.,* Presidentially-declared disaster areas).

Demonstration Funding for Pilot and Demonstration Scale Projects

Comment: Several commenters recommend implementing the demonstration funding portion of the section 9003 program to include pilot and demonstration scale projects providing grants under the section 9003 program to assist in providing additional financial support, because these types of projects typically do not cash flow on a commercial scale. This intermediate step is a vitally important one in developing these new technologies to the commercial stage, and needs funding to allow deserving, sustainable technologies to move to commercialization.

Response: The statute only allows for demonstration scale projects to be funded with grant funding. At this time, no funding has been appropriated to implement a grant program.

Dairy Industry and Department of Defense Set-Asides

Comment: Several commenters recommend setting aside special funds for USDA partnership efforts with the dairy industry and the Department of Defense (DoD). In recent months, the Agency has entered into a memorandum of understanding (MOU) with the dairy industry with the intent of developing anaerobic digester technology and providing a reduction of greenhouse gas emissions. This technology has not been fully implemented in dairies because of the high cost and low profit margins from currently used technologies. However, advanced integrated biofuels technologies have been developed that dramatically increase efficiencies and provide profitable returns for investor-owners. The Agency can assist in this effort by supporting larger projects that are greater than the $25 million cap in the Rural Energy for America Program. Utilizing a 90 percent loan guarantee for these projects, and low or no fees will also additionally incentivize the growth of these technologies in this market segment.

The Agency also recently entered into a partnership agreement with the Navy to assist in developing advanced biofuels for fleets and vehicles. Five energy targets have been adopted by the Navy to reduce conventional fuel use. This will require an intense effort and coordination by the advanced biofuels industry just to supply the Navy this type of fuel, notwithstanding the RFS requirement and other industry needs. It is vitally important to our national security that the Agency can provide assistance to both the industry and the Navy in this effort through assisting in the development, implementation and financing of these new biofuels projects that must be implemented to meet such a demand.

Response: The Agency is not establishing the set asides referenced in the comment because the Agency has adopted a policy of wanting to have a program that is technologically, geographically, and feedstock neutral. Such a set aside would provide preferences for specific feedstock and technologies inconsistent with this policy. The Agency believes that feedstock, geographic, and technology neutrality are critical to meeting the purposes of the program, which is to encourage broad-based advanced biofuel production practices, technologies, and feedstocks so that the best renewable energy options are supported.

However, the Agency has added a provision to the rule to allow the Administrator to award bonus points to

applications for partnerships and other activities that assist in the development of new and emerging technologies for the development of advanced biofuels so as to increase the energy independence of the United States; promote resource conservation, public health, and the environment; diversify markets for agricultural and forestry products and agriculture waste material; and create jobs and enhance the economic development of the rural economy. The Agency will identify these partnerships and other activities in a **Federal Register** notice each fiscal year. Please note that the Agency is specifically seeking comment on this provision (see Section IV, Request for Comments).

New Technology and Commercialization

Comment: One commenter states that there appears to be some confusion as to how to determine whether a new technology is ready for commercialization. This shows up in the requirement that pilot-scale or semi-work facilities will have already been built and operated as a means to build confidence in commercial scale rollout. For some technologies, this is an acceptable approach, but it is not for many others. As a result, the technology development leading up to the proposal, and whether that work provides sufficient confidence to move to commercial scale, should be determined as appropriate, to the technology being proposed. Also, if the financing team and the due diligence performed by them and the third party Technical Reviewer finds the evidence sufficient, that is a good proxy for acceptance. Instead, it can be a requirement of the Technology Assessment to express whether sufficient pre-work has been performed to warrant a commercial scale project. Or when a proposed project for commercial scale operations is of a size that could also be considered a pilot scale project, that such projects are equally qualified and eligible. Although there are many technologies that are well suited to testing with pilot scale facilities as a means to increase confidence in the technology (*e.g.* fermentation), oxygen gasification of biomass is not one of these. The commenter's commercial facility, with a proposed budget of $140 million, is in fact at a scale that would normally be considered "pilot scale." The commenter states they considered developing a quarter-scale facility for this purpose. Unfortunately, the challenges of either generating or trucking sufficient oxygen to a quarter-scale facility drives the cost of such a facility to be comparable (approximately 70 percent) to the full commercial scale design. Also, a quarter-scale facility provides little valuable information in terms of scalability and therefore very little increased confidence for the commercial scale-up. The reason is that the fluid dynamics and chemistry within such a gasifier vary dramatically from one size to another. Operation of a smaller unit does not predict the actual operation of a larger unit. As a result, the design work and subsequent validation within the pilot facility would only prove that the pilot functions properly. The details of the full scale commercial unit will certainly be different and require its own separate validation. Given that the risks are similar and equally low for a quarter-scale versus commercial scale, it is unwise to waste that much money on a useless facility. More importantly, investors are not willing to waste that much investment on a pilot scale that provides little incremental value.

Response: The Agency disagrees with the comment. The application must include documentation that proves the technology as proposed meets the definition of eligible technology. The Agency has consulted with technical experts and has determined that the process needs to be demonstrated to provide reasonable experimental data to support engineering scale-up with acceptable technical risk. That documentation includes that the advanced biofuel technology has at least a 12-month (four seasons) successful operating history at semi-work scale, which demonstrates the ability to operate at a commercial scale. Semi-work scale is defined as "a manufacturing plant operating on a limited commercial scale to provide final tests of a new product or process." The Agency did not receive many comments concerning this issue and the commenter did not provide sufficient reasons for a change in policy at this time.

Interest Caps and Financing Structure

Comment: To achieve the Agency's goal of leveraging Federal government biorefinery assistance loan guarantees and private capital sources to facilitate financing of biorefineries in the U.S., two commenters recommend considering factors not included in the NPRM that affect available financing of renewable energy—in this case biorefinery—projects. Specifically, while Federal loan guarantees provide greater certainty for private lenders, if interest caps on loan guarantees are too low, commercial lenders are just as likely to turn to other stable investments, such as Treasury Bills, rather than the desired renewable energy investments. While some commercial lenders are comfortable operating in the current program structure, the commenters believe that the industry as a whole would benefit from maximum competition and flexibility for lenders to negotiate business structures and terms that provide incentives to finance biorefineries.

Response: The Agency has removed the proposed blended interest rate requirement from the rule. The Agency has revised the interest rate provisions to more closely match the requirements in §§ 4279.125 and 4287.112, while providing lenders with some flexibility in establishing loan type and terms on the unguaranteed portion. The Agency believes that this and other changes to the rule sufficiently address the commenter's concerns.

Grants

Comment: One commenter recommends including grants in the program. According to the commenter, grants could be used as matches for other funding sources and would help reduce the high startup costs associated with the use of new technology, particularly in rural communities.

Another commenter also encourages the Agency to include grants for developing and deploying new and emerging technologies that, at a minimum, emanate from paradigms different from the one built into the proposed rules, and preferably that target transformative innovations in rural America.

Response: The Agency points out that grants for this program are authorized by statute for the development and construction of demonstration-scale biorefineries to demonstrate the commercial viability of one or more processes for converting renewable biomass to advanced biofuels, and are only funded under discretionary funding, which must be appropriated by Congress. At this time, no discretionary funding has been received by the Agency for the program. Therefore, until funds for grants are appropriated, the Agency cannot address grants in the program. Additionally, the authorizing legislation for this program would not authorize program grants being used as a match for another Federal grant program.

Comment: One commenter states that the language in the rules for the grants authorized under Section 9003 are limited to only development and construction of demonstration-scale biorefineries or construction of commercial scale facilities based on a

traditional "bricks and mortar" paradigm. ["Grants for the development and construction of demonstration-scale biorefineries to demonstrate the commercial availability of one or more processes for converting renewable biomass to advanced biofuels."] This language precludes the Agency from tapping into truly transformative innovations.

The commenter further states that the Agency needs to include in its rules the ability to fund transformative technologies in the agriculture sector that support and accelerate the sustainable production of advanced biofuels.

The commenter states that ag-interested/savvy venture investors do not truly exist in the agriculture sector. Thus, incremental agricultural improvements have tended to be the norm; paradigms producing transformative innovations in this sector are few and far between. The DOE views its mission in strictly narrow terms as only pertaining to the fuel, even though by definition biofuel includes agriculture. Thus, it has been funding interesting science "fuel only" focused efforts that will likely take many, many years to deploy at commercial scale with competitively priced output. Our urgent national imperative is for a domestic renewable source of liquid fuels. Urgency requires transformational innovation in the agricultural sector. The Agency is the only entity with enough knowledge and experience in this sector, and with a mission to revitalize rural America, to foster the kind of innovation that can enable transformation in the agricultural-related advanced biofuel sector.

The commenter provided the following discussion to support their position regarding grants for innovative technology:

(1) The new paradigm is born of a different way of thinking about how to solve our urgent near-term need for a thriving domestic biofuels industry. The new paradigm recognizes that it is really the yeast that produces the biofuel and thus is at the center of the ethanol ecosystem, and that the current yeast only produces one product—ethanol. The facilities the existing yeast is deployed in, as a consequence are known as "ethanol plants." The commenter utilized off-the-shelf biotechnology to modify the single-product yeast so it would multi-task. When multi-tasking yeast are deployed, producing ethanol and valuable co-products simultaneously, ethanol plants automatically become biorefineries by definition. Furthermore, since yeast do not care where their C6 sugar-food comes from, the biorefineries deploying multi-tasking yeast can use feedstock other than grain feedstock (e.g. stover, sorghum, grasses, etc.) to produce advanced biofuels. Off-the-shelf technology exists today to convert cellulose into C6 sugar-food for the yeast to ferment into ethanol. The problem heretofore has been doing so in an economically sustainable way from just the cellulose alone. However, the valuable co-products that multi-tasking yeast produce enable economically sustainable conversion of only the cellulose portion of cellulosic feedstock, allowing the hemi-cellulose and lignin to be used for heat and energy to run the operation in a carbon neutral manner.

(2) When the yeast element of the biofuel system changes, all the other elements of that system also change. The most important change from switching to multi-tasking yeast is a sustainable advanced biofuel business model. The revenue in this new model is from the sale of ethanol and valuable co-products that are derived solely from the C6 sugars converted from just the cellulose portion. The hemicellulose and lignin used in CHP facilities provide the heat and power to run the operation and generate more revenue through sale of excess electricity to the grid. Private capital will invest in a sustainably profitable business model—the key element that is missing from the biofuel funded efforts to date. Farmers will grow cellulosic crops when a profitable market exists.

The logical sequence of events, therefore, will proceed as follows:

a. The Agency should change the rule pertaining to grants in Section 9003, allowing the Agency to make "grant(s) for the development of processes for converting renewable biomass to [sustainable] advanced biofuels."

b. The revised rule would allow the commenter, for example, to apply for a grant under Section 9003 to complete the optimization of its multi-tasking yeast in order to produce commercially viable levels of co-products in advanced biofuel biorefineries, furthering the fundamental intent of the rules "to assist in the development of new and emerging technologies for the development of advanced biofuels." It would also enable the Agency to successfully advance its agenda to revitalize rural America by creating thousands of new green jobs, and do so at an accelerated pace.

c. The commenter would then deploy multi-tasking yeast first in existing ethanol plants, where just the cellulose from cellulosic feedstock (initially stover because it is already grown) is converted to C6 sugar for the yeast to ferment.

d. Ethanol produced in the biorefinery would be sold through existing channels at market prices as it is today, and the byproduct portion would be sold as a molasses-type material or dried and sold as a powder (market pricing for amino acids is quite stable), which has enabled computation of the $0.70/gallon of revenue.

e. With a proven sustainable business model (by converting an existing ethanol plant to an advanced biofuel biorefinery), private capital will invest in building many new biorefineries (even without guaranteed loans) to expand the industry, and farmers will grow the cellulosic crops to meet the new market for them.

The systemic changes also include:

(1) No need for funding for new pilot plants to demonstrate viability of unproven, complex and costly technologies.

(2) Existing designs for ethanol plants (substituting pulp mills at the front end for existing corn grinders) can be used for new advanced biofuel biorefineries, expediting deployment of these facilities at a lower cost, and accelerating production of advanced biofuel that can meet the RFS2 production levels and timeline.

(3) Accelerated advanced biofuel production (within 24 months post funding) means accelerated construction and operating jobs in rural communities, which will enable the Agency to dramatically demonstrate to rural America and to Congress that it is the Agency that can make the transformative difference to rural America and to our domestic biofuels industry that the President, Congress and the American people voted for.

In conclusion, the commenter advocates rules that allow an Agency-funded transformational innovation to be developed wherever the resources within the United States most readily exist in order to expedite development and deployment, but the resulting technology must be deployed in rural America. If the statutory language requirement in the 2008 Farm Bill will not allow for inclusion of funding for development of agricultural-biofuels related transformative innovations like the one discussed above, then provision for such should be made clear under § 4279.202(b).

Response: The language in the statute (see section 9003(c)(1) of the FSRIA) states: "grants to assist in paying the costs of the development and construction of demonstration-scale biorefineries to demonstrate the commercial viability of 1 or more

processes for converting renewable biomass to advanced biofuels." This language precludes the Agency from implementing what the commenter is requesting. Further, to the extent commenter is requesting the Agency to do otherwise, the Agency cannot. It is up to Congress to modify the statutory language in order for the Agency to consider the commenter's suggestions.

Simple Applications

Comment: One commenter recommends developing a simple application for small biorefineries that produce less than 1,500 gallons of biofuels per day.

Response: Because the program deals with new and emerging technologies, the Agency needs the same detailed information on the technology and process regardless of the size of the biorefinery. Therefore, a simplified application is not appropriate for the program.

Small, Mobile Biorefinery Units

Comment: One commenter recommends giving preference to small and particularly mobile biorefinery units that may be better able to serve small rural communities on a multi-county regional basis. The commenter states this will help provide economic security to those communities through job creation and dependable sources of local energy and provide greater feedstock security by having the sources located in many different locations throughout a multi-county area instead of being concentrated near one centralized biorefinery.

Response: Please note the previous response where the Agency stated its position to remain technologically, geographically, and feedstock neutral. While there is no preference given for small biorefinery units, they are not excluded from the program. A mobile system is eligible.

Unsecured Debt

Comment: One commenter believes that the primary obstacle to this program is the unsecured debt requirement. According to the commenter, lenders are not willing to take risk in the alternative fuels industry given the current state of financial markets. The Agency must be willing to relax this rule. Options include allowing subordinate risk, such as a state or other credible entity, or offering a 100 percent guarantee under conditions when a high ratio of equity investment is secured, where technology risk is limited, and where there is a demonstrated ability to accelerate return on investment. Loan guarantees, like loans, should not be a "one size fits all." Banks adjust loan terms based on conditions specific to the investment the loan supports. The Agency should consider adjustments when the potential investment offers compelling reasons to do so.

Response: The Agency is addressing these concerns by allowing the subordination its lien on accounts receivable and inventory for working capital loans under certain conditions and guaranteeing up to 90 percent of the loan for guaranteed loans of $125 million or less, also under certain conditions. As noted in an earlier response, the rule outlines the criteria the project must meet to obtain a 90 percent guarantee.

Requested Comments—f. Processing Technology Owned by Borrower

Comment: One commenter believes that the majority of biorefineries will be built by entities that are not owners of the processing technology that will be used in the biorefineries. Thus, the commenter believes that the processing technology should not be counted as collateral or equity in the project. In the instance where the process technology owner is the borrower, the market value of the technology should not be counted in the project cost. This will lower the equity requirement of the borrower because the project cost will be lower. Thus, the commenter recommends setting the market value of the technology at zero, and not entering it into the calculation of the equity requirement, if its market value cannot be determined because it is a novel technology and unproven in the production of advanced biofuels.

Response: With regard to process technology, the Agency agrees with the commenter that it should not be counted as collateral or equity in the project.

The Agency agrees that the market value of the technology should not be counted in the project cost, because it is the Agency's intent to focus the program's limited funding resources on implementing the technology rather than developing technology. However, the Agency notes that technology may be considered as part of the collateral based on the value identified on the borrower's audited financial statement prepared in accordance with Generally Accepted Accounting Principles (GAAP) and subject to appropriate discounting as provided for in the rule.

Comment: One commenter suggests using the standard discount rate of 20 percent that is used in the B&I loan guarantee calculation.

Response: The Agency disagrees with the commenter. Prudent lending practices dictate that the Agency use a discount factor, which may vary depending on condition and type of collateral offered. Because of the variability associated with the technologies participating in this program, discounting needs to be performed on a case-by-case basis and a standard, fixed discounting rate would be inappropriate. Where there is an existing market for intellectual property, discounting will be performed in accordance with the lender's standard discounting practice. Where there is not a market for intellectual property, the value of the intellectual property will be no greater than 25 percent, as determined by the Agency.

Comment: One commenter suggests calculating highly skilled labor as a business expense on the income statement and not including it in the equity calculation.

Response: The Agency agrees that highly skilled labor will not be included in equity calculation. However, labor is an eligible business expense, which could be financed with working capital.

Comment: One commenter stated that a broad interpretation of "eligible project costs" will facilitate lending and achievement of the purposes of the program. Because upfront transaction costs on these projects are significant, borrowers should receive credit for their contributions of real and personal property, including, without limitation, laboratory equipment, intellectual property, and reasonable fees paid to critical service providers. These fees can be substantial, up-front costs that are often a barrier to completing a significant application as is required for this program. If there is the opportunity to wrap these into the loan or apply them towards the borrower's equity contributions, additional companies with promising technology may choose to avail of the program as a financing mechanism.

Response: It is the Agency's intent to focus the program's limited funding resources on primary project costs and, therefore, the Agency disagrees with the suggestion for wrapping these fees into the loan because the Agency does not consider these fees to be primary project costs. For existing biorefineries only, qualified intellectual property, equipment, and real property may be considered in meeting the equity requirement, as described in § 4279.234(c)(1). The Agency notes that a loan guaranteed under the program may only finance 80 percent of the eligible project costs. The borrower needs to provide the remaining 20 percent from other non-Federal sources to complete the project.

Comment: Two commenters state that processing technology owned by the borrower should be included as an eligible project cost. Allowing for a means to recoup the processing technology development costs will speed the creation of biorefineries. It will maximize commercial flexibility of technology owners and project developers to negotiate deals that create incentives for innovation (on the part of the technology owner) and commercialization (on the part of the developer). If it is not an eligible cost, the developer will have to compensate the technology owner outside of the project finance structure, which reduces the capital that could be applied to biorefinery deployment/retrofitting. This may significantly reduce the commercialization of advanced biofuels refining technologies necessary to meet the RFS as well as diversifying the country's transportation fuel portfolio.

Another commenter, however, states that, while physical laboratory and equipment costs should be considered eligible project costs if they are listed as assets of the borrower, there is no legitimate value to intellectual property until the industry has emerged into commercial-scale production, and, at that point, commercial values will be changing to meet new supplies and demands. If there is the opportunity to apply a portion of what the borrower perceives as the value of its intellectual property towards the required equity contributions, additional companies with promising technologies may be eligible for assistance under the section 9003 program. Because the documentation required by the Agency is no different than what a prudent lender should require, eligible project costs should not include any item that is not considered a project cost in the borrower/lender transaction being guaranteed.

One commenter explains that, as a startup company with first-of-kind technology, they have and will incur significant cost securing intellectual property, financing arrangements, R&D expenditures, and developing new forms of renewable biomass. The commenter believes these costs should be allowed as eligible project costs and should be applied to the cash equity requirements.

Response: The Agency will not consider processing technology as an eligible project cost, because, as noted in a previous response, it is the Agency's intent to focus the program's limited funding resources on core project costs. However, the Agency acknowledges that the processing technology has collateral value and can consider the value of such technologies, with certain restrictions, in addressing the program's collateral and equity requirements.

Comment: One commenter states that eligible costs should include all costs that make up a sound project including production of byproducts, co-products, and electricity co-generation. If a facility generates excess heat or other forms of energy that can be harnessed to co-generate power, it should be encouraged to do so because this activity is in keeping with the energy goals of the Agency and the program. Also, as long as there are investment tax credits available for power co-generation, these "funds" can have a profound positive impact on the financability of the project. Hence, these should all be included in eligible costs so that the best possible financing package may be brought to bear. If professional service fees include the legal fees and other fees are required to complete the financing, including the fees to the bank or investment bank, these should be allowed if they are to be incurred after the guarantee application has been submitted. These are bona fide costs of the project and should therefore be included.

Response: The Agency agrees with the commenter to the extent that the costs associated with byproducts, co-products, and electricity generation are eligible project costs as provided in § 4279.229(e). The items listed in paragraphs (e)(1) through (e)(7) of § 4279.229 are eligible project costs as long as they are integral and necessary parts of the total project. With regard to professional fees, the Agency anticipates an over-subscription of the program, so the Agency's intent is to focus the program's limited funding resources on core project costs, which are identified in the interim rule as eligible project costs (see § 4279.229(e)).

Requested Comments—g. Percent Revenue From Sale of Advanced Biofuel

Comment: Two commenters believe that the mandate that 70 percent of the revenue generated by a biorefinery must be from the sale of advanced biofuel will create a disincentive and turn companies away from the program goals. An integrated biorefinery, as described by the DOE, is similar to a petrochemical refinery where crude oil is processed into a variety of fuels and chemicals. To achieve this integrated biorefinery model, biofuel companies will have to go into production of biochemicals themselves (incurring enormous capital expenditure costs), or enter into a joint venture with existing biochemical companies that have ready-to-scale technology.

Under the section 9003 program, a chemical production facility included as part of a biorefinery can have no more than 30 percent of the revenue generated at the biorefinery, yet the revenue generation of chemicals compared to fuels is traditionally disproportionately higher. This revenue restriction inhibits the creation of joint ventures by putting a cap on the future revenue of the potential biorefinery partner, limits the growth potential due to market demand or other external factors that affect the partners, and limits the ability of biofuel companies to enter into a revenue generating joint venture in efforts to become economically viable and self-sufficient in the long-term.

The most powerful aspect of the biorefinery as a business model is the ability to produce multiple products, so that the plant can weather prices drops, fluctuations in demand and volatile feedstock prices by arbitraging between the various products produced and privileging those that are the most profitable at any given time. If this cap exists and biofuels are not economically viable or require large subsidies to be viable, then limiting the amount of higher value-added products that can be produced will condemn the biorefinery to failure.

In addition, as a practical matter, the Agency will be required to regulate the 70 percent revenue generation requirement on an ongoing basis. From the bioproduct and biochemical perspective, this is a revenue limitation of 30 percent. Limiting revenue generation of one component of a business within a free enterprise is questionable policy. The Agency does not have a rational basis for this limitation grounded in sound economics, nor does it serve the broader policy purposes of the program. Biofuels and bioproduct companies should not be limited in revenue for any reason. The U.S. economy and its taxpayers will only reap the benefits of biorefineries if they are profitable ventures. They should be free to innovate new business models in order to achieve sustainable success.

One commenter agrees that the intent of the program is to create biorefineries that produce advanced biofuels, but believes that the 70 percent requirement is too high. The commenter believes that as long as 35 percent or more of the revenue is from the sale of advanced biofuels, then the project should be eligible for the program.

One commenter states that the advanced biofuels industry is an

emerging market and, as such, many configurations for profitability and risk mitigation include the sale of byproducts and renewable electricity as major components of the profit and product streams. There should be no set standards for the production of the advanced biofuels, and to require that 70 percent of the revenues are from the sale of advanced biofuels adds a further artificial barrier on sound, sustainable projects. The requirement should be lowered to 50 percent and be a combination of all forms of energy, including renewable electricity.

One commenter states that it is important that new fuel production methods pass through the financing "Valley of Death" so that they can be replicated in the market without government financial assistance. Hence, whether a first of a kind project under section 9003 sells much, if any, advanced biofuel should be irrelevant as long as the proposed business plan is financeable and there is sufficient evidence that there is a market (or emerging market) for the proposed fuel. Thus, more new technologies will be financed and more new advanced biofuels will ultimately come to market. Because even the small number of section 9003 eventual winners will have a negligible total impact on U.S. fuel consumption, it is more important to set the stage for future growth rather than saddle these early stage projects with excessive hurdles to overcome to create a successful business plan for a first commercial project. As long as the borrower can explain cogently how future plants will produce and deliver advanced biofuels and bioproducts that mitigate imported fuel or energy intensive products, these should be equally rewarded in this program.

One commenter agrees that the program should be focused on projects that primarily produce advanced biofuels, and encouraged the Agency to make a determination of the nature of the project on a site-specific basis and not promulgate a bright-line threshold. BTL (benzene, toluene, and xylenes) facilities can be configured to produce various combinations of fuels, co-products, and electricity. Thus, it may be that an optimized plant on an efficiency basis would be configured for something marginally less than 70 percent revenue from advanced biofuel. While a plant could be configured to meet a 70 percent requirement, the commenter asks that the Agency provide flexibility to allow for the most efficient plant configurations, which would be consistent with the proposal to consider life-cycle GHG emissions and other performance criteria.

Two commenters state that, while the Agency has proposed to require a certain percentage of biofuels be produced at the facility receiving an Agency loan guarantee, other product streams from the same feedstock can enhance the economic viability of biofuel projects. Market forces will affect revenues based on ever-shifting price points. Thus, a requirement for a percentage of revenue would make financial and operational planning very difficult for a biorefinery that receives a loan guarantee. An energy content or biomass usage metric is more effective, allowing developers to plan their facility/project at the outset to ensure that a certain percentage of the energy or biomass is used for biofuels. The commenters recommend basing any required percentage related to biofuel production on energy content or biomass usage, not revenue. The commenters also urge the Agency to promulgate flexible guidelines to implement this approach at this stage of development and uncertainty in the biofuels market.

Response: The Agency agrees with commenters' suggestion to remove the 70 percent revenue threshold. The rule has been modified to require that a majority of the biorefinery production is an advanced biofuel. When the biobased product and any byproduct produced have an established BTU content from a recognized Federal source, majority biofuel production will be based on BTU content of the advanced biofuel, the biobased product, and any byproduct. When the biobased product or any byproduct produced does not have an established BTU content, then majority biofuel production will be based on output volume, using parameters announced by the Agency in periodic Notices in the Federal Register, of the advanced biofuel, the biobased product, and any byproduct.

The Agency has determined that measuring the output is a better metric than the energy content of the biomass input in determining project eligibility, because the energy value of biomass input is not necessarily equivalent to the energy product outputs. The primary purpose of the program is for the development of advanced biofuels. For these reasons, the Agency is focusing on production of advanced biofuels rather than consumption of feedstock.

Comment: One commenter recommends changing the facility's percentage of "revenue" that must come from advanced biofuels to a percentage of "volume" in order to enable a company to maximize the economic viability of its operations. The commenter believes basing the percentage requirement on revenue, and not volume, significantly inhibits a company from pursuing its maximum economic potential as the prices of many byproducts are greater than fuels. The commenter believes that changing this requirement to 70 percent of volume will still enable the Agency to pursue its goal of promoting advanced biofuels without unduly restricting companies from pursuing the most economically advantageous means of supporting their facilities.

Private financing entities will judge whether "facilities are worth financing" solely based on the economic potential of that facility to earn sufficient profits to be able to pay back the loan to the financing entity as well as pay returns to its equity holders. Therefore, any regulations should be structured such that they will facilitate the manufacturing plant achieving maximum profits and enhancing its economic viability. The Agency itself recognizes the value of multiple revenue streams that exist in a biorefinery operation. For example, the Agency states that "byproducts are an important revenue source for many biorefineries."

To provide an example: The commenter's process inherently produces byproducts at a certain level. Monetizing these byproducts significantly enhances the financial viability of a biorefinery facility. As an example, one of the byproducts is an organic acid that sells for more than $2,000/ton, significantly more than the value of ethanol. Under a revenue-based eligibility requirement, the commenter states they would be significantly restricted from monetizing this byproduct, which is currently made exclusively from fossil fuels. Since this acid sells for more than 3 times the value of ethanol, the commenter states they would only be able to sell very small amounts in a revenue-based scenario, losing not only the revenue and societal benefit of replacing a fossil fuel derived material, but also incurring a cost to dispose of the material. In a volume-based scenario, the commenter states they would still focus on producing advanced biofuels as the primary purpose of the facility, but also would be able to enhance the economics of the facility by realizing the value inherent in its processes' byproducts.

Response: As noted in the response to the previous comment, the Agency is replacing revenue as the standard of measurement and instead will determine the majority biofuel production based on BTU content of the advanced biofuel, biobased product, and any byproduct. However, if the biobased

product or any byproduct does not have an established BTU value, the Agency will determine majority biofuel production based on output volume of the advanced biofuel, the biobased product, and any byproduct.

Comment: One commenter states that the 70 percent requirement is not contained in Section 9003 and may cause significant problems, both in terms of deterring companies from using the section 9003 program and then increasing the chance of default if a loan guarantee is issued. The commenter recognizes that the primary purpose of Title IX is "Energy"; however, Title IX also recognizes that, like petroleum, co-products provide essential revenue streams. Liquid transportation fuel has been the "holy grail" of the algae industry since its inception, but many companies are shifting their business plans away from a fuel-dominant approach in the short term and dedicating more efforts to developing higher-value co-products such as chemicals, agricultural soil remediation and fertilization, and plastics. This has been driven primarily by high production costs for lipids and having to compete with low-cost crude oil. One of the primary reasons for the high production costs of algal-based fuels is the lack of commercial-scale (and even demonstration-scale) projects that provide opportunities to optimize and de-risk technologies and reduce costs with scale. The algae industry views the section 9003 program as a much-needed financing tool to develop projects and bring down costs and risks. As the Agency notes, "byproducts are an important revenue source for many biorefineries." They will be even more important for the long-term success of the algae industry and the ability of the industry and its technologies to mature to the point where algal-based liquid transportation fuels are price competitive with petroleum gasoline, diesel or jet fuel.

For this reason, the commenter strongly encourages the Agency to interpret the purposes of Section 9003 broadly and in a way that will most likely accelerate the ultimate development and production of advanced biofuels. Imposing a 70 percent revenue requirement defeats this purpose.

First, it is unclear what the ramifications would be to the applicant if, in practice, this 70 percent threshold was violated. Would this constitute a default under the credit facility or security agreement? If so, this injects an artificial limit into the operation of projects that may, at points, obligate the applicant to run the project in a commercially unreasonable or imprudent way by producing products that fail to provide sufficient revenue to meet debt service.

Second, and related to the first, it is much more difficult to control price for a product (unless long-term off-take contracts are in place) than volume produced. Price fluctuations may inadvertently cause a breach of any loan agreement or security document.

Third, there is a significant pricing differential for feed, nutraceuticals, bioplastics, and biochemicals compared to fuel. This pricing differential could distort financial models and disqualify early algae projects that will rely on co-product sales to make the fuels portion of the project "pencil out." Borrowers should not be penalized for capitalizing on multiple value streams. If any limit on product mix is imposed, this should be volumetric rather than revenue-based.

Fourth, Section 9003 imposes no such specific threshold for purposes of a biorefinery's eligibility for the section 9003 program. Section 9003 provides that "eligible technology" for purposes of qualifying for a loan guarantee is "technology that is being adopted in a viable commercial-scale operation of a biorefinery that produces an advanced biofuel" as well as "technology * * * that has been demonstrated to have technical and economic potential for commercial application in a biorefinery that produces an advanced biofuel." Nothing in this sentence requires anything more than a biorefinery to produce some quantity of advanced biofuel, and it certainly doesn't base a requirement on a percentage of revenue. Further, a "biorefinery" is defined as a "facility (including equipment and processes) that "(A) converts renewable biomass into biofuels and biobased products; and (B) may produce electricity". On the face of the statute, Congress did not require a project's eligibility to be based on production and sale of a specific product mix or revenue mix, and biobased products and electricity are specifically anticipated to be key attributes of any biorefinery. The Agency's exercise of administrative discretion on this issue goes too far and jeopardizes the success of a much-needed program.

This limit on the revenue mix from products produced by the project is counterproductive to the purpose of the section 9003 program. Imposing an arbitrary limit on the product and revenue mix unsupported by Section 9003 will negatively affect borrower's ability to make prudent business choices and maximize revenues based on market demand for certain products at any given time during the loan term. This is not in the lender's best interest, it is not in the borrower's best interest, and it is not in the taxpayer's best interest when the borrower defaults.

The commenter recommends considering the merits of (most desirable to least desirable):
(i) Completely eliminating this requirement for project eligibility in favor of a certification by the borrower that the primary purpose of the project over the term of the loan is the production of advanced biofuels;
(ii) imposing a volumetric requirement rather than a revenue requirement with the volumetric requirement being a "majority" rather than 70 percent;
(iii) reducing the 70 percent revenue threshold to a "majority"; (iv) providing a waiver process to avoid default; and (v) permitting the carry-forward and carry-backward of surpluses and deficits so that the 70 percent revenue requirement is imposed over multiple years.

In any event, the commenter encourages the Agency to clarify its intent here and the ramifications for failing to meet such a requirement, and recommends either discarding the 70 percent revenue-from-fuels requirement or completely restructuring this requirement.

Response: For program integrity the Agency cannot rely just on certifications. As has been noted in the responses to the two previous comments, the Agency is replacing revenue as the standard of measurement and instead will determine the majority biofuel production based on BTU content of the advanced biofuel, biobased product, and any byproduct. However, if the biobased product or any byproduct does not have an established BTU value, majority biofuel production will be determined based on output volume of the advanced biofuel, biobased product, and any byproduct. The Agency has also removed the 70 percent threshold and replaced it with a majority threshold. Based on the changes, the Agency has determined that a waiver process and the carry of revenue surpluses and deficits are not required. The Agency reserves the right to take any legal action to address default when the borrower is not operating as originally proposed.

Comment: One commenter believes that biobased chemicals and biobased products must be included in grant, loan, and loan guarantee programs under the section 9003 program to enable stand-alone commercial scale facilities. Currently, most, if not all, large funding advantages in the DOE and USDA biomass program are

available to biofuels production projects only (with one exception). Expanding funding programs to include production of biobased chemicals and products will enable shovel ready projects that are the cornerstones of new biobased industries to immediately take hold. The 2008 Farm Bill states clear objectives for our nation yet these programs exclude loans, loan guarantees and grants for biochemical and biobased material production that would immediately enable these goals. The commenter believes the U.S. cannot afford to miss an economic and environmental opportunity for ready to scale green technology that falls well within the parameters of 2008 Farm Bill concerns.

Response: The Agency disagrees with commenter. The purpose of the program, as provided in the statute, is to assist in the development of new and emerging technologies for the development of advanced biofuels. Pursuant to the statute, all biorefineries financed under the program must produce advanced biofuels.

Requested Comments—h. Value of Feedstock Supplied by Producer Association and Coops

60 Percent Threshold

Comment: One commenter strongly opposes the proposed 60 percent threshold. The advanced biofuel feedstock markets, particularly for algae and cellulosic ethanol, are immature and have not developed to date using the agricultural cooperative model. Given transportation costs and other logistical issues, algal feedstock will likely be grown by the same companies that harvest the lipids/triaclglycerides and convert the same to advanced biofuels or other biobased products at the same or an adjacent site.

While the commenter encourages and supports the premise that "algae is agriculture," the commenter urges the Agency to avoid making the same mistakes that Congress and other agencies have made in the past when crafting legislation or policy with traditional agricultural food crops in mind. The Agency should not impose an existing model on a new industry at this point in its development, despite the fact that cooperatives and producer associations have served the terrestrial agricultural industry well. To do so in terms of awarding points when scoring applications would severely disadvantage biorefineries seeking to use algal feedstock (and other feedstock) vis-à-vis other projects that would, for example, use corn stover, cobs, straw, sugar, or other cellulosic feedstock.

The commenter recognizes the requirements in Section 9003(e)(1)(C) and the critical importance of producer associations to the development of the agriculture industry in the U.S.; however, the commenter urges the Agency to avoid imposing existing models on new industries. Disproportionate benefits should not be afforded to certain business structures that may be inapplicable to certain sectors of the bioenergy industry. The commenter states that the Agency should minimize such benefits.

One commenter states that, because most producer associations and coops are not yet involved with nor have a track record in feedstock procurement and supply, a lender will generally consider such contracts to be unreliable and likely unfinancable. This proposed criterion should be dropped in its entirety so as to allow projects to procure reliable feedstock wherever possible so that pre-commercial technologies can be built and validated. Do not add this level of complexity. It will almost certainly render most projects ineligible and would be a travesty for the program.

Three commenters state that the Agency should not place limits on feedstock suppliers in order to qualify for this program. Feedstock availability and price basically determine the success of the plant and maximum flexibility should be awarded in order to maximize the opportunity for success.

Several commenters state that a 60 percent threshold is unrealistic and, at this time, presents an artificial restriction for good, bankable projects. The commenters state that woody biomass is currently the lowest cost, most dependable, and most accessible feedstock for large-scale commercial advanced biorefineries, and is not traditionally owned, managed, or harvested by producer associations and/or cooperatives. The commenters support the activities of producer associations and cooperatives in developing advanced biofuels facilities and/or supplying biomass to these facilities, but state that the current costs and lack of infrastructure to economically and sustainably supply the facility with crops, such as miscanthus or energy cane, at a price comparable to woody biomass restricts the project from providing the necessary base level of feedstock pricing support that makes this type of business model bankable in the near term.

Response: The Agency appreciates the commenters' concerns. However, the statute requires the Agency to consider whether the borrower is proposing to work with producer associations or cooperatives. The Agency has modified this criterion to award points if the project can document working with cooperative and producer associations under one of the three criteria rather than all three. In addition, this scoring criterion has been revised by incorporating a two-tiered system that begins awarding points at a 30 percent threshold.

Algae Exception

One commenter states that they reviewed several proposals from potential algae producers to build out 10 to 100 acre algae production facilities that could provide a minimum of approximately 10,000 gallons (235 barrels) per acre/year, and over a million gallons of biomass per acre/year on a totally renewable basis without having to address growing seasons, rainfall and other factors that crop farmers must consider. Due to these considerations and the land use requirements of other feedstock, this would be practical, but due to the de minimus land requirement for algae production, the commenter does not believe that this is a practical restriction and requests that an exception be granted for algae production.

Response: The Agency disagrees. The Agency has adopted a policy to have a program that is technologically, geographically, and feedstock neutral. As noted in the response to the previous comment, the Agency points out that the rule has been revised to award points if the project can document working with cooperative and producer associations under one of the three criteria rather than all three. In addition, this scoring criterion has been revised by incorporating a two-tiered system that begins awarding points at a 30 percent threshold.

Requested Comments—i. Measuring Potential for Rural Economic Development

Comment: One commenter believes that the scoring system is flawed in regard to rural economic development. In large states, such as Texas, the requirement that the average wage created by the project be above the county and state median household wage will greatly affect project scoring compared to a small state since the Texas median state wage may be significantly higher than the county median wage. If a project's average wage is above the median household wage in the county and contiguous rural counties, then the project should receive the points for this criterion. Rural counties would be defined in this instance to be all nonmetropolitan

counties, as defined by ERS, with a rural-urban continuum code of 4 through 9. The commenter believes, however, that this criterion should be worth 15 points and not the 5 points in the proposed rule.

Response: The Agency has considered the comment and revised the criterion to reflect the location of the project (must be in a rural area in order to be awarded points) and County median household wage only. The Agency agrees that the points for this criterion should be increased, and has increased the points from 5 to 10, which the Agency has determined is appropriate relative to the other scoring criteria.

Comment: One commenter states that standard economic impact analysis software is easily obtained through several private organizations and universities, and has often been used to judge the economic impact of a new business in a community. The key components that can be compared are number of direct and indirect jobs created, the area multiplier effect, and the impact of purchases of local goods and services, including feedstock.

One commenter states that when measuring the potential impacts on rural economic development, the easiest things to measure are:

1. Construction Phase

a. Amount of construction funds that will be spent in the local area and immediate region for equipment, supplies, labor and other support services.

b. Downstream effects of construction job spending on the local economy, which is generally a multiple of the primary spending (velocity of money).

2. Operations Phase

a. Number of new jobs and salaries to be paid plus the downstream effects that these employees will have on spending in the local economy.

b. Feedstock purchases. Determine who gets paid and how much in the feedstock supply chain in the local area. In some cases these will be estimates, but given that the feedstock supply chain must be fairly transparent to meet lender requirements, these estimates can be quite accurate.

Response: The Agency does not agree with changing the economic impact analysis at this time. The Agency has not identified the appropriate models to determine the economic impact in the manner suggested by the commenter. If the Agency identifies an appropriate model, it will amend the regulation accordingly and notify the public.

Requested Comments—j. Measuring Positive Impacts

Comment: One commenter believes that the production of advanced biofuels will have positive impacts on resource conservation, public health, and the environment. The commenter believes the Agency should rely on the definition of advanced biofuels as defined in the 2008 Farm Bill and believes EPA is using unproven combinations of models to calculate the GHG reduction for biofuels. Also, EPA's delay in qualifying existing and new feedstock and process pathways will not allow for quick implementation of the program. There could be instances where a feedstock could be under review until 2012 by EPA—the expiration of the current Agency program.

Dependence by the Agency on the RFS2 definitions and delineations is premature. Once the science behind GHG emissions is more fully understood and defined, then the Agency may want to look at including some tiered system to determine the environmental positive impact. The commenter suggests that this could be a much more appropriate discussion as the 2012 Farm Bill takes shape.

The commenter states that a tiered scoring system based on GHG reductions would not further the intent of the program and not help rural economies through the creation of advanced biorefineries. However, the commenter believes that a project should show a reduction in GHG emissions as verified through a life-cycle analysis in the published literature or completed by a university or a private third party that specializes in such analysis.

Response: The Agency agrees with the commenter, and requires that the project produce an advanced biofuel as defined in the statute. The Agency has decided not to require compliance with the Renewable Fuel Standard, because to do so would narrow the range of feedstocks eligible under this Program. Furthermore, the renewable fuel standards only apply to liquid transportation fuels, while this Program applies to a broader range of advanced biofuels. However, the Agency has modified the scoring criteria such that in order to receive points under the first scoring criterion an advanced biofuel must meet an applicable renewable fuel standard as identified by the EPA and clarified the scoring criterion associated with demonstrating positive effects that compliance with the renewable fuel standard is one way that a positive effect on the environment can be demonstrated.

With respect to the commenter's concern about GHGs, the Agency encourages applicants to provide any and all information that supports a positive effect on resource conservation, public health, and the environment. The Agency considers a reduction in life-cycle GHGs to be a positive effect on the environment. Thus, if the borrower demonstrates a reduction in life-cycle GHGs, the borrower will receive points under § 4279.265(d)(6). However, a borrower will also receive points under this criterion if they demonstrate a positive effect on resource conservation, public health, or the environment in another manner. Finally, to help address GHG life-cycle emissions, the Agency has revised, as noted above, the scoring criterion such that an advanced biofuel must meet an applicable renewable fuel standard as identified by the EPA in order to receive points under the first scoring criterion.

Comment: One commenter states that eligible projects should provide a reduction in GHG reductions, as verified through a GREET Analysis or other university or private, third party analysis. The project should also meet or exceed the EPA standards for permitting. Extra points should be given for projects that provide additional clean, potable water for human use and/or irrigation.

Response: Applications will be accepted for biorefineries that produce an advanced biofuel. The Agency is considering the impacts of the EPA requirements on the program and has not made a final determination to date. As noted in the response to previous comments, to help address GHG life-cycle emissions, the Agency has revised the first scoring criterion such that an advanced biofuel must meet an applicable renewable fuel standard as identified by the EPA in order to receive points under the first scoring criterion.

With regard to the comment on potable water, the Agency encourages applicants to provide any and all information that supports a positive effect on resource conservation, public health, and the environment. The Agency may consider potable water under this criterion, for example resource conservation. Thus, if the borrower demonstrates positive impact GHGs or potable water, the borrower may receive points under § 4279.265(d)(6) and, as noted above, the advanced biofuel must meet an applicable renewable fuel standard as identified by the EPA to receive points under the first scoring criterion. However, the Agency has chosen to provide applicants more options in demonstrating a positive effect on

resource conservation, public health, or the environment.

Comment: One commenter agrees that biofuels and bioproducts that significantly reduce greenhouse gas emissions are more desirable than those that do not. Such criteria also ensure that the net energy balance of the proposed fuels or products is higher, which in turn reduces imported energy products to a higher degree. Hence, such a measurement is consistent with the overarching goals of the program. Fuels and products that can be produced with low overall water consumption should also score higher. Given that most fossil fuels require water for production and to date most biofuels require dramatically higher uses of water, which is unsustainable, low water consumption should be considered to be one of the highest and most important criteria.

One commenter recommends structuring the loan guarantee program to promote the best-performing biofuels to the maximum extent possible and "pay for performance." As one of the purposes of the program is to "promote resource conservation, public health and the environment," the commenter encourages the Agency to link the loan guarantee application scoring criteria to the entire performance profile of the advanced biofuel proposed to be produced.

The commenter believes that, while the assessment of the GHG performance of fuels, as well performance relating to air quality, water quality, and water quantity are all important aspects of the performance profile of a fuel, the Agency should assess other important factors, such as the compatibility of fuels with existing infrastructure and equipment and the total thermal efficiency of the facility, among other relevant factors. Linking payments to the achievement of GHG reduction thresholds under EPA's RFS2 program, as suggested in the proposal, would certainly help to achieve the goal of reducing GHG emissions.

While supporting consideration of life-cycle GHG reductions, the commenter encourages the Agency to fill existing policy gaps and maximize GHG reductions from biofuels by scoring proposed projects on the full life-cycle reductions actually anticipated based on a site specific life-cycle analysis, not merely on the basis of achieving minimum thresholds. The existing RFS2 program only requires that biofuels meet specific thresholds (such as a 60 percent reduction for cellulosic biofuels), but the program offers no incentives for producers to exceed those thresholds. Conversely, low-carbon fuel standards being developed by California and the Northeastern states encourage maximum reductions by fully crediting the reductions achieved. Under such an approach, a facility producing a fuel with a 90 percent GHG reduction benefit would score comparatively higher than a facility producing a fuel that merely meets RFS2 thresholds. The commenter encourages the Agency to adopt a similar approach that would best help the Agency achieve incremental GHG reductions and support the Administration's goal of reducing GHGs.

One commenter states it is important to remember that the industry must fulfill the advanced biofuel requirement of the RFS. The commenter believes that, if the Agency decides to award points towards an overall score that will then be used to evaluate and compare applications for facilities that produce biofuels that significantly reduce life-cycle GHG emissions compared to conventional fuels, the regulations should be kept simple to encourage streamlined administration of the program. While the commenter does not believe that the indirect land use change calculations included in the RFS regulation are mature or have been adequately vetted in the scientific community, if the Agency does include life-cycle GHG emission reduction benchmarks as a way to reward lower emitting fuels with additional points, the commenter recommends: (1) Relying on already established regulations instead of creating a new set of regulations for those calculations (*i.e.,* EPA RFS), and (2) Not complicating the program with multiple threshold levels that the Agency will need to create and monitor, but simply create one value (5 points) for advanced biofuels that meet the RFS life-cycle GHG emission reduction requirements.

Response: In addition to the reasons already provided, the Agency also notes that it agrees with simple implementation of this scoring criterion and encourages applicants to provide information that supports a positive effect on resource conservation, public health, and the environment. The applicant can consider a recognized and published source of information to document the impacts noted above. The Agency has increased the amount of points under this scoring criterion and added provisions to deduct points if the feedstock can be used for human or animal consumption.

Comment: Regarding suggested metrics for the other proposed performance criteria, in assessing air quality, one commenter recommends looking at conventional pollutant emissions of a fuel as compared to a baseline represented by the fuel it replaces. For water quantity, fuels could be scored on water use in production per BTU of energy produced. Fuels could be scored on the basis of the fertilizer use and runoff related to their feedstock.

Despite requesting comment on many performance criteria, the Agency has proposed to reduce the points allocated to these criteria in its ranking scheme. Rather than reducing the points, the commenter believes it would be appropriate for the Agency to substantially tailor the scoring system around such criteria.

Response: The Agency agrees that the metrics identified by the commenter can be used to demonstrate the impacts of a biorefinery. However, the Agency disagrees that it is necessary to identify these metrics specifically in the rule. This criterion is written broadly to allow applicants to provide whatever information the applicant believes will demonstrate the positive impacts of their proposed projects. Thus, the Agency encourages applicants to provide any and all information that supports a positive effect on resource conservation, public health, and the environment. The applicant can consider a recognized and published source of information to document the impacts noted above. As noted in the response to the previous comment, the Agency has increased the amount of points under this scoring criterion and added provisions to deduct points if the feedstock can be used for human or animal consumption.

Comment: Two commenters encourage the Agency to coordinate with the DoD to ensure that any requirement regarding the reduction of life-cycle GHGs does not inhibit DoD's goal of increasing the amount of domestically-produced jet fuel. The Agency should ensure that facilities that could provide such fuel are not ineligible for the program based on how GHGs are calculated on a life-cycle basis. The commenters support program incentives that reduce life-cycle GHGs as technologies advance, but recommends that national security benefits be considered for the eligibility of biofuel programs.

Response: Although the statute does not require the Agency to consider national security as an eligibility requirement, the Agency recognizes the importance of biofuels to national security and has signed a MOU with the Navy. The MOU encourages the development of advanced biofuels in order to secure the strategic energy future of the United States and will be

supported by the Agency to the extent possible. Further, as noted in a response to a previous comment, the Agency has included in the rule a provision, for which it is seeking comment, to allow the Administrator to award bonus points to applications that promote partnerships and other activities that assist in the development of new and emerging technologies for the development of advanced biofuels that further the purpose of this Program, as stated in the authorizing legislation. The Agency will identify these partnerships and other activities in a **Federal Register** notice each fiscal year. Therefore, the Agency has determined that it is unnecessary to add the suggested scoring criterion to the rule.

Comment: One commenter urges the Agency to ensure that the program is flexible so that a producer can reapply in order to meet the higher criteria for the same project as it evolves. Liquid biofuels are the only advanced biofuels that currently have a regulatory framework in place for measuring GHG emission reductions compared to their counterparts. If the definition of advanced biofuels in the final rule applies to solid, liquid, or gaseous fuels, the Agency would need to determine how they will quantify gaseous and solid advanced biofuels emission reductions when compared to their counterparts. In addition, it should be assumed that producers of advanced liquid biofuels would not produce fuels that do not meet the RFS qualifications, therefore, including life-cycle GHG emission reduction requirements in this program for liquid transportation fuels would be redundant and the commenter cautions against adding any unnecessary regulations to this program that could slow or complicate the process of awarding guarantees and therefore retard commercialization and production.

One commenter supports the approach the Agency is considering that would award more points to facilities that produce biofuels that significantly reduce life-cycle GHGs compared to conventional fuels. Drafting language to incorporate the EPA's renewable fuels standard and ongoing biofuels life-cycle analysis (in partner with the National Academy of Sciences) would structure the rules effectively. Given the need to address climate change, awarding points is a practical step in fostering development of emission-reducing feedstock production.

One commenter supports basing scoring criteria on life-cycle assessments and encourages the Agency to employ established methods being utilized by other agencies (e.g., the U.S. EPA). If the section 9003 program is a means to achieve the ends required by the RFS Program, then requirements imposed on borrowers as producers of renewable fuel for sale to obligated parties should be synchronous.

Response: The purpose of the program, as provided in the statute, is to assist in the development of new and emerging technologies for the development of advanced biofuels. The Agency is currently considering various models related to life-cycle analysis and has not identified a model at this time. When the Agency determines the appropriate model, it will amend the rule accordingly. As stated above, the Agency encourages applicants to provide any and all information that supports a positive effect on resource conservation, public health, and the environment and, to help address such environmental considerations as GHG life-cycle emissions, the Agency has revised the scoring criteria such that an advanced biofuel must meet an applicable renewable fuel standard as identified by the EPA in order to receive points under the first scoring criterion.

Requested Comments—k. Definition of Agricultural Producer

Comment: Two commenters recommend keeping the definition of agricultural producer as proposed. According to the commenters, there is no advantage increasing this guideline, which will put another artificial barrier or restriction in place to qualifying producers. The definition should be consistent across all areas of Agency funding programs.

Response: The Agency thanks the commenter for their comments and the Agency has decided not to change the definition.

Requested Comments—l. Local Ownership

Distance

Comment: Two commenters recommend increasing the mileage allowance to 200 miles. The project must be economically and financially sustainable, and could require feedstock procured and obtained from a larger area. The most economically advantageous site may be located away from the owner's business or home location. This is another artificial barrier that must be removed from the process.

Two commenters recommend that, if the Agency insists on providing a benefit to locally owned companies, this should be increased to 200 miles from 20 miles. This required scoring criteria, like the producer association scoring criteria, benefits certain sectors of the bioenergy industry and not others and actually serves as a way for producer associations to get "double points" for the same thing. Owners of companies developing large-scale algae growth and cultivation biorefineries, unlike their counterparts using corn stover or wheat straw, will likely be located far from these production facilities due to the fact that these facilities are best located in areas where terrestrial agriculture activities requiring fresh water would be impossible.

To reduce possible double benefits for producer associations in the scoring criteria and to more realistically account for project finance-type investment by funds with urban domiciles into these $100+ million facilities, the commenter recommends basing "local ownership" on owners living either within the state in which the project is located or 200 miles.

One commenter states that the 20 mile limitation for local ownership is too restrictive. Many of these facilities will have to be located in larger communities that have essential infrastructure to service them, which could easily be more than 20 miles from the source of the feedstock. Also, many of these facilities will be utilizing specialized feedstock that may have to be obtained from further distances. The commenter recommends that 100 miles be used to determine local ownership.

Response: In the definition of local ownership, the Agency has replaced the feedstock supply area provision with the distance an owner's primary residence is from the location of the biorefinery, with the distance to be specified by the Agency in a **Federal Register** notice. The Agency is seeking comment on this provision (see Section IV, Request for Comments). It is the Agency's intent to implement in the final rule for this Program a specific criterion, or set of criteria, to establish such distance or distances for defining a local owner. The Agency plans on using the input provided in response to the requested comment in finalizing this definition for the final rule.

Comment: One commenter agrees with the local owner definition requiring a local residence in proximity to the feedstock area. The commenter, however, recommends strengthening the phrasing "an individual who owns any portion" to say an individual who owns a specific minimum dollar amount or percentage. Otherwise, the provision could be open to abuse.

Response: The Agency disagrees with the recommendation, and wants to clarify that local ownership will be determined based on the percentage of ownership of the biorefinery rather than

on the number of owners. The Agency would like to be as inclusive as possible and consider all local ownership interests instead of setting a minimum dollar or percentage threshold.

Scoring

Comment: One commenter believes there should not be more than 5 points allotted for local ownership.

Another commenter states that local ownership is important, but not as important as the jobs created in the rural economy where the biorefinery will be placed. The commenter does not support the scoring system in regards to this criterion. The commenter proposes the following criterion with a maximum of 10 points:

1. If more than 20 but less than or equal to 50 percent of the biorefinery's owners are local owners, 6 points will be awarded.
2. If more than 50 percent of the biorefinery's owners are local owners, 10 points will be awarded.
3. A biorefinery that has as its majority owner a publicly traded entity shall not be eligible for any points under this criterion.

Two commenters suggest that the Agency reconsider its proposal to award increased points to loan applicants that have a higher percentage of owners whose primary residences are within 20 miles of the area supplying feedstock to the biorefinery. While it is reasonable to expect that biomass production sites will be near a biorefining facility, requiring local ownership of the project and establishing a strict 20-mile proximity requirement for scoring is not necessarily the only manner in which to achieve this goal. The commenters urge the Agency to be flexible in its scoring on this matter and to ensure that comparable points are awarded for projects that use other means to encourage nearness of feedstock to biorefinery.

Response: The Agency disagrees with the commenters in that this criterion is not intended to encourage nearness of the feedstock to the biorefinery, but to encourage local ownership of the biorefinery, which is a specified criterion in the statute. The Agency notes that it has revised the points associated with this criterion, from 15 to 5.

Delete the Criterion

Comment: One commenter states that the local ownership requirement should be removed to be in keeping with the goals of financing pre-commercial projects. Although in the past we have seen much local ownership in ethanol and biodiesel plants, this was not true with the first commercial scale facilities. It was only after a track record had been established that rural residents became comfortable with these investments. Requiring local investment is yet another hurdle not needed for a pre-commercial support program.

One commenter states that the Agency should not require local ownership of a biorefinery to qualify for this program. Local ownership requirements place additional investment challenges on projects that otherwise could have a significant impact on rural development. Lack of investment financing is the biggest impediment and this requirement handicaps projects even further.

Response: The Agency points out that local ownership is not an eligibility criterion, as the commenters seem to think, but is one of the criteria that the Agency will use to score applications. Further, because the statute identifies local ownership as a scoring criterion, the Agency must include it in the rule.

Scope

Comment: One commenter states that the aviation industry welcomes "local" investors in an alternative aviation fuel biorefinery, but believes that these investors should be allowed to live within the geographic region where the feedstock is grown. In addition, the commenter proposes that the regulations allow refineries that invite "local" investors into a project after it has been structured to score local ownership points.

The commenter further states they have seen a number of aviation fuel biorefinery proposals for 100 million gallons per year refineries that plan to use camelina, one of the most promising non-food feedstock. Each proposal indicates that, until camelina becomes a generally accepted crop by farmers, it is likely that a refinery would have to purchase camelina from farmers in several states and, as a result, the definition of "local" would need to be changed.

Response: The Agency has revised the rule to remove the reference to the feedstock supply area and now defines local owner as "an individual who owns any portion of an eligible advanced biofuel biorefinery and whose primary residence is located within a certain distance from biorefinery as specified by the Agency in a Notice published in the Federal Register." As has been noted previously, the Agency is seeking comment on the most suitable mechanism for defining a local owner. The Agency disagrees with the comment on inviting "local investors into a project after it has been structured." To be considered under this score criterion, local investors need to be identified in the application. The Agency can consider local owners from more than one state as long as the owners are within a certain distance from the advanced biofuel biorefinery. The Agency notes that the scoring criteria give preference; they do not determine eligibility. As to gaming the local ownership provision, the Agency has addressed this by clarifying that it will examine the percentage of local ownership versus number of owners.

Purpose and Scope (§ 4279.201)

Comment: One commenter supports the continued development of a loan guarantee program for biorefineries in order to encourage the development and construction of commercial scale biorefineries and for the retrofitting of existing facilities using eligible technology for the development of advanced biofuels. The commenter supports the goal of the program and believes that the Agency is being prudent by remaining open to all feasible technologies at this stage in the development of the biofuels industry. In addition, the commenter supports the Agency's proposal to conduct the program on a rolling application acceptance basis that allows the Agency to make decisions regarding proposed deals in a relatively short period of time.

Response: The Agency appreciates the commenter's support.

Definitions (§ 4279.202(a))

Comment: One commenter recommends reviewing the definitions within the October 7, 2009 DOE solicitation to determine if some of these definitions can be utilized for this regulation so there are some common definitions between the DOE and the Agency loan guarantee programs.

Response: While both Agencies have similar terms, specific definitions have to vary in response to different statutory provisions and Departmental policies.

Affiliate

Comment: One commenter recommends adding a definition of "affiliate," to read: "Affiliate. This term has the meaning set forth in Section 2(k) of the Bank Holding Company Act (12 U.S.C. Section 1841(k))." The commenter points out that commercial banks and thrifts administer their CDFI Fund approved New Markets Tax Credit Program (NMTC) Program through controlled affiliates. This addition would enable CDFI Fund approved NMTC Program lenders that are under the control of a bank or thrift to become eligible for the section 9003 program

and provide the benefits of the NMTC Program to projects financed using guaranteed loans under the section 9003 Program.

Similarly, another commenter states that they have discussed with many prospective biorefinery applicants the advantage of combining Federal NMTC Program available to certain commercial banks with a loan guarantee under the section 9003 program. The NMTC Program is administered by the Community Development Financial Institution Fund (CDFI Fund) within the Department of Treasury and provides tax credit equity to certain approved lenders. The program has the effect of "de-leveraging" a project by passing through the tax credit equity to the borrower as an additional source of funds for a project. The commenter states that in order to accommodate the use of the NMTC Program by affiliates of commercial banks and thrifts who have been approved by the CDFI Fund and the section 9003 program, § 4279.202(c)(2) must be revised to read as follows:

"The lender must maintain at all times the minimum acceptable levels of capital specified in paragraphs (c)(2)(i) through (iii) of this section. If the regulated or supervised lender is a commercial bank or thrift, or an Affiliate of a commercial bank or thrift, these levels will be based upon those reflected in the Call Reports and Thrift Financial Reports of that commercial bank or thrift."

Response: The Agency disagrees with commenters that a definition of affiliate is needed as it relates to a lender. Lenders must independently qualify regardless of whether they are affiliated with another eligible lender.

Association of Agricultural Producers

Comment: One commenter urges the Agency to ensure that state and national trade associations are not included in this definition because it would be improper for such groups to receive Agency loan funds. Because money is fungible, it would be difficult for the Agency to track the actual usage of the funds. Funds should go for those activities strictly associated with building and operating advanced biorefineries.

Response: The Agency disagrees with the commenter. The statutory language is broad enough to include these entities. The Agency does not want to limit the pool of eligible applicants as suggested. However, it should be noted that most associations would not have the ability to own, operate, and incur debt for such a project. Further, the Agency would rely upon the lender to ensure that funds were spent as proposed.

Biofuel/Advanced Biofuel

Comment: One commenter recommends expanding the definition of biofuel to include heat and power derived from renewable biomass. The commenter states that the production of renewable heat and power from renewable biomass is just as advantageous to national security and energy independence as transportation fuel.

Response: The Agency disagrees with the recommendation. Per the authorizing legislation, heat and power are not considered biofuel. The applicant would first need to demonstrate they are producing an advanced biofuel, which could then be used for combined heat and power systems.

Comment: Regarding the definition of advanced biofuel, one commenter states that EPA now requires that diesel engines used in transportation must emit extremely low levels of nitrogen oxides (NO_X). The most common way to mitigate NO_X emissions is to use urea to react with the fuel exhaust in a catalytic converter. Given that it will soon be illegal to drive a diesel vehicle without such capabilities, that the engine exhaust is an integral part of the fuel system, and that such exhaust must be treated, it can be argued that any additive that reduces such emission is part of the overall fuel system. When produced from renewable biomass, these would be considered advanced biofuels. Also, given that urea and all such other nitrogen products are being imported as foreign produced energy intensive products, production of these advanced biofuels in a biorefinery meet and achieve the overarching goals of the program and should qualify equally for the program.

Response: Applications will be accepted for biorefineries that produce an advanced biofuel. At the present time, urea is not considered an advanced biofuel. However, urea is considered a biobased product. The rule has been modified to require that a majority of the biorefinery production is advanced biofuels. The definition of biorefinery requires the production of biobased products in addition to biofuel.

Comment: One commenter is concerned that the Agency has misconstrued congressional intent with regard to the definition of "advanced biofuel" when the Agency states in the preamble that it "understands the definition to apply to solid, liquid, or gaseous fuels that are final products." The Agency's Commodity Credit Corporation made a similar statement regarding solid advanced biofuels in its Biomass Crop Assistance Program (BCAP) proposal, where it stated that a biomass conversion facility includes a facility that proposes to convert renewable biomass into heat, power, biobased products, advanced biodiesel, or advanced biofuels, such as wood pellets, grass pellets, wood chips, or briquettes.

The commenter does not believe that any solid fuel qualifies as an advanced biofuel under the 2008 Farm Bill. The Farm Bill definition closely tracks the definition in the 2007 Energy Independence and Security Act (EISA). Like the definition in EISA, the 2008 Farm Bill Section 9001 definition of advanced biofuel includes seven qualifying types of fuel. These fuels are listed in the exact same order, except that the 2008 Farm Bill definition replaces references to "ethanol" with references to "biofuel." Congress also replaced the reference to "biomass-based diesel" in EISA to "diesel equivalent fuel."

The commenter states these changes did not evidence an intent to broaden the definition to include solid fuels, but rather indicated Congress' growing understanding that there were numerous kinds of advanced biofuels other than ethanol, including cellulosic diesel (e.g., BTL). Thus, it is clear that the 2008 Farm Bill definition builds and improves upon the EISA definition, but that in both cases Congress intended to include only liquid fuels and biogas. While the EISA definition specifically focuses on transportation fuels and the 2008 Farm Bill definition does not, there is no indication that Congress ever intended to include products such as wood pellets, grass pellets, wood chips, or briquettes within the definition in either definition. Rather, under the 2008 Farm Bill, these types of products are either a "biobased product" or simply renewable biomass. The mere act of chipping, pelletizing, or compressing renewable biomass does not convert it into an advanced biofuel. The commenter encourages the Agency to clarify that advanced biofuels are liquid fuels (and biogas) as defined in the 2008 Farm Bill.

Response: The Agency disagrees and is satisfied that the statute does not provide an exclusive list of eligible advanced biofuels and does permit solid fuels. However, the Agency has added a provision to the scoring criterion addressing a proposed project's impact on existing manufacturing plants and other facilities that use similar feedstock that if the facility proposes to use wood

pellets as its feedstock, no points would be awarded under this scoring criterion.

Comment: One commenter states that the definition of advanced biofuels in the 2008 Farm Bill is ambiguous in regards to the inclusion of biofuels derived from sugar and starch. The commenter believes the Agency needs to clarify that advanced biofuels other than ethanol, for example fuels with a different molecular structure such as biobutanol, or other hydrocarbons with 4 or more carbons, produced from a corn starch feedstock, qualify for this program under the definition of advanced biofuel. The proposed rule for this program states that "to be eligible for payments, advanced biofuels must be produced from renewable biomass, excluding corn kernel starch, in a biorefinery located in the United States." The inclusions section of the advanced biofuel definition in the legislation specifically includes "(ii) biofuel derived from sugar and starch (other than ethanol derived from corn kernel starch)" and "(vi) butanol or other alcohols produced through the conversion of organic matter from renewable biomass." The commenter believes that this legislative ambiguity requires the Agency to clarify in the final rule that the only fuel produced from corn kernel starch excluded from this program is ethanol, per the legislation.

Response: The Agency disagrees with the commenter. The statute defines advanced biofuels as fuels derived from renewable biomass other than corn kernel starch. Therefore, any advanced biofuel produced from corn kernel starch is excluded.

Comment: Several commenters recommend broadening the definition of advanced biofuels to include bioproducts. There are many new technologies that are being developed in the pursuit of advanced biofuels that can significantly contribute to rural economic development through the use of biobased feedstock and/or biobased products that are more environmentally desirable as well as more cost effective. Many of these new technologies also require plants to be built to an economy of scale that would require a loan guarantee in the $100 to $250 million range. These projects can also provide needed jobs in rural areas and bring enhanced economic development to the region.

Response: The definition of "advanced biofuel" is provided in the statute and, thus, cannot be changed by the Agency. The statute also defines "biorefinery" to include the production of both biofuels and biobased products. However, the potential borrower must demonstrate that the majority of the production is advanced biofuels.

Biorefinery

Comment: One commenter states that the language "and may produce electricity" seems to be at odds with § 4279.228(d). The commenter asks if this means a facility that produces electricity from an advanced biofuel is not an eligible project, unless the revenue generated from the sale of electricity is less than 30 percent of the total revenue generated by the biorefinery. The commenter believes that a facility that makes an advanced biofuel and biobased products (such as biogas) and then produces electricity from the advanced biofuel or biobased products should be deemed to be both a "biorefinery" within the meaning of § 4279.202(a) and an eligible project within the meaning of § 4279.228. In any event, clarity is needed in these two sections.

Response: As long as the electricity is derived from advanced biofuels produced in the facility, the Agency agrees and has included clarifying language in the project eligibility section of the rule.

Byproduct

Comment: One commenter suggests that the definition of byproduct include the primary product being produced whenever the primary product has more than one marketable use beyond as an advanced biofuel. For example, anhydrous ammonia is an excellent fuel in its own right, is the best way to transport, store, and recover hydrogen, and can also be used as fertilizer. There should be no penalties for a biorefinery that sells all of its product to established markets, whether as an advanced biofuel or as a byproduct, as long as the project can be financed.

Response: As noted earlier, the Agency has removed the requirement that 70 percent of the revenue must be from the sale of advanced biofuel. To be eligible, the project needs to produce an advanced biofuel and biobased product and the majority of the production is advanced biofuels.

Eligible Technology

Comment: One commenter states that, in conversations with Agency staff that oversees this program, there appears to be an "institutional bias" in favor of technologies that follow a specific technology development pathway. There appears to be an expectation that all technologies should have completed a "pilot facility" as a precursor to commercial viability. However, not all technologies neatly fit into a reasonably priced "pilot project" pathway. Not all technologies can, nor should be required to, follow one common pathway to commercialization. For example, oxygen gasification of biomass to produce syngas to then produce fuels does not neatly fit into a reasonably priced, pilot scale technology development pathway. Specifically, the commenter states that their technology, when produced at commercial scale, will perform at a level that would normally be considered a pilot scale.

Because of the type of technology involved, there are less expensive and better ways than a "pilot project" to design, optimize, and achieve high confidence in a commercial scale design. For example, to produce a quarter-scale implementation, the cost would be 70 percent of the commercial project and would not yield much valuable data for predicting the success at full scale. The physics and fluid dynamics differences between different scales of the same gasifier technology means that data gathered in one scale are only marginally useful in another scale. As a result, different techniques have been developed to design and scale such gasifiers. These techniques lead to an equal level of confidence in the proposed design and implementation as is often garnered from other technologies that are better suited to pilot scale projects. Therefore, the commenter maintains that requiring the advanced biofuel technology "has at least a 12-month (four seasons) operating cycle at semi-work scale" is unwarranted and unacceptable. This criterion assumes that there are no alternative, less expensive, or even better approaches to achieving confidence that the new technology is ready for first-time commercial deployment. In fact, there are such alternative approaches for many technologies. The program evaluation criteria must be flexible enough to provide the acceptance of technologies that do not neatly fit into the "standard" scale-up model that appears to be expected in this proposed rule.

Response: The Agency disagrees with the recommendations. Because of the operational risks associated with these new and emerging technologies, it is necessary for the semi-work scale facility to operate for a sufficiently long period to determine if there is any seasonal variation in the production process. To determine if there is any seasonal variation, at least 12 months of operation is required. The technology must demonstrate technical and commercial viability at semi-work scale to qualify for the program. The technical

assessment criterion is not specific to any one technology.

Comment: Two commenters state that the definition of technical and economic potential is inconsistent with prevailing industry practice and requirements of other Federal programs. Standard industry practice is to operate a demonstration plant for a sufficient enough time to generate steady state operating data that validates key unit operations and the integrated biorefinery process. For example, the DOE requires six months of operation and 1,000 to 2,000 hours of operating data at the demonstration scale level. The commenters recommend adopting a 1,000 hour operating data requirement to define "technical and economic potential" instead of the 12-month requirement in the proposed rule.

Another commenter states that, although it is generous to add a provision for "semi-work scale," it is restrictive to include the 12-month (four season) operating history in all cases. To prove the viability of the technologies being used, the commenter suggests that the requirement be changed to require that, with regard to algae projects, the growing, harvesting, and extraction systems be benchmarked by three independent third parties rather than requiring a specific length of operating history without a 'proven results' requirement.

Response: The Agency disagrees with the recommendation. Because of the operational risks associated with these new and emerging technologies, it is necessary for the demonstration plant to operate for a sufficiently long period to determine if there is any seasonal variation in the production process. To determine if there is any seasonal variation, at least 12 months of operation is required. Thus, requiring only 1,000 hours, as suggested, would not allow this determination of potential seasonal variation. Therefore, the Agency has not revised the rule as requested.

Farm Cooperative

Comment: One commenter believes this definition would unintentionally exclude long-standing cooperatives from eligibility for the program. Cooperatives are not required to be formed under a cooperative incorporation statute in order to qualify as a cooperative for purposes of the IRS Code or other Federal statutes. A cooperative may be organized, instead, under a state's general business corporation statute and have its cooperative characteristics established in its articles and bylaws. The commenter is aware of many farmer cooperatives incorporated in this manner.

The commenter recommends using the definition as put forth in the recently published proposed rule regarding the VAPG Program, 7 CFR parts 1951 and 4284, RIN 0570–AA79. In the proposed rule, "farmer or rancher cooperative" is defined as: "A business owned and controlled by agricultural producers that is incorporated, or otherwise identified by the state in which it operates, as a cooperatively operated business."

This definition would include farmer cooperatives that are incorporated under general business corporation statutes and yet operate in a cooperative manner and are recognized as farmer cooperatives for purposes of Federal and state taxation and other statutes.

One commenter agrees with the Agency's definition as being a business incorporated as a cooperative that is solely owned and controlled by agricultural producers. However, operational aspects should also be included, consistent with the requirements of the Capper-Volstead Act. This will help prevent the abuse of the term farmer cooperative.

Response: In considering these comments, the Agency has determined that it is appropriate to revise the definition in the rule to be generally consistent with the definition being used in the value-added producer grant program. The revised definition requires the business to be "cooperatively operated," which addresses the one commenter's request concerning operational aspects.

Participation

Comment: One commenter recommends adding a definition for "participation." The commenter suggests the following:

Loan Participations

Structure: Generally, participations are loans where the "lead lender" (Lead) sells a participation in a loan to one or more participating lenders (Participant(s)). The sale may be expressed in terms of a dollar amount or a percentage of the loan. The Lead then continues to manage the loan on behalf of itself and the Participants. The relationship among the lenders is typically formalized by a participation agreement, which states in writing that the Participant receives an undivided interest in the loan. The sale of the participation generally occurs after the Lead and the borrower have executed the loan documentation. The Participant is thus dependent upon the Lead for protection of its interests in the loan—the Participant and the borrower do not have privity of contract and thus have no rights or obligations to one another.

Response: The Agency has determined that the definition of participation found in § 4279.2, which is incorporated by reference in this rule, is sufficient. Thus, the Agency has not included the definition of participation suggested by the commenter.

Regulated or Supervised Lender

Comment: One commenter states that, in order for the implementation of their recommended Bond Loan Model to be successful, the definition of Lender needs to be modified to add to the end thereof:

"* * * and may include a regulated or supervised lender, acting through its corporate trust department, that otherwise meets the lender eligibility requirements in § 4279.202(c). A lender that otherwise meets the lender eligibility requirements of § 4279.202(c), where the guaranteed and/or unguaranteed portions of the loan are to be funded through bonds, may join with a broker or dealer that is regulated by the Securities Industry and Financial Markets Association and is otherwise a registered broker or dealer within the meaning of the Securities Exchange Act of 1934, in submitting the application required by § 4279.260 and be a party to such application for purposes of assisting the lender in assuring compliance with § 4279.261."

Response: The Agency disagrees with the commenter's suggested revision to the definition of lender. The Agency is authorized to guarantee loans, which in certain circumstances may include bonds as described below, under this program. The Agency considers that this requires a lender to make the loan from its resources and then service that loan itself. While the Agency will permit the lender to secure limited servicing responsibilities from third parties, the lender must remain responsible for the servicing. The rule clarifies the definition of eligible lenders, which is similar to that used in the Business and Industry Guaranteed Loan Program. As noted earlier, savings and loan associations, mortgage companies, and other lenders (those that are not regulated) are not eligible to participate in this program.

The Agency considers this as distinct from the typical investment banking scenario where an investment bank secures the financing from outside investors. After the funding is secured, the investment bank has no further involvement with the transaction. Servicing is handled by a trustee who reports to and is controlled by the

investors. The Agency considers that this is an investment instead of a loan and that its current authority is insufficient to guarantee investments.

Renewable Biomass

Comment: One commenter states that they are aware of the numerous definitions of biomass in Federal statutes and understand that the Agency is compelled to administer the loan guarantee program based upon the definition in Section 9001 of the 2008 Farm Bill. The commenter hopes that Congress will consider reconciling these definitions in the near future, and asks that the Agency, in coordination with the Biofuels Interagency Working Group, provide recommendations on a definition of biomass that is consistent with sustainability principles while also providing adequate supplies of biomass. The commenter believes that the 2008 Farm Bill definition meets these criteria.

Response: The Agency acknowledges the comment.

Syndication of Loans

Comment: One commenter recommends adding a definition of "syndication of loans." The commenter suggests the following:

Syndication Structure: A loan participation is similar to a loan syndication in that a group of lenders provides funds to a borrower. In a syndication, however, each lender signs the loan agreement with the borrower and thus has a direct legal relationship with the borrower. One of the lenders will be designated as the agent-lender (Agent) for the other syndicate members. The Agent is typically the lender owning the largest percentage of the loan or the lender with enough prestige to form a syndicate of lenders. The Agent may also be the lender with an established relationship with the borrower. It is responsible for structuring the intended credit facility, pricing the loan, developing information pertaining to the borrower, and negotiating and closing the transaction. Thus, all formal communications among the lenders, as a group, and the borrower are conducted through the Agent and all funds are disbursed through and received by the Agent.

Response: The Agency does not agree that the rule needs to include provisions directed at syndication. The Agency has made three significant changes to the rule that mitigate and minimize the concerns expressed by this and other commenters for syndication in order to mitigate lead lender risk. Specifically, the three changes are:

- Revising the minimum retention requirement from 50 percent of the unguaranteed portion to 7.5 percent of the total loan amount;
- Enabling the interest rate of the unguaranteed portion of the loan to increase by 500 basis points rather than 1 percent as proposed; and
- Allowing loan guarantees up to 90 percent for guaranteed loans of $125 million or less.

Lender Eligibility Requirements (§ 4279.202(c))

Comment: One commenter states that the early preamble comments to the regulation indicate that lender eligibility will be restricted to regulated, supervised lenders. Given the highly specialized nature of biorefinery lending, the restriction on eligible lenders should not be driven by regulatory controls, but rather by experience and sophistication in financing biorefinery projects. The parameters for eligible lender instead should be broader than those outlined in 4279–A and should include experienced investment bank consortiums with an emphasis on experience and capitalization. The commenter states he did not actually find the lender eligibility criteria anywhere in the proposed rule.

One commenter recommends expanding the definition of eligible lender to make it clear that lenders other than commercial banks are allowed. The definition could be: "Any person or legal entity for the purpose of, or engaged in the business of, lending money, including, but not limited to, commercial banks, insurance companies, credit unions, mutual funds, factoring companies, investment banks, institutional investors, venture capital investment companies, trusts, or other entities designated as trustee or agents acting on behalf of bondholders or other lenders."

Another commenter is concerned that allowing only commercial banks to participate in the loan guarantee program limits the pool of potential investors and rules out investors such as insurance companies, pension funds, mutual funds, and college endowments. The commenter believes it makes sense to allow the borrower to fund debt from any accredited investor in order to maximize the potential investor base and lower the overall cost of borrowing for biofuel projects.

Response: The Agency disagrees with the commenters regarding eligible lenders, and the rule reflects requirements that are similar to those for a traditional lender under the Business and Industry guaranteed loan program. The Agency requires a lender to make the loan from its resources and then service that loan itself. While the Agency will permit the lender to secure limited servicing responsibilities from third parties, the lender must remain responsible for the servicing.

Comment: One commenter believes that allowing biorefinery applicants to use the Federal Financing Bank as the sponsor lender, similar to the DOE loan guarantee program, would provide projects with another option to secure debt financing.

Response: The Agency cannot consider the Federal Financing Bank as an eligible lender because it requires a 100 percent guarantee, which the Agency is prohibited from offering by statute.

Comment: One commenter recommends allowing a "lead lender/arranger" to submit an application for a loan guarantee by the NOFA deadline, stating the level of their funding commitment along with a funding plan on how the remaining portion of the loan will be financed by other lenders. The other lenders may not be identified until after the "lead lender" receives the Conditional Commitment, but will be identified and subject to the Conditional Commitment prior to issuance of the Loan Note Guarantee.

Response: The comment presumes that the rule would allow syndication. However, for the reasons presented in response to an earlier comment, the interim rule does not contain provisions specific to syndication. Therefore, no changes have been made to the rule in response to this comment.

Comment: One commenter recommends allowing the "lead lender/arranger" to perform the servicing activities of the syndication, and deal directly with the borrower instead of requiring all the lenders of the syndication perform duplicate routine servicing activities. Each original lender will hold its own promissory note and the collateral is held by the arranger as agent for each of the members of the syndicate. As to any matters of significance, a vote or approval of 51 percent of the lenders is required to take any action (e.g., waive or modify covenants, release collateral, agree to forbearance, declare default and liquidate collateral, etc.). Each of the original lenders in the syndication would be responsible for servicing, but there would only be one original lead lender performing most of the servicing activities.

Response: Absent syndication, the Agency agrees with the concept of a lead lender in the context of participation. As noted in a previous response, while the interim rule does not contain provisions specific to

syndication, the rule does provide other ways lenders can manage risk, which address the concerns raised by the commenter.

Comment: One commenter recommends allowing lenders to "participate the loans," which is different than "syndication of lenders" with other lenders by Participation Agreements.

Response: Participations are not excluded under the rule. The Agency has determined that the definition of participation found in § 4279.2, which is incorporated by reference in this rule, is sufficient for allowing participations.

Comment: One commenter recommends clearly allowing a "syndication of lenders" to finance a single project. The process could be structured similar to the Solicitation Notice DE–FOA–0000166 issued by the DOE on October 7, 2009. This is the traditional way large loans of this type are financed by lenders.

Response: For the reasons previously provided in response to other comments on syndication, the interim rule does not contain provisions specific to syndication. As noted in a previous response, while the interim rule does not contain provisions specific to syndication, the rule does provide other ways lenders can manage risk, which address the concern raised by the commenter.

Lender Eligibility Requirements (§ 4279.202(c)(1))

Comment: One commenter recommends allowing SEC-regulated investment banks, as well as commercial banks, to act as the applicant "lender-of-record." According to the commenter, commercial banks are not the best equipped entities to perform due diligence and debt structuring and placement on first-of-kind biorefinery projects. Because a "lender-of-record" serves as the applicant for the program, this restrictive definition of eligible "lenders-of-record" fundamentally restricts the potential applicant pool.

Response: The Agency's current statutory authority does not permit investment banks to be eligible lenders. The rule reflects requirements that are similar to those for a traditional lender under the Business and Industry guaranteed loan program. The Agency requires a lender to make the loan from its resources and then service that loan itself. While the Agency will permit the lender to secure limited servicing responsibilities from third parties, the lender must remain responsible for the servicing.

Comment: One commenter states that the "supervised or regulated" lender terms are unclear and further definition or guidance needs to be provided so potential lenders know if they meet the criteria prior to applying for a loan guarantee. The commenter recommends loosely defining the term "supervised or regulated" in order to allow as many different types of lenders as possible to qualify, but still have an adequate amount of oversight by a state or Federal agency. If a lender is not "supervised or regulated," then provisions should be stated as to what other criteria they can meet so they can become an eligible lender. This could be patterned after the "non-traditional" lender requirements that the B&I guaranteed loan program utilizes.

Response: The Agency agrees with the commenter that the term "supervised and regulated" was unclear and has modified the rule to define eligible lenders similar to the Business and Industry Guaranteed Loan Program. However, the Agency disagrees with the commenter to make the requirements similar to the non-traditional lender language under the Business and Industry Guaranteed Loan program. Due to the amount of risk associated with these projects, the Agency has determined, based on the its experience in managing lender risk in other guaranteed loan programs, that traditional lenders offer stronger capital base and loan and servicing experience.

Lender Eligibility Requirements (§ 4279.202(c)(2))

Comment: One commenter asks how the requirement that the lender must maintain at all time the minimum acceptable levels of capital specified in § 4279.202(c)(2)(i) through (iii) will be enforced. The commenter also asks: What is the purpose of this requirement? What happens if the lender fails to meet the requirements? The commenter recommends that this requirement be removed from the proposed regulation.

Response: The Agency has modified the rule to require that the lender must meet acceptable levels of capital at the time of application and issuance of loan note guarantee, thereby removing the requirement of maintaining acceptable capital levels at all times, which addresses the enforcement concern noted by the commenter.

Comment: One commenter requests clarification as to whether there are any minimum total risk based capital ratios or leverage capital ratio requirements if the lender is not a commercial bank or thrift.

Response: Lenders other than commercial banks or thrifts must also demonstrate that they meet the same criteria identified in § 4279.202(c)(2).

Debarment/Suspension (§ 4279.202(c)(3))

Comment: In pointing out that one of the lender eligibility requirements is that the lender must not be otherwise debarred or suspended by the Federal government, one commenter states that he assumes this language does not disallow lenders that may have a cease and desist order or other directive requesting corrective actions from FDIC from obtaining a loan guarantee. The commenter recommends that lenders be able to obtain a loan guarantee even if they have a cease and desist or other directive from FDIC requesting corrective actions. The B&I guaranteed loan program allows lenders to continue to obtain loan guarantees.

Response: Because of the maximum program loan amount for this program (i.e., $250 million) and the associated risk under this program, the Agency is concerned that allowing a lender with a cease-and-desist order to continue to obtain a loan guarantee may not be in the government's best interests. Therefore, the Agency will evaluate such instances on a case-by-case basis.

Lender Experience (§ 4279.202(c)(5))

Comment: One commenter states that the Agency is contemplating approving loan guarantees only for lenders with adequate experience (as determined by the Agency) with similar projects and the expertise to make, secure, service, and collect loans approved under the section 9003 program. The Agency believes this provision is necessary to further limit Agency risk, and the Agency is proposing the issuance of loan guarantees to regulated or supervised lenders, which precludes bond financing monies from being guaranteed under this program. In a better economy, other forms of financing, such as bond financing, might become available. Although the underwriting requirements are not necessarily as stringent as bank loans, and given the results of the state guarantees of debt for biorefineries, the commenter suggests that, in order for bond financing to qualify for Agency guarantees, the same guidelines and requirements be implemented as for more traditional lenders.

The commenter proposes that the Agency, the lenders, and the borrowers all remember that the Agency is offering to issue loan guarantees, and that the guidelines not interfere with the traditional asset-based lending process,

but supplement it by offering lenders inducements to make the loans necessary to develop commercial-scale projects.

Response: The Agency is authorized to guarantee loans, which in certain circumstances may include bonds as described below, under this program. The Agency considers that this requires a lender to make the loan from its resources and then service that loan itself. While the Agency will permit the lender to secure limited servicing responsibilities from third parties, the lender must remain responsible for the servicing.

Recognizing the current difficulties in securing funding, the Agency has been approving certain bond transactions. The Agency considers that, under the limitations contained in this regulation, guaranteeing these bonds is in keeping with its authority. In order to be more transparent of its willingness to guarantee certain bond transactions, the Agency has modified this regulation accordingly.

Specifically, the lender is required to provide the loan proceeds and service the loan. The Agency will allow a trustee to provide limited servicing only if the trustee is fully under the control of the lender. Holders' rights are limited to receiving payments under the note or bond and if those payments are delinquent making demand for payment on the lender and the government as provided in the regulation. In certain cases where the lender and borrower desire to change the loan terms, the holder is also required to consent to any changes. Loans providing holders any other rights are ineligible for guarantee under this program.

Independent Credit Risk Analysis (§ 4279.202(d))

Comment: One commenter states that the requirement for an independent risk analysis mentioned in § 4279.202(d) refers to a $100,000 threshold, and recommends a threshold of $100 million.

Response: The Agency agrees that the $100,000 amount was in error. The error has been corrected in the rule to $125 million.

Environmental Responsibilities (§ 4279.202(e))

Comment: One commenter recommends basing the environmental review requirements of § 4279.202(e) on 7 CFR part 1794 rather than 7 CFR part 1940, subpart G. The commenter points out that 7 CFR part 1940, subpart G, relies heavily on agency personnel to conduct the environmental analysis, whereas 7 CFR part 1794 places the burden for preparation on professional consultants whose work is then subject to agency review. This latter approach is appropriate given the complexities of biorefinery environmental impacts. The commenter believes that Agency personnel will typically lack the expertise for a project of this nature.

Response: The Agency disagrees with the commenter. The program is consistent with the Business and Industry Guaranteed Loan Program, 7 CFR part 4279, subparts A and B, which references 7 CFR part 1940, subpart G. The rule requires the applicant to complete Exhibit H of 7 CFR part 1940, subpart G, which is an environmental report, similar to the Rural Utilities Service 7 CFR part 1794 process. Neither this program nor the Business and Industry Guaranteed Loan Program precludes third parties from performing the environmental analysis necessary for the Agency to conduct its National Environmental Policy Act evaluation as long as the submitted material is sufficient for the Agency purposes.

Conditions of Guarantee (§ 4279.202(i))

Comment: Several commenters state that, as proposed, the guarantee would protect only 60 percent of the bank's position. The commenters recommend that, if the Agency wants to insist on a first lien position, a guarantee of up to the 90 percent level allowed by statute is certainly warranted for loans on first-of-a-kind technologies. If the Agency does not increase the guarantee level to 90 percent, some of the commenters recommend that the lien positions of the Agency and the holders of unguaranteed debt have equal priority.

Response: The Agency is allowing a guarantee of 90 percent for guaranteed loans of $125 million or less under certain conditions. To clarify for the commenter, the Agency requires that the lender acquire the first lien position on the collateral. The Agency does not file a lien against the collateral. The Agency notes that the guaranteed and the unguaranteed portions of the loan have the same lien priority.

Comment: One commenter states that a working capital lender is vital to the success of any biorefinery, and that, under commercial lending practices for project finance transactions, a working capital lender will require a first lien on raw goods, works in progress and finished goods inventory, as well as proceeds thereof (in the form of accounts receivable), including any insurance proceeds. Therefore, the commenter recommends modifying § 4279.202(i) to provide that a working capital lender may have a first lien on raw goods, work in process and finished goods inventory, as well as proceeds thereof (in the form of account receivable), including any insurance proceeds.

Response: The Agency is agreeable to allowing working capital loans, not guaranteed by the Agency, which are secured by the inventory and accounts receivable. The Agency may consider a subordinate lien position on inventory and accounts receivable for working capital loans under certain conditions (see § 4279.202(i)(1)). The Agency disagrees with the comment regarding inclusion of insurance proceeds. The borrower should be able to obtain a working capital loan without the inclusion of insurance proceeds.

Comment: One commenter believes that the requirement of § 4279.202(i) for a first lien on all collateral is too inflexible. The commenter recommends that a section 9003 loan be fully secured, and any improvements or property financed with section 9003 funds be pledged under a first lien. Beyond this, the collateral should be negotiable. The commenter believes it may be necessary to allow other lenders to have a first lien on assets they finance, and this is certainly the case with any lender providing working capital.

Response: The Agency partially agrees with the commenter. The Agency is agreeable to allowing working capital loans, not guaranteed by the Agency, which are secured by the inventory and accounts receivable. The Agency may consider a subordinate lien position on inventory and accounts receivable for working capital loans under certain conditions. However, the Agency disagrees with rest of the comment due to the risk to the government.

Comment: Two commenters state that the proposed rule appears to conflict with the 9003 NOFA in that it would put the unguaranteed lenders in a junior position to the Agency, whereas the 9003 NOFA states: "The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan."

Response: There is no conflict. Within the rule at § 4279.224, a cross reference is made to the provisions found in §§ 4279.107 through 4279.187, which includes § 4279.131(e) stating "the entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan." As noted above for clarification purposes, the Agency requires that the lender acquire the first lien position on the collateral. The Agency does not file a lien against the collateral.

Comment: One commenter states that the Agency should clarify that the guaranteed and unguaranteed lenders will rank pari passu with respect to the first lien on project collateral as specified in the 2008 Notice of Funding Announcement (NOFA). The commenter believes the Agency added the first lien requirement in the proposed rule due to the size of the guaranteed loans under this program. This requirement puts lenders in a secondary position behind the Federal government. The lender's position is protected by the loan guarantee—but only up to the percentage amount of the guarantee. In case of default on a $125 to $250 million loan, the guarantee would protect only 60 percent of the lender's position, according to the proposed rule's current structure.

The commenter recommends that, if the Agency includes the first lien position as specified in the proposed rulemaking in the final rule, a guarantee of up to the 90 percent level, as allowed by statute, be provided for loan guarantees on first-of-a-kind technologies.

Response: As noted above for clarification purposes, the Agency requires that the lender acquire the first lien position on the collateral. The Agency does not file a lien against the collateral. As previously referenced, the entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan.

Comment: One commenter states that the requirement for the guarantee to be secured by a first lien on all collateral to run the project in the event of a borrower's default, along with a bank lender being required to hold 50 percent of the unguaranteed portion, has the effect of being an unguaranteed loan equal to 10 percent of the project loan for the bank. The commenter recommends some form of lien with pari passu repayment formula in order to provide sufficient incentive for lenders to participate.

Response: Within the rule at § 4279.224, a cross reference is made to the provisions found in §§ 4279.107 through 4279.187, which includes § 4279.131(e) stating "the entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan." Therefore, the guaranteed and unguaranteed portions of the loan enjoy the same lien position.

Comment: One commenter states that the proposal requiring that the guarantee be secured by a first lien on all collateral is unreasonable from a commercial lending standpoint. In order to comply with basic asset based lending guidelines and prudent commercial lending guidelines, the lender must have a first lien position on all assets of the borrower. The commenter further states that, because the terms of the guarantee documentation will address when the guarantee comes into play, which would be after an uncured event of default by the borrower under the lender's loan documents, an assignment by the lender to the Agency of its lien position, should the lender pursue the guarantee, is a standard and customary term.

Response: As noted above, the Agency requires that the lender acquire the first lien position on the collateral. The Agency does not file a lien against the collateral. As previously referenced, the entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan.

Comment: Several commenters state that the Agency should not hold the first lien on all collateral necessary to run the project in the event of a borrower's default. Lenders would, therefore, be subordinate to the government. In the event of default, the lender's position is only protected up to the percentage of the B&I guaranteed. The commenters also state that this also contradicts the current B&I guaranteed loan requirements, which have worked well for the Agency in the past.

Response: As noted above, the Agency requires that the lender acquire the first lien position on the collateral. The Agency does not file a lien against the collateral. As previously referenced, the entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan.

Comment: One commenter states that authorizing guarantees of a revolving credit facility for future working capital and allowing the replacement of the non-guaranteed portion of the loan with equity would provide cellulosic biofuel companies necessary flexibility to better finance commercial projects.

Response: The Agency does not agree with authorizing guarantees of a revolving credit facility for future working capital. Working capital is an eligible purpose for the guaranteed loan but, at this time, the Agency feels that lenders can administer revolving credit facilities more efficiently. Therefore, the Agency is agreeable to allowing working capital loans, not guaranteed by the Agency, which are secured by the inventory and accounts receivable. The Agency also does not agree with allowing the replacement of the non-guaranteed portion of the loan with equity. The non-guaranteed portion of the loan cannot be converted because the Agency wants the lender to maintain a lending interest in the loan.

Sale or Assignment of Guaranteed Loan (§ 4279.202(j))

Comment: Based upon the state of the commercial banking industry, one commenter recommends applying the language regarding the transferability of the loan to any accredited investor to both the guaranteed and unguaranteed portions of the loan.

Response: To allow the transfer of the unguaranteed portion of the loan beyond the minimum retention requirement would minimize the lender's financial interest in the project. Therefore the Agency disagrees with the recommendation. The Agency notes that the unguaranteed portion of the loan in excess of the minimum retention requirement may be sold to third party holders.

Comment: One commenter states that the Agency should explain why it will not guarantee a loan funded with the net proceeds of a bond described in section 142(a) of the Internal Revenue Code of 1986.

Another commenter believes what the Agency intended to say in the second part of § 4279.202(j) is that the guaranteed portion of the loan may not be funded with the net proceeds of bonds described in section 142(a) of the Internal Revenue Code of 1986, as a result of the prohibition thereof contained in Section 149(b). The commenter suggests revising § 4279.202(j) to read as follows:

"In addition to complying with the provisions of § 4279.75, and subject to the limitation imposed on the original lender by § 4279.202(k), the guaranteed and unguaranteed portions of the loan shall be fully transferable to any accredited investor and the Agency may not guarantee any portion of the loan funded with the net proceeds of the bond described in section 142(a) of the Internal Revenue Code of 1986. The unguaranteed portion of the loan may be funded with the net proceeds of a bond described in section 142(a) of the Internal Revenue Code of 1986."

A third commenter states that borrowers should be permitted to access the tax-exempt capital markets for the unguaranteed portion of debt. Tax-exempt project debt appears permitted, but should be explicitly allowed for the unguaranteed portion of the debt. Projects should be afforded every opportunity to lower interest costs, especially by way of Federal, state and local programs designed to meet regional and national priorities such as

the Recovery Zone bond programs. The commenter recommends that borrowers should be permitted in all cases to access the tax exempt capital markets, including when necessary through state authority issuance vehicles.

Response: The Agency disagrees with the request to modify proposed § 4279.202(j). To support consistency between this program and the B&I guaranteed loan program and to eliminate any duplicative Federal assistance that would be provided by the subsidy for the loan note guarantee and the tax exemption, the Agency has determined that it would be inappropriate to distinguish between guaranteed and unguaranteed portions of the loan when applying this provision.

Minimum Retention (§ 4279.202(k))

Comment: Seven commenters state that the proposed level of unguaranteed loan retention by the original lender is not possible given today's market conditions. The commenters state that banks remain extremely cautious to make loans to first-of-a-kind technologies. One commenter states that the risks associated with holding a large unguaranteed portion of a loan is akin to making an equity investment in the enterprise being financed, something most lenders are unable to do because of regulatory constraints, or are unwilling to do because of the high degree of risk involved. These commenters, therefore, recommend eliminating this provision.

Six commenters recommend using the same requirement for minimum retention that is allowed for the guaranteed Business and Industry loan guarantee program where the lender is to retain 5 percent of the loan amount.

One commenter believes, for a multitude of reasons, that this section of the proposed rule is unworkable and relies upon assumptions that are incorrect. The commenter disagrees with the size of the minimum retention requirement and the assumption on which it was based for the following reasons:

(1) The Agency did not do adequate diligence or inquiry of the commercial banking industry when it proposed the 50 percent minimum retention requirement in the Section 9003 NOFA as is evidenced by its recent outreach to commercial banks to determine why they have been unwilling to act as a sponsor/lender of a section 9003 program guaranteed application;

(2) the Agency incorrectly assumed that a commercial bank originating a loan guarantee under the section 9003 program would be less interested in or attentive to the servicing of a loan where the potential loss to the lender in a liquidation scenario would be $12,500,000 (assuming application of the B&I Program's 5 percent minimum retention requirement) versus $50,000,000 (assuming application of the section 9003 program's 50 percent of the unguaranteed portion minimum retention requirement). The commenter asserts that there is not a commercial bank in the U.S. that would devote less attention to a $12,500,000 potential loss than a $50,000,000 potential loss, as either loss is material;

(3) the Agency did not do adequate diligence in setting the minimum retention requirement in the Section 9003 NOFA, because, if it had, it would have understood that for a $250,000,000 loan guarantee, there are likely less than 5 commercial banks in the U.S. that have the capacity to originate such a loan where they were required to retain 50 percent of the unguaranteed portion thereof; and

(4) the Agency failed to do appropriate diligence when it issued the Section 9003 NOFA because there are no commercial banks in the U.S. that are either willing or able to approve through their respective loan committees a $50,000,000 unguaranteed loan for a nonrecourse financing of a first-of-a-kind technology which loan cannot be syndicated or participated.

The commenter suggests that the language should incorporate either "syndication" or "participation," such that a lender can syndicate and/or participate a portion of the lender's risk position. The commenter also suggests that the language which provides that lenders may syndicate a portion of its risk position to other eligible lenders be revised to provide syndication and/or participation to any accredited investor in order to make § 4297.202(k) consistent with § 4279.202(j).

The commenter states that, in the context of the Bond Loan Model, a bond trustee holds title to and is the owner of 100 percent of the Bond Loan Note and the Collateral Documents securing the guaranteed and unguaranteed portions of the loan for the entire term of the loan. Additionally, a corporate trustee is the agent of and fiduciary for the bondholders, and the commenter states that the minimum retention requirements of § 4279.202(k) should be deemed satisfied as a direct result of the corporate trustee reporting to and being controlled by the underlying bondholders in a way which permits and requires bondholders, subject to Agency retained rights, to exercise their rights as at-risk investors through the trustee. The commenter states that the notion that institutional bondholders working together with a corporate trustee are somehow less accountable to the Agency than an AgBank or other lending institution is simply unfounded. As evidenced by the one trillion dollar annual bond market, which utilizes the Bond Loan Model, there is a demonstrated confidence in and success rate for project finance utilizing the Bond Loan Model. Consequently, the commenter requests that the Agency deem the minimum retention requirement of the section 9003 program to be satisfied by a trustee acting on behalf of the bondholders when a financing is accomplished utilizing the Bond Loan Model.

Based on the above, the commenter recommends revising § 4279.202(k) to read as follows: "The provisions of § 4279.77 apply to this subpart. Lenders may syndicate and/or participate a portion of their risk position to other eligible lenders or accredited investors provided that at no time during the life of the guarantee may the original lender hold an amount of the loan less than the amount required by § 4279.77. The requirements of this section and § 4279.77 will always be deemed satisfied by a trustee where bonds are used to fund a guaranteed loan."

Response: The Agency recognizes the concerns raised by the commenters regarding the impact of a minimum retention requirement. Based on the Agency's lengthy experience, it believes that it is necessary for participating lenders to always retain a portion of the risk to ensure that the loans are properly serviced. The Agency also recognizes that the minimum retention requirement in the proposed rule did not strike a proper balance with respect to these concerns. As a result, the Agency has revised the minimum retention requirement to be similar to that found in the Business and Industry Guaranteed Loan program. The Agency notes that, given the size and complexity of projects under the Biorefinery Assistance Program, the minimum retention was increased from 5 percent to 7.5 percent.

As previously stated, it is the Agency's position that its current authority does not permit a trustee, whether that trustee is an eligible lender or not, to just hold a beneficial interest for other lenders.

Guarantee Fee (§ 4279.226(a))

Fee Structure

Comment: Several commenters believe that the current Agency fee structure is onerous for larger projects, and should be set at one flat fee as in

the other Agency loan guarantee programs. These fees need to be affordable for these types of projects. The Agency should not receive a fee based on the amount of equity that is contributed as long as the loan follows the minimum guidelines. The fees should be capped at the same amount, and because these are large projects, it should be no more than 0.5 percent. Having a fee in the 2 percent range adds tremendous pressure on debt financing that is already higher than usual because of the risk profile. Annual renewal fees should also be capped at 0.25 percent.

Response: The Agency disagrees with commenter. The Agency has structured the fees to address the risk and cost to the government.

Comment: One commenter recommends that the guarantee fee set forth in § 4279.226 be left subject to change in each **Federal Register** notice that announces the availability of funds. The actual subsidy rate cost of running this program may change as more information about the risks associated with it become clear, and because the projects that will be submitted are already controlled by a NOFA process, the Agency should retain the right to set a new fee structure with each NOFA. The commenter believes the Agency should not lock itself in to fees in the regulation.

Another commenter believes the fee structure is reasonable in terms of requiring lower fees for lower dollar projects. The commenter suggested periodically reviewing whether the two percent fee for larger projects is warranted to ascertain its appropriateness as projects are funded.

Response: The Agency generally agrees with commenters. The intent of establishing a specific guarantee fee in the rule is to provide a stated fee in the rule. However, the Agency does acknowledge there may be a time when a different guarantee fee may be required. Therefore, the Agency has revised the rule to allow it the option of adjusting the guarantee fee through the publication of a **Federal Register** notice.

Borrower Eligibility (§ 4279.227)

Comment: One commenter states that the distinction between the proposed rule and the May 6, 2010 NOFA is the addition of the term "persons" and the deletion of the term "individuals." The proposed rule does not define the term "persons"; however, the Section 9003 NOFA and the May 6, 2010 NOFA define "person" to mean "Any individual, corporation, company." With the term "person" now defined to include "corporations" that are "citizens," then a "borrower" for purposes of the section 9003 program seemingly can be owned by corporate or other types of entity shareholders at the first ownership level above the borrower, as corporations or other entities incorporated, organized or otherwise established in the U.S. have traditionally been held by our laws and courts to be U.S. citizens. This interpretation would then require no further "look-up" the ownership chain, as U.S. citizenship will have been legally established at the first ownership level above the borrower. However, the commenter states that in the May 6, 2010 NOFA the Agency unnecessarily goes a step further (this further step is also contained in the proposed rule) by adding a sentence stating: "When an entity owns an interest in the borrower, its citizenship will be determined by the citizenship of the individuals who own an interest in the entity or any sub-entity based on their ownership interest."

According to the commenter, notwithstanding that the term "person" includes a corporation that is a U.S. citizen, the Agency will continue to look-up the chain of ownership to determine the ultimate individual owners of such entity and the total percentage U.S. citizenship among them, ignoring that the corporate entity is a U.S. citizen. The commenter states that the Agency seemingly went out of its way to complicate and confuse the otherwise clear meaning of the term "person" to require that a further test of U.S. ownership be undertaken by adding a seemingly endless upstream ownership analysis notwithstanding that these entities may be legally incorporated, organized or otherwise established entities of the U.S., which are legitimate U.S. citizens under long-established laws.

The commenter states that this U.S. ownership restriction has no bearing on the creditworthiness of any borrower under the section 9003 program. Rather, in the current adverse economic climate of diminishing numbers of available investors, and in light of President Obama's expressly stated dual intentions to (1) create 5 million new jobs from the renewable energy industries and (2) double the percentage of renewable energy in each of the three years between January 1, 2009 and January 1, 2012, these restrictions fly in the face of the Administration's clearly stated goals.

The commenter, therefore, recommends that § 4279.227(a)(2) either be deleted or revised to read as follows: (ii) Entities other than individuals must be at least 51 percent owned by persons who are either citizens as identified above or legally admitted permanent residents residing in the U.S." The commenter noted that comparable Department of Energy and Department of the Treasury loan guarantee and/or grant programs do not contain similar citizenship restrictions.

Response: As noted in a previous response, the Agency has reconsidered the citizenship requirement and has decided to eliminate this requirement from the final rule. Because we have removed this requirement, no action is required to address the commenter's concern.

Comment: One commenter states that the proposed program does not include 501(c)(3) nonprofit organizations as an eligible applicant for the program and believes nonprofit organizations, because of their role in communities as being there for the good of all, can help showcase the biorefinery technology, support small local businesses through their purchasing power, and even encourage the startup of privately owned biorefineries.

Response: Nonprofits can apply provided they meet the eligibility requirements.

Revenue From Sale of Advanced Biofuel Requirement (§ 4279.228(d))

Comment: One commenter states that there are numerous scenarios whereby the only way to achieve financing for a new renewable fuel product is to make it and sell it into an alternative market because this approach achieves the lower risk level required by the investors and lenders. The commenter states that one example would be to convert biomass into methanol. Methanol is a promising and emerging fuel for a large class of fuel cells than can be used for stationary electricity generation, or as a means of recharging a battery in an electric car when a plug is not easily accessible. Or, for electric delivery vehicles that stop regularly, such fuel cells would be providing near-real-time battery recharge. This would not be a typical gasoline replacement fuel scenario but achieves the same goals. While that market is emerging, the production volume that would make the biorefinery sufficiently efficient and therefore economically viable could likely exceed the near term need as fuel. In that case, the financing group could require that the biorefinery sell the methanol to biodiesel plants or as a replacement denaturant for ethanol production. Very few of these uses looks like a standard "fuel" business yet in all cases meets the intended overarching goals of the program which is the reduction of the imports of foreign

energy (especially given that the U.S. imports 100 percent of the methanol used in the U.S.). The commenter states that, as a result, this criterion should be dropped in its entirety and replaced with criteria that cover whether the product proposed replaces an existing fuel or energy intensive product and whether the replacement substitutes for an equivalent imported energy product. Examples of products where substitutes would meet this requirement are: oil (and refined products like gasoline, jet fuel, diesel), methanol, anhydrous ammonia (or other nitrogen derivatives such as urea), LPG/LNG. Any product that replaces any of these energy or energy intensive products should be equally allowed.

Response: The Agency allows the sale of biobased products and byproducts. However, the project must demonstrate that the majority of the production is advanced biofuels, which corresponds with the intent of the authorizing legislation. Unless otherwise approved by the Agency, and determined to be in the best financial interest of the government, the advanced biofuel must be sold as a biofuel.

Comment: One commenter states that, although the purpose and intent of this funding is for alternate fuel feedstock, the nature of algae as a feedstock puts producers in an unusual position: Algae produces many different biomass co-products and biocrude oil, both of which have marketability, whereas most feedstock sources result in one or two products. The commenter states that, while the 70 percent restriction is certainly appropriate for non-algae producers, it reduces the ability of algae producers to develop additional revenues from which it can pay down its loan (and consequently reduce the amount of funds being guaranteed). The commenter proposes that algae producers be excluded from the requirement that 70 percent of its revenue must be from the sale of advanced biofuels. If that is not possible, a suitable compromise would be that at least 50 percent of what algae producers produce be dedicated to the sale of advanced biofuels and that the proceeds (gross vs. net could be determined based on percentage) of the sale of all co-products must be used to pay down the debt being guaranteed. The loan covenants and business plans would have to address the pricing differentials and percentage ratios in entering into the required off-take contracts.

The commenter believes that this solution more specifically mirrors the original intent, as stated in the definition of 'biorefinery' in the 2008 Farm Bill.

Response: The Agency disagrees with the commenter to develop a separate threshold for algae producers. As noted above, the Agency has removed revenue as the standard of measurement, and the rule has been modified to require that a majority of the biorefinery production is advanced biofuels. When the biobased product and any byproduct have an established BTU content from a recognized Federal source, majority biofuel production will be based on BTU content of the advanced biofuel, biobased product, and any byproduct. When the biobased product or any byproduct does not have an established BTU content, majority biofuel production will be based on output volume, using parameters announced by the Agency in periodic Notices in the **Federal Register**, of the advanced biofuel, biobased product, and any byproduct.

Cash Equity Requirement (§ 4279.228(e))

Equity Sources

Comment: Several commenters recommend allowing all sources of equity available to the project when calculating the equity percentage for the project. These projects have large equity requirements, and should be allowed to utilize advanced carbon credit sales, subordinated debt, preferred stock or loans from investor-owners, New Markets Tax Credits, sale of accelerated depreciation, and other means of securing the large amount of capital that is needed to provide the equity component. There is currently a bill in Congress to provide the 30 percent grant by Treasury for biofuels production in lieu of the ITC/PTC credits. As a part of implementing that program, the requirements for application and approval of that program need to be changed to allow Treasury to supply a letter of pre-approval for the project that can be used as a financeable instrument in this process. Currently, this grant is applied for and paid 60 days after the project is commissioned. To be able to properly use this incentive, it is imperative that the legislation and approval process be changed to provide a financeable instrument that can be recognized as collateral by the financing community at the beginning of the project.

Response: The Agency will consider a wide variety of assets as equity. However, in order to control risk, an asset used as equity, for the purpose of this regulation, must be available at the time of closing.

Comment: One commenter states that the 20 percent proposed minimum cash equity requirement is acceptable and appropriate. The commenter states that, given the size of the projects, there are no investors that are truly able to invest in such projects with the expectation of losing funds. Twenty percent of $100 million project ($20 million) is a real and meaningful commitment by an investor or investor group. A higher amount of investment does not actually achieve any higher level of commitment since the amount is already so high. These amounts are also too large for a venture investor given that the project returns do not meet their high return requirements (usually 40 percent) and so these applications will only see project equity investors whose $20 million represents a very real commitment. Hence, by requiring only 20 percent equity and not offering more points for a larger percentage, the Agency can rest assured that sufficient project due diligence will have been performed. When calculating total equity in the project, technology contributions and in-kind services should be counted for any amount above the 20 percent minimum cash equity requirement.

Response: The Agency does score projects based on the level of financial participation by the borrower. In addition, the Agency will consider, for existing biorefineries only, the value of intellectual property based on the value identified on its audited financial statement, prepared in accordance with GAAP. Given the potential size and complexity of these projects, the risks inherent in projects attempting to commercialize new and emerging technologies make in-kind contributions unsuitable for inclusion in the equity calculation.

Comment: One commenter states that, as with cost-sharing in the grants context, consideration should be given to a borrower's contributions of land, personal property, intellectual property, and other assets. The Agency could use the type of "equity" composing the 20 percent (or the borrower's contribution in general) as part of the scoring criteria, but contributions of assets other than cash should not operate to disqualify a project for failing to meet eligibility criteria.

Two other commenters recommend considering existing equipment, building, and land at appraisal value when calculating the equity requirements of the borrower.

Response: The Agency agrees with the commenters to the extent that, for existing biorefineries, qualified intellectual property, equipment, and

real property can be considered in meeting the equity requirement, as described in § 4279.234(c)(1). The Agency will consider the value of qualified intellectual property based on the value identified on its audited financial statement, prepared in accordance with GAAP. The Agency notes that a loan guaranteed under the program may only finance 80 percent of the eligible project costs. The borrower needs to provide the remaining 20 percent from other non-Federal sources to complete the project.

Comment: Two commenters state that the requirement for a 20 percent cash infusion will impose a significant burden that may render many otherwise well-qualified projects unable to secure financing. Any applicant that brings a project to the stage where it is able to achieve financial closing will, by virtue of the selection criteria, have incurred significant pre-closing costs that will not take the form of real property that can be collateralized. This is especially likely to be the case with projects that make use of new technology or new feedstock, endeavors that are especially likely to require up-front commitments of capital. The commenters state that it would be appropriate, in the scoring of applications, to grant extra points to those applicants that commit to provide cash equity at closing, thereby enhancing the competitive position of their proposals; however, the posting of this equity commitment should not be an absolute threshold requirement for participation, as this would have the effect of removing many otherwise-worthy projects from consideration.

The commenters recommend eliminating the requirement for 20 percent cash equity and allowing applicants to include preconstruction costs as contributed equity.

One commenter believes that the requirement that the project must have cash equity of not less than 20 percent of eligible project costs should be changed to allow for non-cash equity, and that "eligible project costs" should not include goodwill or non-proven or non-benchmarked technologies. The commenter states that the latter could be included as a portion of the required equity, but that they believe that the demise of the dotcom industry lay in the fact that values were attributed to unproven ideas and that they are not interested in allowing history to repeat itself, especially with something as important as energy security.

Response: The Agency disagrees with removing the 20 percent cash equity requirement. The Agency may consider, for existing biorefineries only, qualified intellectual property, equipment, and real property in meeting the equity requirement, as described in § 4279.234(c)(1). The Agency notes that, by statute, a loan guaranteed under the program may only finance 80 percent of the eligible project costs. The borrower needs to provide the remaining 20 percent from other non-Federal sources to complete the project.

Guaranteed Loan Funding (§ 4279.229)

Comment: One commenter recommends that borrowers be permitted in all cases to access the tax exempt capital markets, including when necessary through state authority issuance vehicles. The commenter states that tax-exempt project debt appears permitted, but should be explicitly allowed for both the guaranteed and unguaranteed portions. According to the commenter, projects should be afforded every opportunity to lower interest costs, especially by way of Federal, state and local programs designed to meet regional and national priorities such as the Gulf Opportunity Zone bond programs.

Response: Tax-exempt debt cannot be part of the guaranteed loan, which includes the unguaranteed portion of the loan. To support consistency between this program and the B&I guaranteed loan program and to eliminate any duplicative Federal assistance, the Agency has determined that it would be inappropriate to distinguish between guaranteed and unguaranteed portions of the loan when applying this provision.

Guaranteed Loan Funding (§ 4279.229(a))

Comment: One commenter recommends not limiting the availability of funds as set forth in § 4279.229(a). Once a NOFA is issued, all funds should be available rather than have half of the funds reserved. If the idea is to get viable advanced biorefinery projects financed, the commenter believes they should be financed as they are submitted rather than potentially be required to wait for a second funding period.

Response: The authorizing legislation states: "Of the funds made available for loan guarantees for a fiscal year under subsection (h), 50 percent of the funds shall be reserved for obligation during the second half of the fiscal year." Therefore, the Agency cannot accommodate the commenter's request.

Comment: One commenter points out that the program has statutory minimum funding requirements and an ability to add discretionary funds and, in order to maximize the benefits of the program, recommends that the Agency authorize the maximum funding (statutory and discretionary) in each fiscal year.

Response: The Agency points out that it is Congress, not the Agency, who is authorized by statute to provide discretionary program funds. It is the Agency's intent to maximize funding on this program based on Congress's appropriations.

Comment: One commenter recommends that the Agency provide a Web page for the program that shows a running tally of funds expended and funds remaining available on any given day. This should be represented as the actual dollars authorized (and remaining) and the total amount of loan guarantee these dollars represent as authorized (and remaining) because these numbers are different. The available loan guarantee amount is the one that is of most relevance and interest for proposed project sponsors and lenders.

Response: Projects funded are announced by the Agency on its Web site. At this time, the Agency does not have the administrative resources to assume the burden associated with maintaining and verifying the accuracy associated with the suggested Web page. As this request would not require a rule change, none has been made.

Guaranteed Loan Funding (§ 4279.229(b))

Comment: Six commenters recommend offering guarantees of 90 percent of the total loan amount. Each commenter points to the authorizing legislation, which authorizes the Agency to offer loan guarantees up to 90 percent. Concerns identified by the commenters include:

1. The level of guarantees in the proposed rule may be appropriate for existing, commercially available technologies. But they do not provide sufficient risk reduction for new, emerging technologies. That is why the authors of the statute specified in Section 9003, paragraph (e)(2)(B)(iii) that "The Secretary may guarantee up to 90 percent of the principal and interest due on a loan guaranteed under [this] subsection."

2. Low guarantee amounts, such as those proposed by the Agency, limit the number of lenders who will be willing to assume the risks associated with the high capital costs of building and operating a facility that employs a new, first-of-a-kind technology that has not been commercially proven. This makes capital harder to get, and means fewer projects will be funded. As a result, new technologies will be deployed much more slowly. The public interest is not served by this approach.

3. Guarantee amounts less than 100 percent create an additional burden for first-of-a-kind technology projects by requiring the nearly impossible task of placing unguaranteed debt in the market. While commenters believe that funding these unguaranteed portions of debt might be possible in the taxable and tax exempt bond markets, it is not at all clear that the very tight credit market will in fact be receptive to unproven technology risk. There is, therefore, a real risk that projects could succeed in obtaining an Agency loan guarantee, yet end up failing to fund the unguaranteed debt in any market and fail to secure financing.

4. Without a 90 percent guarantee, it is unlikely that first-of-a-kind technology projects will secure financing.

5. At a 90 percent level, the amount of unguaranteed debt could be more easily placed in the market and should keep lenders with some "skin" in the deal. One commenter points out that the Senate version of this program provided for a 100 percent guarantee. The guarantee was reduced to 90 percent in conference committee due to pressure from House negotiators who felt that not only project developers, but banks as well, should have "some skin in the game."

6. The decision to limit the guaranteed percentage to 60 to 80 percent with a maximum of 60 percent for loans greater than $125 million leaves a significant amount of unguaranteed debt that banks are not willing to accept.

One commenter suggests as an alternative, loan guarantee percentages could be adjusted higher depending upon the specific circumstances of a project. For example, a maximum guarantee could be offered under conditions when a high ratio of equity investment is secured, where the use of proven technology removes technology risk, and where there is a demonstrated ability to accelerate return on investment.

Two commenters believe that with the oil spill in the Gulf, prices at the pump creeping up in preparation for the summer travel season, two wars in the Middle East, and a U.S. Department of Energy loan guarantee program that has to date proven unworkable for financing biorefineries, the U.S. can no longer delay efforts to commercialize promising technologies that can lessen our impact on the environment and increase our energy security.

One commenter recommends that the loan guarantee percentage be a maximum of 90 percent per the statute. The commenter states that they make this recommendation based on their experience seeking debt financing for their project. The commenter states that they have been told by most lenders that 80 percent is insufficient, given that the lender must hold no less than 50 percent of the unguaranteed portion of the loan. At an 80 percent guarantee, that represents 10 percent of the total loan. Unlike venture capital, banks are in the business of lending without the expectation of a loss of capital. When combined with the Agency first lien proposal, the guarantee is not perceived as much of a guarantee by the bank holding the unguaranteed portion. Given the perceived technology risk, the bank perceives that they are taking a 10 percent capital risk in such a deal. As a result, the program requirements are not in alignment with the banking industry requirements for lending. In addition, the maximum percentage should not decrease with the size of the loan. As it has been implemented in the NOFAs, projects larger than a certain size, will only achieve a lower percentage guarantee. Given the conflicts noted above with standard banking criteria, these larger projects cannot be financed. Too much would be at risk for the bank and hence they cannot do the deal. At the same time, equity investors cannot make up the difference because doing so will increase the require IRR to a level that is not achievable. Hence, the guarantee percent should be 90 percent no matter whether it is a $40 million loan or a $250 million loan.

Response: The Agency has revised the rule to allow a guarantee of 90 percent for guaranteed loans of $125 million or less. The rule also outlines the criteria the project must meet to obtain a 90 percent guarantee, as well as the guarantee fee for loans obtaining a 90 percent guarantee. In the Agency experience there is greater loss exposure with larger loans; therefore, if the loan does not meet the requirement to issue a 90 percent guarantee, the percent of guarantee will be based on loan size. In addition, with regard to this comment, the Agency continues to support consistency between this program and the Business and Industry guaranteed loan program.

Comment: Several commenters state that the guarantee fees should be consistent at 90 percent, as set by the 2008 Farm Bill. There is no provision for the lesser guarantees. To raise the 20 percent or more equity that is required and to find lending institutions to fund the remaining debt, it is imperative that the guarantee be raised to the 90 percent level that was legislated by Congress. Recent success with the additional B&I Loan Guarantee appropriation in the ARRA (which had up to a 90 percent guarantee, and reduced or no fee structure) resulted in the program being totally subscribed ahead of the September 30, 2010 deadline for use of these funds. This shows that the lending community will utilize these types of programs with this higher level of credit enhancement.

Response: The Agency has revised the rule to allow a guarantee of 90 percent for guaranteed loans of $125 million or less. The rule also outlines the criteria the project must meet to obtain a 90 percent guarantee, as well as the guarantee fee for loans obtaining a 90 percent guarantee. In the Agency experience there is greater loss exposure with larger loans; therefore, if the loan does not meet the requirement to issue a 90 percent guarantee, the percent of guarantee will be based on loan size. In addition, with regard to this comment, the Agency continues to support consistency between this program and the Business and Industry guaranteed loan program.

Guaranteed Loan Funding (§ 4279.229(c))

Comment: One commenter states that, rather than define a maximum amount of $250 million to a given borrower under the program in any given fiscal year, it should only be an initial threshold. In the event that there are budget funds remaining after all other eligible projects have been reviewed, and a borrower has already borrowed $250 million, that borrower should be allowed to borrow additional guaranteed funds in that same fiscal year. This flexibility will allow equal access to the program and yet allow the best borrowers who have more than one excellent project to participate at a higher level. This will also allow the program to achieve its maximum potential in the shortest possible time. Under this same provision, the commenter recommends that more than one similar project be eligible for the extended funds. The commenter states that, for example, their core technology is based on oxygen gasification of biomass to produce syngas. There are three fuels that their analysis indicates are viable in the marketplace: anhydrous ammonia, methanol and dimethyl ether. Although they would each leverage the same core gasification technology, they would each address different fuel market opportunities and each should be allowed simultaneously under the program until they have been proven at commercial scale.

Response: During these early program years, the Agency believes that it is

prudent to diversify its risk, to allow more entities to participate, to assist a more diverse group of applicants, and to provide assistance to geographically separate areas. To this end, the Agency prefers to carry over funds, if available, to the next fiscal year rather than to give an already funded entity more money in that fiscal year. Therefore, the Agency has not revised the rule in response to this comment.

Guaranteed Loan Funding (§ 4279.229(d))

Comment: One commenter states that the proposed rule limits the guaranteed percentage to 60 percent for loans greater than $125 million, even though Congress authorized the Agency to provide guarantees of up to 90 percent for the entire loan amount. Given that commercial-scale cellulosic projects will exceed this $125 million threshold and because these are first-of-kind projects, limiting the guaranteed percentage to 60 percent creates a higher level of risk for many lenders, and could result in projects not being able to secure the non-guaranteed portion from the marketplace. This is compounded by additional restrictions on lenders discussed elsewhere. The commenter, therefore, urges the Agency to implement the program to the fullest extent authorized by law and allow a 90 percent guarantee on the full loan amount regardless of size.

One commenter states that section 9003 permits guarantees of up to 90 percent of the principal and interest, but noted that § 4279.229 provides for guarantees of a lower amount. The level of guarantees may be appropriate for existing, commercially available technologies; however, these levels fall significantly short of providing sufficient risk reduction for new, emerging technologies, and will not incentivize private institutions to lend. Low guarantee amounts limit the number of lenders who will be willing to assume the risks of capital-intensive, first-of-their-kind projects. As a result, entire fledgling industries may disappear and technologies will be deployed slowly and perhaps not at all.

The commenter states that the rule should provide for the full 90 percent guarantee for the principal and interest up to $250 million and, at a minimum, should provide for a 90 percent guarantee of up to $125 million and 80 percent guarantee of principal and interest up to $250 million. The commenter states that it is important to note that the Senate version of the program provided for a 100 percent guarantee. The guarantee was reduced to 90 percent in conference due to House negotiators wanting project developers and lenders to have some "skin in the game." This is not objectionable, but the intent of Congress was clear that the guarantee of a significant amount of the loan is necessary for lenders to finance new technologies.

Two commenters state that insufficient or too low loan guarantee amounts create a major hurdle for first-of-kind technology projects by requiring the placement of significant amounts of unguaranteed debt in very challenging markets. The commenters believe that funding unguaranteed portions might be possible in the taxable and tax exempt bond markets, but that it is not at all clear that these volatile markets will in fact be receptive to unproven technology project risk. There is, therefore, a very real risk that projects that succeed in obtaining a partial Agency loan guarantee nevertheless end up failing to fund the unguaranteed portion in any market. Furthermore, the tiered structure of the guarantee levels is based solely on the size of the loan amount, without regard to overall capital structure. This can create a situation where the Agency guarantee is exposed to a disproportionate share of project risk relative to private capital. For example, on a $200 million project, with a capital structure of 75 percent debt and 25 percent equity, the Agency guarantee covers 60 percent of the loan amount, or $90 million. This reflects nearly double the investment of equity providers. However, if the guarantee percentage were based on the capital structure, with the guarantee percentage growing to 80 percent on projects that have a minimum of 40 percent equity, the Agency's exposure on the project is the same, at $90 million, and yet less than the exposure of equity providers.

The commenters recommend adhering to the statutory language to provide maximum flexibility for project finance and suggest adopting a tiered guarantee coverage based on the overall capital structure, for example:

Minimum equity percentage	USDA guarantee level (percent)
50	90
40	80
30	70
20	60

This structure would allow the Agency to more fully employ its statutory ability to covering up to 90 percent of a loan for strong projects with a significant equity, where private capital contributions are strong. For large projects, as most commercial scale advanced biorefinery projects will be, it still affords a sizeable unguaranteed exposure to lenders. This will ensure adequate risk sharing and, therefore, due diligence by private capital sources whether in the form of unguaranteed loans or equity participation.

One commenter states that the percentage of the loan guarantee should not be limited beyond what the statute sets forth by amount or otherwise. Lowering the percentage for larger loans would unfairly penalize new technology and feedstock that, by the nature of being new, require larger initial funding. In an already difficult lending environment, the proposed limitations would have a deleterious effect on economic-growth oriented innovation. The rural credit crunch has made it imperative for the Agency to guarantee a very high percentage of project costs or offer significant grants in conjunction with those guarantees. The construction of large biofuels facilities should be encouraged.

One commenter believes that the purpose of the loan guarantee program should be to bring alternative energy technologies on line as quickly as possible. Regrettably, current loan guarantee guidelines, while perhaps appropriate for existing, commercially available technologies, do not provide sufficient risk reduction where they are needed most—in the commercial demonstration of new advanced biofuel technologies. That is why the authors of the statute specified that the secretary may guarantee up to 90 percent of the principal and interest due on the a loan guaranteed under this subsection (Sec. 9003(e)(2)(B)). Therefore, the rule should be modified to allow for guarantees up to the maximum amount allowed by statute: 90 percent of all loans up to $250 million. If the Agency wishes to require a first lien position, then a guarantee of up to the 90 percent level is certainly warranted for loans intended to assist these emerging technologies at the pilot or commercial demonstration stage.

One commenter questions whether the guarantee amounts are too low based on size of the project (*e.g.* 70 percent on loans over $80 million; 60 percent over $125 million). Because these may be larger dollar projects, they may easily top $125 million in project costs. A 60 percent loan requirement seems too low to attract private funding given the unproven aspects of commercializing the new technologies. The commenter suggests that a portion of Agency funds should be reserved to provide a higher guarantee percentage on at least a couple of larger projects if projects

cannot be funded with lower guarantee amounts.

One commenter states that the Agency should consider applying the 20 percent non-guaranteed requirement across the board, and not decrease the percentage guaranteed as the amount of the debt increases, as currently proposed in § 4279.229. By decreasing the amount guaranteed by the Agency as the principal amount of the loan increases (as currently proposed), borrowers will be less likely to find an eligible lender that is willing to retain the un-guaranteed debt. At the maximum level of $250,000,000 (resulting in a 60 percent guaranty), a lender would be required to retain at least $50,000,000 of the loan (50 percent of the non-guaranteed portion), assuming the lender is able to find participants for the other 50 percent of the non-guaranteed debt, and possibly the full $100,000,000 if no participants are found. The commenter states that the likelihood of finding eligible lenders that are willing to participate at these levels is extremely unlikely.

Response: The Agency has revised the rule to allow a guarantee of 90 percent for guaranteed loans of $125 million or less. The rule also outlines the criteria the project must meet to obtain a 90 percent guarantee, as well as the guarantee fee for loans obtaining a 90 percent guarantee. In the Agency experience there is greater loss exposure with larger loans; therefore, if the loan does not meet the requirement to issue a 90 percent guarantee, the percent of guarantee will be based on loan size. In addition, with regard to this comment, the Agency continues to support consistency between this program and the Business and Industry guaranteed loan program.

Eligible Project Costs (§ 4279.229(e))

Comment: One commenter recommends expanding the eligible loan purposes listed in § 4279.229(e) to allow debt refinancing on existing advanced biorefineries. Any assistance this program can bring to this emerging sector should be authorized, and debt refinancing on existing projects that may need workout assistance should not be excluded.

Response: While the program is meant for first-of-a-kind technology, the Agency agrees that there may be some refinancing projects that may be suitable for potential funding. Therefore, the Agency will consider refinancing as an eligible project purpose under two situations (see § 4279.228(g)). The first situation is where permanent financing is used to refinance interim construction financing of the proposed project only if the application for the guaranteed loan under this subpart was approved prior to closing the interim loan for the construction of the facility. The second situation is where refinancing is not more than 20 percent of the loan for which the Agency is guaranteeing and the purpose of the refinance is to enable the Agency to establish a first lien position with respect to pre-existing collateral subject to a pre-existing lien and the refinancing would be in the best financial interests of the Federal Government.

Guaranteed Loan Funding (§ 4279.229(e)(6))

Comment: One commenter recommends including the section 9003 guarantee fee as an eligible loan purpose, contrary to what is stated in § 4279.229(e)(6). The commenter believes there is no reason to exclude this purpose, which is offered in the B&I program and other Agency guaranteed programs.

Response: The Agency disagrees with commenter. As noted in previous responses, the Agency is focusing the program's limited funding resources on core project costs, such as construction costs, in order to fund more projects.

Interest Rates (§ 4279.231)

Comment: One commenter states that the rules on interest rates in § 4279.231 are too elaborate and complex. The commenter asks why not simply stick with the proven, viable regulations found in 7 CFR part 4279, subpart B? According to the commenter, consistency between guaranteed loan programs should be maintained for simplicity and consistency's sake unless something about a program absolutely requires deviation. The commenter believes there is no reason to believe advanced biorefinery interest rate protocols are different than other business loan pricing.

Response: The Agency has revised the interest rate provisions to more closely match the requirements in §§ 4279.125 and 4287.112, while providing lenders with some flexibility in establishing loan type and terms on the unguaranteed portion.

Interest Rates (§ 4279.231(a)(1))

Comment: One commenter recommends modifying the amortization requirements for commercial loans for first-of-kind technology to allow a 5- to 10-year non-amortizing period with annual amortization after the non-amortizing period.

Response: The Agency disagrees with the comment. In accordance with § 4279.126(b), interest only payments are allowed for up to three years. Interest only payments for up to ten years substantially increases Agency risk in the event of default by not reducing the principal balance and the commensurate decline in collateral value.

Interest Rates (§ 4279.231(a)(2))

Comment: Three commenters state that bank project financing is most efficiently provided on a floating rate basis during the construction period, given the difficulty of setting a fixed rate on future loan disbursements over a long construction period. Bond investors, however, typically require fixed rate issuance. The commenters recommend allowing the interest rates on the guaranteed and unguaranteed portions to be fixed or floating without requiring both portions to be on the same basis. An appropriate (and conventional) additional requirement to minimize interest rate exposure for a given project would be to the extent the project company borrows on a floating rate basis for all or a portion of the loans, it will enter into interest rate management agreements that reduce interest rate risk during the life of the project.

One commenter states that, under the Commercial Loan Model, it is likely that any portion of a loan purchased or funded by a commercial bank will bear interest at a variable rate such as the Prime Rate or the LIBOR, while any portion of the loan funded or purchased by an institutional investor will likely bear interest at a fixed rate. Accordingly, the commenter recommends amending § 4279.231 to provide as follows:

(2) The interest rate for both the guaranteed and unguaranteed portions of the loan must be the same type (*i.e.,* both fixed and variable). For this purpose, a variable interest rate loan may be converted to a fixed rate through the use of an interest rate hedge or cap so long as such hedge or cap is for maturity of the obligation.

Response: The Agency has revised the interest rate provisions to more closely match the requirements in §§ 4279.125 and 4287.112, while providing lenders with some flexibility in establishing loan type and terms on the unguaranteed portion. The rule identifies a cap by requiring that the rate on unguaranteed portion of the loan not exceed the rate on the guaranteed portion of the loan by more than 500 basis points.

Interest Rates (§ 4279.231(a)(3))

Comment: Several commenters recommend allowing the guaranteed

and unguaranteed portions of the loan to have different interest rates, determined by the market and what is currently available to the borrower and the lender, not an arbitrary blended rate of 1 percent. There is tremendous risk associated with the unguaranteed portion of the loan, and the borrower must be allowed to work with the lender to provide an acceptable solution for all parties without artificial constraints by the section 9003 regulations, including the ability to further enhance the unguaranteed portion by the use of additional equity, letters of credit, personal or corporate guarantees, warrants, or any and all other credit enhancements.

Another commenter also recommends allowing different rates for the guaranteed versus unguaranteed portions of the loan and allowing the market to make the determination, given that the perceived risk for guaranteed versus unguaranteed risk is a purely market-based phenomenon, and changes from time to time. In the Loan Guarantee Conditional Commitment agreement, a maximum percentage could be specified and tolerated, with that percentage being determined by the maximum rate that still allows the project to be financially successful based on the submitted pro formas. The determination of this figure could be a requirement of the application process to be determined by the lender as part of the normal due diligence and sensitivity analysis.

Response: As noted in a previous response, the Agency has removed the proposed blended interest rate requirement from the rule. By changing the minimum retention requirement and by allowing for a 90 percent guarantee for guaranteed loans of $125 million or less, the Agency has eliminated the need for the other credit enhancements for the unguaranteed portion of the loan.

Comment: One commenter notes that, as proposed, interest rates charged must be in line with other similar guaranteed loans and blended rates on the entire guaranteed loan cannot exceed the rate on the guaranteed portion of the loan by more than 1 percent. The commenter questions these stipulations and believes the question of what rates to charge should be left to the marketplace, particularly given the lower guarantee percentage envisioned of 60 percent for larger loans, the high level of borrower equity required of 20 percent and the riskiness of commercializing unproven technologies. The Agency should remove interest rate requirements because the Agency will be able to review the interest rate levels and make a determination down the road if certain interest rates are too far out of line. Viable projects will have strong competition among lenders, which will keep interest rates as low as possible to cover the lender's costs and ensure adequate returns.

Response: The Agency has revised the interest rate provisions to more closely match the requirements in §§ 4279.125 and 4287.112, while providing lenders with some flexibility in establishing loan type and terms on the unguaranteed portion.

Comment: One commenter states that market-based interest rate differentials on the guaranteed and unguaranteed portions of debt will be significant, especially for the first-of-a-kind projects this program seeks to promote (this differential reflecting the difference between a AAA-rated, full faith and credit guarantee of the United States on one hand and sub-investment grade-rated technology project debt on the other). Any limitation on this spread will prevent the market from properly pricing the unguaranteed portion of the debt and may make placement impossible. The commenter believes the Agency should eliminate the proposed 1 percent limitation on the interest rate differential between the guaranteed debt and overall blended debt, since it fails to reflect the wide difference in credit risk to the holders of the guaranteed and unguaranteed portions.

One commenter notes that, over the 10-year period from May 2000 through May 2010, the spread between the AAA and B indices has been approximately 532 basis points and the spread between the AAA and BB indices has been approximately 335 basis points. The underlying credit rating of a biorefinery is reflective of the lack of investment grade off-takes or related purchase contracts that might otherwise elevate the underlying credit level of the biorefinery to investment grade (that is, BBB or greater). Consequently, the commenter suggests it would be a rare occurrence that the blended rate on the entire guaranteed loan would not exceed the rate on the guaranteed portion of the loan by more than 1 percent. The commenter states that without over-collateralizing the unguaranteed portion of the loan, it is not likely that the spread differential on the guaranteed and unguaranteed portions of the loan will ever be within 1 percent. Therefore, the commenter recommends deleting § 4279.231(a)(3).

Several other commenters recommend eliminating the current proposed 1 percent rate differential between guaranteed and non-guaranteed portions of the debt.

One commenter states that banks have told them that the provisions limiting the delta between the interest rate on the guaranteed portion of the loan and the weighted average interest rate of the full loan amount to 1 percent gives them significant pause in moving forward. Lenders would like to be able to set the interest rate for the non-guaranteed portion at market rates.

One commenter states that, because the guaranteed portion is secured by the United States, it is unrealistic to expect market rates for the guaranteed and non-guaranteed portions to be within 1 percent of each other.

One commenter states market-based interest rate differentials on the guaranteed and unguaranteed portions will be significant, reflecting the difference between a AAA-rated, full faith and credit guarantee of the United States on the one hand and sub-investment grade rated technology project debt on the other. (Current market differentials are estimated to be greater than 6.0 percent.)

One commenter states that the blended rate method also gives a disadvantage for the larger loans; since the percentage of guarantee is less, the difference in the interest rates between guarantee and unguaranteed must be less than for the smaller loans with a higher percentage of guarantee. The interest rate on the unguaranteed portion will be influenced by many factors; lenders will have to price it on a case by case basis; and it could vary substantially depending on the financial strength, type of technology, size of loan, type of lender, etc., so the government should let the market determine what that interest rate difference should be on the unguaranteed portion.

Response: The Agency has revised the interest rate provisions to more closely match the requirements in §§ 4279.125 and 4287.112, while providing lenders with some flexibility in establishing loan type and terms on the unguaranteed portion. The rule now states that the rate on unguaranteed portion of the loan shall not exceed the rate on the guaranteed portion of the loan by more than 500 basis points.

Terms of Loan (§ 4279.232(a))

Comment: One commenter recommends that the maximum term be the useful life of the project, not 20 years or 85 percent of its life as set forth in § 4279.232(a). The 9003 program should promote financing, and setting shorter terms does not do this. A lender may elect to use a more conservative term, but the program should at least be

willing and able to go to the limit of the project's useful life.

Response: Due to the risk associated with these new and emerging technologies, the Agency disagrees with using useful life solely. The Agency considers 20 years an appropriate maximum term for loans under this program. However, the Agency has revised the rule to allow either 20 years or useful life of the project (removing the "85 percent" provision associated with useful life), whichever is less.

Credit Evaluation (Proposed § 4279.233)

Comment: Three commenters state that commodity projects, especially fuels facilities, are typically able to obtain low cost, highly efficient working capital loans from specialist lenders secured by inventory and receivables. Two of the commenters also note that, as proposed, a borrower is required to receive a first priority pledge of collateral including, potentially, working capital. These loan/debt facilities are usually entered into just prior to, or just after, commencement of operations. The proposed rule making does not contemplate the use of traditional working capital loans separately secured by inventory or receivables. The commenter recommends allowing collateral carve outs for inventory and receivables pledged to working capital lenders.

Response: The Agency is agreeable to allowing working capital loans, not guaranteed by the Agency, which are secured by the inventory and accounts receivable. The Agency may consider a subordinate lien position on inventory and accounts receivable for working capital loans under certain conditions.

Comment: Two commenters recommend making the maintenance of adequate working capital levels a post-completion requirement. In other words, allow time during the construction period for complete analysis and funding of the project's working capital requirements, including negotiation of working capital loans from specialist lenders.

Response: The Agency disagrees with making maintenance of adequate working capital levels a post-completion requirement. To minimize risk, the Agency requires that all applicants are adequately capitalized at the time of application. Subsequently, borrowers are free to seek additional working capital sources post-application.

Construction Planning and Performing Development (§ 4279.256)

Comment: One commenter states that the traditional commercial lending process for construction projects is different than that providing either development or working capital funds, in that construction lenders traditionally require a commitment for "take-out" or permanent financing upon completion of the construction. The commenter recommends amending the requirements for construction projects to require "take-out" financing commitments for all construction projects.

Response: The Agency agrees that a requirement for take-out financing is needed, and has added a provision addressing permanent financing as described in the interim rule at § 4279.228(g)(1) in the context of a refinance of interim construction financing under certain conditions. Therefore, the Agency has revised the rule in response to this comment.

Onsite Inspectors (§ 4279.256(b))

Comment: One commenter recommends that, instead of requiring lenders to provide an onsite project inspector, the borrower provide an onsite inspector, paid for if necessary from the loan proceeds with verification that such a person is in place by the lender.

Response: The Agency disagrees with the commenter's recommendation. In order to ensure proper oversight, the inspector needs to be a "disinterested" third party. Having the borrower provide the onsite inspector does not ensure that an appropriate third party will be used to conduct onsite inspections. Furthermore, the guarantee is affixed to the lender's loan and having the lender provide the onsite inspector is one way of managing project risk. Lastly, the Agency's relationship is with the lender and the requirement for the lender to provide an onsite inspector is one of the lender's servicing responsibilities. Therefore, the lender needs to be responsible for providing the onsite inspector.

Changes and Cost Overruns (§ 4279.256(c))

Comment: One commenter states that the requirement that no subsequent loans for cost overruns will be made, found in § 4279.256(c), is overly strict. The Agency should be open to such requests, while obviously retaining the right to approve them or not. To simply say this will not be done may create loan servicing problems if promising projects do end up needing additional financing. The commenter believes that prudence dictates the Agency never say never on this.

One commenter states that, in the event that construction cost increases or changes in the proposed project design are required for successful commercial operations, rather than not allowing any restructuring of the loan and guarantee, as long as a revised budget and financial plan meets the required criteria and would have qualified for the loan and guarantee as adjusted if it were a new application, such changes and restructuring should be allowed.

Response: The Agency agrees with the commenters that the proposed rule was potentially too stringent. Therefore, the Agency has revised the rule so that the Agency may consider modifying the current guaranteed loan or a subsequent guaranteed loan after all other financing options have been exhausted by the lender and borrower.

Comment: One commenter states that Change or Cost Overruns should be handled by the lender pursuant to the terms of traditional construction loan documents and restricted per the guarantee and other agreements between the lender and the Agency. The commenter states that all construction agreements should be standard AIA Fixed Cost contracts, and that the lender should be responsible for administration of draw requests. The Agency would, of course, have the option to not guarantee the loan if it does not believe that the construction documents provide adequate protection, and the documentation supporting the loan guarantee should address situations such as this.

Response: The Agency does not agree that this suggestion needs to be provided for in the rule, but rather will consider such matters on a case-by-case basis and, where appropriate, add to the Conditional Commitment. In other words, while this approach may be useful in some cases, it does not need to be universally applied to all Biorefinery Assistance Guaranteed Loan Program loans. Therefore, the Agency has not revised the rule in response to this comment.

New Draw Certifications (§ 4279.256(d))

Comment: One commenter questions why the lender is required to "certify" the borrower is complying with the Davis-Bacon Act as this was not required in Section 9003 NOFA and is an added burden. This should be done by the Agency, not required of the lender.

Response: The Agency disagrees with the commenter. While omitted from the NOFA, this requirement has been placed in each Conditional Commitment under the NOFA and is required by the authorizing legislation. Because our relationship is with the lender and not the borrower and the lender has access to the requisite documentation, the

Agency believes this requirement needs to be completed by the lender.

Surety (§ 4279.256(e))

Comment: One commenter states that it may not be possible to achieve surety from the construction contractor given that no contractor will guarantee the performance of new technology unless they own it (generally not the case). However, it is standard practice that the contractor will guarantee that the work is performed according to specifications. It will generally be necessary to pay the contractor as work is completed and should be anticipated when the guarantee is in place during construction.

Response: The Agency believes that the commenter is misinterpreting surety. The intent of surety for construction projects is to guarantee the completion of the project as designed for the intended purpose. Surety cannot guarantee performance or prevent design failure. To avoid such misinterpretation, the Agency has removed the definition of surety and will rely on the use of the term as it is commonly used by the industry.

Guarantee Applications—General (4279.260)

Comment: One commenter agrees with the position that financing arrangements do not necessarily fit within prescribed application windows and that the applications should be submitted upon individual completion. However, the commenter believes there are some references in the proposal to "application deadlines" which could be confusing or misleading.

Response: The intent of the program is to accept applications year round. The rule identifies two application deadlines. The applications received under each deadline will be competed against each other to determine funding priority. While the rule is clear, to the extent that confusion arises, the Agency will take other action to address the confusion such as supplementing its Web site.

Comment: Several commenters suggest that the section 9003 program have an open year-round application process, similar in scope to the B&I guaranteed loan program. The application process is arduous and time consuming, and cannot be completed in 30 to 60 days. This will encourage applications year-round, and will also ensure that applicants will not have to wait a year or more to apply. It is extremely important to not hinder the growth of this industry at this time through the use of short windows and year-long waits to release appropriated funds for each fiscal year. The experience and "on-the-ground" support of the Agency state offices should be used to administer the program to provide a greater level of service. An experienced regional staff should be appointed to assist the state offices in administering this program and work intra-state to develop regional solutions and approaches for advanced biofuels.

Response: The Agency has an open application cycle, but competes applications twice per year. This competition is necessary in order to pick the best proposals. The Agency will assign adequate staff to review applications and administer this program.

Application Submittal (§ 4279.260(a))

Comment: One commenter recommends that applications be submitted electronically and that paper copies not be required at all. According to the commenter, it is an anachronistic burden and environmentally unsound to require paper copies.

Response: The Agency acknowledges the desirability of electronic applications versus paper applications. The proposed rule required paper copies because, at this time, the Agency is not able to accept electronic copies. However, the Agency is working on having a system to accept electronic applications, although when such a system will be in place is unknown. To accommodate the future acceptability of electronic applications, the Agency has revised the rule to remove reference to paper copies and insert reference to the use of the annual **Federal Register** notice to identify the applicable method of application submittal.

Application Deadline (§ 4279.260(b))

Comment: One commenter states that the June 1 application deadline specified in § 4279.260(b) is too specific. The commenter believes it should be left to the **Federal Register** process and Agency administrative decisions and processes to establish the NOFA date.

Response: The Agency disagrees with the commenter. As discussed above, the Agency intends to accept applications year round, but plans to compete those applications on hand as of the two specific dates stated in the rule (May 1 and November 1). Thus, May 1 would be considered an "application deadline" only to the extent that applications received after May 1 will be included in the evaluation cycle that begins on the following November 1 rather than being evaluated when received. The intent of establishing a specific application deadline in the rule is to provide a default date, which provides the public with a consistent and known date as to when to submit applications. Because unforeseen events may cause a different application date to be preferable, the rule allows the Agency to adjust the application date through the publication of a **Federal Register** notice.

Comment: One commenter recommends that, rather than requiring a deadline for consideration within a given fiscal year, the Agency commit to a short time response, such as two weeks from the date of submittal. It should not matter when the application was submitted as long as it is submitted within the fiscal year to qualify for that year's allocation of funds as long as there are funds remaining in the budget. It would be acceptable to have a response to an application delivered in the next fiscal year when such application was delivered near the end of the prior fiscal year. Also, rather than having two competitions, applications should be considered and awarded as they are received. Because the Agency has discretionary authority to expand the funding for the program beyond the statutory minimum, in such a case when the Agency were to receive many qualified projects throughout the year, funding could be expanded to match the qualified projects. Hence, there is no need for a two phase competition. The commenter further states that, unlike with the NOFAs there should be no specific windows. The program should be available at any time throughout the fiscal year until no more funds are available, with applications accepted, evaluated and loan guarantees authorized on a rolling basis. The Agency needs to commit to respond, and preferably complete its review within two (2) weeks of receiving an application.

Response: The Agency does not have the authority to expand funding for the program beyond the amount appropriated by Congress. Because the amount of funding is limited, the Agency may not be able to award funds to all eligible projects. Therefore, applications need to be competed in order to award the available funds to the highest scoring projects. If the Agency were to award funds to projects on the basis of when applications are received, the best projects may not be funded. Thus, the Agency cannot make awards throughout the year as applications are received. If a lender wishes to know the status of an application, the lender can contact the Agency at any time for updates on application review.

With regard to the commenter's suggestion that the Agency commit to responding to and completing its review within 2 weeks of receiving an

application, the Agency cannot make such a commitment because of the time needed to conduct the technical review (which is performed by parties outside of the Agency) and such uncertainties as the number of applications received at any one time and the availability of Agency resources.

Feasibility Study (§ 4279.261(f))

Comment: Several commenters state that the feasibility study should be modified to include or re-arrange its elements as follows:

Feasibility Study

Economic Feasibility—remove the requirement to document that all woody biomass feedstock cannot be used as a higher value wood-based product. Add a section on "feedstock risks."

Market Feasibility—redefine the risk section to specific market risks, including competitive threats and advantages.

Technical Feasibility—Delete "any constraints or limitations in the financial projections" and move to the Financial Feasibility section. Add a category on "design-related risks." Add a section on permits required and other environmental or ecological constraints.

Financial Feasibility—add a section on "sources and uses of funds" and "matching funds." Add a section on "borrower's business strategy." Redefine the risk section to include only "baseline production outputs, borrower financing plan, tax issues, government regulations, and borrower as a company."

Management Feasibility—further define the three levels of management: Ownership, management, and provide an organizational chart showing all staff required to manage and operate the biorefinery with a spreadsheet showing annual wage rates for each employee category. Change the management risk category to include: Changes in management, strengths and weaknesses of the management team, changes in ownership of the company, conflicts of interest.

Business Plan—Eliminate the Business Plan requirement as all elements are present in the Feasibility Study.

Economic Analysis—This criterion should be eliminated, and all elements moved to the financial feasibility section of the feasibility study.

Response: The Agency agrees with some of the commenters' suggestions and disagrees with others as follows:

1. Economic Feasibility (Section B of Table 1). With regard to the recommendation to remove the requirement to document that all woody biomass feedstock cannot be used as a higher value wood-based product, the Agency disagrees, but instead has revised the rule to clarify that the "higher value product" only applies to woody biomass feedstock from National Forest system lands or public lands.

With regard to the recommendation to add a section on "feedstock risks," the Agency agrees that these risks need to be addressed and has revised the feasibility study accordingly.

2. Market Feasibility (Section C of Table 1). With regard to the recommendation to redefine the risk section to specific market risks, including competitive threats and advantages, the Agency agrees with the comment and has revised the feasibility study accordingly.

3. Technical Feasibility (Section D of Table 1). With regard to the recommendation to delete "any constraints or limitations in the financial projections" from this section and move it to the Financial Feasibility section, the Agency agrees with the comment and has revised technical feasibility accordingly. The Agency notes that the remainder of this element (and any other facility or design-related factors that might affect the success of the enterprise) has been removed, but its intent is covered by the addition of design-related risks as discussed in the following paragraph.

With regard to the recommendation to add a category on "design-related risks," the Agency agrees with the comment. The Agency has revised technical feasibility by adding "risks related to design-related factors that may affect project success" and moving the remaining segment of the fourth section under Section (D) of Table 1 ("Any constraints or limitations in the financial projections") to the Financial Feasibility section.

With regard to the recommendation to add a section on permits required and other environmental or ecological constraints, the Agency does not agree with commenter. The rule requires the lender to submit Exhibit H of 7 CFR part 1940, subpart G, to address environmental issues and permits. Section B of the feasibility study requires the identification of project impacts on the environment.

4. Financial Feasibility (Section E of Table 1). With regard to the recommendation to add a section on "sources and uses of funds" and "matching funds," the Agency agrees with the suggestions to add reference to the "uses of project capital" and has revised the rule accordingly. However, the Agency disagrees with the suggestion to add a section on matching funds because matching funds are already addressed in Section E of Table 1.

With regard to the recommendation to add a section on "borrower's business strategy," the Agency disagrees because the borrower's business strategy is sufficiently covered as part of the borrower's business plan.

With regard to the recommendation to redefine the risk section to include only "baseline production outputs, borrower financing plan, tax issues, government regulations, and borrower as a company," the Agency disagrees with the commenter. The Agency requires the risk categories identified to assist with the evaluation of the feasibility of the project and technology.

5. Management Feasibility (Section F of Table 1). With regard to the recommendation to further define the three levels of management, the Agency is satisfied that sufficient disclosure of management and ownership structures is provided for in the feasibility study and the lender's written credit analysis.

With regard to the recommendation to change the management risk category to include changes in management, strengths and weaknesses of the management team, changes in ownership of the company, and conflicts of interest, the Agency will add management's strengths and weaknesses but disagrees with commenter's other suggestions. The Agency notes that "Conflicts of Interest" was already included in the proposed rule and remains in this interim final rule.

6. Business Plan (proposed § 4279.261(g)). With regard to the recommendation to eliminate the Business Plan requirement as all elements are present in the Feasibility Study, the Agency disagrees with the commenter's suggestion. The business plan is prepared by the borrower, while the feasibility study is prepared by a third-party expert and is an evaluation of the project and the company. The Agency notes that the rule allows a business plan to omit any information that is included in the feasibility study.

7. Economic Analysis (proposed § 4279.261(i)). With regard to the recommendation that this section be eliminated and all elements moved to the financial feasibility section of the feasibility study, the Agency agrees with the commenter and has revised the rule to incorporate the economic analysis into the feasibility study.

Comment: One commenter states that the Agency proposes to require that applicants submit documentation in their feasibility study that all woody biomass feedstock proposed to be utilized could not be used as a higher

value wood-based product. The commenter states that a similar restriction in the BCAP proposal was inconsistent with the Farm Bill definition of "renewable biomass." Under Section 9001 of the Farm Bill, an advanced biofuel need only be derived from "renewable biomass other than corn kernel starch." Thus, a fuel is an advanced biofuel so long as it is produced from materials meeting the definition of renewable biomass and it falls within one of the seven types of listed advanced biofuel categories. Looking to the definition of renewable biomass in the Farm Bill, the only restriction relating to higher-value products can be found in Section 9001(12)(A)(ii), relating to Federal land. There, Congress included the higher-value product limitation with regard to "materials, pre-commercial thinnings, or invasive species from National Forest System land and public lands * * *" Section 9001(12)(B), governing the definition of renewable biomass as it relates to biomass derived from non-Federal land, contains no such value-added restriction. Indeed, this section refers to "any organic matter that is available on a renewable or recurring basis from non-Federal land." However, the definition contains no such restriction as it relates to non-Federal land, nor does it leave room for statutory interpretation.

The commenter does not believe that the Agency has the statutory authority to require that applicants document that their woody biomass could not have been used in a higher-value product. The Farm Bill definition makes clear that such a restriction could only apply to applicants seeking payment for advanced biofuels derived from woody biomass sourced from Federal land. The commenter urges the Agency not to finalize a provision so clearly contrary to express statutory language.

Statutory authority aside, if the Agency chooses to finalize such a scheme, the commenter suggests that it not categorically exclude biomass that could be used in higher-value products. The commenter believes that there is some woody biomass that, while it could be used as a higher-value wood based product, will not be for numerous reasons, including market access. The rule should allow for loans for advanced biofuel facilities using renewable biomass that could be used as inputs for higher-value products, but that have not been previously utilized on a facility-specific or regional basis.

Response: The Agency agrees with commenter's interpretation of the statute with regard to higher-value products from wood sources from Federal lands. The Agency has clarified the rule to reflect that the "higher-value product" documentation requirement only applies to wood sourced from National Forest System lands or other public lands, as specified in the authorizing statute.

Technical Assessment (§ 4279.261(h))

Comment: One commenter suggests that the Agency drop its technology review from the application process. The commenter states that, given that the Agency is open to all technologies, an in-depth technical review will have already been completed by the investor group and so the Agency will not need to do so.

Response: The Agency disagrees with commenter's suggestion. The technology review allows the Agency to determine the commercial viability and technical merit of the proposed project and provides verification that the project has reached semi-work scale. Therefore, the Agency has not revised the rule in response to this comment.

Lender Certifications (§ 4279.261(k))

Comment: One commenter states that the proposed rule requires lenders to "certify" that the project is able to demonstrate technical merit but then states that the Agency will determine the project's technical merit. Lenders should not be required to determine the technical merit of these projects particularly since these projects may or will incorporate first-of-a-kind technology—technology never before utilized. Such a requirement is unnecessary given that the Agency will actually make this determination. Lenders should only be required to verify that the borrower has provided a technology assessment as part of the application.

Response: The purpose of the certification required under this paragraph is neither to replace nor to duplicate the Agency's determination of technical merit. The purpose of this certification is to ensure that the lender performs its due diligence. To make this clear, the Agency has recast the second sentence of this paragraph such that the lender will now certify that, as a result of its due diligence, the lender concludes that the project has technical merit.

Scoring Applications (§ 4279.265(d))

General

A number of commenters characterized the scoring criteria as unrealistic, presenting obstacles or being contrary to the program's goals, etc. Some of these commenters illustrated their concerns by discussing specific scoring criteria. In such instances, such discussions are included in the specific scoring criteria. Commenters also suggested numerous additions to the scoring criteria. The general comments and proposed additions are addressed first, followed by comments associated with the specific scoring criteria.

Comment: Several commenters state that the scoring criteria are unrealistic in several areas and must be reconstructed to recognize the economic, environmental, technical, managerial, and financial strength of the project as the first qualifying criteria. The points in the current proposed rule do not correlate to the risks and rewards involved in the development and successful implementation of a long-term, sustainable project. The scoring criteria should be modified to properly define the risk and reward of a project, including a review of the technology, the financial strength of the project including equity contribution, the strength of the management team, and then include the required criteria with a point value of no more than 30 percent of the total score. The funds must go to the projects that have the best chance of sustainability and implementation in the long run. This will properly provide a springboard for the industry for financing and long-term implementation and success.

Response: The statute identifies the criteria the Secretary will consider when scoring a project and the Agency incorporated the criteria into the rule. In addition, in consideration of language contained in the Managers Report, an additional criterion was incorporated to give preference to projects that are first-of-a-kind. As is true for all of the comments to this rule regarding how many points the Agency assigned to the various scoring criteria, the points for each of these criteria were assigned in a way that the Agency has determined best meets the goal of supporting the advanced biofuel industry and Congressional intent while minimizing the risk to public funds.

Comment: One commenter states that one obstacle that is difficult to overcome is inherent "institutional biases" that lead to specific emphases in point scoring. For example, with respect to Financial Participation, the text states: "Regarding the fifth criterion, level of financial participation, the proposed rule requires borrowers to provide at least 20 percent cash equity into the project. It is the Agency's intent to score applications higher that can demonstrate more than this 20 percent minimum (30 percent or more).

Borrowers who meet the minimum 20 percent cash equity are still eligible, but will not receive points under this criterion. Further, of all the criteria used to score applications, the Agency continues to believe that this criterion is the most important because it represents the best commitment of the borrower to the project. Therefore, the Agency continues to assign the highest potential points to this criterion."

The commenter disagrees that a higher equity percentage indicates a higher and better commitment to the project. Given that the equity investors in such projects do not invest with the expectation to lose their investment, since these are not venture investors, a $100 million project that requires $20 million in cash equity for example, is a major commitment. A $30 million equity participation does not indicate any more commitment. However, it does substantially increase the IRR requirement from the cash investor and that can provide undue financial burden on the project and make it financially unfundable for no real benefit. A higher percentage for a much smaller project could represent a more sincere commitment, but that is not true in this case.

Response: Cash equity is the metric used to show the commitment level. The 20 percent requirement is the minimum level to be eligible and is required by statute. The points awarded are intended to reflect those who contribute more to the project, and not to reflect whether one borrower is more committed than another.

Comment: One commenter refers to the proposed increase in the scoring for novel feedstock as another obstacle presented by the scoring criteria. According to the commenter, the requirement in § 4279.265(d)(3) is in direct opposition to the needs of financing a pre-commercial technology. Despite the Agency's extensive experience with loan guarantee programs, it has yet to administer a program for such large projects or for pre-commercial technologies. Although some of the prior regulations and approaches can conveniently be adopted from B&I and REAP, the section 9003 program is fundamentally different from these commercially proven technology programs. There appears to be a lack of awareness (possibly based on a lack of experience) within the Agency to recognize the roadblocks that some of the proposed rules and scoring criteria create for good projects where pre-commercial technology is being deployed. The fact that we are engaging in pre-commercial technologies is a game changer when it comes to what criteria matter and the support that such projects need.

Response: The Agency recognizes the concern raised by the commenter. However, the statute identifies this criterion. Therefore, the Agency must include this criterion. The Agency notes that the scoring criteria give preference; they do not determine eligibility.

Comment: One commenter states that, to maximize the rural economic benefits of the Section 9003 Guaranteed Loan Program in furtherance of the Rural Development's mission, a project's rural economic benefits be added as an evaluation criterion to proposed § 4279.265(d). Rural Development's mission to enhance the quality of life and economic foundation of rural communities would be furthered by a more comprehensive evaluation of a project's potential rural economic benefits. A project's rural economic impact is not only determined by the location of the biorefinery, but by the origin of the feedstock as well. Awarding points to projects based on their level of economic impact to a rural community is consistent with the Agency's mission and allows maximum opportunity for the commercialization of domestic advanced biofuels in the U.S. Dedicated energy crops, such as carnelian, are grown in rural areas. Thus, the commenter encourages the Agency to consider a project's location in a rural area or its feedstock's rural origins as plus factors in the evaluation criteria. Many non-rural advanced biofuel refining projects can yield substantial economic benefits for rural America, in addition to increasing energy independence, decreasing greenhouse gas emissions, and diversifying agricultural markets. Thus, a more inclusive approach would maximize the impact of the section 9003 program.

Response: The Agency agrees that potential rural economic development is an important metric for evaluating applications. Consistent with one of the commenter's suggestions, the Agency has added a rural location requirement for the project to this criterion to accompany potential rural jobs to measure this metric, as found in § 4279.265(d)(8). To include other aspects suggested by the commenter would make the scoring overly complicated and burdensome with questionable benefit. Therefore, except for adding the rural location requirement for the project, the Agency has not otherwise revised the rule in response to this comment.

Comment: One commenter encourages the Agency to revise the stipulation that "specific feedstock should not receive preference over other feedstock when evaluating applications." The commenter believes that biorefinery feedstock should be evaluated according to a comprehensive life-cycle analysis that accounts for all greenhouse gas emissions, including those associated with indirect land use changes. Additionally, the commenter believes that extra points should be given for projects that provide clean, potable water for human use and/or irrigation.

Response: The scoring criterion in § 4279.265(d)(6) addresses the positive impact of the project on resource conservation, public health, and the environment. This can include each of the elements identified by the commenter, including life-cycle analysis, water impacts, and irrigation. The Agency encourages applicants to submit data, analyses, etc. to support this criterion, including any life-cycle analyses. As noted in previous responses, this scoring criterion now contains a deduction when the feedstock can be used for human or animal consumption. This provision further advances the positive impact under this scoring criterion.

Established Market Criterion

Comment: One commenter agrees that it is appropriate to demonstrate that there is a market for the product from the facility, but believes that the Agency should apply this requirement flexibly in view of two facts. First, unlike electricity which is typically contracted over a multi-year time horizon, liquid fuels are traded almost entirely through short-term spot markets. Second, it was due in part to recognition of this basic structural feature of fuels markets that Congress enacted, in 2005, and expanded, in 2007, an RFS that codifies a purchase mandate in Federal law. The RFS establishes targeted levels for purchases of cellulosic biofuel, as well as default pricing mechanisms for credits when available quantities of that fuel are insufficient to meet the needs of an obligated party under the law. The existence of this mandate provides strong assurance that a market will exist for cellulosic biofuels production, at a price up to the cost that an obligated party under the RFS would incur to purchase alternative supplies plus credits to fulfill its obligation.

To illustrate potential issues with the rule as proposed, the biofuels industry has experienced significant road blocks when navigating the Department of Energy loan guarantee program application process in this regard. Therefore, the commenter is asking for the following inclusion in The

Innovative Technology Loan Guarantee Program (Title XVII of EPAct):

"Loan guarantee applications for emerging technologies, such as advanced biofuels, should not be evaluated against more mature technologies, such as wind or solar. The liquid fuels marketplace does not operate within a framework that lends itself to long-term, fixed-price forward contracting mechanisms; therefore, DOE should not require these contracts as evidence of 'reasonable prospect of repayment' for biofuels projects. The Committee recommends that this program also be expanded to include eligibility for renewable chemicals and biobased products in addition to biofuels."

Another commenter encourages the Agency to consider the appropriateness of off-take agreements in the fuels market. The commenter states that their experience has indicated that such requirements are much more challenging for renewable fuels than with renewable electricity, which has been financed largely through long-term power purchase agreements. The commenter urges the Agency to broaden the scope of what it considers a demonstration of an established market for a fuel. Off-take agreements are clearly one way that such a market can be established. The commenter believes that EPA's large RFS2 mandates represent "legislated demand" that should sufficiently demonstrate that a market exists. RFS2 relies upon a fungible, liquid market for renewable fuels that is fundamentally inconsistent with a requirement that obligated parties actually purchase the fuel and take delivery. Rather, obligated parties demonstrate compliance through submission of "RIN" credits, which renewable fuel producers generate when they produce qualifying fuels. Demand for these RIN credits functions in the same way as an off-take agreement, as both serve as a market outlet for the fuel. Given forecasts on meeting RFS2 targets through 2022, it does not appear that advanced biofuel production will exceed mandates. Thus, every gallon of advanced biofuel produced up to the mandates will have a guaranteed market outlet. Even absent the RFS2 (as well as low carbon fuel standards in California and the northeastern states), the Agency should consider drop-in fungible fuels to have an established market (equivalent to a dedicated off-take agreement) at no less than the value of the fossil-fuel which they replace. Indeed, since synthetic hydrocarbons like BTL offer superior performance characteristics, including lower conventional pollutant emissions than conventional fuels, a market premium would be justified. While non-fungible fuels such as ethanol that can only be blended up to certain levels with conventional fuels have a demand ceiling (absent dedicated infrastructure, such as that needed for E–85), fungible fuels such as BTL that are fully compatible with existing fuels and infrastructure will have access to existing fossil fuel markets. While the commenter recognizes that future fossil fuel prices alone may not sufficiently demonstrate the financial feasibility of a project, the commenter urges the Agency to recognize this market "floor" in its scoring criteria for demonstrating an established market for an advanced biofuel project.

Response: With regard to the commenter's concern about spot market, the Agency points out that the rule does not specify a timeframe associated with the commitments. Therefore, this concern should not be an issue.

With regard to the comments made concerning the Renewable Fuel Standard program, the Agency acknowledges that the Renewable Fuel Standard program may establish a commodity market for renewable fuel standard biofuels as a whole. However, for the purposes of the Biorefinery Assistance Guaranteed Loan Program, the Agency is looking at whether the borrower has established a market for its biofuel and byproducts; that is, the Agency is looking for the establishment of an individual market for the borrower's biofuel and byproducts. The commodity market created by the Renewable Fuel Standard program does not ensure there will be revenue generated for the specific project in the application. On the other hand, the Agency seeks to further the renewable fuel provisions of the Section 9003 program by, as has been noted previously, requiring the advanced biofuel to meet an applicable renewable fuel standard as identified by the EPA in order to receive points under this scoring criterion.

The Agency notes that it does not have the authority to modify the Department of Energy's Innovative Technology Loan Guarantee Program as requested by one commenter.

Comment: One commenter believes that this is a misinterpretation in the proposed rule of the intent of Congress in the 2008 Farm Bill. To "establish markets" for the advanced biofuel and byproducts would only apply for a new type of advanced biofuel. Ethanol and biodiesel are traded as commodities and already have an "established market." The same is true of distiller's grain from current ethanol biorefineries. The commenter proposes that newer types of alcohol, such as butanol or propanol, meet the requirement of establishing a market with a signed off-take agreement. The same is true of the biobased byproducts from new processes. Due to changing farm economics as well as changes in farm policy, a feedstock agreement of more than 3 years is very difficult to obtain. The commenter proposes the following criterion with a maximum of 5 points:

1. If the application has a commitment for at least 40 percent of the biofuel produced from the project; a commitment for at least 40 percent of the biobased byproduct produced from the project; and a commitment for at least 60 percent of the feedstock to be used in the project, then the application will be awarded 5 points.

2. All commitments must be for at least 3 years.

3. Notwithstanding other qualifications of this criterion, ethanol, biodiesel, and distiller's grains shall be exempt from any purchase commitment.

Response: With regard to the recommendation for how points will be awarded, the Agency is revising the rule to require a 50 percent commitment for each and, as noted previously, requiring the advanced biofuel to meet an applicable renewable fuel standard as identified by the EPA in order to receive points under this scoring criterion. The Agency is also increasing the points for this scoring criterion from 5 to 10.

The Agency disagrees with the recommendation for including a requirement that all commitments must be for at least three years, because it could discourage the introduction of advanced biofuels produced from new feedstock.

As noted in the previous response, the borrower needs to demonstrate that the borrower has established a market for the borrower's advanced biofuel and byproducts produced. Furthermore, the selection criteria in the statute refer to "the advanced biofuel and the byproducts produced" without distinguishing between new and established biofuel. Therefore, the Agency disagrees with the commenter's recommendation for providing an exemption from the purchase commitments.

Comment: One commenter states that requiring feedstock supply commitments in demonstrating establishment of a market favors existing feedstock markets and, thus, does not encourage new solutions/feedstock usage/technologies.

Response: All applicants must establish a market for the advanced biofuel and byproducts produced per

the statute. While the Agency recognizes that it may be easier for a borrower to obtain feedstock supply commitments in existing feedstock markets, the Agency has reduced the requirement from 60 percent to 50 percent. Further, the Agency is not requiring a time commitment for these commitments. Lastly, the scoring criteria at § 4279.265(d)(3) and (d)(11) are specifically designed to encourage new feedstock usage and technologies.

Comment: One commenter recommends eliminating this scoring criterion for supply and off-take agreements. The commenter states that liquid fuels are a very fungible product and the industry practice is to not have long term off-take agreements.

Response: As noted in the previous response, all applicants must establish a market for the advanced biofuel and byproducts produced per the statute. The Agency is satisfied that requiring demonstration of such agreements is reasonable. Further, the Agency is not requiring borrowers to demonstrate long-term off-take agreements.

Comment: One commenter states that the proposed scoring system and the manner in which points are awarded in a number of categories seems to contradict the purposes of the program. As a result, there is a significant likelihood that the projects most likely to succeed (and the best deal for the taxpaying public) will be outscored by niche projects that will have limited impact on rural development or of filling advanced biofuel voids. One commenter disagrees with awarding zero points if 60 percent or less on feedstock commitments or finished product marketing agreements. The commenter explains that a commercial scale biorefinery is going to take two years to construct and require significant volumes of feedstock. It is unrealistic to expect a company to be able to contract over two years in advance for what could be millions of dollars of feedstock. Forward pricing would be so speculative and price risk would make a supply contracts unaffordable. Points will only go to small producers of niche products with feedstock sources that have no scalable impact on the rural community. An alternative would be to score based on Ag Census statistics on the agricultural capacity to grow the feedstock within a specified radius of the project.

Response: The Agency disagrees that this scoring criterion will provide a preference to smaller producers. First, not all projects require a multi-year construction period. Second, even for projects that require a multi-year construction period, it is the Agency's experience that borrowers can reasonably obtain commitments in advance. Further, the Agency notes that it has reduced the required percentage of these commitments from 60 to 50 percent.

Presence of Other Biorefineries Criterion

Comment: One commenter believes this criterion should be changed to 10 points maximum. The commenter also suggests that the language be changed, as follows, to clarify that it is based on the exclusivity of a biorefinery using a particular feedstock:

1. If the area that will supply the feedstock to the proposed biorefinery does not have any other advanced biofuel biorefineries using the same or similar feedstock, award 10 points.

2. If there are other advanced biofuel biorefineries using the same or similar feedstock located within the area that will supply the feedstock to the proposed biorefinery, award 0 points.

Response: The Agency is satisfied that the weight provided for this criterion is reasonable. With regard to adding to the scoring criterion "using the same or similar feedstock," the Agency is clarifying the language to read "any other similar advanced biofuel biorefineries." The similarity is intended to refer to the facility and not to the feedstock.

Feedstock Not Previously Used Criterion

Comment: One commenter states that financiers seek to reduce risk as much as possible and, in general, wherever possible, the scoring criteria to qualify for the program should be as flexible as possible so as to allow proposed projects to reduce all non-technology risk as much as possible. For example, the scoring criterion that awards more points for "novel feedstock" is in direct opposition to what is required to attract investors, both equity and debt. This might be a reasonable hurdle for an alternative program that seeks to help finance existing and commercially established technologies. For first-of-a-kind projects, requiring novelty in feedstock supply will likely render most proposed projects unfinancable because lenders will not take that type of risk even when the technology is proven. Despite the value of the loan guarantee, such a guarantee is insufficient in its own right to be able to mitigate sufficient risk for lender, especially given the requirement that the lender put itself at significant risk by holding 10 percent of the unguaranteed portion. The loan guarantee will only help those projects that have reduced risk to the greatest degree possible other than the technology risk.

Response: As stated previously in response to a similar comment, the Agency recognizes the concern raised by the commenter. However, the statute identifies this criterion. The Agency notes that the scoring criteria give preference; they do not determine eligibility.

Comment: One commenter believes that the proposed rule weights this criterion too heavily. The intent of the program is to increase the production of advanced biofuels in rural America, which can be carried out by not limiting the awarding of such a large number of points to the first biorefinery to use a particular feedstock. Many groups want to be the "second" biorefinery to learn from the mistakes of the "first." The proposed rule should not carry such a hefty penalty for not being first. The commenter proposes that this criterion be a maximum of 5 points.

Several commenters state that the points awarded to this criterion should be changed or given 3 to 5 points. Different technologies that utilize the same biomass should not be excluded because another applicant used it first.

Another commenter recommends revising the language to include some threshold level instead of simply a "first mover" requirement. The intent is to establish multiple energy crops on a commercial scale and as written the first user of a new feedstock would qualify regardless of the size of their biorefinery and second user would not. The commenter states that, in addition, you want to encourage the further expansion on the feedstock, preferably with even new and better processes that make even more efficient use of the feedstock.

Response: As noted in the response to the previous comment, because this criterion is identified in the statute, the Agency must include this criterion.

Comment: One commenter agrees that no specific feedstock should be preferred. The commenter states that there should also be no additional points awarded for novelty. The commenter states that, under the NOFAs and propose rule, more scoring points are to be awarded for "novel feedstock." The commenter states that if a prior project has been approved for the program with a type of feedstock, any future applications would not achieve maximum points because the proposed feedstock would no longer be "novel." The commenter believes this scoring criterion is antithetical to the main goals of the program, which is to assist commercially viable technologies to pass through the "valley of death" in terms of financing and should be removed as a scoring criterion, and to the goals of the financiers and especially

the lenders and therefore the program. The most important criterion for lenders is the reliability of the availability of the feedstock and the reliability of the supplier(s). Lenders always look for a track record and performance history. Hence, any feedstock that can be procured to meet the needs of the project financiers should be rewarded equally. The commenter states that it is unwise to increase the number of points for this criterion given that doing so makes projects less financeable and more risky.

Response: As noted in the previous response, the Agency must include this criterion, because it is identified in the statute.

Comment: One commenter states that the proposed manner in which points are awarded in a number of categories seems to contradict the purposes of the program. The commenter states that, as a result, there is a significant likelihood that the projects most likely to succeed (and the best deal for the taxpaying public) will be outscored by niche projects that will have limited impact on rural development or of filling advanced biofuel voids. The commenter states that awarding zero points for using a feedstock previously used in commercial production places the lowest risk projects at the biggest disadvantage. The commenter recommends that the Agency remain feedstock neutral and score projects based on their outcomes (rural revitalization), not inputs (type of feedstock).

Response: Except to the extent the scoring criteria required by the statute result in favoring one feedstock over another, the Agency agrees with the commenter in that the Agency wants to encourage all advanced biofuels, except in very limited specific instances (*e.g.,* feedstock that can be used for human or animal consumption). Beyond such instances, the Agency does not want to limit specific feedstock from participation in the program.

Working With Cooperatives and Producer Associations Criterion

Comment: One commenter believes the calculations representing the 60 percent level are incorrect and represent a 50 percent commitment.

Response: The Agency agrees that the example was incorrect, and the example has been corrected.

Comment: While one commenter agrees with the percentage requirements of the dollar value of feedstock being supplied by and byproducts being produced and sold to local producers to ensure strong local involvement, all other commenters express concern with this criterion, as follows:

One commenter is concerned that the concept of providing points to projects that purchase 60 percent or more of their feedstock from producer associations or cooperatives and sell 60 percent or more of the products precludes benefits associated with purchasing feedstock from independent producers, farmers, etc., who stand to benefit significantly from such purchases. It is also not practical to require 60 percent of revenue generated to be from selling products to producer associations or cooperatives. Typical biorefinery products are sold to obligated parties to generate maximum revenue. In general, this criterion may favor projects that do not bring as much benefit to local farmers and producers and may have higher risk through lower product revenue.

One commenter suggests that this scoring criterion for supply and off-take agreements through cooperatives be eliminated. Because of the capital intensity of the first commercial projects, the entire entrepreneurial community needs to be engaged. Also, because these refineries utilize commodity inputs and are producing liquid fuel that fluctuates daily in price, it is very difficult to get supply and off-take agreements at fixed prices.

One commenter states that, given the challenges of achieving financing for projects, it is unwise to limit scoring to projects that are so heavily weighted to such transactions with producer associations and cooperatives. It is more important to assist the commercialization of new technologies and make the projects attractive to investors. In many cases, biomass feedstock is not yet available by way of producer associations and cooperatives. Hence, such a procurement plan would be considered unduly risky to financiers. At the same time, there is no guarantee that producer associations and cooperatives will provide the best outlet market for products to be sold. It is more important to make sure that these projects have the best possible chance of succeeding financially so that they can be financed. Having the most flexible sources of feedstock suppliers and off-take partners is the smartest way to get projects off the ground. The proposed constraints might make sense for a different program designed to support already commercialized technologies where the quid pro quo for Agency assistance would be to support such supply and off-take entities. The commenter states that it is unwise to try to achieve too many Agency goals in one program when the financing challenges are already very high.

One commenter believes this criterion unfairly limits the sale of biofuels and biofuel byproducts. The commenter believes that both products should be able to be sold to individual farmers, community residents, small local businesses, power generation facilities, hospitals, educational institutions, municipalities, traditional oil refineries, etc. Selling the biofuel to a larger and more diversified number of users will help encourage faster acceptance and adoption of biofuels by the public and industry thereby increasing demand for even more locally produced biofuels.

This same commenter also states that the provision for 60 percent of the dollar value of the feedstock will be supplied by producer associations and cooperatives unfairly and unnecessarily limits it to mainly producer associations and cooperatives. Small independent family farms and landowners should be able to equally provide feedstock to a biorefinery funded through this program. The number of small farms in the United States, particularly in the East, is growing. Being able to sell feedstock to the biorefinery would provide small farmers and landowners an additional source of potential income. It would also help keep land actively farmed in some communities.

One commenter states that waste material, as a feedstock, does not lend itself to contracts with producer associations or cooperatives in the same way that biomass from crop or plant residues do. The commenter urges the Agency to adopt an alternative metric for feedstock that do not ordinarily have a nexus with producer associations and cooperatives, so that the investment in rural communities that the Agency seeks to encourage can come from the broadest possible sources.

Response: The statute requires the Agency to consider whether the borrower is proposing to work with producer associations or cooperatives and, therefore, the Agency must include this as one of the scoring criteria. In recognition of the concerns raised by the commenters, the Agency has modified this criterion to award points if the project can document working with cooperatives and producer associations under one of the three criteria rather than all three. In addition, the Agency has revised this scoring criterion with a two-tiered system that begins awarding points at a 30 percent threshold. The Agency considers the revised scoring methodology more workable, allowing greater participation by independent producers, farmers, etc.

Comment: While working with producer associations and cooperatives is important, one commenter believes that the requirements in the proposed rule are not workable, especially regarding the purchase of the biofuel by the producer association or cooperative. The commenter proposes modification as follows with a maximum of 10 points that can be awarded:

1. Award 2 points for an application with at least two support letters from producer associations or cooperatives.
2. Award 4 points for an application with at least 20 percent of the dollar value of the feedstock purchased from a producer association or cooperative.
3. Award 4 points for an application with at least 20 percent of the dollar value of the biobased byproducts sold to a producer association or cooperative.
4. Notwithstanding other qualifications of this criterion, if the applicant is a producer association or cooperative, award 10 points.

Response: The Agency disagrees with the specific recommendation. However, as stated in the response to the previous comment, the Agency has modified the criteria to award points if the project can document working with cooperative and producer associations under one of the three criteria rather than all three. In addition, the Agency has revised this scoring criterion with a two-tiered system that begins awarding points at a 30 percent threshold. The Agency considers the revised scoring methodology more workable.

With regard to the request to award points based solely on the borrower being a producer association or cooperative, the Agency disagrees because the change in the rule to allow the borrower to meet one of the three criteria allows such a borrower to be awarded points under this criterion by working with another producer association or cooperative.

With regard to the suggestion to increase the points awarded from 5 to 10, the Agency considers the points associated with this criterion appropriate relative to the other scoring criteria and has not changed the points awarded under this criterion.

Comment: Several commenters recommend giving a total score of 5 points for projects that incorporate any contract or business relationship with producer associations and cooperatives, whether it consists of feedstock purchases or product and byproduct sales and should include any renewable electricity sold to a rural electric cooperative, or electricity purchased from a rural electric cooperative.

Response: The Agency agrees with the commenters and has revised the rule to modify the scoring criteria to award points if any one of the three criteria are met. With regard to the suggestions that this criterion should include electricity sold to a rural electric cooperative, the Agency agrees. Sale of an advanced biofuel converted to electricity would qualify for points under § 4279.265(d)(4)(i)(B) or (d)(4)(ii)(B). The Agency does not agree with commenter to award points for purchasing electricity from an electric cooperative. The Agency has determined that to make the criteria meaningful, the Agency must limit the points awarded under this criterion such that not all applicants score under this criterion.

Financial Participation Criterion

Comment: One commenter, while agreeing that this criterion should remain the most important, recommends increasing the maximum points to 25 points. The commenter supports the exclusion of other direct Federal funding in calculating the borrower's cash equity participation. However, the commenter does not support the deduction of 10 points for the use of other Federal direct funding in the project. The commenter proposes the following:

1. If the borrower's cash equity injection plus other resources results in a debt-to-tangible net worth ratio equal to or less than 3.00 to 1, but greater than 2.75 to 1, award 11 points.
2. If the borrower's cash equity injection plus other resources results in a debt-to-tangible net worth ratio equal to or less than 2.75 to 1, but greater than 2.50 to 1, award 18 points.
3. If the borrower's cash equity injection plus other resources results in a debt-to-tangible net worth ratio equal to or less than 2.50 to 1, award 25 points.

Response: With regard to the suggestion to increase points awarded under this criterion from 20 to 25, the Agency disagrees and has reduced the points from 20 to 15, which the Agency considers appropriate relative to the other scoring criteria and changes in points made to other criteria.

With regard to the suggestion to delete the deduction of 10 points for the use of other Federal direct funding, the Agency wants to encourage participation from non-Federal sources and to diversify risk to Federal funds. Therefore, the Agency disagrees with the suggestion to delete this deduction.

With regard to adding an additional level (*i.e.,* 2.5 to 2.75 to 1) for awarding points, the Agency disagrees this level of distinction is necessary at this time because the scoring gradations are sufficient to distinguish the priority of the projects. As the program matures, the Agency may revise this criterion along the lines suggested by the commenter in order to provide further distinction between competing applications.

Comment: One commenter states that projects that have exceptional economics and that can withstand higher percentages of debt should not be penalized by an arbitrary bias in favor of lower debt percentages. There should be no points specifically associated with this issue. Either a project meets the financing criteria or it does not. Not all projects can sustain low percent debt levels. Each project should be evaluated on its own merits, but percent of equity versus debt should not be a competitive decision making criterion. It is a false assumption that lower debt percent is generally preferable. Some products and markets may require high debt percent levels in order to be competitive and should not be penalized for it. Because the goal is to help projects prove commercial viability, projects that propose a financing plan that matches the most likely replicable future commercial financing scenario should be favored. It will be these projects that not only prove that the technology is commercially viable, but that the means of finance is also commercially viable.

Response: The Agency disagrees with the commenter. The statute identifies financial participation of the borrower as a scoring criterion. Therefore, the Agency has retained this scoring criterion. The Agency notes that a loan guaranteed under the program may only finance 80 percent of the eligible project costs. In addition, the Agency's default and loss claim experience is that lower debt percentage is generally preferable because those projects tend to be more successful.

Comment: One commenter states that this scoring criterion unfairly handicaps "advanced technology biorefineries" because they have the highest capital funding requirements. While understanding the need to get some biorefineries in production, the commenter believes the key is to advance future biorefinery technology so that we have a large scale commercial industry in the future.

Response: As stated in the response to the previous comment, the statute requires the Agency to consider the level of financial participation of the borrower as part of scoring applications, and the Agency notes that a loan guaranteed under the program may only finance 80 percent of the eligible project costs.

Comment: Two commenters recommend, given the complexity and variety of negotiation and business structures between the lender and equity source, greater flexibility in the scoring requirement for projects that demonstrate more than 20 percent cash equity in order to foster increased use of the loan guarantee program.

Response: To the extent that the commenter is requesting "more levels" for awarding points under this criterion, the Agency disagrees that additional levels of distinction are necessary at this time. As the program matures, the Agency may revise this criterion to provide further distinction between competing applications.

Positive Effect on Resource Conservation, Public Health, and the Environment Criterion

Comment: One commenter suggests increasing the points awarded for this criterion from 5 to 10 and modifying how points are awarded as follows:

1. If the production of advanced biofuels from the approval of the application would have a positive impact in one of the three impact areas (resource conservation, public health, and environment), award 2 points.

2. If the production of advanced biofuels from the approval of the application would have a positive impact in two of the three impact areas, award 6 points.

3. If the production of advanced biofuels from the approval of the application would have a positive impact in all three of the impact areas, award 10 points.

Response: The Agency has modified the rule to increase points and distribute the points as recommended, except that 3 points will be awarded if there is a positive impact on one of the three impact areas. However, the Agency disagrees with the proposed rewording to use "production of advanced biofuels from the approval of the application" in place of "process adoption" because "process adoption" reflects the statutory language of the "adoption of the process proposed in the application."

In addition, the Agency has added a provision to deduct 5 points if the feedstock for the proposed project can be used for human or animal consumption. The Agency is adding this provision because such feedstocks are considered to have significant enough negative impacts that the Agency seeks to discourage their use.

No Significant Negative Economic Impacts on Existing Facilities Criterion

Comment: One commenter proposes no change to this criterion and would award a maximum 5 points.

Response: The Agency disagrees, and, in the broader context of all the scoring criteria, has revised the points awarded under this criterion from 5 to 10, which the Agency has determined is reasonable relative to the other criterion.

Comment: One commenter recommends that, as for local competition for feedstock, the local area for procurement be considered to be not more than 50 miles from the proposed project site. Given that biomass is generally uneconomical to transport more than 50 miles from source to site, using an area that is more than 50 miles will provide undue protection to some existing projects and limit the scope and possibility of many good projects. The commenter suggests that, alternatively, total available supply of feedstock within the competitive area be considered and whether there is sufficient availability for the incumbents as well as the proposed project. In general, by the time a project has been proposed to the Agency, this issue will have been reviewed to the satisfaction of the financers and will never be an issue. As a result, this review item can probably be dropped in its entirety, other than asking whether such an analysis was performed.

Response: The statute requires the Agency to consider whether the proposed project will have any significant negative impacts on existing facilities. As such, the Agency must include this criterion in the rule. In order to determine if there will be any significant negative impacts, the Agency needs sufficient evidence to make an evaluation—simply asking whether such an analysis was performed is insufficient. Therefore, the Agency has not revised the rule in response to this comment.

However, the Agency has added a provision to this criterion that would result in no points being awarded if the feedstock to be used is wood pellets. While the Agency acknowledges the eligibility of wood pellets, the emphasis of this program is new and emerging technologies. The Agency further notes that wood pellets can be considered under other programs.

Potential for Rural Economic Development Criterion

Comment: One commenter suggests increasing the points awarded for this criterion from 5 to 15 and modifying how points are awarded as follows:

1. If a project's average wage is above the median household wage in the county and contiguous rural counties, award 15 points.

2. If a project's average wage is equal to or below the median household wage in the county and contiguous rural counties, award 0 points.

Response: The Agency has reconsidered the points associated with this criterion and increased them from 5 to 10, which is appropriate relative to the other scoring criteria. Further, the Agency has added the provision that the project must be located in a rural area in order to be awarded points under this scoring criterion. As noted elsewhere in this preamble, this provision replaces the proposed eligibility requirement for a rural area location.

With the respect to commenter's suggestion to use the median household wage in the county, the Agency agrees with the commenter that it is appropriate to look at the median household wage for the county, and not to include the median household wage for the state, because the county median household wage is more reflective of local economic conditions. The Agency has revised the rule accordingly.

With respect to the commenter's suggestion to include contiguous rural counties, the Agency disagrees with the commenter because economic conditions in the contiguous counties may differ significantly from the project county. Thus, the Agency has not revised the rule with respect to this specific comment.

Local Ownership Criterion

Comment: One commenter suggests decreasing the points awarded for this criterion from 15 to 10 and modifying how points are awarded as follows:

1. If more than 20 but less than or equal to 50 percent of the biorefinery's owners are local owners, award 6 points.

2. If more than 50 percent of the biorefinery's owners are local owners, award 10 points.

3. A biorefinery that has as its majority owner a publicly traded entity would be awarded no points.

Response: Considering the points proposed for this criterion relative to the other criteria, the Agency agrees with the recommendation to reduce the points for this criterion, but has reduced them from 15 to 5, in part because of the changes to the rural economic development potential scoring criterion, which now incorporates a rural area location requirement for the project to be awarded points and the increase in points under that criterion from 5 to 10. However, the Agency does not

specifically exclude majority ownership by publicly traded entities so long as the entity can demonstrate local ownership. The Agency has not made the recommended change regarding publicly traded owners because it does not want to discriminate against applicants with publicly traded owners. The Agency also notes that the calculations are based on ownership interest, not the number of owners.

Comment: Four commenters suggest eliminating this scoring criterion. One commenter believes that local ownership will be difficult to obtain for these first-of-a-kind technologies that are perceived to be risky because of the general conservative nature of rural investors. This commenter believes that this criterion would be acceptable for projects based on commercially proven technology as a quid pro quo for Agency financial assistance, but is incompatible with early stage pre-commercial technology projects. It is unwise to increase the number of points for this criterion as a result.

One commenter states that, in many cases, these projects require significant capital to complete and eliminating good projects because they do not have local ownership does not seem to support the objectives of creating a biorefinery industry.

One commenter states that these projects need to be able to take full advantage of the entire range of investment opportunity. According to the commenter, this criterion places limitations on where supporting investment comes from. As a result, the commenter believes that there is a significant likelihood that projects most likely to succeed (and the best deal to the taxpaying public) will be outscored by niche projects that will have limited impact on rural development or of filling advanced biofuel voids. Such an outcome seems to contradict the purposes of the program.

Response: The statute requires the Agency to consider local ownership. As such, the Agency must include this criterion in the rule. The Agency notes that the scoring criteria give preference; they do not determine eligibility. Thus, local ownership is not an eligibility criterion.

With regard to reducing the number of points awarded for this criterion, the Agency has considered the points proposed for this criterion relative to the other criteria and, as discussed in the response to the previous comment, has reduced the points for this criterion.

Project Replication Criterion

Comment: One commenter proposes no change in this criterion and would award a maximum of 5 points.

Response: The Agency disagrees and has increased the points awarded under this criterion from 5 to 10. The Agency, in considering all of the scoring criterion and the relative points associated with each, has determined that the ability of a project to be replicated, especially first-of-a-kind technologies, is an important quality that the Agency wishes to encourage. Thus, the Agency has increased the points associated with this criterion.

Technology Not Currently Operating in Advanced Biofuel Market Criterion

Comment: One commenter recommends eliminating this criterion because it is not explicitly stated in the 2008 Farm Bill. As stated earlier, the commenter believes that the second biorefinery is important as it learns from the first one. This criterion should not be needed to encourage the production of advanced biofuels.

Response: The purpose of the program, as provided in the statute, is to assist in the development of new and emerging technologies for the development of advanced biofuels. This criterion gives priority to such technologies. Therefore, the Agency is retaining this criterion. However, in considering the points for this criterion relative to the other criterion, the Agency has reduced the points from 15 to 5.

Comment: Several commenters state that points for a "first-of-a-kind technology" should be changed to "first commercial application of the applicant's technology."

Response: The Agency notes that the commenters are referring to language ("first-of-a-kind technology") that was used in a notice of funding availability. The rule does not use that phrase, but instead refers to "a particular technology, system, or process that is not currently operating in the advanced biofuel market as of October 1 of the fiscal year for which funding is available." This is very similar to the intent of the commenter's suggested "first commercial application of the applicant's technology," and the Agency has retained the phrasing used in the proposed rule for the interim rule.

Comment: Two commenters state that the points available for "first of a kind technology" category should be at least as high as "feedstock not previously used" in order to continue to encourage innovation.

Response: As proposed, both criteria had the same maximum number of points (15). However, the Agency is concerned that many new technologies are also likely to use new feedstocks and that the resulting 30 points was too high relative to the other criteria the Agency must consider for making awards under this program. Therefore, the Agency reduced the points under this criterion to 5, which would still provide 20 points for new technologies using new feedstocks.

Comment: One commenter believes awarding points for unproven technologies is counter-intuitive to the program mission. The commenter states that technology risk is viewed by lenders and investors as one of the biggest barriers to participating in a project. Loans and loan guarantees should reflect preference towards projects with a declining risk and points should be awarded to projects that overcome technology risk.

Response: The purpose of the program, as provided in the statute, is to assist in the development of new and emerging technologies for the development of advanced biofuels. This criterion gives priority to such technologies. Therefore, the Agency is retaining this criterion.

Comment: One commenter believes this scoring criterion provides many opportunities for unclear scoring. For example, in the commenter's case, there may be other biomass gasification technologies being used, or under construction, for the production of advanced biofuels. However, all gasification systems are not alike and, in the commenter's case, the commenter is using oxygen vs. air plus a syngas yield enhancement stage using a catalytic autothermal reformer vs. a cleanup stage. This combination is considered a different and unique technology within the field. Hence, unless a proposed project and its technology are substantially identical to other technologies in deployment, at the very detailed level, the commenter suggests that any proposed project should be eligible and achieve the maximum possible points.

Response: The Agency recognizes the concerns raised by the commenter. However, the Agency wants to continue to include this criterion in order to encourage the development of truly different and unique technologies. Thus, the Agency encourages the borrower to submit detailed information to establish that the technology is unique for the Agency to consider when scoring the project. As the program matures, the Agency may revisit this criterion to determine if any changes should be made.

Feedstock That Can Be Used for Human or Animal Consumption Criterion

Comment: One commenter recommends eliminating this criterion because almost all feedstock "can" be used for human or animal consumption under some circumstance. Further, this criterion was not explicitly listed in the 2008 Farm Bill and will not further the intent of increasing advanced biofuel production in rural America.

Response: While the Agency generally agrees with the commenter and has removed this as a separate scoring criterion from the rule, the Agency continues to believe that such feedstock should not be encouraged. To that end, the Agency, as noted elsewhere in this preamble, has incorporated a provision in the "impacts on resource conservation, public health, and environment" criterion a deduction of 5 points if the feedstock can be used for human or animal consumption.

Comment: One commenter believes that the Agency should remain feedstock neutral and award points based on the feedstock's ability to create new food and fuel opportunities. According to the commenter, just because feedstock could be used for food does not mean they would be if they otherwise would not have been grown.

Response: As explained in the previous response, the Agency has removed this as a separate scoring criterion from the rule and incorporates it as a 5-point deduction under the "impacts on resource conservation, public health, and environment" criterion.

Alternatives

Comment: One commenter recommends scoring feedstock based on their ability to be easily integrated into current agricultural practices.

Response: The Agency agrees that it would be desirable to use feedstock that can be easily integrated into current agricultural practices. However, the Agency has determined that it would be difficult to measure such integration. Furthermore, the Agency does not want to include in the rule specific feedstock criteria, except in very limited specific instances (e.g., feedstock that can be used for human or animal consumption) that could limit the Agency's implementation of the program and is concerned about establishing a lengthy inflexible permanent list of specific scoring criteria not based directly on the authorizing legislation. Therefore, for these reasons, the Agency has not included the recommendation in the rule.

Comment: One commenter recommends that scoring should be weighted towards avoidance of environmental consequences, ability to offer the agricultural industry a compelling reason to produce (value-add to what is already being done), and likelihood of leading to high capacity volumes. The commenter states that systems that integrate winter crops are an excellent example of this.

Response: With regard to the avoidance of environmental consequences, the Agency is satisfied that this is sufficiently addressed in § 4279.265(d)(6), especially with the addition of the provision to deduct points if the feedstock can be used for human or animal consumption.

With regard to the ability to offer the agricultural industry a compelling reason to produce feedstock, the Agency has determined that it is not appropriate for this program to address this proposed criterion because USDA has other programs that address this area.

With regard to including a criterion specific to the likelihood of leading to high capacity volumes, the Agency is satisfied that this is sufficiently addressed in § 4279.265(d)(10). The ability of a project to be replicated will increase the likelihood that future facilities will be able to have high capacity volume.

Comment: One commenter states that rural development is the ultimate goal, yet program rules, structure, and scoring system place considerable limits on the opportunities. The commenter recommends including the following metrics:

1. Demand for new feedstock. To what extent will the project drive the development of new agricultural-related energy crops?
2. Revenue opportunity. What are the volume needs and expected value of those crops in the vicinity of the project?
3. Job creation. How many additional rural jobs will result from the project?
4. Ease of adoption. How fungible are the new crops with respect to existing agricultural practices (use of existing equipment, storage and handling, planting and cultivating, nutrient and moisture requirements, etc.)?
5. Sustainability. To what extent is the plant and feedstock system a longer term proposition? This includes carbon intensity, use of marginal lands/double crop systems/use of waste or residue, and market outlook for products.

The commenter also states that the scoring system could be a program obstacle and recommends a more basic structure. The commenter states that DOE seems content with promoting the high risk emerging technology and niche application projects and that the Agency should measure projects based upon the mission of revitalization of the rural economy and promote projects with the greatest chance of success. The commenter recommends a scoring system based on the following:

1. Ability to deploy unutilized crop options or create new energy crops that offer new opportunities for rural America.
2. Ability to be scaled and replicated with limited technology risk.
3. Ability to provide environmental benefits and avoid environmental and social consequences.
4. Ability to be accepted into the farming community and be easily integrated into current agricultural practices.
5. Ability for the finished products to be fungible in the current marketplace, while also adding significant volumes to the market.
6. Ability to attract high ratios of equity or other investment.
7. Ability to generate attractive returns and to offer compelling reasons for financing market participation.

Response: The Agency agrees that potential rural economic development is an important metric for evaluating applications. In the rule, the Agency is using both the location of the project in a rural area and potential rural jobs to measure this metric, as found in § 4279.265(d)(8). To include the other aspects suggested by the commenter would make the scoring overly complicated and burdensome. The scoring criteria identified in the rule are either statutory and or in the Managers Report on the authorizing legislation. Statutory provisions cannot be eliminated. Therefore, the Agency has not revised the rule in response to this comment.

Comment: One commenter agrees that there should be strong requirements and incentives for local ownership and local participation, but believes that rural job growth is not given adequate weight in the proposed scoring. The commenter recommends creating a scoring criterion that would award 10 points if a certain level of new job creation is projected. In addition, the commenter suggests that the Agency consider lowering the annual or other fees if the projected job creation level is exceeded by the project.

Response: As noted in a response to a previous comment, the Agency reconsidered the points awarded for potential economic development and increased them from 5 to 10, which the Agency considers appropriate relative to the other scoring criteria.

With respect to the comment on the fees, the Agency disagrees with the suggestion to lower annual or other fees if projected job creation levels are exceeded. The fee structure is independent of the number of jobs created and is based on the cost of implementing the program. Any change in fees would have an impact on the subsidy rate for the program, which determines dollars available. Further, if fees were tied to number of jobs created exceeding projected jobs, applicants would have an incentive to project fewer jobs being created.

Comment: One commenter suggests awarding points to proposed biorefinery projects that intend to produce aviation fuels. According to the commenter, unlike automobiles, power plants, and other energy users who can turn to alternative energy sources for power, aviation does not have alternatives to petroleum-based fuels other than biofuels. Thus, to lower its carbon footprint beyond efficiency measures, aviation must have access to a supply of biofuels. Given these unique technological circumstances, the commenter believes that points should be awarded for proposed biorefinery projects that intend to produce aviation fuels. The commenter believes that declining to do so is risky—should aviation be unable to secure a significant supply of biofuels, the industry and Federal government's goal of carbon reduction will not be achievable.

Response: The Agency wants to encourage all advanced biofuels rather than giving preference to any one biofuel. Therefore, no points have been awarded for production for any one area. It is expected that increased production, in general, will increase the supply for all areas.

Comment: Two commenters suggest modifying the scoring system to award points to projects that benefit the national security needs of the U.S. For example, a biorefinery producing jet fuel used in military aircraft or aircraft used in homeland security-related missions achieves dual goals of developing the biorefinery industry in the United States and providing the Departments of Defense and Homeland Security with a domestically-produced renewable critical resource.

Response: The Agency recognizes the importance of biofuels to national security and has signed a MOU with the Navy. The MOU encourages the development of advanced biofuels in order to secure the strategic energy future of the United States. However, the purpose of the program, as provided in the statute, is to assist in the development of new and emerging technologies for the development of advanced biofuels. Further, the Agency is concerned about establishing a lengthy inflexible permanent list of specific scoring criteria not based directly on the authorizing legislation. Instead, the Agency has included in the rule a provision, for which it is seeking comment, to allow the Administrator to award bonus points to applications that promote partnerships and other activities that assist in the development of new and emerging technologies for the development of advanced biofuels that further the purpose of this Program, as stated in the authorizing legislation. The Agency will identify these partnerships and other activities in a **Federal Register** notice each fiscal year. Therefore, the Agency has determined that it is unnecessary to add the suggested scoring criterion to the rule.

Comment: Two commenters recommend awarding points for improved feedstock, where "improved" is defined as having better per-acre metrics, lower resource requirements, or otherwise great potential for being adopted on a sustainable and viable widespread basis on U.S. soil.

Response: The Agency disagrees with the comment, because it would be difficult to quantify across all current and potential feedstocks. Further, if all of these metrics are improved, the feedstock should prove more appealing to the biorefineries that use the feedstock.

Comment: One commenter encourages the Agency to retain the use of cellulosic feedstock as a scoring criterion. The commenter notes that the EISA requires that 21 billion gallons of advanced biofuel (under the EISA definition) be produced by 2022, and that 16 billion of those gallons must be must be "cellulosic biofuel." Thus, consistent with the President's directive that executive departments and agencies work together through the Biofuels Interagency Working Group to meet the Administration's advanced biofuels goals, the commenter believes that it would be appropriate for the Agency to steer loan guarantee program funds to facilities that will help to meet the large cellulosic biofuel mandate under EISA. If the Agency is concerned that algae and other feedstock do not meet the definition of cellulosic, the commenter suggests that the Agency utilize its scoring discretion to include those feedstock as well.

On the other hand, one commenter agrees with the removal of cellulosic feedstock as a scoring criterion. According to this commenter, all advanced biofuels should compete on a "level playing field," and cellulosic ethanol has already received substantially greater government investment when compared to other advanced biofuels that could serve as "drop-in" replacements for existing petroleum fuels.

One commenter points out that cellulosic biomass is the most abundantly available renewable energy source in rural America and should be favored in the scoring system.

Response: The Agency has decided not to reinsert the cellulosic feedstock criterion. The Agency wants to encourage all advanced biofuels, except in very limited specific instances (*e.g.,* feedstock that can be used for human or animal consumption). Beyond such instances, the Agency does not want to limit specific feedstock from participation in the program.

Selection of Applications for Funding (§ 4279.265(f))

Comment: While a scoring model such as the one proposed may be helpful, one commenter questions whether the model alone is an appropriate determiner of loan quality. The commenter suggests the Agency consider additional flexibility in the loan approval process based on the quality of the loan.

Response: The Agency considers factors other than the scoring criteria in determining loan quality, such as various technical, financial, and environmental factors. Identification of weaknesses during the Agency's review of these additional factors may result in a loan not being approved or they may be addressed in specific conditions in the Conditional Commitment.

Comment: One commenter, who proposes a scoring system that allows for a maximum of 100 points, believes that a score of 55 should be necessary to move forward with an application.

Response: The Agency notes that the maximum score is 100 points, and that a minimum score of 55 points is required in order to be considered for guarantee.

Comment: One commenter recommends that, given that 50 percent of the program budget must be reserved for each half of the fiscal year, in the event that all budget for a given half has been allocated, eligible applications that are received in such a half be held over to the other half and funded in the order received, and not in a new batch competition. The commenter further recommends that any budget unused in any given fiscal year should be re-allocated in the following fiscal year and applications already received should be funded in the order they were

received from the prior fiscal year. According to the commenter, this will reduce the burden and risk of applying for the program and will encourage the maximum number of qualified applications to be submitted as early as possible.

Response: As noted in the response to the following comment, the Agency intends to consider an application for funding for two funding competitions, which will result in some applications carrying over to the subsequent fiscal year. This is reflected in the rule in § 4279.265(e)(1). However, the Agency disagrees with the commenter's suggestion that applications that are carried over should not be re-competed. The Agency has determined that all applications that are carried over will be re-competed in order to fund the highest scoring/best qualified applications. To the extent allowed, the Agency may carry over mandatory funding into the next fiscal year.

Ranked Application Not Funded (§ 4279.265(g))

Comment: One commenter is concerned that there could be situations where Agency budgetary authority for a given fiscal year is insufficient to fully fund strong, highly ranked projects. Given the size of advanced biorefinery projects, it is possible that only one or two projects could constitute the entirety of the Agency's budgetary authority in any given year. Such projects could be stronger than any future projects that are submitted in applications in subsequent fiscal years and should not be competitively disadvantaged versus subsequent submissions.

The commenter, therefore, recommends allowing ranked applications that are not fully funded due to budgetary authority limitations to roll over into subsequent fiscal year budget cycles, without requiring a reapplication. Such applications could be re-ranked against new applications to ensure they are still highly ranked, and that the process remains competitive. They should not, however, be competitively disadvantaged and forced to re-apply to subsequent application periods.

Response: The Agency acknowledges that funding in certain years may not be sufficient to make awards to strong projects and that the proposed rule was unnecessarily restrictive in limiting considerations of an application to the fiscal year in which it was submitted. Therefore, the Agency has revised the rule to allow an application to be competed in two consecutive competitions, which would allow applications submitted during the second application period of a fiscal year to be carried over to the next fiscal year. However, if an application is not funded after its second competition, the Agency will not consider the application any further (the applicant would have to submit a new application). The Agency has revised the rule (see § 4279.265(e)(1) and (g)) to make this process clear.

Comment: Several commenters recommend that applicants not have to re-apply from one funding cycle to the next, but, instead, that the program operate in the same way as the B&I guaranteed loan program in this regard.

Response: The Agency generally agrees and will consider an application for one additional funding cycle. If an application still has not been selected after a second funding cycle, the application will not be considered further by the Agency because the information in the application will no longer be current. Thus, the applicant would need to submit a new application for the project.

Conditions Precedent to Issuance of Loan Note Guarantee (§ 4279.281(a))

Comment: One commenter questions why a lender needs to "certify" compliance with the Anti-Lobby Act because such information on these activities may not be available to the lender. The commenter recommends disclosing these activities in the application.

Response: The Agency disagrees. The lender is the applicant to the Agency, and the Agency is requiring this from the lender to ensure that the lender is sufficiently informed regarding the use of project fund, which would be determined by the lender as part of its due diligence.

Introduction (§ 4287.301(b))

Comment: One commenter recommends modifying § 4287.301(b) to allow non-project related collateral to be pledged to secure the non-guaranteed portion of the debt. Such segregated collateral or security could be in the form of a letter of credit, a parent company collateralized guaranty, or investment securities (or a combination). Restrictions could be placed on the ability to access such security so that it not be available unless and until payment is made on the USDA Guaranty to the holders of the guaranteed debt. In addition, the lender-of-record would not be allowed to access the security until it has completed the foreclosure process on the project and has met the requirements to collect on the USDA Guaranty on any debt held by it that is so guaranteed. This will provide assurance that the lender-of-record will meet its servicing responsibilities throughout the collateral liquidation process.

Response: The Agency does not allow separate collateral for the unguaranteed portion of the loan because the Agency wants the lender to maintain a certain level of risk in connection with the project. This makes the lender more likely to service the loan properly and take an active interest in the success of the project. The Agency has structured the program to ensure that project risk is being shared on a pro rata basis commensurate with the percentage of the loan that is guaranteed versus unguaranteed. Therefore, the Agency has not revised the rule as suggested by the commenter.

Comment: One commenter states that the timing of project equity funding under the proposed rule is under-addressed. The commenter recommends pro rata funding of project equity with loan disbursements, provided the underlying equity commitments are on a firm basis from creditworthy entities (defined as investment grade or otherwise deemed creditworthy by the lender). If the equity commitments are not from creditworthy entities, then upfront equity funding from less than creditworthy sponsors shall be required as a condition of closing.

Response: At closing, the lender must demonstrate the equity is available. At project completion, the lender must certify funds were disbursed in accordance with the Conditional Commitment. Between closing and completion, there are no rule requirements regarding the order in which equity funds and loan funds are disbursed. However, the Agency agrees with the commenter's characterization that the timing of project equity funding is under-addressed in rule. Therefore, the Agency has clarified the rule (see § 4279.234(c)(1)) that the equity requirement must be demonstrated at the time the loan is closed.

Exception Authority (§ 4287.303)

Comment: One commenter recommends providing the Administrator with the widest possible authority for every criterion except for those specifically limited in the statute.

Response: The Agency disagrees that the exception authority needs to be "the widest possible authority for every criterion." The exception authority provided is adequate, and the Agency only exercises this authority when it is not inconsistent with applicable law and when not making an exception

adversely affects the Federal Government's interest.

Other—Working Capital Loans

Comment: One commenter recommends that a portion of the funds dedicated to loan guarantees be converted to working capital and equipment loans for startup businesses. The commenter states that, although several projects are prime for the commercialization of algae as an alternate fuel, traditional funding sources are non-existent in the current economy. If lenders are not making loans, there are no loans to guarantee. The basics of the lending could mirror the guarantee program with certain exceptions:

Commercial lending in the U.S. is virtually non-existent due to the current economic conditions. The inability to obtain working capital and construction funds has significantly slowed the progress of development of alternate fuels. Funds have become available in terms of grants for research and development (as opposed to the commercial applications), and the current financing opportunities are based on grants with milestone payments but no repayment obligation and has primarily supported the academic community and government laboratories. The commenter states that: (a) The technologies that have been created have no value until there is a viable market for them, and (b) laboratories and universities have not, to date, shown the ability to commercialize the algae industry. Their purpose is restricted to research. The commenter believes that a portion of the funds allocated for loan guarantees should be converted to direct loans to individuals and companies who plan to build products in the U.S. and employ U.S. workers. The guidelines for required documentation have already been stated; the only difference is that the Agency would be taking on the role of the lender, subject to servicing arrangements which would probably be handled by a third party service provider on behalf of the Agency. The risk would be greater than with a loan guarantee, but the rewards would include the ability to negotiate loans with shorter terms, requiring the borrowers to generate revenue and loan repayment history so that, when the economy strengthens, they are 'bankable' or investment-grade companies. The commenter believes that this program will further support the concept that private companies and investors will be attracted to invest in these companies once they have proven themselves to be credit-worthy.

Response: The statute authorizing this program does not provide the Agency with the authority to provide direct funding.

Other—Algae Related Projects

Comment: One commenter requests exemptions for algae-related projects involving off-take contracts covering a significant percentage of the biocrude with the two biggest users, the U.S. airlines and the U.S. military, because of the urgent need to develop alternative fuel sources and the lack of traditional lending sources. The governments of many other countries are beginning to invest in commercialization, following the commenter's belief that additional research will be needed after actual commercial-scale production has begun, and the funds need to be made available for construction of commercial production facilities. The commenter states that sites could be built out for production at an approximate cost of $1 million to $2 million per acre and that, although the Agency is not a regulated or supervised lender, it could oversee financing of loans structured with (a) first lien positions, (b) fixed-cost contracts and take-out commitments, (c) required off-take contracts from either the U.S. military or U.S. airlines, (d) interest and repayment terms, and (e) all of the other components of traditional short-term commercial loans.

Response: To the extent the commenter is asking for direct loan financing, the statute authorizing this program does not provide the Agency with the authority to provide direct funding. To the extent the commenter is seeking preferential treatment for algae-related projects, the Agency has adopted a policy of wanting to have a program that is, in part, technologically neutral. Such preferential treatment for algae-related projects would provide preferences for technologies inconsistent with this policy. The Agency believes that technology neutrality, along with feedstock and geographic neutrality, is critical to meeting the purposes of the program, which is to encourage broad-based advanced biofuel production practices, technologies, and feedstock.

Other—Disbursement of Guaranteed and Unguaranteed Portions

Comment: Three commenters believe that requiring the simultaneous disbursement of the guaranteed and unguaranteed portions will unduly burden projects using bonds with excess "negative carry" costs (the difference between the interest rate on the loans and money market reinvestment rates earned while funds are held pending disbursement). Construction periods for capital intensive projects of the type envisioned under the program are generally very long. Most project financings with long construction periods rely on bank lenders to disburse funds over a construction loan period and thereby avoid negative carry costs. However, when bonds are one of the funding sources, bond market convention requires simultaneous closing and funding of bond proceeds. In cases when bonds and bank loans are used together for a project financing, bonds are generally placed first with proceeds held in a disbursement account pending construction draws. Once the bond proceeds have been used, the bank lender then funds its share of the loans over the remainder of the construction period.

The commenters recommend allowing the guaranteed and unguaranteed portions, whether capital markets offerings or bank loans, to be funded disproportionally in order to reduce construction period interest costs for the projects. To address the potential mismatch in exposure based on differing funding schedules, the Intercreditor Agreement will require that upon a default the under-funded lender (likely to be the guaranteed bank lender) fund its pro rata share of the loans (or purchase pro rata participations from the over-funded lender). As is typical for project financings, a requirement that satisfactory debt and equity commitments for the full funding of the project budget are entered into at closing should also be added to the list of program requirements.

Response: The Agency is not adopting this comment. The lender is required to proportionally disburse the guaranteed and unguaranteed funding to reduce Agency risk and maintains the lender's financial stake in the project.

IV. Request for Comments

The Agency is interested in receiving comments on all aspects of the interim rule. The area in which the Agency is seeking specific comments is identified below. All comments should be submitted as indicated in the **ADDRESSES** section of this preamble.

1. *Local owner definition.* The Agency is seeking comments on the best mechanism for defining a local owner. Should it reflect a uniform distance? If not, should we define differently for different regions? Should we reflect different distances based on the type of technology? Are there any other factors the Agency should consider? Should this be established by notice or by

regulation? Please be sure to include your rationale for your suggestions.

2. *Administrator bonus points.* The Agency is seeking comment on whether this is an appropriate use of Administrator bonus points. The Agency is also seeking comment on whether there is a mechanism more suitable than Administrator bonus points to adopt this program to the dynamic nature of the biorefinery industry. Please be sure to include your rationale for your suggestions.

List of Subjects in 7 CFR Parts 4279 and 4287

Biorefinery assistance, Loan programs—Business and industry, Rural development assistance, Rural areas.

For the reasons set forth in the preamble, title 7, chapter XLII of the Code of Federal Regulations, is amended as follows:

CHAPTER XLII—RURAL BUSINESS–COOPERATIVE SERVICE AND RURAL UTILITIES SERVICE, DEPARTMENT OF AGRICULTURE

PART 4279—GUARANTEED LOANMAKING

■ 1. The authority citation for part 4279 is amended to read as follows:

Authority: 5 U.S.C. 301; and 7 U.S.C. 1989.

■ 2. Part 4279 is amended by adding a new subpart C to read as follows:

Subpart C—Biorefinery Assistance Loans

Sec.

4279.201 Purpose and scope.
4279.202 Compliance with §§ 4279.1 through 4279.84.
4279.203–4279.223 [Reserved]
4279.224 Loan processing.
4279.225 Ineligible loan purposes.
4279.226 Fees.
4279.227 Borrower eligibility.
4279.228 Project eligibility.
4279.229 Guaranteed loan funding.
4279.230 [Reserved]
4279.231 Interest rates.
4279.232 Terms of loan.
4279.233 [Reserved]
4279.234 Credit evaluation.
4279.235–4279.236 [Reserved]
4279.237 Financial statements.
4279.238–4279.243 [Reserved]
4279.244 Appraisals.
4279.245–4279.249 [Reserved]
4279.250 Feasibility studies.
4279.251–4279.254 [Reserved]
4279.255 Loan priorities.
4279.256 Construction planning and performing development.
4279.257–4279.258 [Reserved]
4279.259 Borrower responsibilities.
4279.260 Guarantee applications—general.
4279.261 Application for loan guarantee content.
4279.262–4279.264 [Reserved]
4279.265 Guarantee application evaluation.
4279.266–4279.278 [Reserved]
4279.279 Domestic lamb industry adjustments assistance program.
4279.280 Changes in borrowers.
4279.281 Conditions precedent to issuance of loan note guarantee.
4279.282–4279.289 [Reserved]
4279.290 Requirements after project construction.
4279.291–4279.300 [Reserved]

Subpart C—Biorefinery Assistance Loans

§ 4279.201 Purpose and scope.

The purpose and scope of this subpart is to provide financial assistance for the development and construction of commercial-scale biorefineries or for the retrofitting of existing facilities using eligible technology for the development of advanced biofuels.

§ 4279.202 Compliance with §§ 4279.1 through 4279.84.

Except as specified in paragraphs (a) through (l) of this section, all loans guaranteed under this subpart shall comply with the provisions found in §§ 4279.1 through 4279.84 of this title.

(a) *Definitions.* The terms used in this subpart are defined in either § 4279.2 or in this paragraph. If a term is defined in both § 4279.2 and this paragraph, it will have, for purposes of this subpart only, the meaning given in this section.

Advanced biofuel. Fuel derived from renewable biomass, other than corn kernel starch, to include:

(i) Biofuel derived from cellulose, hemicellulose, or lignin;

(ii) Biofuel derived from sugar and starch (other than ethanol derived from corn kernel starch);

(iii) Biofuel derived from waste material, including crop residue, other vegetative waste material, animal waste, food waste, and yard waste;

(iv) Diesel-equivalent fuel derived from renewable biomass, including vegetable oil and animal fat;

(v) Biogas (including landfill gas and sewage waste treatment gas) produced through the conversion of organic matter from renewable biomass;

(vi) Butanol or other alcohols produced through the conversion of organic matter from renewable biomass; and

(vii) Other fuel derived from cellulosic biomass.

Agricultural producer. An individual or entity directly engaged in the production of agricultural products, including crops (including farming); livestock (including ranching); forestry products; hydroponics; nursery stock; or aquaculture, whereby 50 percent or greater of their gross income is derived from the operations.

Association of agricultural producers. An organization that represents agricultural producers and whose mission includes working on behalf of such producers and the majority of whose membership and board of directors is comprised of agricultural producers.

Biobased product. A product determined by the Secretary to be a commercial or industrial product (other than food or feed) that is either:

(i) Composed, in whole or in significant part, of biological products, including renewable domestic agricultural materials and forestry materials; or

(ii) An intermediate ingredient or feedstock.

Biofuel. A fuel derived from renewable biomass.

Biorefinery. A facility (including equipment and processes) that converts renewable biomass into biofuels and biobased products and may produce electricity.

Borrower. Any party that borrows or seeks to borrow money from the lender, including any party or parties liable for the guaranteed loan except guarantors.

Business plan. A comprehensive document that includes a clear description of the borrower's ownership structure and management experience, including, if applicable, discussion of a parent, affiliates, and subsidiaries, and a discussion of how the borrower will operate the proposed project, including, at a minimum, a description of the business and project; the products and services to be provided; the availability of the resources necessary to provide those products and services; and pro forma financial statements for a period of 2 years, including balance sheet, income and expense, and cash flows.

Byproduct. Any and all biobased products generated under normal operations of the proposed project that can be reasonably measured and monitored. Byproducts may or may not have a readily identifiable commercial use or value.

Default. The condition that exists when a borrower is not in compliance with the promissory note, the loan agreement, or other related documents evidencing the loan.

Eligible project costs. Those expenses approved by the Agency for the project.

Eligible technology. Eligible technology is defined as either:

(i) A technology that is being adopted in a viable commercial-scale operation of a biorefinery that produces an advanced biofuel; or

(ii) A technology not described in paragraph (i) of this definition that has been demonstrated to have technical and economic potential for commercial

application in a biorefinery that produces an advanced biofuel.

Existing business. A business that has been in operation for at least one full year. Businesses that have undergone mergers, changes in the business name, changes in the legal type of entity, or expansions of product lines are considered to be existing businesses as long as there is not a significant change in operations.

Farm cooperative. A business owned and controlled by agricultural producers that is incorporated, or otherwise recognized by the state in which it operates, as a cooperatively operated business.

Farmer Cooperative Organization. An organization whose membership is composed of farm cooperatives.

Feasibility study. An analysis by an independent qualified consultant of the economic, market, technical, financial, and management feasibility of a proposed project or business in terms of its expectation for success.

Indian tribe. This term has the meaning as defined in 25 U.S.C. 450b.

Institution of higher education. This term has the meaning as defined in 20 U.S.C. 1002(a).

Loan classification. The assigned score or metric reflecting the lender's analysis of the degree of potential loss in the event of default.

Local owner. An individual who owns any portion of an eligible advanced biofuel biorefinery and whose primary residence is located within in a certain distance from the biorefinery as specified by the Agency in a Notice published in the **Federal Register**.

Market value. The amount for which a property will sell for its highest and best use at a voluntary sale in an arm's length transaction.

Material adverse change. Any change in the purpose of the loan, the financial condition of the borrower, or the collateral that would likely jeopardize loan performance.

Negligent loan origination. The failure of a lender to perform those services that a reasonably prudent lender would perform in originating its own portfolio of unguaranteed loans. The term includes the concepts of failure to act, not acting in a timely manner, or acting in a manner contrary to the manner in which a reasonably prudent lender would act.

Off-take agreement. The terms and conditions governing the sale and transportation of biofuels, biobased products, and electricity produced by the borrower to another party.

Project. The facility or portion of a facility producing eligible advanced biofuels and any eligible biobased product receiving funding under this subpart.

Protective advances. Advances made by the lender for the purpose of preserving and protecting the collateral where the debtor has failed to, and will not or cannot, meet its obligations to protect or preserve collateral.

Renewable biomass.

(i) Materials, pre-commercial thinnings, or invasive species from National Forest System land or public lands (as defined in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702)) that:

(A) Are byproducts of preventive treatments that are removed to reduce hazardous fuels; to reduce or contain disease or insect infestation; or to restore ecosystem health;

(B) Would not otherwise be used for higher-value products; and

(C) Are harvested in accordance with applicable law and land management plans and the requirements for old-growth maintenance, restoration, and management direction of paragraphs (2), (3), and (4) of subsection (e) of section 102 of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6512) and large-tree retention of subsection (f) of that section; or

(ii) Any organic matter that is available on a renewable or recurring basis from non-Federal land or land belonging to an Indian or Indian tribe that is held in trust by the United States or subject to a restriction against alienation imposed by the United States, including:

(A) Renewable plant material, including feed grains; other agricultural commodities; other plants and trees; and algae; and

(B) Waste material, including crop residue; other vegetative waste material (including wood waste and wood residues); animal waste and byproducts (including fats, oils, greases, and manure); and food waste and yard waste.

Retrofitting. The modification of a building or equipment to incorporate functions not included in the original design that allow for the production of advanced biofuels.

Rural or rural area. Any area of a State not in a city or town that has a population of more than 50,000 inhabitants, according to the latest decennial census of the United States, or in the urbanized area contiguous and adjacent to a city or town that has a population of more than 50,000 inhabitants, and any area that has been determined to be "rural in character" by the Under Secretary for Rural Development, or as otherwise identified in this definition.

(1) An area that is attached to the urbanized area of a city or town with more than 50,000 inhabitants by a contiguous area of urbanized census blocks that is not more than 2 census blocks wide. Applicants from such an area should work with their Rural Development State Office to request a determination of whether their project is located in a rural area under this provision.

(2) For the purposes of this definition, cities and towns are incorporated population centers with definite boundaries, local self government, and legal powers set forth in a charter granted by the State.

(3) For the Commonwealth of Puerto Rico, the island is considered rural and eligible for Business Programs assistance, except for the San Juan Census Designated Place (CDP) and any other CDP with greater than 50,000 inhabitants. CDPs with greater than 50,000 inhabitants, other than the San Juan CDP, may be determined to be eligible if they are "not urban in character."

(4) For the State of Hawaii, all areas within the State are considered rural and eligible for Business Programs assistance, except for the Honolulu CDP within the County of Honolulu.

(5) For the purpose of defining a rural area in the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands, the Agency shall determine what constitutes rural and rural area based on available population data.

(6) The determination that an area is "rural in character" will be made by the Under Secretary of Rural Development. The process to request a determination under this provision is outlined in paragraph (6)(ii) of this definition.

(i) The determination that an area is "rural in character" under this definition will apply to areas that are within:

(A) An urbanized area that has two points on its boundary that are at least 40 miles apart, which is not contiguous or adjacent to a city or town that has a population of greater than 150,000 inhabitants or the urbanized area of such a city or town; or

(B) An urbanized area contiguous and adjacent to a city or town of greater than 50,000 inhabitants that is within one-quarter mile of a rural area.

(ii) Units of local government may petition the Under Secretary of Rural Development for a "rural in character" designation by submitting a petition to both the appropriate Rural Development State Director and the Administrator on behalf of the Under Secretary. The petition shall document how the area meets the requirements of paragraph

(6)(i)(A) or (B) above and discuss why the petitioner believes the area is "rural in character," including, but not limited to, the area's population density, demographics, and topography and how the local economy is tied to a rural economic base. Upon receiving a petition, the Under Secretary will consult with the applicable Governor or leader in a similar position and request comments to be submitted within 5 business days, unless such comments were submitted with the petition. The Under Secretary will release to the public a notice of a petition filed by a unit of local government not later than 30 days after receipt of the petition by way of publication in a local newspaper and posting on the Agency's Web site, and the Under Secretary will make a determination not less than 15 days, but no more than 60 days, after the release of the notice. Upon a negative determination, the Under Secretary will provide to the petitioner an opportunity to appeal a determination to the Under Secretary, and the petitioner will have 10 business days to appeal the determination and provide further information for consideration.

Semi-work scale. A manufacturing plant operating on a limited commercial scale to provide final tests of a new product or process.

Startup business. A business that has been in operation for less than one full year. Startup businesses include newly formed entities leasing space or constructing facilities in a new market area, even if the owners of the startup business own affiliated businesses doing the same kind of business. Newly formed entities that are buying existing businesses or facilities will be considered an existing business as long as the business or facility being bought remains in operation and there is no significant change in operations.

Tangible net worth. Tangible assets minus liabilities.

Technical and economic potential. A technology not described in paragraph (i) of the definition of "eligible technology" is considered to have demonstrated "technical and economic potential" for commercial application in a biorefinery that produces an advanced biofuel if each of the following conditions is met:

(i) The advanced biofuel biorefinery's likely financial and production success is evidenced in a thorough evaluation including, but not limited to:

(A) Feedstocks;

(B) Process engineering;

(C) Siting;

(D) Technology;

(E) Energy production; and

(F) Financial and sensitivity review using a banking industry software analysis program with appropriate industry standards.

(ii) The evaluation in paragraph (i) of this definition is completed by an independent third-party expert in a feasibility study, technical report, or other analysis, which must be satisfactory to the Agency, that demonstrates the potential success of the project.

(iii) The advanced biofuel technology has successfully completed at least a 12 -month (four seasons) operating cycle at semi-work scale.

Tier 1 capital. This term has the meaning given it under applicable Federal Deposit Insurance Corporation regulations.

Tier 2 capital. This term has the meaning given it under applicable Federal Deposit Insurance Corporation regulations.

Tier 1 leverage capital ratio. This term has the meaning given it under applicable Federal Deposit Insurance Corporation regulations.

Tier 1 risk-based capital ratio. This term has the meaning given it under applicable Federal Deposit Insurance Corporation regulations.

Total project costs. The sum of all costs associated with a completed project.

Total qualifying capital. This term has the meaning given to it under applicable Federal Deposit Insurance Corporation regulations.

Total risk-based capital ratio. This term has the meaning given it under applicable Federal Deposit Insurance Corporation regulations.

Viable commercial-scale operation. An operation is considered to be a viable commercial-scale operation if it demonstrates that:

(i) Its revenue will be sufficient to recover the full cost of the project over the term of the loan and result in an anticipated annual rate of return sufficient to encourage investors or lenders to provide funding for the project;

(ii) It will be able to operate profitably without public and private sector subsidies upon completion of construction (volumetric excise tax is not included as a subsidy);

(iii) Contracts for feedstocks are adequate to address proposed off-take from the biorefinery;

(iv) It has the ability to achieve market entry, suitable infrastructure to transport the advanced biofuel to its market is available, and the advanced biofuel technology and related products are generally competitive in the market;

(v) It can be easily replicated and that replications can be sited at multiple facilities across a wide geographic area based on the proposed deployment plan; and

(vi) The advanced biofuel technology has at least a 12-month (four seasons) successful operating history at semi-work scale, which demonstrates the ability to operate at a commercial scale.

Working capital. Current assets available to support a business's operations and growth. Working capital is calculated as current assets less current liabilities.

(b) *Exception authority.* The exception authority provisions of this paragraph apply to this subpart instead of those in § 4279.15. The Administrator may, with the concurrence of the Secretary of Agriculture, make an exception, on a case-by-case basis, to any requirement or provision of this subpart that is not inconsistent with any authorizing statute or applicable law, if the Administrator determines that application of the requirement or provision would adversely affect the Federal government's interest.

(c) *Lender eligibility requirements.* The requirements specified in § 4279.29 do not apply to this subpart. Instead, a lender must meet the requirements specified in paragraphs (c)(1) through (c)(5) of this section in order to be approved for participation in this program.

(1) An eligible lender is any Federal or State chartered bank, Farm Credit Bank, other Farm Credit System institution with direct lending authority, and Bank for Cooperatives. These entities must be subject to credit examination and supervision by either an agency of the United States or a State. Credit unions subject to credit examination and supervision by either the National Credit Union Administration or a State agency, and insurance companies regulated by a State or National insurance regulatory agency are also eligible lenders. The National Rural Utilities Cooperative Finance Corporation is also an eligible lender. Savings and loan associations, mortgage companies, and other lenders as identified in 7 CFR 4279.29(b) are not eligible.

(2) The lender must demonstrate the minimum acceptable levels of capital specified in paragraphs (c)(2)(i) through (c)(2)(iii) of this section at the time of application and at time of issuance of the loan note guarantee. This information may be identified in Call Reports and Thrift Financial Reports. If the information is not identified in the Call Reports or Thrift Financial Reports, the lender will be required to calculate

its levels and provide them to the Agency.

(i) Total Risk-Based Capital ratio of 10 percent or higher;

(ii) Tier 1 Risk-Based Capital ratio of 6 percent or higher; and

(iii) Tier 1 Leverage Capital ratio of 5 percent or higher.

(3) The lender must not be debarred or suspended by the Federal government.

(4) If the lender is under a cease and desist order from a Federal agency, the lender must inform the Agency. The Agency will evaluate the lender's eligibility on a case-by-case basis given the risk of loss posed by the cease and desist order.

(5) The Agency, in its sole determination, will approve applications for loan guarantees only from lenders with adequate experience and expertise, from similar projects, to make, secure, service, and collect loans approved under this subpart.

(d) *Independent credit risk analysis.* The Agency will require an evaluation and credit rating of the total project's indebtedness, without consideration for a government guarantee, from a nationally-recognized rating agency for loans of $125,000,000 or more.

(e) *Environmental responsibilities.* The provisions of this paragraph shall be used instead of the provisions specified in § 4279.30(c) for determining a lender's environmental responsibilities under this subpart. Lenders have a responsibility to become familiar with Federal environmental requirements; to consider at the earliest planning stages, in consultation with the prospective borrower, the potential environmental impacts of their proposals; and to develop proposals that minimize the potential to adversely impact the environment.

(1) Lenders must alert the Agency to any controversial environmental issues related to a proposed project or items that may require extensive environmental review.

(2) Lenders must help the borrower prepare Form RD 1940–20, "Request for Environmental Information," (when required by 7 CFR part 1940, subpart G, or successor regulations); assist in the collection of additional data when the Agency needs such data to complete its environmental review of the proposal; and assist in the resolution of environmental problems.

(3) Lenders must ensure that the borrower has:

(i) Provided the necessary environmental information to enable the Agency to undertake its environmental review process in accordance with 7 CFR part 1940, subpart G, or successor regulations, including the provision of all required Federal, State, and local permits;

(ii) Complied with any mitigation measures required by the Agency; and

(iii) Not taken any actions or incurred any obligations with respect to the proposed project that will either limit the range of alternatives to be considered during the Agency's environmental review process or which will have an adverse effect on the environment.

(f) *Additional lender functions and responsibilities.* In addition to the requirements in § 4279.30, the requirements specified in paragraphs (f)(1) through (f)(3) apply.

(1) Any action or inaction on the part of the Agency does not relieve the lender of its responsibilities to originate and service the loan guaranteed under this subpart.

(2) The lender must compile a complete application for each guaranteed loan and maintain such application in its files for at least 3 years after the final loss has been paid.

(3) The lender must report to the Agency all conflicts of interest and appearances of conflicts of interest.

(g) *Certified lender program.* Section 4279.43 does not apply to this subpart.

(h) *Oversight and monitoring.* In addition to complying with requirements specified in § 4279.44, the lender will cooperate fully with Agency oversight and monitoring of all lenders involved in any manner with any guarantee under the Biorefinery Assistance program to ensure compliance with this subpart. Such oversight and monitoring will include, but is not limited to, reviewing lender records and meeting with lenders (in accordance with § 4287.107(c)).

(i) *Conditions of guarantee.* All loan guarantees under this subpart are subject to the provisions of § 4279.72, except for § 4279.72(b), and the provisions specified in paragraphs (i)(1) through (i)(5) of this section.

(1) The entire loan, the guaranteed and unguaranteed portions, must be secured by a first lien on all collateral necessary to run the project. The Agency may consider a subordinate lien position on inventory and accounts receivable for working capital loans provided: The Agency determines the working capital is necessary for the operation; with the subordination, the Agency remains adequately secured; and the subordination is in the best interests of the Government.

(2) The holder of a guaranteed portion shall have all rights of payment, as defined in the loan note guarantee, to the extent of the portion purchased. Even if all or a portion of the loan note guarantee has been sold to a holder, the lender will remain bound by all obligations under the loan note guarantee, Lender's Agreement, and Agency program regulations.

(3) The lender must be shown as an additional insured on insurance policies (or other risk sharing instruments) that benefit the project and must be able to assume any contracts that are material to running the project, including any feedstock or off-take agreements, as may be applicable.

(4) If a lender does not satisfactorily comply with the provision found in § 4279.256(c) and such failure leads to losses, then such losses may not be recoverable under the guarantee.

(5) When a guaranteed portion of a loan is sold to a holder, the holder shall succeed to all rights of the lender under the Loan Note Guarantee to the extent of the portion purchased. The lender will remain bound to all obligations under the Loan Note Guarantee, Lender's Agreement, and the Agency program regulations. A guarantee and right to require purchase will be directly enforceable by a holder notwithstanding any fraud or misrepresentation by the lender or any unenforceability of the guarantee by the lender, except for fraud or misrepresentation of which the holder had actual knowledge at the time it became the holder or in which the holder participates or condones. The lender will reimburse the Agency for any payments the Agency makes to a holder of lender's guaranteed loan that, under the Loan Note Guarantee, would not have been paid to the lender had the lender retained the entire interest in the guaranteed loan and not conveyed an interest to a holder.

(j) *Sale or assignment of guaranteed loan.* The provisions of § 4279.75 apply to this subpart.

(k) *Minimum retention.* The provisions of § 4279.77 apply to this subpart, except that the lender is required to hold in its own portfolio a minimum of 7.5 percent of the total loan amount.

(l) *Replacement of document.* Documents must be replaced in accordance with § 4279.84, except, in § 4279.84(b)(1)(v), a full statement of the circumstances of any defacement or mutilation of the Loan Note Guarantee or Assignment Guarantee Agreement would also need to be provided.

§§ 4279.203–4279.223 [Reserved]

§ 4279.224 Loan processing.

Processing of Biorefinery Assistance Guaranteed loans under this subpart shall comply with the provisions found

in §§ 4279.107 through 4279.187 of this chapter, except as provided in the following sections.

§ 4279.225 Ineligible loan purposes.

For the purposes of this subpart, the ineligible purposes identified in § 4279.114(b), (c), and (p) do not apply to this subpart.

§ 4279.226 Fees.

Fees will be determined according to the provisions of this section in lieu of § 4279.107.

(a) *Guarantee fee.* The guarantee fee will be paid to the Agency by the lender and is nonrefundable. The fee may be passed on to the borrower. Issuance of the Loan Note Guarantee is conditioned on payment of the guarantee fee by closing. The guarantee fee will be the percentage specified in paragraphs (a)(1) or (a)(2) of this section, as applicable, unless otherwise specified by the Agency in a notice published in the **Federal Register**, multiplied by the principal loan amount multiplied by the percent of guarantee and will be paid one time only at the time the Loan Note Guarantee is issued.

(1) For loans receiving a 90 percent guarantee, the guarantee fee is three percent.

(2) For loans receiving less than a 90 percent guarantee, the guarantee fee is:

(i) Two percent for guarantees on loans greater than 75 percent of total project costs.

(ii) One and one-half percent for guarantees on loans of greater than 65 percent but less than or equal to 75 percent of total project costs.

(iii) One percent for guarantees on loans of 65 percent or less of total project costs.

(b) *Annual renewal fee.* The annual renewal fee, which may be passed on to the borrower, will be paid to the Agency for as long as the guaranteed loan is outstanding and is payable during the construction period. Unless otherwise specified by the Agency in a notice published in the **Federal Register**, the annual renewal fee shall be as follows:

(1) One hundred basis points (1 percent) for guarantees on loans that were originally greater than 75 percent of total project costs.

(2) Seventy five basis points (0.75 percent) for guarantees on loans that were originally greater than 65 percent but less than or equal to 75 percent of total project costs.

(3) Fifty basis points (0.50 percent) for guarantees on loans that were originally for 65 percent or less of total project costs.

§ 4279.227 Borrower eligibility.

Borrower eligibility will be determined according to the provisions of this section in lieu of § 4279.108.

(a) *Eligible entities.* To be eligible, a borrower must meet the requirements specified in paragraphs (a)(1) and (a)(2) of this section, as applicable.

(1) *Type of borrower.* The borrower must be one of the following:

(i) An individual;

(ii) An entity;

(iii) An Indian tribe;

(iv) A unit of State or local government;

(v) A corporation;

(vi) A farm cooperative;

(vii) A farmer cooperative organization;

(viii) An association of agricultural producers;

(ix) A National Laboratory;

(x) An institution of higher education;

(xi) A rural electric cooperative;

(xii) A public power entity; or

(xiii) A consortium of any of the above entities.

(2) *Legal authority and responsibility.* Each borrower must have, or obtain before loan closing, the legal authority necessary to construct, operate, and maintain the proposed facility and services and to obtain, give security for, and repay the proposed loan.

(b) *Ineligible entities.* A borrower will be considered ineligible for a guarantee if the borrower, any owner with more than 20 percent ownership interest in the borrower, or any owner with more than 3 percent ownership interest in the borrower if there is no owner with more than 20 percent ownership interest in the borrower:

(1) Has an outstanding judgment obtained by the U.S. in a Federal Court (other than U.S. Tax Court),

(2) Is delinquent on the payment of Federal income taxes,

(3) Is delinquent on a Federal debt, or

(4) Is debarred or suspended from receiving Federal assistance.

§ 4279.228 Project eligibility.

In lieu of the requirements specified in § 4279.113, to be eligible for a guaranteed loan under this subpart, at a minimum, a borrower and project, as applicable, must meet each of the requirements specified in paragraphs (a) through (g) of this section.

(a) The project must be located in a State, as defined in § 4279.2.

(b) The project must be for either:

(1) The development and construction of commercial-scale biorefineries using eligible technology or

(2) The retrofitting of existing facilities, including, but not limited to, wood products facilities and sugar mills, with eligible technology.

(c) The project must use an eligible feedstock for the production of advanced biofuels and biobased products. Eligible feedstocks include, but are not limited to, renewable biomass, including municipal solid waste consisting of renewable biomass, biosolids, treated sewage sludge, and byproducts of the pulp and paper industry. For the purposes of this subpart, recycled paper is not an eligible feedstock.

(d) The majority of the biorefinery production must be an advanced biofuel. Unless otherwise approved by the Agency, and determined to be in the best financial interest of the government, the advanced biofuel must be sold as a biofuel. The following will be considered in determining what constitutes the majority of production:

(1) When the biorefinery produces a biobased product and, if applicable, byproduct that has an established BTU content from a recognized Federal source, majority biofuel production will be based on BTU content of the advanced biofuel, the biobased product, and, if applicable, the byproduct, or

(2) When the biorefinery produces a biobased product or, if applicable, byproduct that does not have an established BTU content, then majority biofuel production will be based on output volume, using parameters announced by the Agency in periodic Notices in the **Federal Register**, of the advanced biofuel, the biobased product, and, if applicable, the byproduct.

(e) An advanced biofuel that is converted to another form of energy for sale will still be considered an advanced biofuel.

(f) The project must provide funds (*e.g.,* cash, subordinate financing, non-federal grant) of not less than 20 percent of eligible project costs. All projects must meet the equity requirements specified in § 4279.234(c)(1).

(g) The Agency will consider refinancing only under either of the two conditions specified in paragraphs (g)(1) and (g)(2) of this section.

(1) Permanent financing used to refinance interim construction financing of the proposed project only if the application for the guaranteed loan under this subpart was approved prior to closing the interim loan for the construction of the facility.

(2) Refinancing that is no more than 20 percent of the loan for which the Agency is guaranteeing and the purpose of the refinance is to enable the Agency to establish a first lien position with respect to pre-existing collateral subject to a pre-existing lien and the refinancing would be in the best financial interests of the Federal Government.

§ 4279.229 Guaranteed loan funding.

Instead of the provisions found in § 4279.119, the provisions of this section apply to loans guaranteed under this subpart.

(a) In administering this program's budgetary authority each fiscal year, the Agency will allocate up to, but no more, than 50 percent of its budgetary authority to fund applications received by the end of the first application window, including those carried over from the previous application period. Any funds not obligated to support applications submitted by the end of the first application window will be available to support applications received by the end of the second window, including those carried over from the previous application period. The Agency, therefore, will have a minimum of 50 percent of each fiscal year's budgetary authority for this program available to support applications received by the end of the second application window.

(b) The amount of a loan guaranteed for a project under this subpart will not exceed 80 percent of total eligible project costs. Total Federal participation will not exceed 80 percent of total eligible project costs. The borrower needs to provide the remaining 20 percent from other non-Federal sources to complete the project. Eligible project costs are specified in paragraph (e) of this section.

(c) The maximum principal amount of a loan guaranteed under this subpart is $250 million to one borrower; there is no minimum amount. If an eligible borrower receives other direct Federal funding (*i.e.,* direct loans and grants) for a project, the amount of the loan that the Agency will guarantee under this subpart must be reduced by the same amount of the other direct Federal funding that the eligible borrower received for the project. For example, an eligible borrower is applying for a loan guarantee on a $1 million project. The borrower provides the minimum matching requirement of 20 percent, or $200,000. This leaves $800,000 in other funding needed to implement the project. If the borrower receives no other direct Federal funding for this project and requests a guarantee for the $800,000, the Agency will consider a guarantee on the $800,000. However, if this borrower receives $100,000 in other direct Federal funding for this project, the Agency will only consider a guarantee on $700,000.

(d) The maximum guarantee on the principal and interest due on a loan guaranteed under this subpart will be determined as specified in paragraphs (d)(1) through (d)(4) of this section.

(1) If the loan amount is equal to or less than $125 million, 80 percent for the entire loan amount unless all of the conditions specified in paragraphs (d)(1)(i) through (d)(1)(iii) of this section are met, in which case 90 percent for the entire loan amount.

(i) Equity of 40 percent, excluding qualified intellectual property;

(ii) Feedstock and off-take contracts of at least 1 year in duration; and

(iii) Collateral coverage ratio, total discounted collateral value divided by total loan request, exceeding 1.5 to 1.

(2) If the loan amount is more than $125 million and less than $150 million, 80 percent for the entire loan amount.

(3) If the loan amount is equal to or more than $150 million but less than $200 million, 70 percent on the entire loan amount.

(4) If the loan amount is $200 million up to and including $250 million, 60 percent on the entire loan amount.

(e) Eligible project costs are only those costs associated with the items listed in paragraphs (e)(1) through (e)(7) of this section, as long as the items are an integral and necessary part of the total project, as determined by the Agency.

(1) Purchase and installation of equipment (new, refurbished, or remanufactured), except agricultural tillage equipment, used equipment, and vehicles.

(2) Construction or retrofitting.

(3) Permit and license fees.

(4) Working capital.

(5) Land acquisition.

(6) Cost of financing, excluding guarantee and renewal fees.

(7) Any other item identified by the Agency in a notice published in the **Federal Register**.

(f) Loans made with the proceeds of any obligation the interest on which is excludable from income under the Internal Revenue Code are ineligible. Funds generated through the issuance of tax-exempt obligations cannot be used to purchase the guaranteed portion of any Agency guaranteed loan and an Agency guaranteed loan cannot serve as collateral for a tax-exempt issue. The Agency may guarantee a loan with respect to a project at a facility that has received, or will receive, tax-exempt financing only when the guaranteed loan funds are used to finance a project that is separate and distinct from the activities at the facility that have been or will be financed by the tax-exempt obligation, and the guaranteed loan has at least a parity security position with the tax-exempt obligation.

§ 4279.230 [Reserved]

§ 4279.231 Interest rates.

The provisions found in § 4279.125 apply to loans guaranteed under this subpart, except as provided in paragraphs (a) through (c) of this section. Lenders are encouraged to pass interest-rate savings realized through the secondary market on to the borrower.

(a) The rate on the unguaranteed portion of the loan shall not exceed the rate on the guaranteed portion of the loan by more than 500 basis points;

(b) Variable rate loans will not provide for negative amortization nor will they give the borrower the ability to choose its payment among various options.

(c) Both the guaranteed and unguaranteed portions of the loan must be amortized over the same term, as provided in § 4279.232(a).

§ 4279.232 Terms of loan.

Instead of the provisions found in § 4279.126, the provisions of this section apply to loans guaranteed under this subpart, except as provided in § 4279.232(e).

(a) The repayment term for a loan under this subpart will be for a maximum period of 20 years or the useful life of the project, as determined by the lender and confirmed by the Agency, whichever is less. The length of the loan term shall be the same for both the guaranteed and unguaranteed portions of the loan.

(b) Guarantees shall be provided only after consideration is given to the borrower's overall credit quality and to the terms and conditions of any applicable subsidies, tax credits, and other such incentives.

(c) All loans guaranteed under this subpart must be financially sound and feasible, with reasonable assurance of repayment.

(d) A loan's maturity will take into consideration the use of proceeds, the useful life of assets being financed, and the borrower's ability to repay the loan.

(e) Repayment of the loan shall be in accordance with § 4279.125(a) and § 4279.126(b) and (c).

§ 4279.233 [Reserved]

§ 4279.234 Credit evaluation.

Instead of the provisions found in § 4279.131, the provisions of this section apply to loans guaranteed under this subpart. For all applications for guarantee, the lender must prepare a credit evaluation. An acceptable credit evaluation must:

(a) Use credit documentation procedures and an underwriting process

that are consistent with generally accepted commercial lending practices, and

(b) Include an analysis of the credit factors associated with each guarantee application, including consideration of each of the following five elements.

(1) *Credit worthiness.* Those financial qualities that generally make the borrower more likely to meet its obligations as demonstrated by its credit history.

(2) *Cash flow.* A borrower's ability to produce sufficient cash to repay the loan as agreed.

(3) *Capital.* The financial resources that the borrower currently has and those it is likely to have when payments are due. The borrower must be adequately capitalized.

(4) *Collateral.* The assets pledged by the borrower in support of the loan, including processing technology owned by the borrower and excluding assets acquired with other Federal funds. Collateral must have documented value sufficient to protect the interest of the lender and the Agency, and the discounted collateral value must be at least equal to the loan amount. Lenders will discount collateral consistent with sound loan-to-value policy. The Agency may consider the value of qualified intellectual property, as defined in § 4279.2, arrived at in accordance with GAAP standards. The value of the intellectual property may not exceed 30 percent of the total value of all collateral.

(i) If there is an established market for the intellectual property, the value of the intellectual property will be valued according to the lender's standard discounting practice for intellectual property for determining adequacy of collateral.

(ii) If there is no established market for the intellectual property, the value of the intellectual property will be valued not greater than 25 percent, as determined by the Agency, for determining adequacy of collateral.

(5) *Conditions.* The general business environment and status of the borrower's industry.

(c) When determining the credit quality of the borrower, the lender must include the following in its analysis:

(1) The borrower shall demonstrate that it will be able to provide equity in the project of not less than 20 percent of eligible project costs at the time the loan is closed. For existing biorefineries, the fair market value of project equity (including the guaranteed loan being applied for) in real property and equipment and the value of qualified intellectual property based on the audited financial statements in accordance with Generally Accepted Accounting Principles may be substituted in whole or in part to meet the equity requirement. However, the appraisal completed to establish the fair market value of the real property and equipment must not be more than 1 year old. The Agency may require the lender to provide a more recent appraisal in order to reflect current market conditions. The appraisal used to establish fair market value of the real property and equipment must conform to the requirements of § 4279.244. Otherwise, equity must be in the form of cash and cannot include other direct Federal funding (*i.e.,* loans and grants).

(2) The credit analysis must also include spreadsheets of the balance sheets and income statements of the borrower for the 3 previous years (for existing businesses), pro forma balance sheets at startup, and projected yearend balance sheets and income statements for a period of not less than 3 years of stabilized operation, with appropriate ratios and comparisons with industrial standards (such as Dun & Bradstreet or Robert Morris Associates) to the extent industrial standards are available.

(3) All data must be shown in total dollars and also in common size form, obtained by expressing all balance sheet items as a percentage of assets and all income and expense items as a percentage of sales.

§§ 4279.235–4279.236 [Reserved]

§ 4279.237 Financial statements.

The provisions of § 4279.137 do not apply to this subpart. Instead, the submittal of financial statements with the loan guarantee application must meet the requirements specified in § 4279.261(c).

§§ 4279.238–4279.243 [Reserved]

§ 4279.244 Appraisals.

All appraisals must be in accordance with § 4279.144 and each appraisal must be a complete, self-contained appraisal. Lenders must complete at least a Transaction Screen Questionnaire for any undeveloped sites and a Phase I Environmental Site Assessment on existing business sites in accordance with ASTM International Standards, which should be provided to the appraiser for completion of the self-contained appraisal. Specialized appraisers will be required to complete appraisals under this section. The Agency may approve a waiver of this requirement only if a specialized appraiser does not exist in a specific industry or hiring one will cause an undue financial burden to the borrower.

§§ 4279.245–4279.249 [Reserved]

§ 4279.250 Feasibility studies.

The provisions of § 4279.150 do not apply to this subpart. Instead, feasibility studies must meet the requirements specified in § 4279.261(f).

§§ 4279.251–4279.254 [Reserved]

§ 4279.255 Loan priorities.

The provisions of § 4279.155 do not apply to this subpart.

§ 4279.256 Construction planning and performing development.

The lender must comply with § 4279.156(a) through (c), except as otherwise provided in paragraphs (a) through (f) of this section.

(a) *Architectural and engineering practices.* Under paragraph § 4279.156(a), the lender must also ensure that all project facilities are designed utilizing accepted architectural and engineering practices that conform to the requirements of this subpart.

(b) *Onsite inspector.* The lender must provide an onsite project inspector.

(c) *Changes and cost overruns.* The borrower shall be responsible for any changes or cost overruns. If any such change or cost overrun occurs, then any change order must be expressly approved by the Agency, which approval shall not be unreasonably withheld, and neither the lender nor borrower will divert funds from purposes identified in the guaranteed loan application approved by the Agency to pay for any such change or cost overrun without the express written approval of the Agency. In no event will the current loan be modified or a subsequent guaranteed loan be approved to cover any such changes or costs. In the event of any of the aforementioned increases in cost or expenses, the borrower must provide for such increases in a manner that does not diminish the borrower's operating capital. Failure to comply with the terms of this paragraph will be considered a material adverse change in the borrower's financial condition, and the lender must address this matter, in writing, to the Agency's satisfaction.

(d) *New draw certifications.* The following three certifications are required for each new draw:

(1) Certification by the project engineer to the lender that the work referred to in the draw has been successfully completed;

(2) Certification from the lender that all debts have been paid and all mechanics' liens have been waived; and

(3) Certification from the lender that the borrower is complying with the Davis-Bacon Act.

(e) *Surety.* Surety, as the term is commonly used in the industry, will be required in cases when the guarantee will be issued prior to completion of construction unless the contractor will receive a lump sum payment at the end of work. Surety will be made a part of the contract if the borrower requests it or if the contractor requests partial payments for construction work. In such cases where no surety is provided and the project involves pre-commercial technology, technology that is first of its type in the U.S., or new designs without sufficient operating hours to prove their merit, a latent defects bond may be required by the Agency to cover the work.

(f) *Reporting during construction.* During the construction of the project, lenders shall submit quarterly construction progress reports to the Agency. These reports must contain, at a minimum, planned and completed construction milestones, loan advances, and personnel hiring, training, and retention. This requirement applies to both the development and construction of commercial-scale biorefineries and to the retrofitting of existing facilities using eligible technology for the development of advanced biofuels. The lender must expeditiously report any problems in project development to the Agency.

§§ 4279.257–4279.258 [Reserved]

§ 4279.259 Borrower responsibilities.

(a) *Federal, State, and local regulations.* Borrowers must comply with all Federal, State, and local laws and rules that are in existence and that affect the project including, but not limited to:

(1) Land use zoning;

(2) Health, safety, and sanitation standards as well as design and installation standards; and

(3) Protection of the environment and consumer affairs.

(b) *Permits, agreements, and licenses.* Borrowers must obtain all permits, agreements, and licenses that are applicable to the project.

(c) *Insurance.* The borrower is responsible for maintaining all hazard, flood, liability, worker compensation, and personal life insurance, when required, on the project.

(d) *Access to borrower's records.* Except as provided by law, upon request by the Agency, the borrower will permit representatives of the Agency (or other Federal agencies as authorized by the Agency) to inspect and make copies of any of the records of the borrower pertaining to any Agency-guaranteed loan. Such inspection and copying may be made during regular office hours of the borrower or at any other time agreed upon between the borrower and the Agency.

(e) *Access to the project.* The borrower must allow the Agency access to the project and its performance information until the loan is repaid in full and permit periodic inspections of the project by a representative of the Agency.

§ 4279.260 Guarantee applications—general.

Unless otherwise noted, the provisions of § 4279.161 do not apply to this subpart. Instead, the application provisions of this section and § 4279.261 apply to the preparation of Biorefinery Assistance Guaranteed loan applications.

(a) *Application submittal.* For each guarantee request, the lender must submit to the Agency an application that is in conformance with § 4279.261. The methods of application submittal will be specified in the annual **Federal Register** notice.

(b) *Application deadline.* Unless otherwise specified by the Agency in a notice published in the Federal Register, complete applications must be received by the Agency on or before May 1 of each year to be considered for funding for that fiscal year. If the application deadline falls on a weekend or a Federally observed holiday, the deadline will be the next Federal business day.

(c) *Incomplete applications.* Incomplete applications will be rejected. Lenders will be informed of the elements that made the application incomplete. If a resubmitted application is received by the applicable application deadline, the Agency will reconsider the application.

(d) *Application withdrawal.* During the period between the submission of an application and the execution of documents, the lender must notify the Agency, in writing, if the project is no longer viable or the borrower is no longer requesting financial assistance for the project. When the lender so notifies the Agency, the selection will be rescinded or the application withdrawn.

§ 4279.261 Application for loan guarantee content.

Approved lenders must submit an Agency-approved application form for each loan guarantee sought under this subpart. Loan guarantee applications from approved lenders must contain the information specified in paragraphs (a) through (n) of this section, organized pursuant to a table of contents in a chapter format, and in paragraph (o) of this section as applicable.

(a) *Project Summary.* Provide a concise summary of the proposed project and application information, project purpose and need, and project goals, including the following:

(1) *Title.* Provide a descriptive title of the project.

(2) *Borrower eligibility.* Describe how the borrower meets the eligibility criteria identified in § 4279.227.

(3) *Project eligibility.* Describe how the project meets the eligibility criteria identified in paragraph (c) of this section. Clearly state whether the application is for the construction and development of a biorefinery or for the retrofitting of an existing facility. Provide results from demonstration or pilot facilities that prove that the technology proposed to be used meets the definition of eligible technology. Additional project description information will be needed later in the application process.

(4) *Matching funds.* Submit a spreadsheet identifying sources, amounts, and availability of matching funds. The spreadsheet must also include a directory of matching funds source contact information. Attach any applications, correspondence, or other written communication between borrower and matching fund source.

(b) *Lender's analysis and credit evaluation.* This analysis shall conform to § 4279.232(b) and shall include:

(1) A summary of the technology to be used in the project;

(2) The viability of such technology for the particular project application;

(3) The development type (e.g., installation, construction, retrofit);

(4) The credit reports of the borrower, its principals, and any parent, affiliate, or subsidiary as follows:

(i) A personal credit report from an Agency-approved credit reporting company for individuals who are key employees of the borrower, as determined by the Agency, and for individuals owning 20 percent or more interest in the borrower or any owner with more than 10 percent ownership interest in the borrower if there is no owner with more than 20 percent ownership interest in the borrower, except for when the borrower is a corporation listed on a major stock exchange unless otherwise determined by the Agency; and

(ii) Commercial credit reports on the borrower and any parent, affiliate, and subsidiary firms;

(5) The credit analysis specified in § 4279.232(b);

(6) For loans of $125 million or more, an evaluation and credit rating of the total project's indebtedness, without consideration for a government guarantee, from a nationally-recognized rating agency; and

(7) Whether the loan note guarantee is requested prior to construction or after completion of construction of the project.

(c) *Financial statements.* Financial statements as follows:

(1) For businesses that have been in existence for one or more years,

(i) The most recent audited financial statements of the borrower if the guaranteed loan is $3 million or more, unless alternative financial statements are authorized by the Agency; or

(ii) The most recent audited or Agency-acceptable financial statements of the borrower if the guaranteed loan is less than $3 million.

(2) For businesses that have been in existence for less than one year, the most recent Agency-authorized financial statements of the borrower regardless of the amount of the guaranteed loan request.

(3) For all businesses, a current (not more than 90 days old) balance sheet; a *pro forma* balance sheet at startup; and projected balance sheets, income and expense statements, and cash flow statements for a period of not less than 3 years of stabilized operation. Projections should be supported by a list of assumptions showing the basis for the projections.

(4) Depending on the complexity of the project and the financial condition of the borrower, the Agency may request additional financial statements and additional related information.

(d) *Environmental information.* Environmental information required by the Agency to conduct its environmental reviews (as specified in Exhibit H of 7 CFR part 1940, subpart G).

(e) *Appraisals.* An appraisal conducted as specified under § 4279.244.

(f) *Feasibility study.* Elements in an acceptable feasibility study include, but are not limited to, the elements outlined in Table 1. In addition, as part of the feasibility study, a technical assessment of the project is required, as specified in paragraph (h) of this section.

TABLE 1—FEASIBILITY STUDY COMPONENTS

(A) Executive Summary:
- Introduction/Project Overview (Brief general overview of project location, size, etc.).
- Economic feasibility determination.
- Market feasibility determination.
- Technical feasibility determination.
- Financial feasibility determination.
- Management feasibility determination.
- Recommendations for implementation.

(B) Economic Feasibility:
- Information regarding project site;
- Availability of trained or trainable labor;
- Availability of infrastructure, including utilities, and rail, air and road service to the site.
- Feedstock:
  - Feedstock source management;
  - Estimates of feedstock volumes and costs;
  - Collection, Pre-Treatment, Transportation, and Storage; and
  - Feedstock risks.
- Documentation that woody biomass feedstock from National Forest system lands or public lands cannot be used for a higher-value product.
- Impacts on existing manufacturing plants or other facilities that use similar feedstock if the borrower's proposed biofuel production technology is adopted.
- Projected impact on resource conservation, public health, and the environment.
- Detailed analysis of project costs including:
  - Project management and professional services;
  - Resource assessment;
  - Project design and permitting;
  - Land agreements and site preparation;
  - Equipment requirements and system installation;
  - Startup and shakedown; and
  - Warranties, insurance, financing, and operation and maintenance costs.
- Overall economic impact of the project, including any additional markets created for agricultural and forestry products and agricultural waste material and the potential for rural economic development.
- Feasibility/plans of project to work with producer associations or cooperatives, including estimated amount of annual feedstock, biofuel, and byproduct purchased from or sold to producer associations and cooperatives.

(C) Market Feasibility:
- Information on the sales organization and management;
- Nature and extent of market and market area;
- Marketing plans for sale of projected output—principal products and byproducts;
- Extent of competition, including other similar facilities in the market area;
- Commitments from customers or brokers—principal products and byproducts.
- Risks related to the Advanced Biofuel industry, including
  - Industry status;
  - Specific market risks; and
  - Competitive threats and advantages.

(D) Technical Feasibility:
- Suitability of the selected site for the intended use.
- Scale of development for which the process technology has been proven (i.e., lab or bench, pilot, demonstration, or semi-work scale).
- Specific volume of the process (expressed either as volume of feedstock processed [tons per unit of time] or as product [gallons per unit of time]).
- Identification and estimation of project operation and development costs. Specify the level of accuracy of these estimates and the assumptions on which these estimates have been based.

TABLE 1—FEASIBILITY STUDY COMPONENTS—Continued

Ability of the proposed system to be commercially replicated.
Risks related to:
Construction of the Biorefinery;
Advanced Biofuel production;
Regulation and governmental action; and
Design-related factors that may affect project success.
(E) Financial Feasibility:
Reliability of the financial projections and the assumptions on which the financial statements are based, including all sources and uses of project capital, private or public, such as Federal funds. Provide detailed analysis and description of projected balance sheets, income and expense statements, and cash flow statements over the useful life of the project.
A detailed description of:
Investment incentives;
Productivity incentives;
Loans and grants; and
Other project authorities and subsidies that affect the project.
Any constraints or limitations in the financial projections.
Ability of the business to achieve the projected income and cash flow.
Assessment of the cost accounting system.
Availability of short-term credit or other means to meet seasonal business costs.
Adequacy of raw materials and supplies.
Sensitivity analysis, including feedstock and energy costs and product and byproduct prices.
Risks related to:
The project;
Borrower financing plan;
The operational units; and
Tax issues.
(F) Management Feasibility:
Borrower and/or management's previous experience concerning:
Biofuel production;
Acquisition of feedstock;
Marketing and sale of off-take; and
The receipt of Federal financial assistance, including amount of funding, date received, purpose, and outcome.
Management plan for procurement of feedstock and labor, marketing of the off-take, and management succession.
Risks related to:
Borrower as a company (e.g., development-stage);
Conflicts of interest; and
Management strengths and weaknesses.
(G) Qualifications:
A resume or statement of qualifications of the author of the feasibility study, including prior experience, must be submitted.

(g) *Business plan.* The lender must submit a business plan that includes the information specified in paragraphs (g)(1) through (g)(10) of this section. Any or all of this information may be omitted if it is included in the feasibility study specified in paragraph (f) of this section.

(1) The borrower's experience;

(2) The borrower's succession planning, addressing both ownership and management;

(3) The names and a description of the relationship of the borrower's parent, affiliates, and subsidiaries;

(4) The borrower's business strategy;

(5) Possible vendors and models of major system components;

(6) The availability of the resources (*e.g.,* labor, raw materials, supplies) necessary to provide the planned products and services;

(7) Site location and its relation to product distribution (*e.g.,* rail lines or highways) and any land use or other permits necessary to operate the facility;

(8) The market for the product and its competition, including any and all competitive threats and advantages;

(9) Projected balance sheets, income and expense statements, and cash flow statements for a period of not less than 3 years of stabilized operation; and

(10) A description of the proposed use of funds.

(h) *Technical Assessment.* As part of the feasibility study required under paragraph (f) of this section, a detailed technical assessment is required for each project. The technical assessment must demonstrate that the design, procurement, installation, startup, operation and maintenance of the project will permit it to operate or perform as specified over its useful life in a reliable and a cost effective manner, and must identify what the useful life of the project is. The technical assessment must also identify all necessary project agreements, demonstrate that those agreements will be in place at or before the time of loan closing, and demonstrate that necessary project equipment and services will be available over the useful life of the project. The technical assessment must be based upon verifiable data and contain sufficient information and analysis so that a determination can be made on the technical feasibility of achieving the levels of income or production that are projected in the financial statements. All technical information provided must follow the format specified in paragraphs (h)(1) through (h)(9) of this section. Supporting information may be submitted in other formats. Design drawings and process flow charts are required as exhibits. A discussion of a topic identified in paragraphs (h)(1) through (h)(9) of this section is not necessary if the topic is not applicable to the specific project. Questions identified in the Agency's technical review of the project must be answered to the Agency's satisfaction before the application will be approved. All projects require the services of an independent, third-party professional engineer.

(1) *Qualifications of project team.* The project team will vary according to the complexity and scale of the project. The project team must have demonstrated expertise in similar advanced biofuel technology development, engineering,

installation, and maintenance. Authoritative evidence that project team service providers have the necessary professional credentials or relevant experience to perform the required services for the development, construction, and retrofitting, as applicable, of technology for producing advanced biofuels must be provided. In addition, authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the biorefinery to operate over its useful life must be provided. The application must:

(i) Discuss the proposed project delivery method. Such methods include a design-bid-build method, where a separate engineering firm may design the project and prepare a request for bids and the successful bidder constructs the project at the borrower's risk, and a design-build method, often referred to as "turnkey," where the borrower establishes the specifications for the project and secures the services of a developer who will design and build the project at the developer's risk;

(ii) Discuss the manufacturers of major components of advanced biofuels technology equipment being considered in terms of the length of time in business and the number of units installed at the capacity and scale being considered;

(iii) Discuss the project team members' qualifications for engineering, designing, and installing advanced biofuels refineries, including any relevant certifications by recognized organizations or bodies. Provide a list of the same or similar projects designed, installed, or supplied and currently operating, with references if available; and

(iv) Describe the advanced biofuels refinery operator's qualifications and experience for servicing, operating, and maintaining such equipment or projects. Provide a list of the same or similar projects designed, installed, or supplied and currently operating, with references if available.

(2) *Agreements and permits.* The application must identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits, including the items specified in paragraphs (h)(2)(i) through (h)(2)(vi) of this section.

(i) Advanced biofuels refineries must be installed in accordance with applicable local, State, and national codes and applicable local, State, and Federal regulations. Identify zoning and code requirements and necessary permits and the schedule for meeting those requirements and securing those permits.

(ii) Identify licenses where required and the schedule for obtaining those licenses.

(iii) Identify land use agreements required for the project, the schedule for securing those agreements, and the term of those agreements.

(iv) Identify any permits or agreements required for solid, liquid, and gaseous emissions or effluents and the schedule for securing those permits and agreements.

(v) Identify available component warranties for the specific project location and size.

(vi) Identify all environmental issues, including environmental compliance issues, associated with the project.

(3) *Resource assessment.* The application must provide adequate and appropriate evidence of the availability of the feedstocks required for the advanced biofuels refinery to operate as designed. Indicate the type and quantity of the feedstock, and discuss storage of the feedstock, where applicable, and competing uses for the feedstock. Indicate shipping or receiving methods and required infrastructure for shipping, and other appropriate transportation mechanisms. For proposed projects with an established resource, provide a summary of the resource.

(4) *Design and engineering.* The application must provide authoritative evidence that the advanced biofuels refinery will be designed and engineered so as to meet its intended purposes, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. Projects shall be engineered by a qualified entity. Each biorefinery must be engineered as a complete, integrated facility. The engineering must be comprehensive, including site selection, systems and component selection, and systems monitoring equipment. Biorefineries must be constructed by a qualified entity.

(i) The application must include a concise but complete description of the project, including location of the project; resource characteristics, including the kind and amount of feedstocks; biorefinery specifications; kind, amount, and quality of the output; and monitoring equipment. Address performance on a monthly and annual basis. Describe the uses of or the market for the advanced biofuels produced by the biorefinery. Discuss the impact of reduced or interrupted feedstock availability on the biorefinery's operations.

(ii) The application must include:

(A) A description of the project site that addresses issues such as site access, foundations, and backup equipment when applicable;

(B) A completed Form RD 1940–20 and an environmental assessment prepared in accordance with Exhibit H of 7 CFR part 1940, subpart G; and

(C) Identification of any unique construction and installation issues.

(iii) Sites must be controlled by the eligible borrower for at least the financing term of the loan note guarantee.

(5) *Project development schedule.* The application must describe each significant task, its beginning and end, and its relationship to the time needed to initiate and carry the project through startup and shakedown. Provide a detailed description of the project timeline including resource assessment, project and site design, permits and agreements, equipment procurement, and project construction from excavation through startup and shakedown.

(6) *Equipment procurement.* The application must demonstrate that equipment required by the biorefinery is available and can be procured and delivered within the proposed project development schedule. Biorefineries may be constructed of components manufactured in more than one location. Provide a description of any unique equipment procurement issues such as scheduling and timing of component manufacture and delivery, ordering, warranties, shipping, receiving, and on-site storage or inventory.

(7) *Equipment installation.* The application must provide a full description of the management of and plan for site development and systems installation, details regarding the scheduling of major installation equipment needed for project construction, and a description of the startup and shakedown specification and process and the conditions required for startup and shakedown for each equipment item individually and for the biorefinery as a whole.

(8) *Operations and maintenance.* The application must provide the operations and maintenance requirements of the biorefinery necessary for the biorefinery to operate as designed over its useful life. The application must also include:

(i) Information regarding available biorefinery and component warranties and availability of spare parts;

(ii) A description of the routine operations and maintenance requirements of the proposed biorefinery, including maintenance schedules for the mechanical, piping,

and electrical systems and system monitoring and control requirements, as well as provision of information that supports expected useful life of the biorefinery and timing of major component replacement or rebuilds;

(iii) A discussion of the costs and labor associated with operating and maintaining the biorefinery and plans for in-sourcing or outsourcing. A description of the opportunities for technology transfer for long-term project operations and maintenance by a local entity or owner/operator; and

(iv) Provision and discussion of the risk management plan for handling large, unanticipated failures of major components.

(9) *Decommissioning.* A description of the decommissioning process, when the project must be uninstalled or removed. A description of any issues, requirements, and costs for removal and disposal of the biorefinery.

(i) *Scoring information.* The application must contain information in a format that is responsive to the scoring criteria specified in § 4279.265(d).

(j) *Loan Agreement.* A proposed loan agreement or a sample loan agreement with an attached list of the proposed loan agreement provisions as specified in § 4279.161(b)(11).

(k) *Lender certifications.* The lender must provide certification in accordance with § 4279.161(b)(16). In addition, the lender must certify that the lender concludes that the project has technical merit.

(l) *Intergovernmental consultation.* Intergovernmental consultation comments in accordance with RD Instruction 1940–J and 7 CFR part 3015, subpart V.

(m) *DUNS Number.* For borrowers other than individuals, a Dun and Bradstreet Universal Numbering System (DUNS) number, which can be obtained online at *http://fedgov.dnb.com/webform.*

(n) *Bioenergy experience.* Identify borrower's, including its principals', prior experience in bioenergy projects and the receipt of Federal financial assistance, including the amount of funding, date received, purpose, and outcome, for such projects.

(o) *Other information.* Any other information determined by the Agency to be necessary to evaluate the application.

§§ 4279.262–4279.264 [Reserved]

§ 4279.265 Guarantee application evaluation.

Instead of evaluating applications using the provisions of § 4279.165, the Agency will evaluate and award applications according to the provisions specified in paragraphs (a) through (h) of this section.

(a) *Application processing.* Upon receipt of a complete application, the Agency will conduct a review to determine if the borrower, lender, and project are eligible; if the project has technical merit as determined under paragraph (b) of this section; and if the minimum financial metric criteria under paragraph (c) of this section are met.

(1) If the borrower, lender, or the project is determined to be ineligible for any reason, the Agency will inform the lender, in writing, of the reasons. No further evaluation of the application will occur.

(2) If the Agency determines it is unable to guarantee the loan, the lender will be informed in writing. Such notification will include the reasons for denial of the guarantee.

(b) *Technical merit determination.* The Agency's determination of a project's technical merit will be based on the information in the application. Projects determined by the Agency to be without technical merit will not be selected for funding.

(c) *Financial metric criteria.* The borrower must meet the financial metric criteria specified in paragraphs (c)(1) through (c)(3) of this section. These financial metric criteria shall be calculated from the realistic information in the pro forma statements or borrower financial statements, submitted in accordance with § 4279.261(c), of a typical operating year after the project is completed and stabilized.

(1) A debt coverage ratio of 1.0 or higher.

(2) A debt-to-tangible net worth ratio of 4:1 or lower for startup businesses and of 9:1 or lower for existing businesses.

(3) A discounted loan-to-value ratio of no more than 1.0.

(d) *Scoring applications.* The Agency will score each complete and eligible application it receives on or before May 1 in the fiscal year in which it was received. The Agency will score each eligible application that meets the minimum requirements for financial and technical feasibility using the evaluation criteria identified below. A maximum of 100 points is possible.

(1) Whether the borrower has established a market for the advanced biofuel and the byproducts produced and whether the advanced biofuel meets an applicable renewable fuel standard. A maximum of 10 points can be awarded. Points to be awarded will be determined as follows:

(i) If the business has less than or equal to a 50 percent commitment for each of the following: feedstocks, marketing agreements for the advanced biofuel, and the byproducts produced or if the project does not produce an advanced biofuel that meets an applicable renewable fuel standard, 0 points will be awarded.

(ii) If the business has a greater than 50 percent commitment for any one or two of the following: feedstocks, marketing agreements for the advanced biofuel, and the byproducts produced and if the project produces an advanced biofuel that meets an applicable renewable fuel standard, 5 points will be awarded.

(iii) If the business has a greater than 50 percent commitment for each of the following: Feedstocks, marketing agreements for the advanced biofuel, and the byproducts produced and if the project produces an advanced biofuel that meets an applicable renewable fuel standard, 10 points will be awarded.

(2) Whether the area in which the borrower proposes to place the biorefinery, defined as the area that will supply the feedstock to the proposed biorefinery, has any other similar advanced biofuel facilities. A maximum of 5 points can be awarded. Points to be awarded will be determined as follows:

(i) If the area that will supply the feedstock to the proposed biorefinery does not have any other similar advanced biofuel biorefineries, 5 points will be awarded.

(ii) If there are other similar advanced biofuel biorefineries located within the area that will supply the feedstock to the proposed biorefinery, 0 points will be awarded.

(3) Whether the borrower is proposing to use a feedstock not previously used in the production of advanced biofuels. A maximum of 15 points can be awarded. Points to be awarded will be determined as follows:

(i) If the borrower proposes to use a feedstock previously used in the production of advanced biofuels in a commercial facility, 0 points will be awarded.

(ii) If the borrower proposes to use a feedstock not previously used in production of advanced biofuels in a commercial facility, 15 points will be awarded.

(4) Whether the borrower is proposing to work with producer associations or cooperatives. A maximum of 5 points can be awarded. Points to be awarded will be determined as follows:

(i) Five (5) points will be awarded if any one of the three conditions specified in paragraphs (d)(4)(i)(A) through (d)(4)(i)(C) of this section is met.

(A) At least 60 percent of the dollar value of feedstock to be used by the proposed biorefinery will be supplied by producer associations and cooperatives;

(B) At least 60 percent of the dollar value of the advanced biofuel to be produced by the proposed biorefinery will be sold to producer associations and cooperatives; or

(C) At least 60 percent of the dollar value of the biobased products to be produced by the proposed biorefinery will be sold to producer associations and cooperatives.

(ii) Three (3) points will be awarded if any one of the three conditions specified in paragraphs (d)(4)(ii)(A) through (d)(4)(ii)(C) of this section is met.

(A) At least 30 percent of the dollar value of feedstock to be used by the proposed biorefinery will be supplied by producer associations and cooperatives;

(B) At least 30 percent of the dollar value of the advanced biofuel, or an advanced biofuel converted to electricity, to be produced by the proposed biorefinery will be sold to producer associations and cooperatives; or

(C) At least 30 percent of the dollar value of the biobased products to be produced by the proposed biorefinery will be sold to producer associations and cooperatives.

For example, consider a proposed biorefinery that will purchase $1,000,000 of feedstock and produce $5,000,000 worth of biofuel and $2,000,000 worth of biobased products. In order to receive the 5 points under this criterion, at least $600,000 worth of feedstock purchases must be from producer associations or cooperatives, at least $3,000,000 worth of biofuel must be sold to producer associations or cooperatives, or at least $1,200,000 worth of biobased products must be sold to producer associations or cooperatives.

(5) The level of financial participation by the borrower, including support from non-Federal government sources and private sources. Other direct Federal funding (*i.e.,* direct loans and grants) will not be considered as part of the borrower's equity participation. A maximum of 15 points can be awarded. Points to be awarded will be determined as follows:

(i) If the borrower's equity plus other resources results in a debt-to-tangible net worth ratio equal to or less than 3 to 1, but greater than 2.5 to 1, 8 points will be awarded.

(ii) If the borrower's equity plus other resources results in a debt-to-tangible net worth ratio equal to or less than 2.5 to 1, 15 points will be awarded.

(iii) If a project uses other Federal direct funding, 10 points will be deducted.

(6) Whether the borrower has established that the adoption of the process proposed in the application will have a positive effect on three impact areas: resource conservation (*e.g.,* water, soil, forest), public health (*e.g.,* potable water, air quality), and the environment (*e.g.,* compliance with an applicable renewable fuel standard, greenhouse gases, emissions, particulate matter). A maximum of 10 points can be awarded. Based on what the borrower has provided in either the application or the feasibility study, points to be awarded will be determined as follows:

(i) If process adoption will have a positive impact on any one of the three impact areas (resource conservation, public health, or the environment), 3 points will be awarded.

(ii) If process adoption will have a positive impact on two of the three impact areas, 6 points will be awarded.

(iii) If process adoption will have a positive impact on all three impact areas, 10 points will be awarded.

(iv) If the project proposes to use a feedstock that can be used for human or animal consumption as a feedstock, 5 points will be deducted from the score.

(7) Whether the borrower can establish that, if adopted, the biofuels production technology proposed in the application will not have any economically significant negative impacts on existing manufacturing plants or other facilities that use similar feedstocks. A maximum of 10 points can be awarded. Points to be awarded will be determined as follows:

(i) If the borrower has not established, through an independent third party feasibility study, that the biofuels production technology proposed in the application, if adopted, will not have any economically significant negative impacts on existing manufacturing plants or other facilities that use similar feedstocks, 0 points will be awarded.

(ii) If the borrower has established, through an independent third party feasibility study, that the biofuels production technology proposed in the application, if adopted, will not have any economically significant negative impacts on existing manufacturing plants or other facilities that use similar feedstocks, 10 points will be awarded.

(iii) If the feedstock is wood pellets, no points will be awarded under this criterion.

(8) The potential for rural economic development. If the project is located in a rural area and the business creates jobs with an average wage that exceeds the County median household wages where the biorefinery will be located, 10 points will be awarded.

(9) The level of local ownership of the biorefinery proposed in the application. A maximum of 5 points can be awarded. Points to be awarded will be determined as follows:

(i) If local owners have an ownership interest in the biorefinery of more than 20 percent but less than or equal to 50 percent, 3 points will be awarded.

(ii) If local owners have an ownership interest in the biorefinery of more than 50 percent, 5 points will be awarded.

(10) Whether the project can be replicated. A maximum of 10 points can be awarded. Points to be awarded will be determined as follows:

(i) If the project can be commercially replicated regionally (*e.g.,* Northeast, Southwest, etc.), 5 points will be awarded.

(ii) If the project can be commercially replicated nationally, 10 points will be awarded.

(11) If the project uses a particular technology, system, or process that is not currently operating in the advanced biofuel market as of October 1 of the fiscal year for which the funding is available, 5 points will be awarded.

(12) The Administrator can award up to a maximum of 10 bonus points to applications that promote partnerships and other activities that assist in the development of new and emerging technologies for the development of advanced biofuels so as to increase the energy independence of the United States; promote resource conservation, public health, and the environment; diversify markets for agricultural and forestry products and agriculture waste material; and create jobs and enhance the economic development of the rural economy. These partnerships and other activities will be identified in a **Federal Register** notice each fiscal year. However, the Administrator's bonus points may not raise an applicant's score to more than 100 points.

(e) *Ranking of applications.* The Agency will rank all scored applications to create a priority list of scored applications for the program. Unless otherwise specified in a notice published in the **Federal Register**, the Agency will rank applications by approximately January 31 for complete and eligible applications received on or before November 1 and by approximately July 31 for complete and eligible applications received on or before May 1.

(1) All applications received on or before November 1 and May 1 will be ranked by the Agency and will be

competed against the other applications received on or before such date. All applications that are ranked will be considered for selection for funding for that application cycle.

(2) When an application scored in first set of applications is carried forward into the second set of applications, it will be competed against all of the applications in the second set using its score from the first set of applications.

(f) *Selection of applications for funding.* Using the priority list created under paragraph (e) of this section, the Agency will select applications for funding based on the criteria specified in paragraphs (f)(1) through (f)(3) of this section. The Agency will notify, in writing, lenders whose applications have been selected for funding.

(1) *Ranking.* The Agency will consider the score an application has received compared to the scores of other applications in the priority list, with higher scoring applications receiving first consideration for funding. A minimum score of 55 points is required in order to be considered for a guarantee.

(2) *Availability of budgetary authority.* The Agency will consider the size of the request relative to the budgetary authority that remains available to the program during the fiscal year.

(i) If there is insufficient budgetary authority during a particular funding period to select a higher scoring application, the Agency may elect to select the next highest scoring application for further processing. Before this occurs, the Agency will provide the borrower of the higher scoring application the opportunity to reduce the amount of its request to the amount of budgetary authority available. If the borrower agrees to lower its request, it must certify that the purposes of the project can be met, and the Agency must determine the project is financially feasible at the lower amount.

(ii) If the amount of funding required is greater than 25 percent of the program's outstanding budgetary authority, the Agency may elect to select the next highest scoring application for further processing, provided the higher scoring borrower is notified of this action and given an opportunity to revise their application and resubmit it for an amount less than or equal to 25 percent of the program's outstanding budgetary authority.

(3) *Availability of other funding sources.* If other financial assistance is needed for the project, the Agency will consider the availability of other funding sources. If the lender cannot demonstrate that funds from these sources are available at the time of selecting applications for funding or potential funding, the Agency may instead select the next highest scoring application for further processing ahead of the higher scoring application.

(g) *Ranked applications not funded.* A ranked application that is not funded in the application cycle in which it was submitted will be carried forward one additional application cycle, which may be in the next fiscal year. The Agency will notify the lender in writing. If an application has been selected for funding, but has not been funded because additional information is needed, the Agency will notify the lender of what information is needed, including a timeframe for the lender to provide the information. If the lender does not provide the information within the specified timeframe, the Agency will remove the application from further consideration and will so notify the lender.

(h) *Wage rates.* As a condition of receiving a loan guaranteed under this subpart, each borrower shall ensure that all laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with guaranteed loan funds under this subpart shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with sections 3141 through 3144, 3146, and 3147 of title 40, U.S.C. Awards under this subpart are further subject to the relevant regulations contained in title 29 of the Code of Federal Regulations.

§§ 4279.266–4279.278 [Reserved]

§ 4279.279 Domestic lamb industry adjustment assistance program.

The provisions of § 4279.175 do not apply to this subpart.

§ 4279.280 Changes in borrowers.

All changes in borrowers must be in accordance with § 4279.180, but the eligibility requirements of this program apply.

§ 4279.281 Conditions precedent to issuance of loan note guarantee.

The loan note guarantee will not be issued until the lender certifies to the conditions identified in § 4279.181(a) through (o) of subpart B of this part and paragraphs (a) through (h) of this section. If the lender is unable to provide any of the certifications required under this section, the lender must provide an explanation satisfactory to the Agency as to why the lender is unable to provide the certification. The lender can request the guarantee prior to construction, but must still certify to all conditions in this section.

(a) For loans exceeding $150,000, the lender has certified its compliance with the Anti-Lobby Act (18 U.S.C. 1913). Also, if any funds have been, or will be, paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to guarantee a loan, the lender shall completely disclose such lobbying activities in accordance with 31 U.S.C. 1352.

(b) Where applicable, the lender must certify that the borrower has obtained:

(1) A legal opinion relative to the title to rights-of-way and easements. Lenders are responsible for ensuring that borrowers have obtained valid, continuous, and adequate rights-of-way and easements needed for the construction, operation and maintenance of a facility.

(2) A title opinion or title insurance showing ownership of the land and all mortgages or other lien defects, restrictions, or encumbrances, if any. It is the responsibility of the lender to ensure that the borrower has obtained and recorded such releases, consents, or subordinations to such property rights from holders of outstanding liens or other instruments as may be necessary for the construction, operation and maintenance of the facility and to provide the required security. For example, when a site is for major structures for utility-type facilities (such as a gas distribution system) and the lender and borrower are able to obtain only a right-of-way or easement on such site rather than a fee simple title, such a title opinion must be provided.

(c) The minimum financial criteria, including those financial criteria contained in the Conditional Commitment, have been maintained through the issuance of the loan note guarantee. Failure to maintain these financial criteria shall result in an ineligible application.

(d) Each borrower shall certify to the lender that all laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with guaranteed loan funds under this subpart shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with sections 3141 through 3144, 3146, and 3147 of title 40 U.S.C.

Awards under this subpart are further subject to the relevant regulations contained in title 29 of the Code of Federal Regulations.

(e) The lender certifies that it has reviewed all contract documents and verified compliance with Sections 3141 through 3144, 3146, and 3147 of title 40 U.S.C., and title 29 of the Code of Federal Regulations. The lender will certify that the same process will be completed for all future contracts and any changes to existing contracts.

(f) The lender certifies that the proposed facility complies with all Federal, State, and local laws and regulatory rules that are in existence and that affect the project, the borrower, or lender activities.

(g) The lender will notify the Agency in writing whenever there has been a change in the classification of a loan within 15 calendar days of such change.

(h) The lender certifies that the borrower has provided the equity in the project identified in the Conditional Commitment.

§§ 4279.282–4279.289 [Reserved]

§ 4279.290 Requirements after project construction.

Once the project has been constructed, the lender must:

(a) Provide the Agency annual reports from the borrower commencing the first full calendar year following the year in which project construction was completed and continuing for the life of the guaranteed loan. The borrower's reports will include, but not be limited to, the information specified in the following paragraphs, as applicable.

(1) The actual amount of advanced biofuels, biobased products, and, if applicable, byproducts produced in order to assess whether project goals related to majority production are being met;

(2) If applicable, documentation that identified health and/or sanitation problems have been solved;

(3) A summary of the cost of operating and maintaining the facility;

(4) A description of any maintenance or operational problems associated with the facility;

(5) Certification that the project is and has been in compliance with all applicable State and Federal environmental laws and regulations;

(6) The number of jobs created;

(7) A description of the status of the project's feedstock including, but not limited to, the feedstock being used, outstanding feedstock contracts, feedstock changes and interruptions, and quality of the feedstock;

(8) The results of the annual inspections conducted under paragraph (b) of this section; and

(b) For the life of the guaranteed loan, conduct annual inspections.

§§ 4279.291–4279.300 [Reserved]

PART 4287—SERVICING

■ 3. The authority citation for part 4287 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989.

■ 4. Part 4287 is amended by adding a new subpart D to read as follows:

Subpart D—Servicing Biorefinery Assistance Guaranteed Loans

Sec.

4287.301 Introduction.
4287.302 Definitions.
4287.303 Exception authority.
4287.304–4287.305 [Reserved]
4287.306 Appeals.
4287.307 Servicing.
4287.308 Fiscal Year 2009 and Fiscal Year 2010 loan guarantees.
4287.309–4287.400 [Reserved]

Subpart D—Servicing Biorefinery Assistance Guaranteed Loans

§ 4287.301 Introduction.

(a) This subpart supplements 7 CFR part 4279, subparts A and C, by providing additional requirements and instructions for servicing and liquidating all Biorefinery Assistance Guaranteed Loans.

(b) The lender will be responsible for servicing the entire loan and will remain mortgagee and secured party of record notwithstanding the fact that another party may hold a portion of the loan. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. The unguaranteed portion of a loan will neither be paid first nor given any preference or priority over the guaranteed portion of the loan.

(c) Copies of all forms, regulations, and Instructions referenced in this subpart are available in any Agency office. Whenever a form is designated in this subpart, that designation includes predecessor and successor forms, if applicable, as specified by the field or National Office.

§ 4287.302 Definitions.

The definitions and abbreviations contained in § 4279.2 of subpart A and in § 4279.202 of subpart C of part 4279 of this chapter apply to this subpart.

§ 4287.303 Exception authority.

The exception authority provisions of this paragraph apply to this subpart instead of those in § 4279.15 of subpart A of part 4279 of this chapter. The Administrator may, with the concurrence of the Secretary of Agriculture, make an exception, on a case-by-case basis, to any requirement or provision of this subpart that is not inconsistent with any authorizing statute or applicable law, if the Administrator determines that application of the requirement or provision would adversely affect the Federal government's interest.

§§ 4287.304–4287.305 [Reserved]

§ 4287.306 Appeals.

Section 4279.16 of subpart A of part 4279 of this chapter applies to this subpart.

§ 4287.307 Servicing.

Except as specified in paragraphs (a) through (m) of this section, all loans guaranteed under this subpart shall comply with the provisions found in §§ 4287.101 through 4287.180 of this chapter. If the Agency determines that the lender is not in compliance with its servicing responsibilities, the Agency reserves the right to take any action the Agency determines necessary to protect the Agency's interests with respect to the loan. If the Agency exercises this right, the lender must cooperate with the Agency. Any cost to the Agency associated with such action will be assessed against the lender.

(a) *Periodic reports.* Each lender shall submit quarterly reports, unless more frequent ones are needed as determined by the Agency to meet the financial interests of the United States, regarding the condition of its Agency guaranteed loan portfolio (including borrower status and loan classification) and any material adverse change in the general financial condition of the borrower since the last report was submitted.

(b) *Default reports.* Lenders shall submit monthly default reports, including borrower payment history, for each loan in monetary default using a form approved by the Agency.

(c) *Financial reports.* The financial report requirements specified in § 4287.107(d) apply except as follows:

(1) The financial reports required under § 4287.107(d) may be specified in either the loan agreement or the Conditional Commitment;

(2) The lender must submit to the Agency quarterly financial statements within 45 days of the end of each quarter; and

(3) The annual financial statements required under § 4287.107(d) must be audited financial statements and must be submitted within 180 days.

(d) *Additional loans.* Instead of complying with the additional

expenditures provisions specified in § 4287.107(e), the lender may make additional expenditures or new loans to a borrower with an outstanding loan guaranteed only with prior written Agency approval. The Agency will only approve additional expenditures or new loans where the expenditure or loan will not violate one or more of the loan covenants of the borrower's loan agreement. In all instances, the lender must notify the Agency when they make any additional expenditures or new loans. Any additional expenditure or loan made by the lender must be junior in priority to the loan guaranteed under 7 CFR part 4279 except for working capital loans for which the Agency may consider a subordinate lien provided it is consistent with the conditional provisions specified in § 4279.202(i)(1).

(e) *Interest rate adjustments.* The provisions of § 4287.112 apply, except for § 4287.112(a)(2).

(f) *Collateral inspection and release.* In lieu of complying with § 4287.113, lenders must comply with the provisions of this paragraph. The lender must inspect the collateral as often as necessary to properly service the loan. The Agency must give prior approval for the release of collateral, except as specified in paragraph (f)(1) of this section or where the release of collateral is made under the abundance of collateral provision of the applicable security agreement, subject to the provisions of paragraph (f)(3) of this section. Appraisals on the collateral being released are required on all transactions exceeding $250,000 and will be at the expense of the borrower. The appraisal must meet the requirements of § 4279.244. The sale or release of collateral must be based on an arm's length transaction, unless otherwise approved by the Agency in writing.

(1) Lenders may, over the life of the guaranteed loan, release collateral with a cumulative value of up to 20 percent of the original loan amount without Agency concurrence (subject to the provisions of paragraph (f)(3) of this section) if the proceeds generated are used to pay down secured debt in order of lien priority or to buy replacement collateral.

(2) Release of collateral with a cumulative value in excess of 20 percent of the original loan or when the proceeds will not be used to pay down secured debt in order of lien priority or to buy replacement collateral, must be requested, in writing, by the lender and concurred by the Agency, in writing, in advance of the release. A written evaluation will be completed by the lender to justify the release.

(3) Lenders may not release collateral with a value of more than 10 percent of the original loan amount at any one time and within any one calendar year without Agency concurrence.

(4) Any release of collateral must not adversely affect the project's operation or financial condition.

(g) *Subordination of lien position.* In addition to complying with the provisions found in § 4287.123, a subordination must not extend the term of the guaranteed loan.

(h) *Transfers and assumptions.* Transfers and assumptions shall comply with § 4287.134, except as specified in paragraphs (h)(1) through (h)(3) of this section, and with paragraphs (h)(4) and (h)(5) of this section.

(1) In complying with § 4287.134(a), eligible applicants shall be determined in accordance with subpart C of part 4279 of this chapter instead of subpart B of part 4279.

(2) Any new loan terms under § 4287.134(b) must be within the terms authorized by § 4279.232 of subpart C of part 4279 of this chapter instead of § 4279.126 of subpart B of part 4279.

(3) Additional loans under § 4287.134(e) will be considered as a new loan application under subpart C of part 4279 of this chapter instead of subpart B of part 4279.

(4) The Agency may charge the lender a nonrefundable transfer fee at the time of a transfer application. The Agency will set the amount of the transfer fee in an annual notice of funds availability published in the **Federal Register**.

(5) Assumption shall be deemed to occur in the event of a change in the control of the borrower. For purposes of the loan, change of control means the merger of the borrower, sale of all or substantially all of the assets of the borrower, or the sale of more than 25 percent of the stock or other equity interest of either the borrower or its corporate parent.

(6) The Agency will not approve any change in terms that results in an increase in the cost of the loan guarantee, unless the Agency can secure any additional budget authority that would be required and the change otherwise conforms with applicable regulations.

(i) *Substitution of lender after issuance of the Loan Note Guarantee.* All substitutions of lenders must comply with § 4287.135 except that, instead of approving a new lender as a substitute lender using the provisions of § 4287.135(a), the Agency may approve the substitution of a new lender if the proposed substitute lender:

(1) Is an eligible lender in accordance with § 4279.202(b);

(2) Is able to service the loan in accordance with the original loan documents; and

(3) Acquires title to the unguaranteed portion of the loan held by the original lender and assumes all original loan requirements, including liabilities and servicing responsibilities.

(j) *Default by borrower.* The provisions of § 4287.145 apply to this subpart, except that:

(1) Instead of complying with § 4287.145(b)(2), in the event a deferment, rescheduling, reamortization, or moratorium is accomplished, it will be limited to the remaining life of the collateral or remaining limits as contained in § 4279.232(a) of part 4279 of this chapter; and

(2) If a loan goes into default, the lender must provide the notification required under § 4287.145(a) to the Agency within 15 calendar days of when a borrower is 30 days past due on a payment or is otherwise in default of the Loan Agreement.

(k) *Protective advances.* All protective advances made by the lender must comply with § 4287.156 and the provisions of paragraphs (k)(1) and (k)(2) of this section.

(1) Instead of the $5,000 specified in § 4287.156(c), the Agency's written authorization is required when cumulative protective advances exceed $100,000, unless otherwise specified by the Agency at a lesser amount.

(2) The lender must obtain written Agency approval for any protective advance that will singularly or cumulatively amount to more than $100,000 or 10 percent of the guaranteed loan, whichever is less.

(l) *Liquidation.* Liquidations shall comply with § 4287.157, except that, in complying with § 4287.157(d)(13), lenders are to obtain an independent appraisal report meeting the requirements of § 4279.244, instead of § 4279.144, when the outstanding balance of principal and accrued interest is $200,000 or more.

(m) *Determination of loss and payment.* In addition to complying with § 4287.158, if a lender receives a final loss payment, the lender must submit to the Agency an annual report on its collection activities for each unsatisfied account for 3 years following payment of the final loss claim.

§ 4287.308 Fiscal Year 2009 and Fiscal Year 2010 loan guarantees.

Any loan guarantee application that has been submitted to the Agency under this program prior to March 16, 2011 may submit to the Agency a written request for an irrevocable election to

have the guaranteed loan serviced in accordance with this subpart. Such an election must be made by October 1, 2011.

§§ 4287.309–4287.400 [Reserved]

Dated: January 31, 2011.

Dallas Tonsager,

Under Secretary, Rural Development.

[FR Doc. 2011–2473 Filed 2–11–11; 8:45 am]

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Part III

Department of Agriculture

Forest Service

36 CFR Part 219

National Forest System Land Management Planning; Proposed Rule

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 219

RIN 0596–AC94

National Forest System Land Management Planning

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed rulemaking; request for comment.

SUMMARY: The U.S. Department of Agriculture is proposing a new planning rule to guide land and resource management planning for all units of the National Forest System (NFS) under the National Forest Management Act of 1976. The proposed rule sets forth process and content requirements to guide the development, amendment, and revision of land management plans to maintain, protect, and restore NFS lands while providing for sustainable multiple uses, including ecosystem services, so that NFS lands continuously provide ecosystem functions and contribute to social and economic sustainability. Planning under the proposed rule would be collaborative and science-based with the responsible official required to take the best available scientific information into account and provide opportunities for public participation throughout the planning process.

The proposed framework consists of a three-part learning and planning cycle: Assessment, development/revision/amendment, and monitoring. The phases of the framework are complementary and are intended to create a feedback loop that allows the Forest Service to adapt management to changing conditions and to improve plans based on new information and monitoring. This framework is intended to move the Agency toward a more responsive planning process that allows the Agency to understand the landscape-scale context for management, adapt management to changing conditions, improve management based on new information and monitoring, and support an integrated and holistic approach to management that recognizes the interdependence of social, ecological, and economic systems.

The Agency is requesting public comment on the proposed rule and on the alternatives that are described and evaluated in the accompanying draft environmental impact statement (DEIS). Readers are invited to comment on each section of the proposed rule and on how provisions in the DEIS alternatives compare with the proposed rule. The Agency will carefully consider all public comments in preparing the final rule.

DATES: Comments must be received in writing by May 16, 2011. The Agency will consider and place comments received after this date in the record only if practicable. Public meetings to discuss the proposed rule and draft environmental impact statement will be held throughout the country during the public comment period. A schedule of meeting dates and further information is available on the planning rule Web site at *http://www.fs.usda.gov/planningrule.*

ADDRESSES: Submit comments through the public participation portal at *http://www.govcomments.com/.* Alternatively, submit comments by addressing them to Forest Service Planning DEIS, c/o Bear West Company, 132 E 500 S, Bountiful, UT 84010; or via facsimile to 801–397–1605. Please identify your written comments by including "planning rule" on the cover sheet or the first page. Alternatively, submit comments through the World Wide Web/Internet Web site *http://www.regulations.gov.* All comments, including names and addresses, when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments at *http://contentanalysisgroup.com/fsrd/.*

FOR FURTHER INFORMATION CONTACT: Ecosystem Management Coordination staff's Assistant Director for Planning Ric Rine at 202–205–1022 or Planning Specialist Regis Terney at 202–205–1552.

SUPPLEMENTARY INFORMATION:

1. Additional Documents Are Available

The following information is available online at *http://www.fs.usda.gov/planningrule:* (1) This proposed rule; (2) a draft environmental impact statement (DEIS) analyzing the effects of the proposed rule and alternatives to it; (3) the Civil Rights Impact Analysis for this proposed rule; (4) the cost-benefit analysis for this proposed rule; (5) summaries of the numerous roundtables and public meetings held to date to engage the public in the development of the proposed rule, and summaries of the input received thus far from comments to the Notice of Intent and the public meetings; and (6) the Forest Service directives on land management planning developed for the 1982 planning procedures, which may currently be used under the transition language of the 2000 rule. This information may also be obtained upon written request from the Director, Ecosystem Management Coordination Staff, Forest Service, USDA, Mail Stop 1104, 1400 Independence Avenue, SW., Washington, DC 20250–1104. The final rule and environmental impact statement, when completed, will also be available on the above Web site.

2. Overview

A new Agency planning rule is proposed to guide land managers in developing, amending, and revising land management plans for all units of the National Forest System (NFS), consisting of 155 national forests, 20 grasslands and 1 prairie. The new planning rule must be responsive to the challenges of climate change; the need for forest restoration and conservation, watershed protection, and wildlife conservation; and the need for the sustainable provision of benefits, services, resources, and uses of NFS lands, including ecosystem services and sustainable recreation. It must provide a process for planning that is adaptive, science-based, and collaborative with ample opportunities for active and effective public participation. The new planning rule must be clear, efficient, effective, and within the Agency's capability to implement on all NFS units. It must meet requirements under the National Forest Management Act (NFMA), as well as allow the Agency to meet its obligations under the Multiple-Use Sustained-Yield Act (MUSYA), the Endangered Species Act, and the Wilderness Act, as well as other legal requirements. With stability in planning regulations, national land management planning can regain momentum, and units would be able to complete timely revisions that guide sustainable management of NFS lands.

The vision for the proposed rule.

The Forest Service mission is to sustain the health, diversity, and productivity of the Nation's forests and grasslands to meet the needs of present and future generations. The NFS consists of 193 million acres of national forests and grasslands. Land management plans provide a framework for integrated resource management on NFS units, and guide project and activity decisionmaking on the unit. The Forest Service planning rule serves as the primary tool to ensure that land management plans continuously provide desired ecosystem functions, contribute to social and economic sustainability, are rooted in the best available scientific information, and are developed with public input and participation.

The objective of this proposed rule is to guide the collaborative and science-based development, amendment, and revision of land management plans that

promote healthy, resilient, diverse, and productive national forests and grasslands. The Agency's goal is to create a planning framework that will guide management of NFS lands so they are ecologically sustainable and contribute to social and economic sustainability, with resilient ecosystems and watersheds, diverse plant and animal communities, and the capacity to provide people and communities with a range of social, economic, and ecological benefits now and for future generations. This planning framework will help the Agency to provide clean water, habitat for diverse fish, wildlife, and plant communities, and opportunities for recreational, spiritual, educational, and cultural sustenance.

The rule proposes a framework for adaptive management and planning and reflects key themes from the public, as well as experience gained through the Agency's 30-year history with land management planning. The framework is intended to move the Agency toward a more adaptive system with more frequent amendments that can keep plans current between revisions. Plans will be revised at least every 15 years. However, under the proposed rule, the Agency expects plan amendments to be done more frequently than they are now. For example, as budgets and conditions on-the-ground change, the plan objectives may be amended every 3 to 5 years. Alternatively, if new information is learned about a threatened and endangered species, plan standards and guidelines may be updated more often. Some plans may even be amended annually to reflect up-to-date information.

The proposed framework consists of a three-part learning and planning cycle: (1) Assessment, (2) development/revision/amendment, and (3) monitoring. The phases of the framework are complementary and are intended to create a feedback loop that allows the Forest Service to adapt management to changing conditions and to improve plans based on new information and monitoring.

Throughout implementation of the cycle, the Forest Service would:

(1) *Assess* conditions, stressors, and opportunities on the NFS unit within the context of the broader landscape and identify any need for changes to a plan;

(2) *Develop, Revise,* or *Amend* land management plans based on the need for change in the plan; and

(3) *Monitor* to detect changes on the unit and across the broader landscape, to test assumptions underlying management decisions, and to measure the effectiveness of management activity in achieving desired outcomes.

The proposed rule would strengthen the role of public involvement in the planning process and provide numerous opportunities for meaningful public participation and dialogue. The proposed rule would require that the best available scientific information be taken into account and documented. The planning process would take into account other forms of knowledge, such as local information, national perspectives, and native knowledge. Ideas, resources, and knowledge should be shared with all interests, individuals, and groups throughout the planning process.

The planning process also builds an understanding of the landscape-scale context for unit-level management. Assessments, in particular, are designed to create an understanding of conditions, trends, and stressors on-and-off NFS lands in order to guide the development of plans to manage resources on the unit. The proposed rule has requirements in each phase for working with the public, partners, landowners, other government agencies, and Tribes and would require the responsible official to identify each unit's unique roles and contributions to the local area, region, and Nation.

The proposed rule would include requirements for plan components. In the face of changing environmental conditions such as climate change, plans would include plan components to maintain or restore ecosystem and watershed health and resilience; protect key ecosystem elements, including water resources on the unit; and provide for plant and animal diversity. In doing so, responsible officials would take into account the various stressors or impacts that could affect the presence of ecological resources and their functions on the unit.

Plans would also include plan components to contribute to social and economic sustainability. The proposed rule emphasizes integrated resource management so that all the relevant interdependent elements of sustainability are considered as a whole, instead of as separate resources or uses. Planning would consider the full suite of multiple uses, including ecosystem services, energy, minerals, outdoor recreation, range, timber, watershed, wildlife and fish, and wilderness, to the extent relevant to the plan area. Plan components would be required to provide for multiple uses, including sustainable recreation and ecosystem services, and protect cultural and historic resources and specially designated areas (such as wilderness areas and wild and scenic rivers). Plans would also guide the management of timber harvest, as required by the NFMA.

The proposed rule would create a two-tiered strategy for monitoring at the unit level and at a broader scale. Monitoring would be a central part of both content of plans and the planning process, allowing responsible officials to test assumptions, track changing conditions, measure management implementation and effectiveness in achieving desired outcomes, and feed new information back into the planning cycle so that plans and management can be changed as needed.

Finally, the proposed rule would create a pre-decisional administrative review process to provide individuals and groups with an opportunity to resolve issues before the approval of a plan, plan amendment, or plan revision.

The History of Forest Planning and the Need for a New Planning Rule

The NFMA at 16 U.S.C. 1604 requires the Agency to have a planning rule developed "under the principles of the Multiple-Use Sustained-Yield Act of 1960, that set[s] out the process for the development and revision of the land management plans, and the guidelines and standards" (16 U.S.C. 1604 (g)). This requirement is fulfilled through a planning rule, set out at Title 36, Code of Federal Regulations, Part 219 (36 CFR Part 219), which sets requirements for land management planning and content of plans.

In 1979, the Department issued the first regulations to comply with this statutory requirement. The 1979 regulations were superseded by the 1982 planning rule, which has formed the basis for all existing Forest Service land management plans.

In 1989, the Agency initiated a comprehensive Critique of Land Management Planning, which identified a number of adjustments that were needed to the 1982 planning rule. The Critique found that the 1982 planning rule process was complex, had significant costs, was lengthy, and was cumbersome for the public to provide input. The recommendations in the Critique and the Agency's experiences with planning led to the Agency issuing an advance notice of proposed rulemaking for new regulations in 1991 and two proposed rules in 1995 and 1999.

After working with a committee of scientists, the Department issued a final rule in 2000 to revise the 1982 regulations. The 2000 revision of the planning rule described a new framework for NFS planning; made sustainability the foundation for NFS planning and management; required the

consideration of the best available scientific information during the planning process; and set forth requirements for implementation, monitoring, evaluation, amendment, and revision of land management plans. However, a review in the spring of 2001 found that the 2000 rule was costly, complex, and procedurally burdensome. The results of the review led the Department to issue a new planning rule in 2005 and a revised version again in 2008, but each of those rules was held invalid by a Federal District Court on procedural grounds (*Citizens for Better Forestry* v. *USDA,* 481 F. Supp.2d 1059 (N.D. Cal. 2007) (2005 rule); *Citizens for Better Forestry* v. *USDA,* 632 F. Supp.2d 968 (N.D. Cal. 2009) (2008 rule)).

Though committees of scientists were created for the 1979 rule and 2000 rule, a formal committee of scientists was not formed for this planning rule for several reasons. The Agency believes a collaborative approach, involving as many interests as possible, including the scientific community, is best for developing the planning rule. Science is one source of understanding and knowledge that informs planning and decision-making. Much of planning also involves consideration of public values in land management. This proposed rule is very much a science-based rule and establishes a strong requirement for consideration and use of best available scientific information in planning. The proposed rule is based on some of the major recommendations from the 1999 Committee of Scientists report: Sustainability, public participation and collaboration, adaptive management, monitoring and evaluation, the role of science, and the objection process; all concepts that were recommendations of that report. In addition, the Agency has reached out to the science community in developing this proposed rule. An open, public meeting of invited scientists occurred in Washington, DC, March 29–30, 2010, to create a dialogue about the latest science relevant to the planning rule. Additionally, scientists have been involved in the development and review of the proposed rule from the beginning and will continue to be involved throughout the rule making process.

Because it was the last promulgated rule to take effect and not to have been set aside by a court, the planning rule issued in 2000 legally governs the development, amendment, or revision of plans until a new planning rule is issued. On December 18, 2009, the Department reinstated the 2000 rule in the Code of Federal Regulations as an interim measure and made technical amendments to update transition provisions to be in effect until a new planning rule is issued (74 FR 67062). While the 2000 planning rule replaced the 1982 rule in the Code of Federal Regulations, the transition section of the 2000 rule allows units to use the 1982 planning rule procedures for plan revisions and amendments until a new planning rule is issued. The Agency's expectation, based on experience, is that those NFS units choosing to amend or revise plans during the development of this new rule will continue to use the 1982 rule procedures until the new planning rule is issued.

The 1982 planning rule procedures have guided the development, amendment, and revision of all existing Forest Service land management plans. However, since 1982 much has changed in our understanding of how to create and implement effective land management plans. The body of science that informs land management planning in areas such as conservation biology and ecology has advanced considerably since 1982, as has our understanding of the values and benefits of NFS lands, and the challenges and stressors that may impact resources on the unit (including climate change).

Because planning under the 1982 rule is often time consuming and cumbersome, it has been a challenge for units to keep plans current. Instead of updating plans as conditions on the ground change, units often wait and make changes all at once during the required revision process every 15 years. This can result in a drawn-out, difficult, and costly revision process. Plans in the interim lose much of their utility because they no longer reflect the reality on the ground. The focus of land management activity has also changed. Much of the 1982 rule focused on creating plans that would mitigate negative environmental impacts from resource extraction activities. The protective measures in the 1982 rule were important, but now the Agency needs plans that do more than mitigate harm. The Agency needs a planning process that helps units identify their unique roles in the broader landscape and create land management plans to guide proactive contributions of the unit and of management to ecological, social, and economic sustainability.

The instability created by the history of the planning rule has had a significant negative impact on the Agency's ability to manage the NFS and on its relationship with the public. At the same time, the vastly different context for management and improved understanding of science and sustainability that has evolved over the past three decades creates an urgent need for a planning framework that allows the Agency to respond to new challenges and management objectives for NFS lands. The NFMA requires that the Agency revise land management plans "at least every 15 years." The NFS has 127 land management plans. Currently, 68 plans are past due for plan revision. Most plans were developed between 1983 and 1993 and should have been revised between 1998 and 2008. The Agency must establish a stable planning rule that is consistent with the current science and creates a planning process that can incorporate new knowledge as science continues to evolve, allowing the Agency to protect, reconnect, and restore national forests and grasslands for the benefit of human communities and natural resources.

What the Agency Heard

The Agency strongly believes that involving the public through a participatory, open, and meaningful process is the best way to develop this planning rule. This belief has, and continues to be, reflected in the unprecedented participatory process created to develop this proposed rule. The Agency is working to make the process accessible through the use of updated methods of involvement such as new media and has engaged in efforts to involve diverse groups and interests.

The development of this proposed rule has been informed by the 26,000 comments made on the Notice of Intent (NOI); a Science Forum with panel discussions from 21 scientists; regional and national roundtables held in over 35 locations and attended by over 3,000 people; national and regional tribal roundtables; feedback from Forest Service employees; and over 300 comments on the planning rule blog. Summary reports of this input are available at: *http://fs.usda.gov/planningrule.* A separate summary of the tribal consultation and participation and of how the proposed rule reflects tribal input is in a special section of this preamble called "*Consultation with Indian tribal governments.*"

The participatory process to develop this proposed rule began with a new approach to the NOI. While an NOI typically involves sending out a detailed proposed action for comment, the Agency wanted to involve the public in crafting the proposed rule from its very beginning. The December 2009 NOI for the proposed planning rule therefore asked for public feedback on a set of eight principles that could be used to guide future land management planning. The notice resulted in a broad discussion of what should be in a proposed rule and led to a robust

dialogue with the public over the course of the national, tribal, regional, and Web-based public meetings. This discussion has allowed the Agency to craft a proposed rule that more fully responds to public comments and concerns.

While input from the public, Tribes, and agency employees covered a broad range of opinion, there were areas of consistent shared support. Broad support exists for a simple but effective planning process; a planning rule designed to persist through changing times; up-front collaboration in developing proposals for plan revisions; creating plans that focus on NFS units, but also reflect consideration of the landscape beyond unit boundaries; and a strong monitoring plan component that improves accountability and encourages a mutual learning process with cooperators and partners. Additional themes that arose during public participation included the importance of public involvement and working with Tribes, the importance of working with State and local governments and other Federal agencies in land management planning; the importance of providing for sustainable recreation; the importance of creating a rule that meets the multiple use mandate of MUSYA; and the need for an efficient plan amendment and revision process that can keep pace with changing conditions.

There were also broad areas of disagreement that emerged from the collaborative process. One point of tension was how to balance the need for national consistency with the need for local flexibility. Some people want a rule that is streamlined and only includes direction on meeting the minimum requirements of the NFMA, so that local units have more flexibility in how their plan is developed and in what it needs to contain. At the other end of the spectrum, others want a rule that is highly prescriptive and includes detailed national standards and processes.

Another major area of disagreement was how the planning process should consider and balance the multiple uses of the NFS, as well as local versus national and regional interests. Many people asked for a rule that emphasizes one resource area over another or prioritizes the needs of local communities over the needs and desires of people who live further from NFS lands. Others asked for a rule that requires plans to include direction for only restoration and preservation of ecological conditions, while others sought a rule that provides for and emphasizes a full array of multiple uses that contribute to social and economic opportunities.

While no rule can satisfy the entire spectrum of opinion, the Forest Service has worked to find a balance between these different needs and perspectives and has developed a proposed rule that is practical, workable, based on science, and reflective of public and agency values and input. The Agency is now eager to receive public feedback. Readers should carefully examine and consider the information in this preamble and proposed rule, as well as each of the alternatives that are described and evaluated in the accompanying draft environmental impact statement (DEIS). In particular, Alternatives D and E explore substitute or additional rule language that reflects comments received by the Agency during the public engagement process and the comment period for the notice of intent. Suggestions explored and analyzed in these alternatives include different approaches to rule text on management of water resources and watersheds, collaboration, climate change adaption and mitigation, monitoring, and planning for services that connect people to the unit, like conservation education and volunteer opportunities. Based on the public's continued feedback, the Agency will consider substituting or adding specific provisions on these subjects for inclusion in the final rule.

The Agency invites comments on each section of the proposed rule and on how provisions in the DEIS alternatives compare with the proposed rule. The Agency will carefully consider all public comments in preparing the final rule.

3. Section-by-Section Explanation of the Proposed Rule

The following section-by-section descriptions are provided to explain the approach taken in the proposed rule to NFS land management planning. The proposed rule would create an adaptive framework based on science and public participation to guide unit-level land management planning for the NFS with a focus on integrated management of all forest resources. The overarching objective of this proposed rule is to move all NFS units toward social, economic, and ecological sustainability.

Subpart A—National Forest System Land Management Planning

Section 219.1 Purpose and Applicability

This section states that the purpose of Subpart A is to set out the planning requirements for developing, amending, and revising land management plans for the NFS in a national planning rule. The NFMA requires the Agency to have a planning rule developed under the principles of the Multiple-Use Sustained-Yield Act of 1960 (MUSYA). The planning rule sets requirements for land management planning and content of plans and applies to all units in the NFS.

The proposed planning rule is designed to guide the collaborative and science-based development, amendment, and revision of land management plans that would promote healthy, resilient, diverse, and productive national forests and grasslands. These plans would guide management of NFS lands so that they are ecologically sustainable and contribute to social and economic sustainability. Plans would guide management to maintain and restore resilient ecosystems and watersheds and diverse plant and animal communities. Plans would also guide management to provide people and communities with a range of social, economic, and ecological benefits for the present and into the future, including clean water; habitat for fish, wildlife, and plant communities; and opportunities for recreational, spiritual, educational, and cultural sustenance.

The proposed rule is designed to create a collaborative and science-based planning process so that plans and their amendments reflect public values and the best available scientific information. It is intended to ensure that managers understand the role and contribution of their units and the context for management within the broader landscape. It is also designed to facilitate adaptation, creating a feedback loop to allow responsible officials to respond to new information and changing conditions.

Comments from and discussions with the public as part of this rule-making effort revealed growing concern about a variety of risks and stressors impacting resources, services, benefits, and uses on NFS lands. Issues included, for example: Climate change; insects and disease; recreation, timber, and shifts in other local demands and national market trends; population growth and other demographic shifts; water supply protection; and other ecosystem support services. Addressing these types of issues, risks, and contingencies requires a larger landscape perspective, information from a broader spectrum of sources and users, and a framework that can facilitate adaptation.

Questions about multiple use and ecosystem services came up in the collaborative process for the rule.

Multiple use management is well established in law, policy and the Agency mission. "Ecosystem services" is a term that is used today to describe many consumptive and non-consumptive uses, as well as traditional and non-traditional uses, that people associate with national forests. In the proposed rule we use the phrase "multiple uses, including ecosystem services" in certain places to show an association between the terms so both are recognized in the rule and within our statutory authority as part of land management planning. The management of the multiple uses described by the MUSYA of 1960 (outdoor recreation, range, timber, watershed, and wildlife and fish purposes) has broader application in today's context.

The new requirements in the proposed rule should increase agency and unit capacity for adapting management plans to new and evolving information about risks, stressors, changing conditions, and management effectiveness. Agency intent is for responsible officials to use the proposed planning framework to keep plans and management activity current, relevant, and effective.

This section of the proposed rule also would require the Chief of the Forest Service to establish procedures for planning in the Forest Service Directives System that provide further explanation of the methods to implement the requirements of the rule. The Forest Service Directives System is designed to contain implementation requirements and protocols that are more detailed than the rule and provide guidance and direction on how to implement the rule. Directives can be updated as protocols and methods evolve and improve over time.

Some people wanted to see very detailed requirements in the rule, such as monitoring methods and protocols, while others emphasized the need to keep the rule simple so it would endure and could be implemented across different landscapes within the NFS. This section would ensure that the Agency would establish the needed detail in the Directives for effective implementation of the planning rule, while allowing rule language to remain strategic, relevant, and useful even as conditions change.

Finally, this section makes clear that the proposed rule would not affect treaty rights or valid existing rights, and that plans must comply with all applicable laws and regulations. It also includes direction for how responsible officials must treat certain information that is culturally sensitive to an Indian Tribe or Tribes.

Section 219.2 Levels of Planning and Responsible Official

Levels of Planning

Planning occurs at three levels—national strategic planning, NFS unit planning, and project or activity planning. Section 219.2 of the proposed rule describes these levels of agency planning and identifies specific attributes and requirements for unit-level planning. The first level is national strategic planning. At the second level of planning, land management plans are established for administrative units of the NFS (typically an individual forest, grassland, or prairie although in some instances, a plan will cover more than one forest or grassland). Land management plans (also called forest plans, or grassland plans), establish requirements and constraints for on-the-ground management decisions; they do not authorize projects or activities and do not commit the Forest Service to take any action. The proposed rule would provide guidance for this level of planning. The third level of planning includes development of on-the-ground projects and activities, which must be consistent with the unit's land management plan. The environmental effects of decisions made at the unit and project levels are analyzed and there are opportunities for public involvement at both levels.

Some members of the public suggested the Forest Service undertake two additional scales of planning, one at a regional scale between national and unit scales and another at a finer scale such as a ranger district or watershed. The 1982 rule required the preparation of a regional guide and a planning process for the development of that guide. The proposed rule does not include a requirement for regional planning. After several years of developing and using regional guides, the Agency found that they added an additional and time-consuming level of planning that often delayed progress of unit planning. Regional plans also tended to remain static and did not change as new information or science became available. Furthermore, most major issues that emerged regionally, such as issues regarding lynx or grizzly bears, were ultimately dealt with directly in the individual unit plans, usually through simultaneous amendment of multiple unit plans.

The proposed rule also does not include a requirement for finer scale planning (district or watershed scale) below the unit plan level. In many cases, units are building this kind of planning into the development of the management plan for the unit, with several of them using watersheds to organize planning. The proposed rule would allow for this to occur, and in § 219.7, would require identification of priority watersheds for restoration. However, on some units, watershed scale planning might not be appropriate or needed, such as on small NFS units or on units with highly intermixed ownerships. Some units that are influenced by disturbance regimes that are not defined by watershed boundaries may choose other ecological units on which to organize planning. This approach is intended to allow the responsible official to determine how planning on the unit is best organized based on the resources and desired conditions on the unit.

Responsible Official

The proposed rule identifies the unit supervisor as the responsible official for unit-level plans. This is a change from the 1982 rule, which identified the regional forester as the responsible official. This change is intended to facilitate and encourage active public participation by ensuring that the person sitting at the table during the planning process is the decisionmaker.

During public participation to develop the proposed rule, the Agency heard from members of the public who felt that empowering the supervisor with decisionmaking authority would strengthen the collaborative process, while others preferred the current assignment of authority to the regional forester because of concerns that the unit supervisor may be more inclined to place too much of an emphasis on local needs and concerns without being sufficiently responsive to national needs or issues of regional consistency. In the proposed rule, the Agency tried to create a balance by ensuring that planning would not happen in isolation. There are a number of places in the proposed rule that call for coordination with other staff in the Agency, including the appropriate research station director. The regional forester and regional office planning and resource specialists would continue to be involved by providing an additional level of oversight, including reviewing draft and final products developed during the planning process and participating in the development of those products. Regional office oversight would help to provide consistency in interpretation and implementation of the planning rule and other agency planning requirements on units within the region.

The proposed rule also specifically would allow the option for a higher-level official, such as a regional forester,

to choose to serve as the responsible official. For example, a higher-level official could assume responsibility for decisionmaking when planning issues apply to multiple units.

Section 219.3 Role of Science in Planning

This section of the proposed rule addresses the role of science in planning and would require that the responsible official take into account the best available scientific information. This requirement would apply throughout the planning process. The intent of this requirement is to ensure that the responsible official has access to and considers the best available scientific information in order to make informed decisions when developing, revising, and amending land management plans; that social, economic, and ecological science would be appropriately interpreted and applied throughout the planning process; and that the best available scientific information would increase the understanding of risks and uncertainties and improve assumptions made in the course of decisionmaking.

This proposed rule emphasizes the use of science as an important source of information for decisionmaking with the intent that the best available scientific information be used to inform, but not dictate, decisions. The term "taking into account" is used because this term expresses that science is just one source of information for the responsible official and only one aspect of decisionmaking. Land management planning is complex and decisonmakers must consider such things as balancing competing values or competing ecological concerns. There also may be competing scientific perspectives or uncertainty in the science. While the appropriate interpretation and application of science provides the foundation for planning, the Agency recognizes that other forms of information, such as local and indigenous knowledge, public input, agency policies, results of monitoring and the experience of land managers must also be taken into account.

This proposed rule imposes a duty on the responsible official to review the available scientific information and determine which is the best, that is, the most accurate, reliable, and relevant information for the particular matter under consideration. The responsible official does not have unfettered discretion in making this determination, but must demonstrate and document how the determination was made.

In some circumstances, the best available scientific information would be that which is developed using the scientific method, which includes clearly stated questions, well designed investigations and logically analyzed results, documented clearly and subjected to peer review. However, in other circumstances the best available scientific information for the matter under consideration may be information from analyses of data obtained from a local area, or studies to address a specific question in one area. In other circumstances, the best available scientific information could be the result of expert opinion, panel consensus, or observations, as long as the responsible official has a reasonable basis for relying on that information. Regardless of the source of the information, the Office of Management and Budget (OMB) Information Quality Bulletin on Peer Review may apply.

The proposed rule would require the responsible official to document how the best available scientific information was taken into account in the assessment report, the plan decision document, and the monitoring evaluation reports. Through this requirement, the Agency seeks to ensure science is considered throughout the planning process and decisions are well-thought-out and reasoned. This requirement would also provide transparency and an explanation to the public as to how science was used and how the responsible official arrived at important decisions.

It is important to note that the Agency is already required to incorporate science into decisionmaking. The Agency has a longstanding practice of considering relevant factors and explaining the bases for its decisions. Including this section in the proposed rule, with its explicit requirements for determining and documenting the consideration of the information most accurate, reliable, and relevant to making planning decisions, will help to ensure a consistent approach across the National Forest System. However, this section is not intended to impose a higher standard for judicial review than the existing "arbitrary and capricious" standard.

The requirements of this section of the proposed rule are also separate from those of NEPA (40 CFR 1502.22(b)), which requires the responsible official to seek out missing or incomplete scientific information needed for an environmental impact statement, unless the costs of doing so are prohibitive. This section of the proposed rule does not change that requirement. However, the requirements proposed in section 219.3 apply throughout the planning process, and are focused on ensuring the responsible official takes into account the best scientific information that is already available. Thus, while an assessment report or monitoring evaluation report may identify gaps or inconsistencies in data or scientific knowledge, this rule would not impose the affirmative duty that the CEQ regulation applies to EISs, that is, to engage in new studies or develop new information, or to document that the costs of seeking new information are prohibitive.

During the public participation process to create this proposed rule, questions were raised as to what, if anything, the rule should say about the role of science in decisionmaking. Some suggested that science should inform planning but not have a dominant or exclusive role in the decisions. Others wanted more structure or national standards. Many expressed the desire that the input of non-scientists be used to inform agency decisionmaking as many of the issues and problems have social and economic aspects that cannot be resolved through scientific or technical solutions. There were differing opinions on how science should be used to resolve differences in value judgments and how science and public participation should be integrated and weighted in the decisionmaking process. The Agency believes the proposed rule would strike the appropriate balance for using science as an integral and foundational, but not the sole, influence on planning.

The Forest Service Directive System would contain further detail on how to document the consideration of science including identifying the sources of data such as peer reviewed articles, scientific assessments, or other scientific information, and when applicable, the Forest Services' information quality guidelines and OMB's Information Quality Bulletin on Peer Review. Direction about science reviews may be found in Forest Service Handbook 1909.12—Land Management Planning, Chapter 40—Science and Sustainability.

Section 219.4 Requirements for Public Participation

Participation Opportunities

The proposed rule seeks to ensure that the Forest Service provides meaningful opportunities for the public to participate early and throughout the planning process. This section lists the specific points during the planning process when opportunities for public participation would be provided. In order to meet these requirements, the responsible official must be proactive considering who may be interested in the plan, who might be affected by a

plan or change to a plan, and how to encourage various constituents and entities to engage. Additionally, the proposed rule would require the responsible official to use collaborative processes when possible, to take into account the various roles and responsibilities of participants and the responsibilities of the Forest Service itself, and to create a process that is open and accessible.

To develop the public participation requirements of this proposed rule, the Forest Service used the Council on Environmental Quality (CEQ) publication: *Collaboration in NEPA—A Handbook for NEPA Practitioners at: http://ceq.hss.doe.gov/ntf/Collaboration_in_NEPA_Oct_2007.pdf,* (the rule definition of collaboration, at § 219.19, references the CEQ handbook). The CEQ handbook describes a spectrum of engagement, including the categories of inform, consult, involve, and collaborate. Each of these categories is associated with a set of tools, from traditional activities such as notice and comment on the inform end of the spectrum, to consensus building or a Federal advisory committee on the collaborative end of the spectrum. Because "collaboration" is often associated with only those activities on one end of the public engagement spectrum, the rule uses the term "public participation" to clarify the level of public engagement that could be used in the planning process. Every planning process would involve traditional scoping and public comment; in addition, the responsible official would determine the combination of additional public participation strategies that would best engage a diverse set of people and communities in the planning process.

It is important to clarify that while this section of the rule commits the Agency to public participation requirements and encourages collaboration, the Forest Service would retain final decisionmaking authority and responsibility throughout the planning process.

A successful planning process must be socially inclusive in order to adequately reflect the range of values, needs, and preferences of society, and especially those who may be affected by land management planning. The outcomes of public participation can include a greater understanding of interests underlying the issues, a shared understanding of the conditions on the unit and in the broader landscape that provide the context for planning, the development of alternatives that could accommodate a wide range of interests, and the potential development of a shared vision for the unit, as well as an understanding of how and why planning decisions are made. People expressed the desire to participate at a number of points in the planning process, including, but not limited to, crafting the proposed plan revision or plan amendment and monitoring unit progress toward meeting the plan desired conditions, objectives, or other plan components.

The proposed rule specifically would require the responsible official to encourage participation by the public, Tribes, governments, scientists, and other individuals by sharing knowledge, ideas, and resources. It is also expected that the responsible official would rely on proactive, contemporary tools, such as the Internet, to encourage widespread participation.

Because the make-up and dynamics of the communities surrounding each planning area differ, and because the level of interest in decisionmaking may vary, based on the scope and potential impact of the decision being contemplated, the responsible official would need the flexibility to select the public participation methods that would best meet the needs of interested people and communities. Some people wanted a rule that contains thorough process and method requirements detailing how each unit would conduct public participation. Others wanted the responsible official to have full discretion for how public participation would be conducted. The Agency is proposing a balanced approach that would require the responsible official to engage a diverse array of people and communities throughout the planning process but would allow flexibility in the methods.

Many people discussed the need for the Forest Service to make a stronger effort to engage groups and communities that traditionally have been underrepresented in land management planning. This is reflected in the requirement that responsible officials encourage the participation of youth, low-income populations, and minority populations in the planning process and in the requirements to be proactive to use contemporary tools to reach out to the public and consider the accessibility of the process to interested groups and individuals. The Agency recognizes the need to engage a full range of interests and individuals in the planning process and the responsibility to promote environmental justice.

Tribal Participation in Land Management Planning

The proposed rule also acknowledges the Federal Government's unique obligations and responsibilities to Indian Tribes and Alaska Native Corporations in the planning process. The proposed rule recognizes the government-to-government relationship that creates a unique role for federally recognized Tribes. As required by Executive Order 13175, government-to-government consultation would continue throughout the development of plans separately, and in addition to, the process for public participation. The Agency also seeks to involve Tribes and Alaska Native Corporations throughout the planning process and the proposed rule would require the responsible official to encourage their participation in the public process. The responsible official would work with Tribes and Alaska Native Corporations to seek out native knowledge, including information about land ethics, cultural issues, and sacred and culturally significant sites as an additional opportunity for information sharing and dialog that would augment the consultation process.

Several Tribes and Alaska Native Corporations are concerned about keeping information confidential to protect sites from vandalism. Responsible officials will protect confidentiality regarding information given by Tribes in the planning process and may enter into agreements to do so. Participation in a collaborative process would be voluntary and would supplement, not replace consultation.

The Agency heard from Tribes and Alaska Native Corporations that the rule should clearly state how the rights and interests of Tribes and Alaska Native Corporations would be provided for in the planning process. The comments emphasized the obligations the Forest Service has to honor the exercise of treaty rights on NFS lands and the need to fully recognize the government-to-government relationship that exists between the Federal Government and federally recognized Indian Tribes. Requirements in this section of the proposed rule, as well as § 219.1, seek to respond to those comments.

Coordination With Other Public Planning Efforts

Some local governments also asked that the planning rule require land management plans to strive for consistency with local government plans. The proposed rule would require that during the plan development or plan revision process, the responsible official would review the planning and land use policies of federally recognized Indian Tribes and of other Federal, State, and local governments and document the results of the review in

the draft EIS. The review would include assessments conducted by other Federal agencies, statewide forest resource assessments, community wildfire protection plans, or state wildlife action plans. The review would consider the objectives of federally recognized Indian Tribes, and of other Federal, State, and local governments, as expressed in their plans and policies, and would assess the compatibility and interrelated impacts of these plans and policies. The review would include a determination of how each Forest Service plan should address the impacts identified or how each plan might contribute to joint goals.

Requiring land management plans to be consistent with local government plans; however, would not allow the flexibility needed to address the diverse management needs on NFS lands and could hamper the Agency's ability to address regional and national interests on Federal lands. In the event of conflict with Forest Service planning objectives, consideration of alternatives for resolution within the context of achieving NFS goals or objectives for the unit would be explored.

Section 219.5 Planning Framework

This section provides an overview of a proposed new framework for land management planning that would require a three-part learning and planning cycle: assessment, development/revision/amendment, and monitoring. This new framework is science-based and would provide a blueprint for the land management process, creating a structure within which land managers and partners could work together to understand what is happening on the land, revise management plans to respond to existing and predicted conditions and needs, and monitor changing conditions and the effectiveness of management actions to provide a continuous feedback loop for adaptive management.

In the assessment phase, the responsible official would conduct a review of conditions on the ground and in the context of the broader landscape, using available ecological, social, and economic data to the extent possible. The assessment phase would lead to the identification of a potential need to change the unit's plan. In the development, revision, or amendment phase, the responsible official would work with other government agencies, Tribes, and the public to use the information gathered in the assessment phase to shape a proposed action that would respond to the need for change. This process would include scoping and public comment in accordance with agency National Environmental Policy Act (NEPA) procedures and would culminate in a plan decision. In the monitoring phase, the responsible official would implement a monitoring plan informed by the assessment and developed as part of the plan, revision, or amendment. This phase would give managers data to evaluate management actions and measure effectiveness, test assumptions, track changing conditions, and make adjustments to both projects and to the land management plan as needed.

This framework would also guide land managers in working with the public and partners before, during, and after plans are written, offering participation opportunities to partners and interested parties throughout the planning process. An open and participatory approach for each phase of the framework is intended to ensure planning efforts are well understood; informed by public knowledge and opinion; and responsive to ecological, social, and economic conditions that may be impacted by management on the unit.

The approach described in the proposed framework responds to the public's stated desire for participation throughout land management planning. The assessment phase would allow for early public participation—well before a proposed action—so that stakeholders could engage in joint fact-finding and develop a mutual understanding of the interconnections among social, economic, and ecological communities and systems. The development/revision/amendment element of the framework responds to the public desire to help develop and provide meaningful input to proposals for land management plans. The monitoring part of the framework responds to stakeholder's desires for a systematic, deliberate, monitoring approach that can inform, and be informed, by other monitoring efforts relevant to management on the unit. Both stakeholders and the Agency recognize the potential efficiencies of a uniform monitoring approach and hope to increase information sharing and learning opportunities.

The proposed framework embraces adaptive management in planning and reflects key themes heard from the public, as well as experience gained through the Agency's 30-year history with land management planning. The new proposed framework is intended to establish a more responsive and agile process that would allow the Agency to adapt management to changing conditions and improves management based on new information and monitoring. As proposed, the framework would support a more integrated and holistic approach to management recognizing the interdependence among all parts of the ecosystem including the communities (biotic and human) and systems (functions and values) that are part of each forest.

Section 219.6 Assessments

This section sets out both process and content requirements for assessments. Assessments are intended to provide a solid base of information and context for plan decisionmaking. The responsible official would have discretion to set the scale and scope of the assessment but would engage the public early and would encourage participation in the assessment process. The content of assessments would be used to develop new plans and plan revisions, to develop monitoring questions, and to provide a feedback loop. The scope and scale of an assessment could be comprehensive, such as those for a revision, or they could be narrow, such as those for an amendment focused on one issue.

Responsible officials would use assessments to determine the unique roles and contributions of the unit within the context of the broader landscape as well as the need to change the plan. Assessments should provide useful information to the responsible official to develop plan components and other content for a new or revised plan, to identify gaps in needed information that might be filled by a monitoring program, to identify changing conditions that the Agency might need to track, or to identify assumptions that should be tested later.

Process Requirements

This section of the proposed rule would require an assessment prior to plan revision or development. The responsible official would reach out to the public, Tribes, Alaska Native Corporations, other Federal agencies, States, local governments, and scientists to start the assessment and help identify the questions and issues to be considered. The responsible official would also be required to coordinate with the regional forester, and agency staff from State and Private Forestry, Research and Development, as well as other governmental and non-governmental partners to consolidate existing information and develop strategies for satisfying any additional information needs. Early engagement with a diverse set of interests is needed to create an accurate depiction of the issues affecting the plan area and a solid base of understanding for any changes needed to the plan.

This section of the proposed rule would require the responsible official to document the assessment in a report or set of reports. To bring transparency and accountability to the assessment process, the reports would be available to the public. The report, or set of reports, would be included in the planning record and document how the relevant best available scientific information was taken into account. Within the report, the responsible official would identify how a new plan should be proposed or identify the potential need to change an existing plan based on the assessment.

Content Requirements

At a minimum, the content of assessments for revisions and new plans would provide information to support development of plan components that meet the substantive requirements of other rule provisions such as sustainability (§ 219.8), diversity (§ 219.9), multiple uses (§ 219.10), and the timber requirements based on the NFMA (§ 219.11). In order that planners have sufficient information to meet the requirements set out in sections 219.8 through 219.11, assessments would include information on existing conditions, trends, and stressors, both on and off the unit, which might impact resources or ecological, social, or economic sustainability.

An assessment is expected to use existing information and be conducted rapidly in order to respond to changing conditions. Existing information may come from sources inside or outside the Forest Service, such as assessments conducted by other Federal agencies, statewide forest resource assessments, community wildfire protection plans, or state wildlife action plans. Existing information would be gathered and synthesized for relevant ecological, economic, and social conditions and trends within the context of the broader landscape. However, nothing in this section would restrict the responsible official from gathering new information to address the issues or questions for the assessment.

Assessments for Plan Amendments

Because plan amendments vary in their complexity, this section provides a flexible approach to preparing an assessment for a plan amendment. Plan amendments would be based on a documented need for change but do not require an assessment. In some cases, the information from monitoring and evaluation would identify the need for change, or the need may arise from an unexpected proposed use such as a new permit application. Thus, there would be no need for an assessment. In other cases, the assessment would focus on an issue or question that only affects a portion of the plan area. In such a case, the scope of the assessment would be narrow and scale would be small. In other cases, particularly for complex issues that cross unit boundaries, the responsible official could conduct a more comprehensive assessment for an amendment.

Section 219.7 Plan Development or Plan Revision

This section sets out requirements for how to develop a new plan or revise an existing plan. This section has two primary topics: (1) The process for developing or revising plans and (2) the plan, which includes plan components and other content in the plan. Plans and plan revisions provide direction and guidance and management for the unit as a whole. Plan revisions are required every 15 years under the NFMA. Most plans would be revised in the 15-year period. However, the responsible official has the discretion to determine at any time that conditions on a unit have changed significantly such that a plan must be revised. A plan revision before the 15-year requirement has been rare in the past, and is expected to be rare in the future.

A plan revision is considered an entirely new plan even if it uses much of the same direction and guidance as the previous version.

Process Requirements

The responsible official would begin by notifying the public of the start of a process to draft a proposed plan. That proposal would be informed by the assessment(s) that would identify the need to change the plan as well as information about the unique roles of the unit in the context of the broader landscape.

Drafting a proposed plan with public participation is a change from current planning processes. Typically, the responsible official appoints an interdisciplinary team to draft a proposed plan and then publishes it for public comment. Under the proposed rule, the public would have opportunities to shape the proposed plan while it is being drafted, however, these opportunities are not intended to prejudge the outcome of the NEPA process. This process change responds to the desire expressed during the collaborative process for this proposed rule that the public be involved early, before proposed plans are already drafted.

The process would include the preparation of an EIS with opportunities for consideration of alternatives during a public comment period. By crafting a proposed plan with public participation, it is expected that meaningful alternatives would be rapidly developed and evaluated in the EIS. The environmental analysis should be focused and the responsible official should reach a decision in a timely manner.

As part of the process for developing a proposal, this section would require the responsible official to, at minimum, review information from the assessment. This includes consideration of conditions, trends, and stressors that affect plan components as well as the identification of the presence and value of resources on the unit. The responsible official would also assess potential wilderness areas, eligible wild and scenic rivers, suitability of areas for resource management, and the quantity of timber that can be removed in accordance with NFMA requirements. The proposed plan would identify questions for the monitoring plan and potential other content in the plan. These requirements are designed to form a basis for developing plan components and content that would meet the requirements set forth in this proposed rule.

Many people have asked that the rule streamline planning; that it not include detailed processes and methods that may rapidly become outdated. By conducting an assessment using a collaborative approach prior to starting a new plan or plan revision and by working with the public to develop a proposal for a new plan or plan revision, the Agency expects that the actual preparation of a plan would be much less time consuming. These process requirements incorporate the best practices learned from the past 30 years of planning and the Agency believes these practices should be carried out in an efficient and effective manner.

Plan Components

This section sets out proposed requirements for plan components. Every plan would contain five plan components: desired conditions, objectives, standards, guidelines, and suitability of areas. Plans could also contain goals, an optional plan component. These plan components are based on techniques widely accepted and practiced by planners, both inside and outside of government. Every plan would contain at least one of each of the required five plan components—these are the central parts of a plan. Projects and activities would be required to be consistent with plan components.

Except to correct clerical errors, plan components could only be changed through plan amendment or revision.

Desired conditions identify an overall vision for the unit. When developed during a collaborative process with the public, desired conditions would provide a way to identify a shared vision for a plan area. Other plan components would provide the strategy and guidance needed to achieve that vision. A desired condition is generally supported by objectives that identify intended, measureable progress toward reaching the desired condition. Taken as a whole, objectives lead to the development of a proactive program of work of passive or active management designed to achieve the desired condition.

Standards, guidelines, and suitability (identifying lands within the planning area as suitable or not suitable for various uses) are intended to create a framework that would permit uses, projects, and activities that move the unit toward the desired conditions, while restricting uses, projects, or activities that may be inconsistent with achieving desired conditions.

Standards are mandatory constraints and do not allow for deviation. The Agency heard from the public that many people want the rule to include "default" standards, and others want a way for responsible officials to "opt-out" of standards when they do not fit the situation at hand. The Agency recognizes that circumstances on the ground differ from place-to-place. The proposed rule would require guidelines that, like standards, are requirements. Guidelines are not intended to allow an "opt-out," but they would allow the responsible official some flexibility in how to meet the intent of the guideline, recognizing that different conditions may necessitate a different approach. Guidelines provide a means to protect resources in different ways depending on those circumstances.

Examples of a desired condition, objective, standard, and guideline for long leaf pine restoration are provided below.

These examples assume that during the assessment it was determined that the native ecological condition for a portion of the plan area on a coastal plain forest should be a long leaf pine savanna. The existing condition has 45 percent of the area dominated by loblolly pine forest with closed canopy and a sparse understory. The following statement would describe the desired condition, usually in terms of composition, structure, and function for ecological types.

Desired condition: First would be a description of the composition: *The composition is predominately longleaf pine savanna, comprising approximately 75 percent of the area. There are patches of mixed pine/hardwood primarily along streams, but these patches comprise less than 25 percent of the total composition.*

Often a statement would follow regarding the vegetation structure: *The forest has two distinct layers: a pure longleaf pine open canopy approaching 70 feet in height and a wiregrass dominated herbaceous layer.*

The functions or processes in this ecological type would then be described: *This savanna structure is maintained by recurring fire on an average 3-year cycle. This ecological type functions as primary nesting and foraging habitat for red-cockaded woodpecker.*

Objective: The objective statement would be written to show the change from the existing condition to the desired condition: *Restore longleaf pine on approximately 1250 to 1500 acres per year over for the 10 years following plan approval on longleaf pine landtypes currently dominated by loblolly pine. Within 5 years of the restoration activity, the desired outcome is 150 to 250 seedlings per acre, free of competition.*

Standard: A standard intended to protect all existing longleaf pine could be written as: *Retain any longleaf pine during the restoration activity.*

Guideline: A guideline to protect soil and water with built in flexibility could be written as: *To avoid unacceptable risks of erosion, mechanical fire lines should not occur on slopes greater than 30 percent or on the highly erosive X, Y, and Z soil types.*

In the suitability plan component, the plan would identify specific areas of the planning unit as being suitable or not suitable for certain types of uses or activities. The plans are not required to have suitability identified for any specific type of use or activity, with the exception that areas not suitable for timber production must be identified as required by the NFMA. Determining the suitability of a specific land area for a particular use or activity is usually based upon the desired condition for that area and the inherent capability of the land to support the use or activity. If the plan identifies an area as not suitable for a type of use or activity, such a use or activity may not be permitted within that area. If the plan identifies an area as suitable for a type of use or activity, authorization of such a use or activity in that area may be considered; however, site-specific analysis consistent with NEPA procedures and due consideration of relevant factors will always be needed before a specific use or activity can be authorized.

For example, a plan may identify an area as suitable for motorized recreation trails on stable soils, but the plan also has a guideline limiting motorized recreation during the nesting season. Before a new designated motorized trail can be opened in the management area, a site-specific analysis would need to determine which parts of the project area have stable soils and are thus suitable for the motorized trail. Consistent with the plan, a motorized trail may then be proposed within the management area on stable soils with a requirement that it be seasonally closed during the month of the nesting season. The site-specific analysis for the proposal would have to document consistency with the motorized trail suitability, the wildlife guideline, and any other applicable plan components.

A goal is an optional plan component that conveys a broad statement of intent. Usually, goal statements are not associated with on-the-ground conditions in contrast to desired conditions. Instead, goals express intentions about how processes or interactions with the public would be conducted under the plan. Examples of goal statements in current plans are:

> Provide opportunities for the local populations to develop a unique connection—a sense of place—to the national forest.
>
> Provide information about the natural and cultural environment to foster understanding of the uniqueness of the resources of the unit and to help develop ecological-based tourism.

Goals are optional plan components because some responsible officials find them useful while others do not. The proposed rule would allow the responsible officials flexibility to choose whether to include goals as a plan component.

The set of plan components must meet the substantive requirements for sustainability (§ 219.8), plant and animal diversity (§ 219.9), multiple uses (§ 219.10), and timber requirements based on the NFMA (§ 219.11) as well as other requirements laid out in the plan. While all plans must contain the required five plan components (desired conditions, objectives, standards, guidelines, suitability of areas, and may contain goals), not every issue or resource contained in a plan would require all five plan components. Through the planning process, the responsible official would determine the content of plan components needed to

address specific management issues or resources.

Other Content in the Plan

In addition to the plan components, this section would require other content in the plan for integrated resource management. Other required content differs from plan components in that an amendment or revision would not be required for changes to be made to reflect new information or changed conditions.

This section sets out four requirements for other required content: The monitoring program, identification of watersheds that are a priority for maintenance or restoration, description of the unit's distinctive roles and contributions within the broader landscape, and information reflecting proposed and possible actions that may occur on the unit during the life of the plan. Other content could be included as needed.

The proposed monitoring program, described in § 219.12, would be required in every plan. A monitoring program has been included as other required content, but not as a plan component, so the program can be updated without a plan amendment. In the past, monitoring programs became outdated and ineffective because any changes required a plan amendment, which usually took a long time to complete. Since monitoring methods and protocols are constantly being refined, and since it may be important to add or change a monitoring question or indicator to be sure that the monitoring is effective and targeted to inform and improve management, it is important to have processes where changes can be made rapidly. Reflecting the importance that stakeholders place on monitoring, the proposed rule requires advanced public notice (§ 219.16) of any changes to be made in the monitoring program, along with an opportunity for the public to provide comment on the proposed change.

The proposed requirement that other required content include the identification of priority watersheds for maintenance or restoration is designed to complement the water-based sustainability requirements found in § 219.8. The Agency realizes that areas prioritized for potential restoration activities could change quickly due to events such as wildfire, hurricanes, drought, or the onslaught of invasive species. Therefore, this requirement is included in this section as other required content rather than in § 219.8 for plan components thus allowing an administrative change (§ 219.13) to be used to re-prioritize watersheds for maintenance or restoration.

The proposed requirement that the plan describe the unit's distinctive roles and contributions within the broader landscape is designed to ground the development of plan components in a context of capability and opportunity. The identification of the unit's roles and contributions directly supports development of desired conditions and objectives. The requirement should lead to each unit developing a plan that reflects its unique characteristics while addressing issues of importance for the NFS and setting priorities for management.

Section 219.8 Sustainability

Sustainability is the fundamental principle that will guide land management planning. The intent is for plans to guide management so that NFS lands are ecologically sustainable and contribute to social and economic sustainability, with resilient ecosystems and watersheds, diverse plant and animal communities, and the capacity to provide people and communities with a range of social, economic, and ecological benefits for the present and future generations.

The requirements of this section of the proposed rule are linked to the requirements in the assessment (§ 219.6) and monitoring sections (§ 219.12). In addition, this section provides a foundation for the next three sections regarding diversity of plant and animal communities (§ 219.9), multiple uses (§ 219.10), and timber requirements based on the NFMA (§ 219.11). Together these sections of the proposed rule would guide the land management planning process for maintaining or restoring ecological sustainability on NFS lands and contributing to social and economic sustainability of the local communities and regions and the Nation.

The proposed requirements of this section are limited to what can be accomplished within the Agency's authority and the capability of the unit. This limitation arises from the fact that some influences on sustainability are outside the Agency's control, for example, climate change, extreme disturbance events, and urbanization on lands outside of or adjacent to NFS lands. Given those constraints, the Agency realizes it cannot guarantee sustainability. However, it can establish planning processes and practices that provide the best opportunity for maintaining or restoring sustainable ecological systems and contributing to social and economic sustainability.

It is important to note that plan components themselves could not compel agency action or guarantee specific results. Instead, they provide the vision, strategy, guidance, and constraints needed to move the unit toward sustainability. This section must be read with these constraints in mind.

Ecological Sustainability

A common theme brought up throughout the public involvement process was the importance of maintaining or restoring healthy, resilient ecosystems and the benefits that such resilient systems provide. Examples of such benefits include a reduced risk of catastrophic fire, clean abundant water, connected habitats for wide ranging species, and economic benefits. Those themes are reflected in the requirements of this section in the proposed rule.

The proposed requirements for plan components in this section are based on sound ecological principles that the health of aquatic and terrestrial systems is interdependent, and that they are shaped by processes at the landscape scale. When the Agency speaks of ecological sustainability in this document, the Agency means to maintain or restore ecosystem and watershed structure, function, composition, and connectivity.

The proposed rule, therefore, would require the development of plan components that maintain or restore the structure, function, composition, and connectivity of these systems as a whole and that maintain, protect, or restore key elements within each system. Management to maintain, protect, and restore ecosystems would include both active and passive management and require different levels of investment based on the difference between the desired and existing conditions of the system.

In designing plan components to maintain or restore ecosystems and watersheds, the proposed rule would require the responsible official to take into account the physical (including air quality) and biological integration of the terrestrial and aquatic ecosystems within a landscape. Because fire is an important ecosystem driver, the proposed rule would require that the responsible official would also take wildland fire and opportunities to restore wildland fire ecosystems into account. During the planning process, other potential ecosystem drivers, disturbance regimes, and environmental stressors, including climate change, would be identified, assessed, and considered when developing plan

components for ecological sustainability.

Paragraph (a)(2) would require that the responsible official develop plan components to maintain, protect, or restore certain ecosystem elements. The first two elements would require the responsible official to develop plan components for aquatic and terrestrial areas, including lakes, streams, wetlands, forest stands, meadows, and other habitat types. These areas represent the individual elements that form a foundation for maintaining the health and resilience of the overall ecosystem or watershed. The third element would require plan components for rare aquatic and terrestrial plant and animal communities, which may have particular value as communities, consistent with the individual species and ecosystem diversity requirements in § 219.9. Finally, plan components would be required to protect, maintain, and restore clean, abundant water supplies (both surface and groundwater sources), and soils, and productivity recognizing their importance as fundamental ecosystem resources and services.

Water

One of the original purposes for establishing the NFS was to protect our Nation's water resources. Of all land uses, forested land provides the highest quality water. National Forest System lands contain 400,000 miles of streams, 3 million acres of lakes, and many aquifer systems that together serve as the source of drinking water for more residents of the United States than any other source. The Agency administers over 90,000 water rights in cooperation with States; protects and improves habitat for more than 550 rare, threatened, and endangered aquatic species; provides outdoor recreation to more than 130 million visitors per year near streams, lakes, and other water resources; and supports access and operations for more than 200 hydroelectric facilities. National forests alone provide 18 percent of the Nation's water and over half the water in the West. The Organic Act, Weeks Act, MUSYA, and the NFMA all discuss the protection of water and/or watersheds.

Although forests are effective at maintaining hydrologic functions, there are areas on national forests where water resources are degraded. There are serious environmental and economic costs of depleting or damaging water resources and unsustainable water and land use practices pose risks to people and ecosystems. The quantity and quality of America's water and aquatic habitats are affected by our changing climate as well as by non-climate related stressors. Changing conditions and stressors can include changing water temperatures, variability in volume and timing of precipitation, and increased frequency and severity of floods. The requirements of this section recognize the importance of maintaining those watersheds and aquatic resources that are in good condition and restoring those that are not.

The proposed rule would require that plans include plan components to maintain, protect, and restore public water supplies, groundwater, sole source aquifers, and source water protection areas where they occur on NFS lands. Source water protection areas are areas delineated for public water systems as part of the State or tribal source water assessment and protection program and may include ground water or surface water or both. Under section 1424(e) of the Safe Water Drinking Act, sole source aquifers are defined as underground water sources that are designated by the Environmental Protection Agency and supply at least 50 percent of the drinking water consumed in the area overlying the aquifer.

Riparian areas are important elements of watersheds that provide critical transition zones linking terrestrial and aquatic ecosystems. The proposed rule would highlight the importance of maintaining, protecting, or restoring riparian areas and the values such areas provide by requiring that plans include plan components to guide management with riparian areas. The proposed rule also requires that plans establish a default width within which those plan components apply. The width of such zones is usually measured from the edge of the water, extending outward to the adjacent upland areas, and it could be a standard width for all riparian areas or it could vary based on the type of waterbody.

Additionally, riparian areas would be site-specifically verified over time, either during watershed or landscape assessments or when management actions are proposed that might affect riparian areas. The width of the actual riparian area would be based on the characteristics of the site and could be wider or narrower than the default width(s). Many NFS units already have actual riparian areas identified, while in some areas, for example wilderness areas, there may be no need to site-specifically delineate riparian areas. Restoration of riparian areas may be accomplished through passive management or may require active management, particularly in areas where natural disturbance such as fire or flooding have been excluded or where past management has altered function.

Public comment ranged between those who wanted very prescriptive national standards in the rule for such things as road density or riparian area widths and those who wanted very few requirements and ultimate flexibility at the unit level to determine the suite of plan components best suited to the unit's unique situation. The proposed rule reflects a balance by including requirements for plan components to guide management of these resources but not prescribing national standards that may not be ecologically appropriate or practical across all units. In this way, the Agency ensures that all plans will consistently include plan components for these critical resources while allowing the flexibility to design plan components that are ecologically appropriate to the unit.

Social and Economic Sustainability

During the public participation process to develop this proposed rule, there was a divergence of opinion on whether ecological sustainability should take precedence over social and economic sustainability or if the ecological system, the social system, and the economic system are of equal importance. The proposed rule considers the ecological, social, and economic systems as interdependent systems, which cannot be ranked in order of importance.

However, there is an important difference in the wording between the ecological and the social/economic sustainability requirements. The requirements for ecological sustainability would require responsible officials to provide plan components to maintain or restore elements of ecological sustainability. The requirements for social sustainability would require plan components to guide the unit's contribution to social and economic sustainability.

The distinction between these two sets of requirements recognizes the Agency has more influence over the factors that impact ecological sustainability on NFS lands (ecological diversity, forest health, road system management, etc.) than it does for social and economic sustainability (employment, income, community well-being, culture, etc.). National Forest System lands can provide valuable contributions to economic and social sustainability, but that contribution is just one in a broad array of factors that influence the sustainability of social and economic systems. Similar to the requirements for ecological

sustainability, the requirements for social and economic sustainability reflect that NFS lands are integral parts of the larger landscape.

Section 219.8(b) of the proposed rule would require plans to include plan components to guide the unit's contribution to social and economic sustainability. In developing these plan components, the responsible official would be required to take into account through the collaborative planning process and the results of the assessment the social, cultural, and economic conditions relevant to the area influenced by the plan; the distinctive roles and contributions of the unit within the broader landscape; sustainable recreational opportunities and uses; multiple uses, including ecosystem services, that contribute to local, regional, and national economies in a sustainable manner; and cultural and historic resources and uses.

Several Tribes and Alaska Native Corporations requested the rule recognize and provide a framework for sustaining cultural services and benefits from national forests and grasslands, including cultural traditions, ways of life, and cherished spaces. Furthermore, several Tribes and Alaskan Native Corporations requested that sustainability be based on four equal aspects: Ecological, economic, social, and cultural sustainability. The Agency has defined sustainability as having three aspects since 1999: Ecological, economic, and social. Instead of adding a new aspect to sustainability, the Agency proposes that the planning rule require responsible officials to take into account cultural conditions when developing plan components for social and economic sustainability. An alternative way of dealing with this issue would be to require the responsible official to develop plan components for cultural resilience (The ability of cultural knowledge and expression to adapt to social, economic, and ecological change in ways that continue the core meanings of that knowledge and expression). The Agency welcomes public comment on the issue of cultural sustainability.

Requirements for specific elements that would contribute to social and economic sustainability are found in § 219.10 and § 219.11.

Section 219.9 Diversity of Plant and Animal Communities

The Agency is committed to the goals of the Endangered Species Act (ESA) and the NFMA. This section of the proposed rule demonstrates agency commitment to meeting the NFMA requirement to provide for diversity of plant and animal communities based on the capability of the plan area. The Agency's intent is to keep common native species common, contribute to the recovery of threatened and endangered species, conserve candidate species, and protect species of conservation concern.

This section of the proposed rule addresses the diversity requirement by focusing on factors within agency control and using the best available scientific information to design a robust and achievable diversity standard. The proposed rule adopts a complementary ecosystem diversity and species conservation approach to provide for the diversity of plant and animal communities in the plan area and the long term persistence of native species. Known as a coarse-filter/fine-filter approach, this is a well-developed concept in the scientific literature and has broad support from the scientific community and many stakeholders. The coarse-filter should provide ecological conditions for the long-term persistence of the vast majority of species within the plan area. The fine-filter would identify specific habitat needs of species with known conservation concerns or whose long-term persistence in the plan area is at risk, and for which the coarse-filter protection is insufficient.

The wording in paragraph (a) for ecosystem diversity intentionally mirrors that found in § 219.8(a)(1) for ecological sustainability, as they are not intended to be separate processes or requirements. The requirements in § 219.8 (a)(1) for plan components to maintain or restore structure, function, composition, and connectivity of healthy and resilient terrestrial and aquatic ecosystems and watersheds would also meet the requirement of this section to retain or restore ecosystem diversity on the unit. The requirements are restated in both of these sections to emphasize the link between sustainability of terrestrial and aquatic systems and the diversity of plant and animal communities.

Specific agency policy direction for ecosystem diversity and species conservation using the coarse-filter/fine-filter approach, as well as for identifying species of conservation concern would be included in the Forest Service Directive System.

The Coarse-Filter Approach

Paragraph (a) of this section of the proposed rule would require plan components for maintaining or restoring structure, function, composition, and connectivity of healthy and resilient terrestrial and aquatic ecosystems and watersheds to maintain the diversity of native species. This serves as the "coarse-filter" aspect of the diversity standard. The premise behind the proposed coarse-filter approach is that native species evolved and adapted within the limits established by natural landforms, vegetation, and disturbance patterns prior to extensive human alteration. Maintaining or restoring the ecological conditions similar to those under which native species have evolved therefore offers the best assurance against losses of biological diversity and maintains habitats for the vast majority of species in an area, subject to factors outside of the Agency control, such as climate change. Climate change and related stressors could affect many species and may make it impossible to maintain current ecological conditions.

Ecosystems are described in terms of their composition (vegetation types, rare communities, aquatic systems, riparian systems); structure (vertical and horizontal distribution of vegetation, stream habitat complexity, and riparian habitat elements); function (processes such as stream flows, nutrient cycling, and disturbance regimes); and the connection of habitats (for breeding, feeding, or movement of wildlife and fish within species home ranges or migration areas). Healthy ecosystems are indicated by the degree of ecological integrity related to the completeness or wholeness of their composition, structure, function, and connectivity. Resilience refers to the capacity of the system to absorb disturbance so as to retain essentially the same function. By working toward the goals of diverse native ecosystems with connected habitats that can absorb disturbance, it is expected that over time, management would create ecological conditions, through activities such as ecosystem restoration treatments, which support the abundance, distribution, and long-term persistence of native species within a plan area to provide for plant and animal diversity.

The Fine-Filter Approach

Paragraph (b) of this section sets forth three species-specific requirements for plan components that would provide the basis for the fine-filter approach to species conservation. The intent would be to provide plan components that identify specific habitat needs of species, when those needs are not met through the coarse filter. These species are threatened and endangered (T&E) species, candidate species, and species of conservation concern.

The first species conservation requirement in this section of the proposed rule is to maintain or restore

ecological conditions to contribute to the recovery of T&E species. These species are at risk of extinction and are protected under the ESA. The Agency proposes that its role is to provide ecological conditions in the plan area that would contribute to recovering these species across their ranges, which in many cases includes lands outside NFS boundaries where the Agency has no control. The responsible official may also contribute to other recovery actions, such as species reintroductions to increase species distribution.

The second species conservation requirement proposed in this section of the proposed rule is to maintain or restore ecological conditions to conserve candidate species. These species are plants and animals for which the Fish and Wildlife Service has proposed listing under the ESA, but for which a listing regulation has not yet occurred. Under the ESA, candidate species do not receive special legal protections, as do threatened and endangered species. However, the agency would like to be proactive and take measures to ensure animal and plant species do not require protection under ESA. Candidate species are not the same as focal species (§ 219.12), but units may choose to use a candidate species as a focal species, as part of their monitoring program. The Agency is proposing to use its policy discretion to take steps to reduce the risks to candidate species from activities on NFS lands. These steps would include identifying specific ecological conditions for NFS land that would conserve candidate species and specifying plan components for the maintenance or restoration of those conditions.

The proposed rule would represent a higher level of protection for candidate species than currently exists in the planning process while still recognizing that candidate species may not have viable populations. Protection requirements for candidate species may at times contradict the protection requirements of other species or other management objectives. The Agency invites public comment on how it should address these circumstances in this rule.

The final species conservation requirement in this section of the proposed rule addresses the needs of species of conservation concern. A species of conservation concern is a species that is not threatened, endangered, or a candidate species, but is one for which the responsible official has determined there is evidence demonstrating significant concern about its capability to persist over the long term in the plan area. A viable population is defined in this proposed rule as a population of a species that continues to persist over the long-term with sufficient distribution to be resilient and adaptable to stressors and likely future environmental conditions. The responsible official would identify, where necessary, specific ecological conditions needed by these species that are not provided by the coarse-filter. The identification of species of conservation concern within the plan area could be based on several criteria, such as substantial scientific information as to the overall status of the species, the quantity and quality of species habitat within the plan area, and the potential for management activities to affect the species habitat within the plan area. Forest Service Directives would contain the criteria for selecting species of conservation concern. State lists of endangered, threatened, rare, endemic, or other classifications of species, such as those listed as threatened under State law; and other sources such as the Nature Serve conservation status system may be used to inform the selection of species of conservation concern.

The proposed rule's requirement for species of conservation concern would be to maintain or restore ecological conditions to maintain viable populations of species of conservation concern within the plan area, within the Agency's authority and consistent with the inherent capability of the plan area. Where a viable population of a species of conservation concern already exists within the plan area, the appropriate ecological conditions needed to maintain the long-term persistence of that species will continue to be provided.

At times, factors outside the control of the Agency prevent the Agency from being able to maintain a viable population of species of conservation concern within the plan area, such as when the range and current distribution of a species extends beyond NFS boundaries. In such cases, the proposed rule would require that the Agency provide plan components to maintain or restore ecological conditions within the plan area for that species, and by doing so to contribute to the extent practicable to a viable population across its range. Additionally, the responsible official would reach out beyond NFS boundaries to land managers who have authority where the species exists, to coordinate management for the benefit of a species across its range.

Some examples of plan components used for the fine-filter approach to address species-specific ecological conditions could be the following: a desired condition statement that describes the composition, structure, and function of a longleaf pine ecosystem that will provide optimum habitat conditions for red-cockaded woodpeckers; an objective for acres of occupied prairie dog habitat to facilitate the goal of reintroducing black-footed ferrets; a standard that sets a maximum road density that will improve habitat conditions for the Canada lynx or gray wolf; or a guideline that recommends a "no disturbing activities" time period within a specified distance of a known bald eagle or goshawk nest site during the critical breeding period.

Diversity of Trees and Other Plant Species

The intent of the "diversity of trees and other plant species" requirement in this section of the proposed rule is to address the specific requirements of the NFMA to preserve, where appropriate, and to the degree practicable, the diversity of tree species similar to that existing in the region controlled by the plan. The proposed rule would require plan components to preserve diversity of native tree and other plant species. Preserving the diversity of tree species native to the unit will also preserve other native plant species. Meeting the requirements for ecosystem diversity and species conservation, as discussed above, would meet this provision as well.

Endangered Species

As part of the Forest Service mission, the actions needed to recover T&E species and maintain or restore critical habitats are a high priority. Under the ESA, the Forest Service is to carry out "programs and activities for the conservation of endangered species and threatened species" (16 U.S.C. 1536 (a)(1)) and "insure that any action authorized, funded or carried out by [it] is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [designated critical habitat]" (16 U.S.C. 1635 (a)(2)).

Under the proposed rule, plans would address conservation measures and actions identified in recovery plans relevant to T&E species in the plan area. The Forest Service would continue to collaborate with the U.S. Fish and Wildlife Service (USFWS) and the National Oceanic and Atmospheric Administration (NOAA) in the development and implementation of recovery plans for these species. The Forest Service would also continue to work with USFWS, NOAA, States, and other partners to conserve and recover

federally listed plant and animal species. The Agency would continue to restore NFS ecosystems and habitats through a number of management activities, including monitoring, habitat assessments, habitat improvements through vegetation treatments and structure installation, species reintroductions, development of conservation strategies, research, and conservation education. In addition, the Agency would continue to evaluate effects of proposed management actions to T&E species or designated critical habitat.

The proposed rule would require the responsible official to explicitly recognize the recovery of T&E species as an important part of land management plans and provide plan components to maintain or restore ecological composition, structure, function, and connectivity. Additionally, the requirements in this section are linked to the proposed requirements for public participation, assessments, and monitoring (Sections 219.4, 219.6, and 219.12 respectively). Collectively these requirements are intended to have the responsible official work beyond the planning unit boundary to collaborate and cooperate with other landowners and land managers in working toward an all-lands approach to ecosystem and species diversity and conservation.

Providing for Diversity Within the FS Authority and the Capability of the Plan Area.

This section fulfills the diversity requirement of the NFMA, which directs the Forest Service to "provide for diversity of plant and animal communities based on the suitability and capability of the specific land area in order to meet multiple-use objectives, and within the multiple-use objectives of a land management plan adopted pursuant to this section, provide, where appropriate, to the degree practicable, for steps to be taken to preserve the diversity of tree species similar to that existing in the region controlled by the plan" (1604(g)(3)(B)).

The 1982 planning rule required the Forest Service to manage habitat to "maintain viable populations of native and desired non-native vertebrate species in the planning area" (47 FR 43048; September 30, 1982, section 219.19). The 1982 viability standard at times proved to be unattainable because of factors outside the control of the Agency. Some factors outside the control of the Agency include: (1) Species ranging on and off NFS lands; (2) activities outside the plan area (*e.g.,* increasing fragmentation of habitat, non- and point source pollution) often impact species and their habitats, both on and off NFS lands; (3) failure of the species to occupy suitable habitat; and (4) climate change and related stressors, which could impact many species and may make it impossible to maintain current ecological conditions.

Other stressors, such as invasive species, insects, disease, catastrophic wildfire, floods, droughts, and changes in precipitation, among others, will also affect species and habitat in ways that the Agency cannot completely control or mitigate for.

Additionally, it is important to note that the proposed rule is not limited to "vertebrate" species as required under the 1982 provisions. The proposed rule would include native plants and native invertebrates (fungi, aquatic invertebrates, insects, plants, and others) for which the Agency currently has very minimal biological information on their life histories, status, abundance, and distribution. However, maintaining or restoring ecosystem diversity within the plan area is the best opportunity to conserve these little-known species.

People suggested a broad range of approaches, including reinstating the 1982 viability provision; protecting and maintaining healthy habitats, with no species specific provisions; promoting biodiversity and measuring it with a biodiversity index; monitoring landscape characteristics as proxies for a suite of species; and including both habitat- and species-level standards with specific population monitoring requirements. In addition, some people emphasized the need to coordinate and cooperate beyond NFS unit boundaries for purposes of identifying and protecting critical habitat, migration corridors, and other habitat elements. The Agency believes that the proposed rule requirements to provide for the diversity of plant and animal communities are practical and meet the intent of the NFMA.

Section 219.10 Multiple Uses

The intent of this section is to provide the requirements for developing plans that guide management for continued and sustainable multiple uses, including ecosystem services, through integrated resource management, and in the context of the requirements of sections 219.7–11.

Multiple Use Background

NFS lands provide economic, social, and cultural sustenance for local communities; for Tribes; and for people across the Nation. Products and services generated on NFS lands continue to sustain traditional livelihoods, provide for subsistence uses, and provide new economic opportunities or benefits generated through sustainable recreation and tourism, restoration activities, ecosystem services, and renewable energy. National Forest System lands are also of immense social and cultural importance, enhancing quality of life; sustaining scenic, historic, and culturally important landscapes; sustaining traditional life ways; and providing places to engage in outdoor recreation, improve physical and mental health, and reconnect with the land.

The MUSYA has guided NFS management since it was enacted in 1960. The MUSYA expanded upon the original purposes for which national forests may be established and administered, which were identified in the Organic Administration Act: "to improve and protect the forest within the boundaries, or for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber for the use and necessities of citizens of the United States." (Act of June 4, 1897 (16 U.S.C. 475)).

The MUSYA states that the Forest Service is to "administer the renewable surface resources of the national forests for multiple use and sustained yield of the several products and services obtained therefrom." (16 U.S.C. 529). The MUSYA defines "multiple use" as "the management of all the various renewable surface resources of the national forests so that they are utilized in the combination that will best meet the needs of the American people; making the most judicious use of the land for some or all of these resources or related services (16 U.S.C. 531(a)). In the MUSYA, Congress declared that the national forests are established and shall be administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes (16 U.S.C. 528). The MUSYA also explicitly recognizes that "the establishment and maintenance of areas of wilderness are consistent with the purposes and provisions of [this Act]." (16 U.S.C. 529).

The Agency believes that MUSYA anticipated changing conditions and needs. In particular, the Agency's understanding of what is meant by the "several products and services obtained" from the national forests has changed since 1960, and incorporates all values, benefits, products, and services the Agency now knows the NFS provides, and what are now more typically identified as ecosystem services. Over time, the Agency expects understanding will continue to evolve.

Integrated Resource Management.

The responsible official would use information gathered during assessment and the opportunities for public participation to consider a wide range of resources, potential stressors, foreseeable risks, and opportunities to work with neighboring landowners and partners to develop plan components.

The proposed rule would require the development of a set of plan components that provide for integrated resource management. This is a different approach than the 1982 rule, which focused on individual resources and provided detailed planning processes and guidance based on the type of resource. These requirements did not necessarily translate into integrated plan components and often led to fragmented management of resources within the ecosystem with each resource considered independently within the plan and within Agency management structures. In addition, the level of detail in the requirements was often not relevant or an appropriate fit for circumstances on an individual unit, resulting in Forest Service employees spending disproportionate time on processes that produced little value for plan direction and subsequent management.

Many people expressed a desire for very prescriptive national requirements established for various resources or program areas. Others expressed a desired for a more holistic approach to management focusing on the system as a whole. Still others wanted to see the planning process become "simpler" and "more elegant" without detailed procedures or national prescriptive standards that might become outdated or might not work for all units.

The Agency believes that an interdisciplinary process is the best way to achieve integration of all resource concerns, recognizing that ecosystems are complex communities of interconnected and interdependent resources and systems that function as a whole. To be effective, land management strategies must take into account a wide range of resource conditions and values and strive to achieve multiple benefits while managing the risk of adverse effects to interconnected systems.

This section would require that in meeting the requirements of § 219.8 and § 219.9, and within Forest Service authority, the capability of the plan area and the fiscal capability of the unit, the plan would provide for multiple uses, including ecosystem services, outdoor recreation, range, timber, watershed, wildlife, and fish. Paragraph (a) identifies nine factors the responsible official would be required to consider when developing plan components to provide for multiple uses, to the extent that each factor is relevant to the plan area. This requirement builds on a similar requirement in § 219.7(c)(2)(ii), as well as consideration of the resources on the unit during the assessment phase.

First, the responsible official would be required to consider the existence and relative value of the resources on the unit. The list included in the proposed rule is intentionally long in order to reflect stakeholder and agency staff comments that all relevant resources and stressors need to be considered during the planning process. There may be some uses or benefits not included in the list that could be considered if they arise in connection with plan development or revision. The Agency invites public comment on the scope of this list in § 219.10(a)(1). In addition to the resources included on the list, and any others that are relevant, § 219.10(a)(2) and (3) would direct responsible officials to consider renewable and nonrenewable energy and mineral resources on the unit in the context of the unit's contributions within the broader landscape, along with the sustainable management of infrastructure on the unit, such as recreational facilities and transportation and utility corridors.

The proposed rule would require responsible officials to consider opportunities to coordinate with neighboring landowners to link open spaces and take into account joint management objectives where feasible and appropriate. The responsible official would also be required to consider the landscape-scale context for management as identified in the assessment and the land ownership and access patterns relative to the plan area. These requirements reflect the "all-lands" approach the Agency is taking to resource management.

The responsible official would also be required to consider habitat conditions, subject to the requirements of § 219.9, for wildlife, fish, and plants commonly enjoyed and used by the public, such as species that are hunted, fished, trapped, gathered, observed, or needed for subsistence. This requirement is intended to respond to comments the Agency received, particularly from Indian Tribes and State game and fish departments, that certain species play a special role in contributing to social, cultural, and economic sustainability, and that plans should consider habitat for those species beyond what is required to provide diversity. Through this provision the Agency recognizes the important role of NFS lands in providing the habitat for these species subject to the provisions of §§ 219.8 and 219.9. This provision is not intended to require that units support the population goals of State agencies.

Paragraphs (a)(8) and (a)(9) would require that the responsible official take into account reasonably foreseeable risks to ecological, social, and economic sustainability and the potential impacts of climate and other system drivers, stressors, and disturbance regimes, such as wildland fire, invasive species, and human-induced stressors, on the unit's resources. These requirements would build on the assessment and lead into the monitoring phases of planning and are intended to ensure that the responsible official has a science-based understanding of the context for managing resources and providing for multiple uses. Paragraph (a) is not intended to require an exhaustive analysis; rather, the responsible official would consider existing information (§ 219.6), identify gaps and uncertainties in the information, and move forward with reasonable assumptions that could be monitored over time (§ 219.12).

Specific Requirements for Plan Components

This section further describes specific requirements for plan components for new plans or plan revisions. These requirements would be developed based on the set of resources considered in paragraph (a) that contribute to the unique role of the unit in the larger landscape.

Recreation

The high value placed on recreation has been a common theme throughout the public participation process leading to the proposed planning rule. Many people said that the NOI ignored recreation as a stand-alone issue, and wanted the rule to address it separately from the other multiple uses. Others said that recreation should be considered along with, and equal to, all other multiple uses.

Americans make over 170 million visits to national forests and grasslands each year. These visits provide an important contribution to the economic vitality of rural communities as spending by recreation visitors in areas surrounding national forests amounts to nearly 13 billion dollars annually. Recreation is also a critical part of social sustainability, connecting people to nature, providing for outdoor activities that promote long-term physical and mental health, enhancing the American public's understanding of their natural

and cultural environments, and catalyzing their participation and stewardship of the natural world. Providing for sustainable recreation is one of the biggest challenges and opportunities facing the Forest Service, and land management planning is a critical process in meeting this need. The proposed rule recognizes the importance of recreation as a multiple use, and integrates recreation concerns and provides for the unique needs of the recreation resource throughout the planning process, including in the assessment and monitoring phases.

Section 219.8 would require the responsible official to take sustainable recreation opportunities and uses into account when developing plan components to contribute to social and economic sustainability. This section would go a step further, requiring that plan components provide for sustainable recreation, considering opportunities and access for a range of uses. It also calls for plans to identify recreational settings and desired conditions for scenic landscape character. The proposed rule defines sustainable recreation as "the set of recreational opportunities, uses and access that, individually and combined, are ecologically, economically, and socially sustainable, allowing the responsible official to offer recreation opportunities now and into the future. Recreational opportunities could include non-motorized, motorized, developed, and dispersed recreation on land, water, and in the air."

Together, these requirements and those in sections 219.6 and 219.12 reflect the Agency's intent that the unit would understand recreation roles, demands, benefits, and impacts in the assessment phase; include a set of plan components to provide for sustainable recreational opportunities, uses, and access in the plan, revision, or amendment; and monitor visitor use and progress toward meeting recreational objectives in the monitoring phase.

Cultural and Historic Resources

The Agency recognizes the social, cultural, and economic importance of cultural and historic resources and uses. This section would require that plans would contain plan components designed to protect cultural and historic resources and uses. Our intent in using the word "protection" is to ensure that the responsible official takes into account the effect a plan may have on cultural and historic values and provides for these resources and uses, within the context of managing for multiple uses. The intent is not to create a preservation mandate; rather, where actions might impair the resources or use, the responsible official would seek to avoid or minimize potential harm to the extent practicable. In some cases, damage may occur if necessary to achieve a different multiple use objective.

We also recognize that Tribes may have areas within the national forest system that are of special importance to them, and our intent is to ensure that the responsible official recognizes those areas and provides appropriate management.

Section 219.8 would also require the responsible official to take cultural and historic resources on the unit into account when developing plan components to contribute to social and economic sustainability. Benefits of cultural and historic sites include expanded knowledge and understanding of history; cultural and spiritual connections to our heritage; scientific data about past cultures or historical conditions and similar matters; and tourism that benefits rural economies. The Agency considers these resources very important for social sustainability as well as important economic contributors.

Wilderness, Wild and Scenic Rivers, and Other Designated Areas

This section would require that plan components provide for the protection of designated wilderness areas and wild and scenic rivers, and for the protection of recommended wilderness and eligible or suitable wild and scenic rivers in order to protect the ecologic and social values and character for which they may at some point be included in the system(s). These requirements meet agency responsibilities under the Wilderness Act and the Wild and Scenic Rivers Act and are consistent with the recognition in the MUSYA that wilderness protection is a valid multiple use. Wilderness areas provide important places for recreation, solitude, and renewal; are refuges for species; and, like cultural and historic sites, can attract tourism that benefits rural economies.

Some members of the public wanted the rule to include additional restrictions on uses within recommended wilderness areas and for eligible or suitable wild and scenic rivers. The Agency believes the requirement in the proposed rule meets the Agency's intent to ensure, in the case of recommended wilderness, that the types and levels of use allowed would maintain wilderness character and would not preclude future designation as wilderness, and, in the case of eligible or suitable wild and scenic rivers, that no modification to the free-flow, river-related values, or classification would be allowed which would preclude future designation.

The Agency also manages other kinds of designated areas, including experimental forests, national heritage areas, national monuments, national recreational areas, national scenic trails, research natural areas, and scenic byways. These are areas or features within a planning unit with specific management direction normally established through a process separate from the land management planning process, including by statute or through a different administrative process. These areas can contribute in important ways to social and economic sustainability as well as ecologic sustainability. This section would require that plan components provide protection and appropriate management guidance for those areas, based on the purpose for which the area is established.

Section 219.11 Timber Requirements Based on the NFMA

Timber is one of the multiple uses of the NFS, as recognized by the MUSYA and the Act of 1897, also known as the Organic Administration Act. The National Forest Management Act of 1976 at the time signaled a new direction for the planning and management of NFS lands, especially with regard to management of the timber resource and impacts to other resources. Management and use of timber harvest on NFS lands continue to evolve. Today, harvest of timber on NFS lands occurs for many different reasons, including restoration of ecological resilience, community protection in wildland urban interfaces, habitat restoration, and protection of municipal water supplies. Timber harvest also supports economic sustainability through the production of timber, pulp for paper, specialty woods for furniture, and fuel for small-scale renewable energy projects. Timber harvesting, whether for restoration or wood production objectives, also provides employment and tax revenue in many counties throughout the country.

This section would meet the statutory requirements of the NFMA related to management of the timber resource. It includes provisions for identification of lands as suitable or not suitable for timber production. It would allow for timber harvest on lands unsuitable for timber production for other reasons, such as for: achieving desired conditions and objectives of the plan, multiple use purposes, sanitation, salvage, or protection of public health

and safety. The NFMA, along with the proposed requirements of this section, would provide for mitigation of the effects of timber harvest on other resources and multiple uses. Other sections of this proposed rule contain provisions that would supplement the protections of this section.

The specific factors proposed in this rule for identifying lands not suitable for timber production are based on the NFMA requirements limiting timber harvest (16 U.S.C. 1604(g)(3)(E)) and agency policy. Lands would be suitable for timber production unless they are identified in the plan as not suitable, and, as required by the NFMA, lands not suitable for timber production must be reviewed every 10 years to determine whether they are still not suitable. The proposed rule clarifies that timber harvest on lands suitable for timber production can also occur for other reasons, including resource management, restoration, or community protection.

Paragraph (a)(1)(iv) of this section is a specific factor that would not allow lands to be identified as suitable for timber production unless technology is currently available for conducting timber harvest without causing irreversible damage to soil, slope, or other watershed conditions or substantial and permanent impairment of the productivity of the land. Available technology may vary from place to place, and could be any of the following: Horse logging, ground based skidding, aerial systems, or cable logging systems. This provision has been in place since the 1979 rule, to meet the NFMA obligation to consider physical factors to determine the suitability of lands for timber production. The factor has been effective in protecting watershed conditions.

In addition, the proposed rule at paragraph (d) of this section would require plan components to ensure that timber will be harvested from NFS lands only where such harvest would not violate the NFMA prohibition of timber harvest that would irreversibly damage soil, slope or other watershed conditions (16 U.S.C. 1604(g)(3)(E)(i)). This prohibition applies whether the harvest is for timber production or other purposes, and whether or not lands were identified as suited for timber production.

Some people requested the proposed rule change or add to the NFMA criteria for defining lands not suitable for timber harvest. The Agency believes that the NFMA provisions continue to provide a firm foundation for identifying these lands. The proposed rule includes an additional requirement that would prohibit timber production where it is not compatible with the achievement of desired conditions and objectives established by the plan, including those desired conditions and objectives designed to meet requirements for plan development or revision (§ 219.7); social, economic, and ecological sustainability (§ 219.8); plant and animal diversity (§ 219.9); multiple uses (§ 219.10); and timber (§ 219.11). Some people requested that additional limits be placed on the harvest of timber on lands not suitable for timber production. The Agency believes that the provisions of this section would provide a balanced approach, allowing timber harvest on lands not suitable for timber production if it serves as a tool for achieving or maintaining plan desired conditions or objectives. Timber harvest today is used often to achieve ecological conditions and other multiple use benefits for purposes other than timber production; therefore we have included § 219.11(b)(2) in the proposed rule to clarify.

Paragraph (d) sets forth limits on timber harvest, regardless of the reason, on all NFS lands. All plans would, at a minimum, comply with the limitations set forth by the NFMA (16 U.S.C. 1604(g)(3)(E) and (F)). These requirements would limit harvest to situations where the productivity of the land could be sustained and harvesting prescriptions are appropriately applied. These requirements are referenced but not repeated because the Agency believes they are incorporated and enhanced by the requirements for resource protection and plan compatibility set forth in this section of the proposed rule. However, paragraph (d) does reiterate that harvests must be carried out in a manner consistent with the protection of soil, watershed, fish, wildlife, recreation, and aesthetic resources.

Paragraph (d) also includes requirements that track the NFMA at 16 U.S.C. 1604(g)(3)(F) regarding even-aged timber harvest. These requirements: (1) Limit clearcutting to locations where it is determined to be the optimum method for regenerating the site; (2) require interdisciplinary review of the harvest proposal; (3) require cutting to be blended with the natural terrain; (4) establish maximum size limits of areas that may be cut; and (5) require that harvest is consistent with resource protections. These limits on the maximum opening sizes were established in the 1979 planning rules and have been in use under the 1982 rule. There were no issues raised about these default maximum size limits in the public comments on the notice of intent or in the collaborative round tables. The procedure for varying these limits is an established process and has worked effectively, providing a limit on opening size and public involvement with higher level approval for exceeding the limits.

The Agency believes that the procedure for varying from these limits may be particularly justifiable in the future for ecological restoration, species recovery, improvement of vegetation diversity, mitigation of wildland fire risk, or other reasons. For example, some rare species are adapted to large patch sizes with similar habitat attributes for critical parts of their life cycle.

Many of the specific NFMA requirements related to timber harvest are not reiterated in the text of the proposed rule, but are incorporated by reference. Some requirements are not repeated because they are addressed by other regulations; for example, the NEPA regulations direct environmental analysis and the use of interdisciplinary teams. Other requirements are not repeated because they are addressed under separate sections of the proposed rule. For example, the minimum harvest limitations are not repeated because § 219.8 incorporates and exceeds the requirements of the NFMA.

Many of the NFMA provisions referenced or included in this section refer to project level activities. The proposed planning rule provides the proposed guidance for developing plans, not guidance for individual projects, and it is important to recognize that any individual timber project or activity could not provide for all aspects of social, economic, or ecological sustainability. However, all projects and activities must be consistent with the plan components developed to meet the requirements of sustainability, diversity, and multiple uses (§§ 219.8 through 219.10), as required by § 219.15.

Section 219.12 Monitoring

Monitoring is a critical part of the proposed planning framework that provides a feedback loop for adaptive management and is intended to test assumptions underpinning management decisions, track conditions relevant to management of resources on the unit, and measure management effectiveness and progress toward achieving desired conditions and objectives.

This section sets forth the proposed requirements for the monitoring program, including unit-level and broader-scale monitoring. The unit-level monitoring program would be informed by the assessment phase, developed

during plan development, plan revision, or amendment, and implemented after plan approval. The regional forester would develop broader-scale monitoring strategies while the responsible official would develop the unit monitoring program. Monitoring results and data would be documented in biennial monitoring evaluation reports, which would include an assessment of whether or not the new information suggests there is a need to change the plan or the monitoring program, or do a new assessment.

In developing the monitoring program, the Agency intends for responsible officials to coordinate with each other, with other parts of the Agency, and with partners and the public. The proposed rule also would require that the responsible official ensure that monitoring efforts are integrated with relevant broader-scale monitoring strategies to ensure that monitoring is complementary and efficient, and that information is gathered at scales appropriate to the monitoring questions. The Agency does not intend for the requirements in this section to lead to an exhaustive or research-based program; monitoring must be targeted toward information needed to inform management of resources on each unit.

The unit-level monitoring program could be changed either in a plan revision or amendment, or through an administrative change (§§ 219.6 and 219.13).

Unit-Level Monitoring

As proposed, the unit-level monitoring program would be part of required other content in the plan, developed by the responsible official, or two or more responsible officials, during development of a new plan or plan revision, with input provided by the public through opportunities for public participation throughout the planning process. The unit-monitoring program sets out unit-monitoring questions and associated indicators, which would be designed to inform the management of resources on the unit.

The responsible official would have the discretion to determine the scope and scale of the monitoring program that best meets the information needs identified through the planning process as most critical for informed management of resources on the unit, taking into account existing information and the financial and technical capacity of the Agency.

This section has eight specific requirements for every unit-monitoring program. This set of requirements is designed to link the monitoring program back to the assessment and plan development or revision phases of the planning framework and to the substantive content requirements set forth in other sections of the proposed rule, thereby creating a feedback loop for adaptive management. A range of monitoring techniques may be used to meet the eight specific requirements.

Every monitoring program would contain one or more questions or indicators that address each of the following: the status of select watershed conditions; the status of select ecological conditions; the status of focal species; the status of visitor use and progress toward meeting recreational objectives; measurable changes on the unit related to climate change and other stressors on the unit; the carbon stored in above ground vegetation; the progress toward fulfilling the unit's distinctive roles and contributions to ecological, social, and economic conditions of the local area, region, and Nation; and finally, the effects of management systems to determine that they do not substantially and permanently impair the productivity of the land.

Monitoring for ecological and watershed conditions is intended to support achievement of the sustainability and diversity requirements of §§ 219.8 and 219.9, and the provisions of multiple uses including ecosystem services in § 219.10.

The proposed requirement that monitoring questions address the status of visitor use and progress toward meeting recreational objectives is intended to support achievement of the sustainable recreation requirements of § 219.8 and the multiple use requirements of § 219.10.

Monitoring questions developed to measure changes on the unit related to climate change and carbon stored in above ground vegetation are intended to help responsible officials understand potential impacts to resources from climate change, as well as contributions of the unit to carbon storage. Currently, the Agency tracks information about climate change influences and carbon storage using the Forest Inventory and Analysis (FIA) through protocols of the Research and Development branch of the Forest Service. The FIA protocol has been an ongoing process for some time. Although they are a required part of the unit monitoring program, it is likely that these monitoring requirements would be coordinated with other agency actions on climate change, and would be met using a broader-scale approach.

Monitoring questions to measure progress toward fulfilling the unit's distinctive roles and contributions to the ecological, social, and economic conditions of the local area, region, and Nation are intended to help the responsible official understand how resources on the unit would contribute to sustainability both locally and in the context of the broader landscape. Monitoring questions that focus on the plan components of desired conditions (the vision for future conditions) and objectives (strategy to make progress toward achieving desired conditions) are expected to be most useful for meeting this requirement.

Monitoring to determine that management systems are not substantially or permanently impairing the productivity of the land is intended to meet the NFMA requirements.

Focal Species and Management Indicator Species

The proposed requirement for monitoring questions that address the status of focal species is linked to the requirement of § 219.9 of the proposed rule to provide for ecosystem diversity, which describes the coarse filter approach for providing diversity of plant and animal communities. The term "focal species" is defined in the rule as: a small number of species selected for monitoring whose status is likely to be responsive to changes in ecological conditions and effects of management. Monitoring the status of focal species is one of many ways to gauge progress toward achieving desired conditions in the plan.

There are several categories of species that could be used to inform the selection of focal species for the unit. These include indicator species, keystone species, ecological engineers, umbrella species, link species, species of concern, and others.

Monitoring the status of selected focal species over time is intended to provide insight into the integrity of ecological systems on which those species depend and the effects of management on those ecological conditions (*i.e.,* the coarse filter aspect of the diversity requirement). It is not expected that a focal species be selected for every element of ecological conditions. The proposed requirement for the responsible official to monitor a small number of focal species is intended to allow discretion to choose the number needed to properly assess the relevant ecological conditions across the planning area, within the financial and technical capabilities of the Agency.

The choice to have the proposed rule require monitoring of focal species as well as select ecological and watershed conditions is a shift from the 1982 rule's requirement to specifically monitor

population trends of "management indicator species," or MIS. The theory of MIS has been discredited since the 1982 rule. Essentially, monitoring the population trend of one species should not be extrapolated to form conclusions regarding the status and trends of other species. In addition, population trends for most species are extremely difficult to determine within the 15-year life of a plan, as it may take decades to establish accurate trend data, and data may be needed for a broader area than an individual national forest or grassland. Instead, the Agency expects to take advantage of recent technological advancements in monitoring the status of focal species, such as genetic sampling to estimate area occupied by species.

Broader-Scale Monitoring Strategies

The proposed rule would require the regional forester to develop a broader-scale monitoring strategy for those monitoring questions that could best be answered at a scale broader than one unit; for example, detecting changes in conditions related to wide-ranging or migratory species or measuring stressors such as climate change.

The proposed broader-scale monitoring strategy would be a new requirement for the Agency. Other options were considered, such as requiring only a unit-level monitoring program without any specific monitoring requirements. However, the Agency believes that having broader-scale monitoring strategies provides a way to distribute the monitoring workload most efficiently. Unit-level monitoring would be focused on answering questions directly related to the management of an individual plan area, and that are within the capability of the unit to measure. Broader-scale monitoring would look at how plans fit within the larger landscape, taking into account drivers and stressors affecting large ecosystems, multiple land ownerships, and information available from other branches of the Agency as well as other governmental and nongovernmental partners.

Coordinating Unit-Level and Broad-Scale Approaches

The Agency recognizes that the timing of plan revisions and the development of broader-scale strategies needs to be coordinated. In some cases, a plan revision for a unit may not be scheduled for 8 or 10 years, which would delay the development and implementation of an effective broader-scale strategy. To address this concern, the Agency proposes that within 4 years of the effective date of the rule, or as soon as practicable, all units would change their unit-monitoring program to comply with the requirements of this section.

Biennial Evaluations

Many scientists, agency employees, and the public emphasized the importance of using monitoring to measure the effectiveness of plans and regularly evaluate monitoring results to change the plan or to change management activities. Others wanted to use pre-determined thresholds, called triggers, to initiate a change to management activities. These concerns are addressed by the proposed requirement that the responsible official conduct a biennial evaluation of the monitoring information and determine whether there is a need for an administrative correction, a plan amendment, or plan revision. The biennial evaluation of monitoring information is intended to provide a report on progress toward meeting desired conditions and other plan components to determine whether additional actions are necessary. The biennial monitoring evaluation does not need to evaluate all questions or indicators on a biennial basis but must focus on new data and results that provide new information for management.

The Agency considered other timeframes for the evaluation, such as an annual evaluation or a 5-year evaluation. The Agency experience is that an annual evaluation is too frequent to determine trends or to accumulate meaningful information and the 5-year time frame is too long to wait in order to respond to changing conditions. Therefore, the Agency proposes that the monitoring evaluation would occur at a 2-year interval.

The Agency also considered requiring pre-determined thresholds or triggers to initiate a change to management activities. The Agency experience is that pre-determined thresholds may be quite difficult to develop and therefore may take years to formulate when there is uncertainty regarding scientific or other information. Instead, during the biennial evaluation, the responsible official would decide whether the monitoring data indicates that a change to the plan or management activities is warranted. Changes to the monitoring program would also be considered based on the evaluation, to ensure that monitoring remains effective and relevant.

The first monitoring evaluation for a plan or plan revision developed under this proposed rule would have to be produced no later than 2 years from the time of plan approval. For plan monitoring programs that were developed under the provisions of a prior planning regulation, the first monitoring evaluation would have to be produced no later than 2 years from any change made to meet the requirements of this section. The proposed rule would require all units to change their monitoring programs to conform to this section of the rule within 4 years of the effective date of the rule, or as soon as practicable.

The public notice of the availability of the monitoring evaluation report may be made in any way the responsible official deems appropriate (§ 219.16(c)(5)). The responsible official may post on the Forest Service Web site. The responsible official may postpone the monitoring evaluation for 1 year after providing notice to the public in the case of exigencies such as a natural disaster or catastrophic fire.

Section 219.13 Plan Amendment and Administrative Changes

This section sets out the proposed process for changing plans through plan amendments or administrative changes. The requirements in this section are intended to facilitate rapid amendment and adjustment of plans. The section would allow the responsible official to use new information obtained from the monitoring program or other sources and react to changing conditions to amend or change the plan.

Public comments emphasized the need for the Agency to have a framework for adaptive management. Under this proposed rule's framework, the Agency anticipates the availability of more complete information provided through the unit-monitoring program and evaluation reports. The framework is also expected to facilitate more collaboration with the public and a more efficient amendment process. Comments about how to change the plan ranged from a desire for a flexible and rapid approach to plan changes, to those who wanted more structure and requirements for both the process of planning and actual content of the plan. The Agency believes the approach taken in the proposed rule strikes an appropriate balance with rule requirements commensurate with the three methods of changing the plan described below.

Plan revisions as described in § 219.7 contain more comprehensive requirements, as the revision stage is the appropriate time for a comprehensive evaluation of the plan. As noted in § 219.7, plan revisions are required every 15 years. However, the responsible official has the discretion to determine at any time that conditions

on a unit have changed significantly such that a plan must be revised. A plan revision before the 15-year requirement has been rare in the past, and is expected to be rare in the future.

Plan amendments incrementally change the plan as need arises. Plan amendments could range from project specific amendments, amendments of one plan component, to the amendment of multiple plan components. Finally, the proposed rule allows for administrative changes, which would allow for rapid correction of errors in the plan components and rapid adjustment of other content in the plan.

Plan Amendments

The proposed rule would provide that the responsible official could amend plans or change the plan at any time. Plan amendments would be required whenever a plan component would be materially altered (clerical errors could be corrected by an administrative change). Plan amendments may change other content in the plan. The process requirements for plan amendments and administrative changes would be simpler than those for new plan development or plan revisions in order to allow responsible officials to keep plans current and adapt to new information or changed conditions.

The proposed rule would require that for new plans or plan revisions responsible officials conduct an assessment and collaboratively develop the plan proposal prior to issuing a proposed plan and environmental documents, entertaining objections to the proposed plan, and approving the plan or plan revision. Amendments may include each of those steps, but the proposed rule would allow the responsible official to rely on a documented need to change the plan to propose an amendment without doing an assessment or including the separate process step of developing a proposal before issuing a proposed amendment.

An amendment would be preceded by a documented need to change the plan, set out in an assessment report, monitoring evaluation report, or other source. For example, a monitoring evaluation report may show that a plan standard is not sufficiently protecting streambeds, indicating that a change to that standard may be needed to achieve the unit's objective or desired condition for riparian areas. In that case, the responsible official could choose to act quickly to propose an amendment to change that particular plan component, without doing an additional assessment or developing a proposal that goes further than the specific need to change the plan clearly indicated by the monitoring report.

However, the responsible official could choose to conduct an assessment and take additional time to develop a proposal when the potential amendment is broader or more complex or requires an updated understanding of the landscape-scale context for management. For example, a monitoring evaluation report may indicate that a new invasive species is affecting forest health on the unit. The responsible official may want to conduct an assessment to synthesize new information about the spread of that species, how other units or land management agencies are dealing with the threat, what stressors make a resource more vulnerable to the species, how the species may be impacting social or economic values, or how neighboring landowners are approaching removal of the species. The outcome of the assessment may identify a need to change the plan through an amendment. The responsible official, consistent with the requirements for public participation in § 219.4, would then collaboratively develop with the public a proposal to amend several plan components to deal with the invasive species.

For plan amendments done to make a specific project or activity consistent with a plan, the project analysis alone would likely suffice to document the need to change the plan.

All plan amendments must comply with Forest Service NEPA procedures. The proposed rule provides that appropriate NEPA documentation for an amendment could be an EIS, an environmental assessment (EA), or a categorical exclusion (CE) depending upon the scope and scale of the amendment and its likely effects.

Administrative Changes

Administrative changes would be permitted to correct clerical errors to plan components, to alter content in the plan other than the plan components, or to achieve conformance of the plan to new statutory or regulatory requirements. A clerical error is an error of the presentation of material in the plan such as phrasing, grammar, typographic errors, or minor errors in data or mapping that were appropriately evaluated in the development of the plan, plan revision, or plan amendment.

An administrative change could not otherwise be used to change plan components or the location in the plan area where plan components apply, except to conform the plan to new statutory or regulatory requirements. Whether an administrative change or an amendment would be done to conform plan components to a new statutory or regulatory requirement would depend upon the requirement. A requirement that would allow no discretion in management would call for simply an administrative change, as there would be no decision for the responsible official to make, and no reason for public input. For example, an addition of lands to an existing wilderness boundary would call for simply extending the wilderness plan components to the newly included lands, as there would be no reason to manage those lands differently from the rest of the wilderness. In contrast, designation of an entirely new wilderness would require a plan amendment to ensure appropriate public involvement in the development of plan components for the new wilderness area.

Other content in the plan that could be altered with an administrative change, as identified in § 219.7(e), includes the monitoring plan, the identification of watersheds that are a priority for maintenance or restoration, the unit's distinctive roles and contributions, and information about proposed or possible actions that may occur on the unit during the life of the plan. The plan may also include additional items such as other content in the plan, including management approaches or strategies; partnership opportunities and coordination activities; or criteria for priority areas or activities to achieve objectives of the plan.

An example of how the responsible official may conform the plan to a new statutory requirement would be if a new wilderness bill becomes law and it adds land to an existing wilderness area. To comply with the law, the responsible official may modify the management area map contained within the plan through an administrative change. This change would allow the existing plan components for the existing wilderness area to apply to the additional land. If the responsible official determines an administrative change is appropriate, the responsible official would post notice of the administrative change on the planning unit's Web site.

The proposed rule would require the responsible official to provide public notice before issuing an administrative change. If the change would be to the monitoring program, the responsible official would provide public notice and an opportunity for the public to comment on the intended change and consider public concerns and suggestions before making a change. Following this notification, the

responsible official would adjust the plan. The Agency believes that allowing administrative changes to other content, other than plan components, would help the responsible official adapt to changing conditions, while requiring the responsible official to notify the public.

Section 219.14 Decision Documents and Planning Records

The proposed rule would require the responsible official to record approval of a new plan, plan revision, or amendment in a decision document prepared according to Forest Service NEPA procedures. This section describes requirements for decision documents and associated records for approval of plans, plan amendments, or plan revisions.

Decision Document

Many members of the public have expressed a desire for greater transparency to help understand decisionmaking in the development, revision, and amendment of plans. The proposed rule would require the decision document to describe the rationale for approval of a plan. It further would require that the decision document include an explanation of how plan components meet plan requirements for sustainability and diversity set forth in §§ 219.8 and 219.9. This explanation would allow the responsible official to say what the plan components are designed to do given the limits of Forest Service authority and the capability of the plan area. In addition the explanation would be required to describe how the plan applies to approved projects and activities (§ 219.15(a)), and how the best available scientific information was taken into account and applied (§ 219.3). The decision documents must contain research station director concurrence on experimental forests and ranges (§ 219.2(b)(4)) to ensure proper coordination between the Research and NFS branches for the management of these areas. The effective date of approval (§ 219.17) would also be required to clarify the exact date the plan action takes effect.

These requirements would help provide a clearer understanding of the approval, the reasons for approving the plan, plan revision, or plan amendment and its immediate consequences in a way that is clear to all participants in the planning process.

Meeting the proposed requirements for a plan development or plan revision would require a comprehensive discussion of each of these requirements with respect to the plan. For an amendment, these requirements would only need to be described for those plan components being changed by the plan amendment. For example, if a plan amendment does not change plan components applicable to an experimental forest or range, there would be no need to document the research station director's concurrence with the amendment. For plan development or revision, the decision document would also be accompanied by a final EIS. A plan amendment would be accompanied by appropriate NEPA documentation.

Planning Records

This section also sets forth basic requirements for the responsible official to maintain public documents related to the plan and monitoring program. It would require the responsible official to ensure that certain key documents are readily accessible to the public online and through other means. The published planning documents associated with a plan, plan revision, or amendment are listed in paragraph (b)(1) of this section. These documents must be posted online. Other documents that support the analytical conclusions and alternatives of the planning process would be part of the planning record and must be available to the public although they would not be required to be online. The planning record for each plan, plan revision, or amendment would be required to be maintained and available to the public at the office that developed that plan, plan revision, or amendment.

Section 219.15 Project and Activity Consistency With the Plan

The NFMA requires that "resource plans and permits, contracts and other instruments for the use and occupancy of National Forest System lands shall be consistent with the land management plans" (16 U.S.C. 1604(i)). However, no previous planning rule provided specific criteria to evaluate consistency of projects or activities with the plan. Forest Service policy was that consistency could only be determined with respect to standards and guidelines, or just standards. *See* the 1991 Advanced Notice of Proposed Rulemaking 56 FR 6508, 6519–6520 (Feb. 15, 1991) and the 1995 Proposed Rule, at 60 FR 18886, 18902, 18909 (April 13, 1995).

The Forest Service's position has been that a project's consistency with a land management plan could only be determined with respect to standards and guidelines, because an individual project by itself could almost never achieve objectives and desired conditions. Objectives and desired conditions are long-term aspirations whose achievement would depend on the cumulative effect of a number of agency actions, and often on factors outside the agency's control.

We continue to believe that the consistency requirement cannot be interpreted to require achievement of the aspirational components of a plan, but we believe that we can interpret the consistency requirement, in a way that makes those components more meaningful in the day-to-day management of the unit. The proposed rule therefore would provide that each project must be expected to either to move the plan area toward desired conditions and objectives, or at least not to preclude the eventual achievement of desired conditions or objectives.

This interpretation would apply to plans developed under this rule. Plans developed under prior rules were not developed with this interpretation in mind, and therefore applying this interpretation to projects governed by such plans would not be feasible or appropriate.

This section would provide that projects and activities authorized after approval of a plan, plan revision, or plan amendment developed pursuant to this rule must be consistent with plan components as set forth in this section. Project approval documents would have to describe how the project or activity is consistent in order for it to be considered as such. The proposed rule specifies criteria to evaluate consistency with the plan for each plan component.

The proposed rule states that a project or activity must contribute to the maintenance or attainment of one or more goals, desired conditions, or objectives, or must not foreclose the opportunity to maintain or achieve any goal, desired condition, or objective over the long term. Desired conditions, objectives, and/or goals are all expected to provide the purpose and need for most projects and activities; thus, most projects or activities would usually be designed to meet one or more of these plan components. For example, if a plan has an objective to construct X number of trails for recreation over Y years, a project to build trails would be consistent with that objective.

However, even when a project is proposed for a reason other than to meet a desired condition, objective, or goal (for example, an unexpected proposed use such as a new permit application), the project would be consistent if and only if it does not foreclose the possibility of achieving any desired conditions, objectives, and goals of the plan. As an example, a project is

proposed to repair the effects of a landslide, but the plan does not describe desired soil conditions, or objectives for repairing landslides. If the repair project does not prevent achieving other goals, desired conditions, or objectives, the project would be consistent with these plan components.

This paragraph of the proposed rule also would require projects or activities to comply with applicable standards. Projects or activities would also have to be consistent with applicable guidelines, but consistency may be determined in one of two ways. The project or activity either must comply with the applicable guidelines or must be designed in a way that is as effective in carrying out the intended contribution to the applicable goals, desired conditions, or objectives; avoiding or mitigating undesirable effects; or meeting applicable legal requirements.

For example, a plan could contain a guideline designed to protect a riparian area that recommends not allowing soil-disturbing activities within 300 feet from the edge of a perennial stream. The responsible official could propose to eliminate or control invasive species of plants with prescribed burning, which would require a mechanical fireline within 200 feet of the same stream and other streams and wetlands. After site-specific examination, an interdisciplinary team might recommend that the fireline be allowed in that location, if sediment fences, slash, logs across slopes, and straw bales are used to protect water quality in the nearby stream from sediment (loose soil) in stormwater runoff. A responsible official may conclude that the project, as designed, is consistent with the guideline since its mitigation measures are as effective as the 300 foot recommendation in contributing to desired conditions for the stream system.

For the suitability plan component, the project or activity would be consistent if it occurred in an area the plan has identified as suitable for that type of project or activity, or in an area for which the plan is silent with respect to the suitability of that type of project or activity.

This section of the proposed rule would give the responsible official four options to resolve inconsistency, subject to valid existing rights, when it is determined that a proposed project or activity would be inconsistent with the plan. The project or activity may be modified so that it is consistent, or may be rejected, or terminated. Alternately, the responsible official could make a general amendment to the plan so the project or activity is consistent with the plan as amended. The responsible official could also make a project-specific amendment contemporaneously with the approval of the project or activity so that it is consistent with the plan as amended.

Project specific amendments are usually short-lived with the project, very localized to the project area, and have limited utility outside of the project activity. Project specific amendments allow appropriate action or a reasonable project to continue without unnecessary delay for a larger permanent amendment process. This provides a means to accommodate exceptions.

The Agency has experienced difficulties determining how new plan components and content in a plan apply to existing projects and activities when amending or revising plans. This section would require (with respect to projects and activities approved before the effective date of the plan, plan amendment, or plan revision) that either: (1) The plan approval document must expressly allow such projects to go forward or continue, and thus deem them consistent, or (2) in the absence of such express provision, the authorizing instrument (permit, contract, etc.) approving the use, occupancy, project, or activity must be adjusted as soon as practicable to be consistent with the plan, plan amendment, or plan revision, subject to valid existing rights.

Other types of plans may be developed for the lands or resources of the unit. These resource plans, such as travel management plans, wild and scenic river plans, etc., provide further guidance for approval of projects or activities; therefore, they would also be required to be consistent with the applicable land management plan. If such plans are not consistent, modifications of the resource plan must be made or amendments to the land management plan must be made to resolve any inconsistencies.

Section 219.16 Public Notifications

The proposed rule represents a significant new investment in public engagement designed to involve the public early and throughout the planning process. The Agency is making this investment in the belief that public participation throughout the planning process would result in a more informed public, better plans, and plans that are more broadly accepted by the public than in the past. This section is the companion to § 219.4, which sets forth direction for responsible officials to engage the public and provide opportunities for interested individuals, entities, and governments to participate in the planning process. In this section, the proposed rule sets forth requirements for public notification designed to ensure that information about the process reaches the public in a timely and accessible manner. This section describes when public notification is required, how it must be provided, and what must be included in each notice. The requirements in this section respond to the consensus that people want to be informed about the various stages of the planning process, with clear parameters for when and how they could get involved.

Public notification would be required to begin preparation of an assessment; begin the development of a plan proposal; propose a plan, plan amendment, or plan revision and invite comments on the proposed plan, plan amendment, or plan revision and accompanying environmental documentation; begin the objection period for a plan, plan amendment, or plan revision; and announce final approval of a plan, plan revision, or plan amendment (§ 219.16(a)). Notice would also be required if a responsible official chose to use a new planning rule to complete a plan, plan revision, or plan amendment initiated under the previous rule; and for administrative changes, changes to the monitoring program, assessment reports, and monitoring evaluation reports. Notice and public involvement in the assessment phase and development of a plan proposal are especially significant additions to the requirements for public notice included in prior planning regulations.

Discussions at several public meetings emphasized the importance of updating the way we provide notice to the public to ensure that we successfully reach a diverse array of people and communities and inform them about the process and how they could participate. Many people said that using only one outreach method would not reach all needed communities. In response, § 219.16 directs responsible officials to use contemporary tools to provide notice to the public, and, at a minimum, to post all notices on the relevant Forest Service Web site. In addition, the proposed rule continues to require traditional forms of formal notice, including the **Federal Register** or the applicable newspaper of record, for assessments and approval of plans, plan revisions, and plan amendments. For administrative changes, changes to the monitoring plan, and publication of assessment or monitoring reports, the responsible official must post the notice online and has discretion in

determining other means of providing notice.

Public notices required in this section of the proposed rule must clearly describe the action subject to notice and the nature and scope of the decisions to be made; identify the responsible official; describe when, where, and how the responsible official will provide opportunities for the public to participate in the planning process; and explain how to obtain additional information about the action being taken or about the planning process. These requirements respond to the public's desire for clarity in communications to ensure the process is understandable and accessible.

This section of the proposed rule provides that "formal notifications may be combined where appropriate." This provision would allow flexibility for plan amendments to have a more streamlined, efficient process than new plans or plan revisions, where appropriate. This approach is in keeping with the public's desire and the Agency's need for a process that allows units to quickly and efficiently adapt to new information and changing conditions. (*See* § 219.13 for further discussion.)

The requirements as proposed in § 219.16, along with those in § 219.4, should lead to a public participation effort that provides broad access and attempts to engage and meet the unique information needs of the public interested or affected by management on each unit.

Section 219.17 Effective Dates and Transition

Section 219.17 of the proposed rule describes when approval of plans, plan revisions, or plan amendments would take effect and when units must begin to use the new planning regulations.

A plan, plan amendment, or plan revision would take effect 30 days after plan approval is published. The NFMA (16 U.S.C. 1604(j)) requires the 30-day delay for plans and revisions. The proposed rule would also impose this delay upon amendments to be consistent with the process for plan development and plan revision. The only exception is for project specific amendments, which would take effect at the same time as the project(s) with which they are associated.

When the final rule goes into effect, new plans and plan revisions must conform to the new planning requirements in Subpart A. There would be a 3-year transition window during which amendments may be initiated and completed using the 2000 rule or the amendments may conform to the new rule. After 3 years, all new plan amendments would conform to the new rule. This transition period for new amendments would give the responsible official the option to facilitate rapid amendments to plans developed under previous rules for a limited time, until full familiarity with the new rule develops. No transition period would be provided for new plans or plan revisions. Plan revisions are comprehensive and the new regulations should be applied as soon practicable.

For plan activity (plan development, plan revision, or plan amendment) initiated before the new rule goes into effect, the responsible official may choose whether to complete the plan using the 2000 rule, as it is in effect now, or conform to the requirements of the new rule after providing notice to the public. This would allow the responsible official to consider many factors and determine what is best for the planning process on the unit.

After it goes into effect, the new rule will supersede all previous planning rules. Units with plans developed under the 1982 rule or rule procedures would no longer be subject to the requirements of the 1982 rule, but would continue to be subject to any requirements included in their plan. Activities and projects on those units would have to meet the requirements of the plan. This paragraph in the proposed rule is needed for clarity so that all NFS units understand they are subject to the new planning rule for plan development, plan amendment, and plan revision, while still requiring NFS units to follow the plan provisions of their current plans.

Section 219.18 Severability

If any part of this proposed rule is held invalid by a court, this section provides that the invalid part would be severed from the other parts of the rule, which would remain valid.

Section 219.19 Definitions

This section sets out and defines the special terms used in this proposed rule.

The Agency is about to ask for public comment on a proposed change to Forest Service Manual (FSM) 2020—Ecological Restoration and Resilience, which includes the definition of restoration. FSM 2020 provides foundational policy for using ecological restoration to manage National Forest System lands in a sustainable manner. The definition for restoration also appears in FSM 2020. The proposed rule definition is based on the definition in the current FSM 2020, but is not identical. The current directive may be found at *http://www.fs.fed.us/im/directives/fsm/2000/id_2020-2010-1.doc.* If you are interested in restoration, we hope you also review the proposed changes to FSM 2020 when the proposed directive is issued for public comment.

The Forest Service Directive System consists of the Forest Service Manual (FSM) and the Forest Service Handbook (FSH), which contain the Agency's policies, practices, and procedures and serve as the primary basis for the internal management and control of programs and administrative direction to Forest Service employees. The directives for all Agency programs are set out on the World Wide Web/Internet at *http://www.fs.fed.us/im/directives.*

Subpart B—Pre-Decisional Administrative Review Process

Introduction to This Subpart

The Forest Service has provided an administrative review process for decisions and proposals related to land management plans since they were first produced in the 1980s, and an appeal process by which the public can challenge individual project and permit decisions made by Forest Service responsible officials since 1906. The Forest Service has a long history of providing an administrative review process that has allowed interested individuals and organizations the opportunity to have unresolved concerns considered and responded to by an independent agency official at a level above the deciding official. This process has also provided for additional internal review to ensure that Forest Service proposals and decisions comply with applicable laws, regulations, and agency policy.

Prior to the 2000 rule, the administrative review process for unit plan decisions provided an opportunity for a post-decisional appeal. In other words, at the time the plan decision was issued, the plan was generally put into effect. This scenario has often been problematic because when reviewing appeals, if a reviewing officer finds fault with a plan already in effect, the remedy can be costly to both the Forest Service and the public in terms of time and money. Such a situation can also damage public trust in the planning process. Interim direction is often put into place while the responsible official prepares further analysis and other appropriate corrections.

With the promulgation of the 2000 planning regulations, and in subsequent regulations promulgated in 2005 and 2008, the Agency moved toward a pre-decisional administrative review process called an objection process.

This process allows interested individuals to voice objections and point out potential errors or violations of law, regulations, or agency policy prior to approval of a decision. An objection prompts an independent administrative review by an official at a level above the deciding official and a process for resolution of issues. This change was intended to provide for better decisions and efficient resolution of issues. The Forest Service has successfully used a similar process since 2004 for administrative review of hazardous fuel reduction projects developed pursuant to the Healthy Forests Restoration Act; however, there has been limited application of the objection process to land management plan proposals due to legal challenges to the previous three planning regulations.

After a review of public comments and consideration of agency history regarding pre- or post-decision administrative appeal in this proposed rule, the objection process is proposed. This proposal is based on two primary considerations. First, a pre-decisional objection is more consistent with the collaborative nature of this proposed rule and encourages interested parties to bring specific concerns forward early in the planning process, allowing the Forest Service a chance to consider and respond to potential problems in a plan or decision before it is approved. Second, pre-decisional objections lead to a more timely and efficient process for developing plans, thus reducing waste of taxpayer and agency time and dollars spent implementing projects under plans subsequently found to be flawed.

Subpart B sets forth the requirements for the objection process in the proposed rule, explained in detail below.

Section 219.50 Purpose and Scope

This section states that the purpose of the subpart is to establish a process for pre-decisional administrative review of plans, plan amendments, and plan revisions.

Section 219.51 Plans, Plan Amendments, or Plan Revisions Not Subject to Objection

This section identifies those plans, plan amendments, or plan revisions that would not be subject to the pre-decisional objection process under the proposed rule. Specifically, if no individual or organization would be eligible to file an objection based on the requirements in § 219.53(a), then the plan proposal would not be subject to objection. Plans, plan amendments, or plan revisions proposed by the Secretary of Agriculture or the Under Secretary for Natural Resources and Environment would not be subject to the objection process of this subpart because the Department's position for all Forest Service administrative review processes has been that secretarial decisions are not subject to administrative review (the Agency anticipates that plans, plan amendments, or plan revisions proposed by the Secretary or Under Secretary would be rare occurrences); and if another administrative review process is used, the process in this subpart would not apply. Section 219.59 identifies the limited circumstances in which a different administrative review process may be used.

Section 219.52 Giving Notice of a Plan, Plan Amendment, or Plan Revision Subject to Objection Before Approval

Section 219.52 provides additional information for providing the public notice, required by section 219.16 subpart A, that would begin the objection filing period. This notice serves three particular purposes: (1) To notify parties eligible to file objections that the objection filing period is commencing; (2) to notify parties eligible to file objections and others of the availability of planning documents and how to obtain those documents; and (3) to establish a publicly and legally verifiable start date for the objection filing period.

Section 219.52 would require the Forest Service to make a special effort to ensure the public understands how the objection process in this subpart would be used for each plan, plan amendment, and plan revision. Specifically, the responsible official would be required to disclose the objection procedures by stating so during scoping under the NEPA process and in the appropriate NEPA documents. Early disclosure would help assure that those parties who may want to file objections are aware of the necessary steps to be eligible.

The proposed rule also would require the responsible official to make the public notice for beginning the objection filing period available to those who have requested the environmental documents or who are eligible to file an objection. This is intended to ensure that the necessary information reaches those who have specifically requested it and those who could have a particular interest in the start of the objection filing period by virtue of their eligibility to file an objection.

Paragraph (c) outlines the format and content of the public notice to ensure potential objectors have necessary procedural information, can find underlying documents, and understand the process, timing, and requirements for filing an objection.

Section 219.53 Who May File an Objection

This section of the rule identifies eligibility requirements for filing an objection under this subpart. This section is written in the context of § 219.4 in Subpart A, which expresses the Agency's intent to involve the public early and throughout the planning process in keeping with the collaborative nature of this proposed rule.

Paragraph (a) provides that individuals and organizations who have submitted "formal comments" related to a plan, plan amendment, or plan revision during public participation opportunities provided in planning process for that decision could file an objection. "Formal comments" are defined at § 219.63 as "written comments submitted to, or oral comments recorded by, the responsible official or his/her designee during an opportunity for public participation provided during the planning process and attributed to the individual or organization providing them." This requirement would allow those who have engaged in the process in a substantive way to object to the plan decision. Since formal comments could be made at opportunities for public participation provided at any point in the planning process, the Agency believes it is not too high of a burden for a potential objector. The definition specifically would allow oral comments to be formally recorded in order to accommodate individuals new to the process or those who would prefer to submit their comments orally. At the same time, the requirement would include parameters for submitting formal comments to ensure the proposed rule would not inadvertently impose an unachievable burden on Forest Service officials to record every comment made, or written submission sent, outside of the offered participation opportunities. To honor the collaborative process and encourage participation in the numerous opportunities provided for public participation, this requirement would bar individuals or organizations who did not participate from using the objection process.

Paragraph (a) further would require that objections must be based on the substance of the objector's formal comments, unless the objection concerns an issue that arose after the opportunities for formal comment.

Furthermore, the burden would rest with the objector to demonstrate compliance with the requirements for objection. This is to ensure that the Forest Service has the opportunity to hear and respond to potential problems as early as possible in the process so that new substantive problems are not identified at the end of the planning process when they could have been previously addressed.

Paragraph (b) states that when an organization submits comments, eligibility to submit an objection would be conferred on that organization only, not on individual members of that organization. The Agency believes an organization is its own entity for purposes of submitting comments, and that it is appropriate to accord an organization eligibility to file objections as an organization after submitting comments. However, the Agency does not believe it is appropriate to allow individual members in that organization to file objections by virtue of membership in an organization that submitted comments. Nothing in this section would prohibit an individual member of an organization from submitting comments on his or her own behalf.

Paragraph (c) clarifies that if an objection is submitted on behalf of a number of named individuals or organizations, each individual or organization listed must meet the eligibility requirements of paragraph (a) to be considered objectors. However, as long as at least one individual or organization listed meets the eligibility requirements and the objection is not otherwise flawed, the Forest Service must accept the objection. Objections rejected because they were not filed by an eligible individual or organization must be documented in the planning record, but they would not receive a response from the reviewing officer.

Paragraph (d) states that Federal agencies may not file an objection. Other avenues, including consultations required by various environmental protection laws, are available to Federal agencies for working through concerns regarding a proposed plan, plan amendment, or plan revision. It is expected that Federal agencies will work cooperatively during the planning process.

Paragraph (e) would allow Federal employees to file objections as individuals in a manner consistent with Federal conflict of interest requirements.

Section 219.54 Filing an Objection

This section provides information on how to file an objection. Paragraph (a) would provide for an objection to be filed with the reviewing officer in writing and would require all objections be open to public inspection during the objection process.

Paragraph (b) would provide that incorporation of documents by reference not be allowed, with specific exceptions listed. This provision would ensure the contents and substance of an objection, including all attachments, are readily understandable and available to the reviewing officer for timely completion of the objection process. Similarly, objectors must provide arguments and supporting documentation, and cannot meet the requirements of this process by attempting to incorporate by reference substantive materials and arguments. The Federal courts have taken a similar view of such procedural maneuvers; *see Swanson* v. *U.S. Forest Service,* 87 F.3d 339 (9th Cir. 1996).

Paragraph (c) provides a detailed list of information that must be included in an objection. The list is very similar to Department requirements in the objection regulations for hazardous fuel reduction projects authorized under the Healthy Forests Restoration Act (36 CFR Part 218), and the appeal regulations for projects implementing land management plans (36 CFR Part 215). The objection should set the stage for meaningful dialogue with the reviewing officer and responsible official. Required information would be used to focus the administrative review and written response of the reviewing officer. For example, the objection must provide the basis for a potential remedy to the objection by including how the proposed plan decision could be improved. An objector's telephone number or e-mail address would be part of the administrative record, considered public information, and available under the Freedom of Information Act.

Section 219.55 Objections Set Aside From Review

This section sets out the proposed conditions under which the reviewing officer would not review an objection. The reviewing officer must set aside an objection without review or response on the concerns raised when any of the following apply: an objection is not filed within the objection period; the proposal is not subject to the objection procedures of this section; the objector did not meet the eligibility requirements to object (§ 219.53); there is insufficient information to review and respond; the objector has withdrawn the objection in writing; the objector's identity cannot be determined and a reasonable means of contact has not been provided; or the objection is illegible. The reviewing official must also set aside from review any issue within the objection that is not based on previously submitted substantive formal comments and which did not arise after the opportunities for formal comment. The reviewing officer must give written notice to the objector and the responsible official when an objection is set aside from review and must state the reasons for not reviewing the objection. If the objection is set aside from review for reasons of illegibility or lack of a means of contact, the reasons must be documented in the planning record.

Section 219.56 Objection Time Periods and Process

This section describes the timeframes in the objection process, the reviewing officer's role and responsibilities, and the means of providing public notification of the objections filed. The provisions in this section are responsive to public concern that the review process be timely and efficient.

The filing period for the objection would be 30 days following publication of the required public notice. The objector would be responsible for filing the objection in a timely manner. The method to determine timeliness would be based on indicators appropriate to the method of submission. For example, objections sent via the U.S. Postal Service must be postmarked on or before the close of the last day of the objection-filing period. Some members of the public have raised the concern that this is not enough time to review the planning documentation and develop an objection. However, the Agency believes that given the emphasis this rule places on a collaborative planning process and the requirements outlined earlier for public notice, a 30-day filing period would be sufficient. Because the responsible official could not approve the plan, plan amendment, or plan revision until after the objection process, it is important to ensure that the submission, review, and resolution of, or response to, the objections occur in a timely manner. Additionally, by requesting to meet with the reviewing officer, objectors would have an opportunity to elaborate on those concerns documented in their objections.

Paragraph (e) describes the role and responsibilities of the reviewing officer. The proposed rule would provide that the reviewing officer be a line officer at the next higher administrative level above the responsible official. A number of those who provided written comment expressed concern that agency reviewing officers could lack sufficient objectivity to render a fair response to

objections. Generally, these individuals advocated for the establishment and use of some form of administrative review board. However, we believe that the Agency's experience with review processes over the past century indicate that assigning the role of reviewing officer to a line officer at the next higher administrative level above the responsible official does allow for a fair and impartial review of concerns raised during the administrative review processes.

For plan amendment objections only, the next higher-level line officer could delegate the reviewing officer authority and responsibility to a line officer under his or her chain of command at the same administrative level as the responsible official. In other words, if the responsible official for a plan amendment is a forest supervisor, the regional forester or deputy regional forester (agency directives assign deputy regional foresters line officer authority) could delegate the reviewing officer responsibilities to another forest supervisor. The Agency believes the option of making such a delegation could contribute to a more effective, and still impartial, review process; for example, in instances where a particular line officer at the same administrative level as the responsible official is more familiar with particular plan issues or is more readily available to meet with objectors. Responsibility for new plans or plan revisions could not be delegated.

Paragraph (f) would require the responsible official to publish a notice of all objections in the applicable newspaper of record and online within 10 days of the close of the objection-filing period. This requirement would allow any person or entity that may have specific interest in the outcome of an objection to participate in the objection as an "interested person," as provided in § 219.57.

Paragraph (g) would require the reviewing officer to issue a written response to the objector(s) within 90 days. The reviewing officer could extend the 90-day time frame in the event of a large number of objection filings or so that meaningful and productive discussions to resolve issues are not cut short.

Section 219.57 Resolution of Objections

This section describes the objection resolution process. The objective of this administrative review process is to resolve as many concerns as possible prior to approval of a plan, plan amendment, or plan revision. Paragraph (a) would allow the reviewing officer or the objector to request a meeting to discuss the objection and attempt resolution. To maintain as much of a collaborative approach as possible under the circumstances of an administrative review, this section would require the reviewing officer to allow any other person who filed a request to participate in meetings to do so. Requests to participate as an interested person would have to be filed with the reviewing officer within 10 days of the publication of the notice of filed objections. The meetings would always be open to the public, but only the objectors and interested persons who filed a request to participate in the meeting could participate; others could attend the meetings but only to observe.

Paragraph (b) would provide for a written response to the objection. The reviewing officer could issue a single response to multiple objections of the same plan, plan amendment, or plan revision. Whether in individual responses or a consolidated response, the reviewing officer's response would be limited to only those concerns submitted in the objection(s). Paragraph (b) also states that the reviewing officer's response would be the final decision of the Department of Agriculture on the objection.

Section 219.58 Timing of a Plan, Plan Amendment, or Plan Revision Decision

This section describes when a responsible official could approve a plan, plan amendment, or plan revision.

Paragraph (a) would allow a responsible official to approve a plan, plan revision, or plan amendment only after the reviewing officer has responded to all objections in writing, and § 219.57(b)(1) specifies the response need not be point-by-point.

Paragraph (c) provides that when no objection is filed on a plan, plan amendment, or plan revision within the 30-day period for filing an objection, the responsible official could approve the plan, plan amendment, or plan revision. Approval could occur on or after the 5th business day following the end of the objection filing period. The 5 business day delay/buffer is to allow sufficient time for any objections that may have been timely filed through the U.S. Postal Service (*i.e.,* postmarked before the end of the objection filing period) to be received by the reviewing officer. Objections that are timely filed but not received by the fifth business day following the end of the objection-filing period would not be considered.

Section 219.59 Use of Other Administrative Review Processes

This section would allow for the use of other administrative review processes in lieu of the objection process in certain circumstances.

Paragraph (a) would allow the use of the administrative review procedure of another Federal agency when the plan, plan amendment, or plan revision is part of a multi-Federal agency effort. This provision is proposed to minimize the confusion that could occur if multiple administrative review processes are used for a single joint proposal. It also requires that the public notice identify which administrative review procedure is to be used.

Paragraph (b) provides that the objection process in this subpart of the proposed rule would not apply when a plan amendment decision is made at the same time as a project or activity decision, and is specifically limited to that project or activity. Instead, the regulations for notice, comment, and appeal of projects at 36 CFR Part 215, or the regulations for objections to hazardous fuel reduction projects authorized by the Healthy Forests Restoration Act, at 36 CFR Part 218, would apply to the amendment as well as the project. In this type of mixed decision, the project decision is the dominant part so the administrative review process for projects is more appropriate than the objection process contained in this subpart of the proposed rule.

However, paragraph (b) also would provide that the objection process in this subpart be used for an amendment that applies not just to one project or activity, but to any future project or activity for which it is relevant, even when the amendment is approved as a part of a mixed decision with a project or activity. Because the plan amendment would apply broadly, and not just to the project, it would be subject to the pre-decisional administrative review process of this subpart, while the project part of the decision would be subject to the administrative review process of either 36 CFR Part 215 or Part 218. Corresponding provisions for administrative reviews of the mixed decisions described by these two scenarios already exist in 36 CFR Parts 215 and 218.

Section 219.60 Secretary's Authority

Paragraph (a) explains that no part of this proposed rule would restrict the Secretary's authority.

Section 219.61 Information Collection Requirements

This section explains that the rule would contain information collection requirements as defined in 5 CFR Part 1320 and specifies the information that

objectors would have to supply in an objection.

Section 219.62 Definitions

This section defines some of the commonly used terms and phrases used in Subpart B of the proposed rule.

4. Regulatory Certifications

Regulatory Planning and Review

The Agency reviewed this proposed rule under U.S. Department of Agriculture (Department) procedures and Executive Order (E. O.) 12866 issued September 30, 1993.

The Agency has determined this proposed rule is not an economically significant rule. This proposed rule will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This proposed rule will not interfere with an action taken or planned by another agency. Finally, this proposed rule will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. However, because of the extensive interest in NFS planning and decisionmaking, this proposed rule has been designated as significant and, therefore, is subject to Office of Management and Budget review. An analysis was conducted to compare the costs and benefits of implementing the proposed rule to the baseline, which assumes planning pursuant to the 1982 rule procedures, as allowed by the transition provisions of the 2000 planning rule (36 CFR 219.35(b), 74 FR 67073 (December 18, 2009)). This analysis is posted on the World Wide Web at: *http://www.fs.usda/planningrule*, along with other documents associated with this proposed rule.

The scope of this analysis is limited to programmatic or agency procedural activities related to plan development, plan revision, and plan amendment (*i.e.,* maintenance) of land management plans for management units (*e.g.,* national forests, grasslands, prairies) within the NFS. Agency, or private costs or benefits associated with on-the-ground or site-specific activities and projects are not characterized or projected. Potential procedural effects evaluated in the analysis include potential changes in agency costs and changes in overall planning efficiency. This analysis identifies and compares the costs and benefits associated with developing, maintaining, revising, and amending NFS land management plans under five alternatives: (A) The proposed NFS planning rule (proposed rule); (B) the implementation of 1982 rule procedures under the 2000 rule (No Action); (C) the minimum to meet the National Forest Management Act (NFMA) and purpose and need; (D) a modified version of the proposed rule with an alternative approach to species diversity and an emphasis on watershed health; (E) a modified version of the proposed rule with emphasis on monitoring performance and collaboration. Procedural effects evaluated include potential changes in agency costs and changes in overall planning efficiency. Alternative B is the no action alternative and therefore the baseline for this analysis.

The effects of the proposed rule are evaluated within the context of a planning framework consisting of a three-part learning and planning cycle: Assessment, development/revision/amendment, and monitoring. The cost-benefit analysis focuses on key activities related to this three-part planning cycle for which agency costs can be estimated under the 1982 rule procedures and the proposed rule. Differences in costs across alternatives are estimated when possible, but benefits are discussed qualitatively as potential changes in procedural or programmatic efficiency. The key activities for which costs were analyzed include: (1) Assessments (*e.g.,* activities conducted to establish a need to change the existing plan prior to initiating plan revisions or plan amendments); (2) collaboration (*e.g.,* collaboration and public participation activities in addition to those required by the NFMA and NEPA); (3) development and analysis of plan revision and amendment decisions (*i.e.,* developing of alternatives to address the need to change the plan, analyzing and comparing the effects of alternatives, and finalizing and documenting plan revision and plan amendment decisions); (4) science support (*i.e.,* activities for assuring consideration and use of the best scientific information); (5) monitoring (limited to those monitoring activities that support planning); (6) resolution of issues regarding plan revisions or plan amendments through the administrative processes of appeals or objections; and (7) minimum maintenance (*i.e.* minimum expenses to maintain a plan during non-revision years, excluding assessment, collaboration, and analysis/decision costs associated specifically with plan amendments).

Primary sources of data used to estimate agency costs include recent cost-benefit analyses, business evaluations, and budget justifications for planning rules issued between 2000 and 2008 and recent historical data (1996–2009) regarding regional and unit-level budget allocations and paid expenditures for planning and monitoring activities related to planning. Agency costs are initially estimated for the 1982 rule procedures and then used as a baseline from which adjustments are made, based on explicit differences in planning procedures, to estimate costs for the proposed rule. Cost projections of the proposed rule are speculative because there are challenges anticipating the process costs of revising and amending plans at this programmatic level of analysis. The Agency will not be able to determine costs until the Department issues the final rule and the Agency implements it. Annual costs are estimated separately for years during which units (with regional support) are engaged in plan revision and the years units are engaged in plan maintenance/amendment. The estimated costs are then aggregated to estimate total planning costs. Over a 15-year planning cycle, it is assumed that management units will be engaged in plan revision for 3 years under the proposed rule and 5 years under the 1982 rule procedures, implying annual plan maintenance or more frequent but shorter amendments will be occurring for the remaining 12 and 10 years respectively.

Monitoring is assumed to occur every year, but monitoring differs slightly for plan revision years compared to maintenance years. Shorter revision periods reflect the expectation that the process for revising plans will be more efficient because of procedural changes described below (*see* "Efficiency and Cost Effectiveness Impacts"). It is also assumed that approximately 120 management units will initiate plan revision over the next 15 years (*i.e.,* 2012 through 2026). Total costs are assumed to cover activities directly related to planning (and monitoring for planning purposes) at the unit and regional office levels, as well as indirect or overhead (*i.e.,* cost pools) activity for supporting planning activities, but do not include project-level costs. Costs associated with planning at the national office and research stations are assumed to remain relatively constant across alternatives. Total costs (2009 dollars ($)) are estimated for a 15-year planning cycle and then annualized assuming a 3 percent and 7 percent discount rate. Annualized costs accrued over the 15-year period reflect the annual flow of costs that have been adjusted to acknowledge society's time value of money.

Due to the programmatic nature of the proposed action, the benefits derived from land management plans developed, revised, or amended under the different alternatives are not quantified. Instead, the benefits of the alternatives are assessed qualitatively for procedural or programmatic efficiency. Efficiency is a function of (1) the time and resources used (costs) to complete and maintain plans, and (2) the degree to which those plans are capable of providing direction for resource monitoring, management, and use/access that sustains multiple uses (including ecosystem services) in perpetuity and maintains long-term health and productivity of the land for the benefit of human communities and natural resources, giving due consideration to relative values of resources (*i.e.,* meets the objectives of the NFMA and other key guiding legislation).

Agency Cost Impacts

Results of the cost analysis indicate agency costs increase for some key activities and decrease for others under the proposed rule and alternatives. However, total annual planning costs are not projected to be substantially different between the proposed rule and the 1982 rule procedures. Estimates of potential differences in planning costs are complicated by the unknown effects of any future Forest Service directives that might be developed to support the proposed rule.

The annual average undiscounted cost to the Agency for all planning-related activities under the proposed rule ($102.5 million per year) is estimated to be $1.5 million per year lower compared to the 1982 rule procedures ($104 million per year). Assuming a 3 percent discount rate, the projected annual cost for the proposed rule is estimated to be $102 million, while the projected annual cost for the 1982 rule procedures is $103 million, implying a projected annual cost difference of only $1 million. Assuming a 7 percent discount rate for the same timeframe, the projected annual cost estimate for the proposed rule is $80 million compared to $81 million under the 1982 rule procedures.

Based on the above quantitative comparison, annual average planning costs to the Agency are projected to be similar for the proposed rule and the 1982 procedures. If the Agency implements the planning rule as proposed, it is anticipated employee training will be needed, in large part due to the proposed collaborative process and reallocation of resources across different planning related activities. It is likely the cost of training will decrease gradually over time. Therefore, during the first 15-year period, planning costs will be slightly elevated and not significantly different from the no-action alternative as units adjust to the new planning process and build collaborative capacity. In subsequent 15-year periods, planning costs are likely to decrease as the new process becomes more established. Costs in subsequent planning cycles are expected to be lower than those estimated in this analysis for the proposed rule.

The cost and benefit analysis assumed eight management units will start plan revision annually. Therefore, approximately 120 management units will at least initiate plan revision over the next 15 years (*i.e.* 2012 through 2026). This analysis also assumed each management unit would take 3 years to revise a plan under the proposed rule and 5 years under the 1982 rule procedures. Given these assumptions, over a 15 year period, there would be approximately 104 plan revisions completed under the proposed rule in contrast to an estimated 88 plans revised under the 1982 rule procedures, a net increase of 16 plans revised under the proposed rule.

Efficiency and Cost-Effectiveness Impacts

The numerous public meetings, forums, and roundtable discussions revealed growing concern about a variety of risks and stressors (*e.g.,* climate change; insects and disease; recreation, timber, and shifts in other local demands and national market trends; population growth, and other demographic shifts; water supply protection and other ecosystem support services). Addressing these types of risks and contingencies requires a larger landscape perspective, information from a broad spectrum of sources and users, and a framework that can facilitate adaptation to new information. The new procedural requirements under the proposed rule are designed to recognize these needs. The requirements are intended to increase agency capacity to adapt management plans in response to new and evolving information about risks, stressors, contingencies, and management constraints as described in the section above. It is anticipated under the proposed rule that management units will be better able to keep plans updated and current with evolving science and public concerns without substantial changes in planning costs over a 15-year period. The Agency would be able to establish plans that are efficient and legitimate frameworks for managing resources that meet public demand in a sustainable fashion and satisfy the goals of the MUSYA and the NFMA.

Under the proposed rule, costs are projected to be redirected toward collaboration, assessment, and monitoring activities and away from development and analysis of alternatives compared to the 1982 rule procedures. Costs are also redirected more toward maintenance or plan amendments under the proposed rule, due in part to expectations that less time will be needed to complete plan revisions. These effects are projected to occur, in part, because of broader support and resolution of issues at earlier stages of plan revision, achieved through collaboration as well as other procedural changes.

The reallocation of efforts and costs across different phases of planning, and across key planning activities under the proposed rule is expected to improve overall planning efficiency. Shifts in emphasis and resources under the proposed rule are projected to improve the currency, reliability, and legitimacy of plans to serve as a guide for: (1) Reducing uncertainty by identifying and gathering new information about conditions, trends, risks, stressors, contingencies, vulnerabilities, values/needs, contributions, and management constraints; (2) integrating and assessing ecological, social, and economic information to determine if outputs and outcomes related to unit contributions to ecological, social, and economic conditions indicate a need to change the plan; and (3) responding to the need for change in management activities, projects, or revisions and amendments to plan components. Potential increases and/or reallocation of costs associated with assessment, analysis, and monitoring requirements for elements such as diversity and sustainability are expected to provide clearer direction for subsequent project planning. It is recognized project-level costs are not included in the analysis of land management planning costs. Details about the potential effects of specific procedural changes on agency costs and planning efficiency are described below, by activity category.

Assessment: Slight increases in assessment costs (compared to the cost of doing an analysis of the management situation under the 1982 rule procedures) are anticipated under the proposed rule. This is due to an increased emphasis on characterizing factors such as unit roles and contributions within a broader ecological and geographic context (landscapes), ecosystem and species

diversity, climate change, as well as other system drivers, risks, threats, and vulnerabilities, as well as the mitigating effects of other elements such as direction to rely on existing information and the removal of required prescriptive benchmark analysis. Changes in the assessment requirements and guidance are expected to increase planning efficiency and effectiveness by improving capacity to assimilate and integrate new information for determining a need to change the plan.

Assessments would be conducted at landscape levels and at a geographic scale based on ecological, economic, or social factors rather than a strict adherence to administrative boundaries. This broader approach would enhance capacity to incorporate information about conditions outside of NFS boundaries.

Risks and vulnerabilities to ecosystem elements and functions would be considered in assessments thereby encouraging consideration of the effects of long-term environmental or social/economic variability, events, and trends on future outputs, ecosystem services, and outcomes.

Collaboration: Costs associated with public participation are projected to increase under the proposed rule due primarily to requirements that opportunities for collaboration be provided at all stages of planning. Gains in cost effectiveness may occur, in part, by providing responsible officials with discretion to design collaborative strategies that meet unit-specific needs and constraints and recognize local collaborative capacity. Costs for some units may be higher where potential barriers to collaboration are present (*e.g.,* pre-existing relationships may exacerbate perceived inequities; absence of pre-existing social networks or capacity). However, changes in guidance and requirements for collaboration under the proposed rule are expected to increase planning efficiency because of the following:

Improved analysis and decisionmaking efficiency during latter stages of planning due to increases in collaborative efforts during early phases;

Improved capacity to reduce uncertainty by gathering, verifying, and integrating information from a variety of sources, including tribal or other forms of knowledge and land ethics, within and beyond unit boundaries;

Potential to offset or reduce agency monitoring costs as a result of collaboration during monitoring plan development and monitoring itself;

Improved capacity for identifying and integrating ecological, social, and economic indicators for determining the need to change the plan during assessments;

Reduced need for large numbers of plan alternatives as well as time needed to complete plan revisions as a consequence of broader support and resolution of issues achieved through collaboration during early phases of proposed plan development;

Improved perceptions regarding the legitimacy of plans and the planning process, as well as reduced agency costs associated with resolving objections (or conflict) by increasing transparency, developing awareness of the values and expected behavior of others, and seeking greater consensus about values, needs, tradeoffs, and outcomes during earlier stages of planning; and,

Improved expectations about building unit (and regional) capacity to overcome existing barriers to collaboration (*e.g.,* absence of social networks or capacity; perceptions about pre-existing power relationships) through training and facilitation.

Analysis and decisions (plan development, plan revision or amendment): Costs associated with analysis and decisions are estimated to decrease under the proposed rule due primarily to the effect of fewer prescriptive requirements (relative to 1982 rule procedures) regarding probable (management) actions, timber program elements, number and types of alternatives, evaluation of alternatives, and minimum management requirements. The forces affecting the cost include (1) increased emphasis on consideration of resource attributes and conditions such as sustainability, watershed health, and water supply, and (2) adaptation to new approaches for addressing species viability and diversity in the short-term (with long-term potential for gains in cost-effectiveness).

The following elements associated with the proposed rule are expected to increase planning efficiency by facilitating plan revisions and amendments, expanding capacity for adaptive management, and improving guidance for responding to diverse determinations of a need to change the plan:

The adoption of a coarse-filter/fine-filter approach for addressing species viability and diversity within plan components, combined with the recognition of land management and resource limits which constrain levels of achievable viability and diversity, is expected to make management units better able to develop plans that provide feasible or realistic direction for responding to species and ecosystem sustainability and recovery needs while meeting requirements for plant and animal diversity;

A greater emphasis on ecosystem sustainability and resiliency in plan components is expected to increase the ability of management units to respond efficiently to new information regarding environmental, social, and economic risks and stressors, including climate change and market trends, that might threaten the long-term productivity and sustainability of forest resources and outputs;

Refocusing the use of the term "restoration" to focus on recovery of resiliency and ecosystem functions (instead of historical reference points) offers greater flexibility to develop plan components (*e.g.,* desired conditions) that provide more feasible and adaptable direction for addressing damaged ecosystems;

Greater emphasis placed on identifying each unit's role in providing ecosystem services within a broader landscape or region should facilitate the design of management responses that recognize the marginal effects or contributions of ecological, social, or economic conditions originating from outside of the traditional unit study area boundaries;

More frequent amendments expected under the proposed rule leading to more current plans and more focused descriptions of the need to change the plan to guide future subsequent plan revisions;

Fewer "minimum management requirements," with flexibility to adopt plan components to provide similar levels of protection afforded by minimum management requirements under 1982 rule procedures; and,

Less prescriptive descriptions of timber harvests, sale schedule, and management practices under the proposed rule (compared to the 1982 rule procedures) may provide greater flexibility for units to develop more adaptive plans capable of responding to uncertain vegetation management and restoration needs.

Science support: Slight cost increases for science support may occur under the proposed rule due in part to more prescriptive language to take into account the best available scientific information when preparing assessment reports, plan decision documents, and monitoring evaluation reports. On the other hand, guidance and requirements under the proposed rule for taking science into account contribute to planning efficiency by maximizing coverage of scientific input from diverse sources, integrating science throughout all stages of planning, and taking advantage of scientific knowledge from

external partners and agency research stations, thereby strengthening the decisionmaking process.

Resolutions: The cost effect of a shift from a post-decisional appeals process (under the 1982 rule procedures) to a pre-decisional objection period under the proposed rule is difficult to project; however, the anticipated success of collaboration in achieving greater understanding about plan components and perceptions of legitimacy and trust in the planning process is expected to have a beneficial effect on resolution activity and corresponding costs. Procedural changes related to collaboration are expected to provide opportunities for resolving potential objections or conflict at earlier stages of planning, thereby reducing the need for, and cost of, resolutions at latter stages.

Monitoring: Relative increases in monitoring costs are anticipated as a consequence of a greater emphasis on broader input and participation in the design and implementation of monitoring, adjustments to new requirements for characterizing diversity and resiliency, and two-level (unit and broad-scale) monitoring. However, over time, the two-level approach to monitoring is expected to increase monitoring efficiencies and decrease the cost of other planning related activities. Under the proposed rule, the two-level approach to monitoring is intended to inform the unit's management and make progress toward desired outcomes. In addition, the monitoring program will be closely tied to the assessment phase of the planning framework, so the new information that arises through monitoring drives assessments to determine the need to change a plan. Unit monitoring and broader-scale monitoring levels are related. The two-level monitoring framework would effectively standardize unit-level monitoring requirements. The proposed rule would mobilize multi-party monitoring resources by working across all Forest Service branches and engage partners and other government agencies in its monitoring efforts to help reduce the cost of added monitoring requirements. There is also potential that collaboration would result in more cooperative monitoring programs with other agencies and the public. This could help leverage resources to accomplish additional monitoring.

Monitoring requirements, such as coordination of broad-scale monitoring, as well as monitoring of "focal species" and select ecological conditions as measures for diversity, are expected to contribute to overall cost efficiency. Changes in guidance and requirements for monitoring under the proposed rule are expected to increase planning effectiveness by improving capacity to gather information and reduce uncertainty for a number of integrated ecological, social, and economic conditions, trends, risks, stressors, constraints, and values within and beyond unit boundaries. The following is a list of the changes.

Monitoring under the proposed rule focuses to a greater extent on ecosystems, habitat diversity, and small numbers of focal species, with the intent that tracking overall species diversity and habitat sustainability will be more cost effective and reflective of unit-specific capacities compared to the 1982 rule procedures involving management indicator species (MIS).

Two-level monitoring is intended to create a more systematic and unified monitoring approach to detect effects of management within unit boundaries as well as track risks, stressors, and conditions beyond unit boundaries that affect, or are affected by, unit conditions and actions.

Emphasis on coordination between unit- and broad-scale monitoring helps ensure information is complementary, is gathered at scales appropriate to monitoring questions, reduces redundancy, and improves cost-effectiveness.

Distributional Impacts

Due to the programmatic nature of this rule, it is not feasible to assess distributional impacts (*e.g.,* changes in jobs, income, or other measures for socio-economic conditions across demographics or economic sectors) in detail. In general, the proposed rule is designed to facilitate engagement and involvement throughout all phases of planning, thereby improving capacity to consider and incorporate values and concerns for all economic sectors and social segments affected by any given plan, plan revision, or amendment. The proposed rule is also intended to facilitate assimilation of new information about local or rural, as well as national, concerns and values throughout the planning process (*i.e.,* continuous cycle of assessment, development/revision/amendment, and monitoring).

The proposed rule is more prescriptive about considering and facilitating restoration of damaged resources as well as improving resource capacity to withstand environmental risks and stressors (*i.e.,* resiliency), thereby providing greater capacity for sustaining local or rural economic opportunities to benefit from forest resources and ecosystem services, including recreation/tourism and water supply/watershed health as well as restoration based activities.

Proper Consideration of Small Entities

The proposed rule has also been considered in light of E.O. 13272 regarding proper consideration of small entities and the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), which amended the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Forest Service has determined this action will not have a significant economic impact on a substantial number of small entities as defined by the E.O. 13272 and SBREFA, because the proposed rule imposes no requirements or costs on small entities, nor does it impose requirements or costs on specific types of industries or communities. In addition, the proposed rule provides more opportunities for small entities to collaborate with the Forest Service and become more involved in all phases of planning, thereby expanding capacity to identify and consider the needs and preferences of small entities. Timelier planning and management decisions under the proposed rule should increase opportunities for small entities to benefit from implementation of updated land management plans. Additional emphasis on ecosystem resiliency to facilitate restoration activities and on sustainable recreation opportunities should help sustain economic opportunities linked to local or rural communities, many of which are host to small entities. Therefore, a regulatory flexibility analysis is not required for this proposed rule.

Energy Effects

This proposed rule has been reviewed under Executive Order 13211 issued May 18, 2001 (E.O. 13211), "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use." It has been determined that this proposed rule does not constitute a significant energy action as defined in E.O. 13211. This proposed rule would guide the development, amendment, and revision of NFS land management plans. These plans provide the guidance for making future project or activity resource management decisions. As such, these plans would address access requirements associated with energy exploration and development within the framework of multiple-use sustained-yield management of the surface resources of the NFS lands as required by § 219.10. These land management plans may identify major rights-of-way corridors for utility transmission lines, pipelines,

and water canals. While these plans may consider the need for such facilities and may include standards and guidelines that may constrain energy exploration and development, they would not authorize construction of them; therefore, the proposed rule does not constitute a significant energy action within the meaning of E.O. 13211. The effects of the construction of such lines, pipelines, and canals are, of necessity, considered on a case-by-case basis as specific construction proposals. Consistent with E.O. 13211, direction to incorporate consideration of energy supply, distribution, and use in the planning process will be included in the Agency's administrative directives for carrying out the proposed rule.

Environmental Impacts

This proposed rule establishes the administrative procedures to guide development, amendment, and revision of NFS land management plans. The Agency has prepared a draft programmatic environmental impact statement to analyze possible environmental effects of the proposed rule, present several alternatives to the proposed rule, and disclose the potential environmental impacts of those alternatives. The draft programmatic environmental impact statement is available on the Web at *http://www.fs.usda.gov/planningrule.*

The proposed rule would require plan development, amendment, or revision to follow NEPA procedures. The rule requires an EIS for plan development and plan revisions. The rule also requires that plan amendments comply with Forest Service NEPA procedures. The appropriate NEPA documentation for an amendment may be an EIS, an EA, or a CE, depending upon the scope and scale of the amendment and its likely effects.

Controlling Paperwork Burdens on the Public

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or reporting requirements for the objection process were previously approved by the Office of Management and Budget (OMB) and assigned control number 0596–0172 for the objection process included in the CFR 218 objection regulation.

The information required by subpart B of this rule is needed for an objector to explain the nature of the objection being made to a proposed land management plan, plan amendment, or plan revision. This proposed rule retains the objection process established in the CFR 218 objection regulation and does not require additional information be provided from the public. This rule does instead give direction that is more detailed to both the public and Forest Service personnel on the timelines, requirements, and procedures of the objection process.

Federalism

The Agency has considered this proposed rule under the requirements of Executive Order 13132 issued August 4, 1999 (E.O. 13132), "Federalism." The Agency has made an assessment that the proposed rule conforms with the Federalism principles set out in this Executive Order; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, on the relationship between the national government and the States, nor on the distribution of power and responsibilities among the various levels of government. Therefore, the Agency concludes that this proposed rule does not have Federalism implications. Moreover, § 219.4(a)(6) of this proposed rule shows sensitivity to Federalism concerns by requiring the responsible official provide opportunities for the participation of State and local governments and Indian Tribes in the planning process. In addition, § 219.4(b) requires the responsible official to coordinate planning with State and local governments and Indian Tribes.

In the spirit of E.O. 13132, the Agency provided many opportunities for State and local officials, including their national representatives, to share their ideas and concerns in developing the proposed regulation. The Forest Service made the December 18, 2009, NOI for the proposed planning rule available for comment and asked the public, including State and local officials, for feedback on a set of eight principles that could guide future land management planning. In addition, Forest Service regional office staff invited State and local government officials to participate in regional public roundtable meetings that occurred in 34 locations throughout the country, and nearly all of these meetings had representatives from county, city, and/or State governments present. At the request of State and county officials, the Rocky Mountain Region held a meeting with Wyoming State and county officials on April 14, 2010, in Cheyenne, WY; the Pacific Southwest Region held a meeting with California County officials on April 30, 2010.

Agency representatives also contacted the National Association of Counties, the U.S. Conference of Mayors, the Western Governors Association, the National Association of State Foresters, the National Conference of State Historic Preservation Officers and other State and local government associations to encourage them to attend the four national roundtables held during development of the proposed regulation. Attendance at the national roundtables included both State and county government officials and representatives from national associations such as the National Association of Counties and the National Association of County Planners. Agency officials also met with the Association of State Fish and Wildlife Agencies on May 26, 2010, to obtain further input on the planning rule from the perspectives of State agencies.

Based on the input received throughout all these meetings, the Agency determined that additional consultation was not needed with State and local governments for the development of this proposed rule. State and local governments are encouraged to continue to comment on this proposed rule, in the course of this rulemaking process.

Consultation With Indian Tribal Governments

On September 23, 2010, the Deputy Chief for the National Forest System sent letters inviting more than 600 federally recognized Tribes and Alaska Native Corporations to begin consultation on the proposed planning rule. The Forest Service will continue to conduct government-to-government consultation on the planning rule until the final rule is published. The Forest Service considers tribal consultation as an ongoing, iterative process that encompasses development of the proposed rule through the issuance of the final rule.

The Agency held 16 consultation meetings across the country in November and December 2010. During these meetings, Forest Service leaders met with tribal and Alaska Native Corporation leaders, or their designees, to discuss the tribal consultation paper, which described how the proposed rule addressed concerns Tribes had raised during the collaborative sessions held earlier in the year. In addition, Forest Service leaders have been meeting one-on-one with tribal leaders that request consultation in this manner. These consultation meetings have strengthened the government-to-government relationship with the Tribes as well as improved the proposed rule.

The Agency incorporated the input received through consultation into the development of this proposed rule. All comments received up through

December 13, 2010, were considered for the proposed rule; comments received after December 13, 2010, will be considered for the final rule.

Since the NOI was issued in December 2009, the Agency has also engaged the Tribes in the planning rule development process through collaborative efforts designed to complement the government-to-government consultation process. The Agency sent a letter to all federally recognized Tribes on December 18, 2009, encouraging them to submit comments on the NOI and inviting them to participate in national and regional roundtable meetings to share with the Agency what they want in the planning rule. The letter stated that consultation typically begins later in the rule development process, but also provided the option for Tribes to begin consultation sooner if they desired. While most Tribes elected to wait to consult until later in the rule development process, some Tribes began consultation through the local responsible official prior to the September 23, 2010, letter. Many tribal comments were also received as part of the public record on the NOI. The Agency analyzed these comments separately from the general public comments, published a report about the comments, and posted the report on the planning rule Web site. Additionally, many Tribes submitted letters as part of the collaborative process. The content of these letters have been considered and incorporated into the rule development process.

The Agency held two national tribal roundtable conference calls to provide additional opportunities for Tribes and tribal associations to comment on the development of the proposed planning rule. More than 45 Tribes and tribal associations participated in the First National Tribal Roundtable on May 3, 2010, and more than 35 Tribes and tribal associations participated in the Second National Tribal Roundtable on August 5, 2010. Transcripts and summaries of these meetings are available on the planning rule Web site.

Several Forest Service regional offices held specific in-person tribal roundtables to discuss the planning rule. The Southwestern Region held tribal roundtables in Pojoaque, NM; Albuquerque, NM; Phoenix, AZ and Flagstaff, AZ. The Pacific Southwest Region held tribal roundtables in Bayside and Clovis, CA. Transcripts and summaries of these meetings are available on the planning rule Web site. The Eastern and Southern Regions of the National Forest System also invited Tribes to attend separate tribal meetings in association with the regional roundtable being held in those regions, however, no Tribes attended.

To date, the Agency has heard from tribal leaders that the rule should clearly state how the special rights and interests of Tribes would be provided for in the planning process and show how Tribes will be engaged early throughout the planning process. They emphasize the obligation the Forest Service has to Tribes to fulfill treaty obligations and trust responsibilities, protect and honor reserved rights, and fully recognize the unique government-to-government relationship that exists between the federal government and Tribes. Tribal leaders also state that the role of science in the planning process must account for traditional tribal knowledge. In response to these concerns, the proposed rule states that plans and the planning process would not affect treaty rights or valid existing rights, and that plans must comply with all applicable laws and regulations; the responsible official must offer opportunities for Tribes to participate in collaborative plan development, along with government-to-government consultation; and the responsible official shall request information from Tribes about native knowledge, including information about land ethics, cultural issues, and sacred and culturally significant sites during the planning process.

Language has also been added to the proposed rule at § 219.4(a)(8) to encourage federally recognized Tribes to seek cooperating Agency status. This provides an additional opportunity for Tribes to be engaged in the planning process and provides further avenues for Tribes to provide input during the planning process. To address tribal concerns regarding statutes that require consultation with federally recognized Indian Tribes and Alaska Native Corporations, language at § 219.4(a)(5) specifies that the responsible official shall provide the opportunity to undertake consultation with federally recognized Indian Tribes and Alaska Native Corporations in accordance with Executive Order 13175 of November 6, 2000. Alaska Native Corporations also commented that they wanted their planning efforts to be included under requirements for coordination with other planning efforts. At § 219.4(b)(2), for plan development or revision, the responsible official shall review the planning and land use policies of federally recognized Indian Tribes, other Federal agencies, and State and local governments. The results of the review would be displayed in the environmental impact statement for the plan.

Tribal leaders stated that they want to see non-federally recognized Tribes and groups included in the consultation or planning process, as well as the involvement of youth. Non-federally recognized groups and Tribes would be able to participate in the planning process under the public requirements in § 219.4. Per § 219.4(a)(3), responsible officials shall encourage participation by youth, as well as low-income and minority populations.

Tribes place great emphasis on protection of water resources and want to see the planning rule include stipulations for water protection. Water resources are addressed throughout this proposed rule, including specifically in § 219.7 New plan development or plan revision, § 219.8 Sustainability, § 219.9 Diversity of Plant and Animal Communities, and § 219.10 Multiple Uses. Tribes support a management approach that moves away from monoculture management and promotes sustainable and diverse populations of plants and animals. Section 219.9 of the proposed rule requires land management plans to contain components to maintain or restore the structure, function, composition, and connectivity of healthy and resilient terrestrial and aquatic ecosystems in the plan area to maintain the diversity of native species.

Many Tribes expressed concerns regarding the Agency's definition of native knowledge. To address these concerns, the definition of native knowledge in § 219.19 has been expanded based on the feedback that we received during consultation. The new definition acknowledges that native knowledge is a way of knowing or understanding the world derived from multiple generations of indigenous peoples' interactions, observations, and experiences with their ecological systems, and that it is also place-based and culture-based knowledge in which people learn to live in and adapt to their own environment through interactions, observations, and experiences with their ecological system.

The Agency also received comments from tribal leaders related to the protection of cultural resources. Under § 219.10, the plan must contain plan components for a new plan or plan revision that provides for protection of cultural and historic resources and management of areas of tribal importance.

Many Tribes have a variety of concerns regarding social, economic, and ecological sustainability, and suggest that the Agency specifically

address cultural sustainability within the proposed rule. § 219.8 in the proposed rule addresses sustainability and requires that land management plans include plan components to guide the unit's contribution to social and economic sustainability. To address concerns regarding cultural sustainability, proposed rule language at § 219.8 requires that these plan components take into account social, cultural, and economic conditions relevant to the area influenced by the plan and the distinctive roles and contributions within the broader landscape. Plan components must also take into account cultural and historic resources and uses.

During the consultation meetings, the Agency heard from tribal leaders that confidentiality is a big concern. In order to address these concerns and explicitly address confidentiality, § 219.1(f) states that the responsible official shall comply with Section 8106 of the Food, Conservation, and Energy Act of 2008, Executive Order 13007 of May 24, 1996, Executive Order 13175 of November 6, 2000, laws and other requirements with respect to disclosing or withholding under the Freedom of Information Act certain information regarding reburial sites or other information that is culturally sensitive to Indian Tribe or Tribes.

The Agency has heard from tribal leaders that they want to see sacred sites protected. The proposed rule requires that responsible officials request information from Tribes about sacred sites, and provides for protection of cultural and historic resources and management of areas of tribal importance. In addition, a separate initiative by the USDA Office of Tribal Relations and the Forest Service is conducting a policy review concerning sacred sites and is consulting with Tribes during their effort. The Agency has informed Tribes of this separate initiative and how they can participate during the consultation meetings. Information that the Agency received during the proposed planning rule consultation process regarding sacred sites has been shared with the USDA/Forest Service initiative.

The Forest Service received many other comments during the tribal consultation meetings. A number of these comments were regarding concerns that are outside of the scope of the national planning rule or that will be addressed at the local level during the development of land management plans. Tribes will receive responses to these comments via separate documents.

Pursuant to Executive Order 13175 of November 6, 2000, "Consultation and Coordination with Indian Tribal Governments," the Agency has assessed the impact of this proposed rule on Indian tribal governments and has determined that the proposed rule does not significantly or uniquely affect communities of Indian tribal governments. The proposed rule deals with the administrative procedures to guide the development, amendment, and revision of NFS land management plans and, as such, has no direct effect on the occupancy and use of NFS land.

The Agency has also determined that this proposed rule does not impose substantial direct compliance costs on Indian tribal governments. This proposed rule does not mandate tribal participation in NFS planning. Rather, the proposed rule imposes an obligation on Forest Service officials to reach out early to provide Tribes an opportunity to consult and to work cooperatively with them throughout the planning process.

Takings of Private Property

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630 issued March 15, 1988, and it has been determined that the proposed rule does not pose the risk of a taking of private property.

Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988, "Civil Justice Reform." The Agency has not identified any State or local laws or regulations that are in conflict with this regulation or that would impede full implementation of this rule. Nevertheless, in the event that such conflicts were to be identified, the proposed rule, if implemented, would preempt the State or local laws or regulations found to be in conflict. However, in that case, (1) no retroactive effect would be given to this proposed rule; and (2) the Department would not require the use of administrative proceedings before parties could file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), the Agency has assessed the effects of this proposed rule on State, local, and tribal governments and the private sector. This proposed rule does not compel the expenditure of $100 million or more by any State, local, or tribal governments or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

Environmental Justice

The United States Department of Agriculture, Forest Service, considered impacts of the proposed rule to civil rights and/or environmental justice (pursuant to Executive Order 12898 (59 FR 7629, February 16, 1994)). If implemented as proposed, with collaborative outreach, public engagement and using NEPA procedures to document effects, this analysis concludes that no adverse civil rights or environmental justice impacts from the proposed planning rule are anticipated to the delivery of benefits or other program outcomes on a national level for any under-represented population or to other U.S. populations or communities from the adoption of the proposed planning rule.

While national level impacts are not expected to be disproportionate, yet-to-be-identified adverse impacts may be possible on a regional or local level at the unit planning level. Differences in national level effects and regional/local level effects are the result of uneven distribution of minorities, low-income populations, and variations in regional, cultural, or traditional use, and differences in local access to resources. Impacts on the national forest level will be further examined at the local level, including NEPA analysis for plan development, plan revision, or plan amendment and site-specific projects.

The collaboration required by the proposed rule has significant potential to reach and involve diverse segments of the population that historically have not played a large role in NFS planning and management. Section 219.4(a) requires that when developing opportunities for public participation, the responsible official shall take into account the discrete and diverse roles, jurisdictions, responsibilities, and skills of interested and affected parties as well as the accessibility of the process, opportunities, and information. The responsible official will be proactive and use contemporary tools, such as the internet, to engage the public, and share information in an open way with interested parties.

The proposed rule includes provisions for filing an objection prior to the final decision if the objector has filed a formal comment related to a new plan, plan revision, or plan amendment. In the past, formal comments were required to be in writing and submitted during the formal comment period when developing land management plans. The proposed rule expands the definition of a formal comment to

include written or oral comments submitted or recorded during an opportunity for public participation provided during the local unit's planning process (§§ 219.4 and 219.16).

If implemented as proposed, there are no anticipated adverse or disproportionate impacts to underserved, protected groups, low income, or socially disadvantaged communities. The proposed rule, including outreach and collaboration, and the requirement for NEPA analysis are designed to avoid adverse or disproportionate effects; therefore, mitigating measures are not necessary or appropriate for adopting or implementing the planning rule. Requirements of § 219.4 to consider accessibility, and encourage participation by youth, low–income populations, and minority populations may improve environmental justice outcomes. Local site-specific mitigation may occur as NFS projects and activities are planned and executed consistent with Forest Service and USDA policy.

List of Subjects in 36 CFR Part 219

Administrative practice and procedure, Environmental impact statements, Indians, Intergovernmental relations, National forests, Reporting and recordkeeping requirements, Science and technology.

Therefore, for the reasons set forth in the preamble, the Forest Service proposes to revise part 219 of Title 36 of the Code of Federal Regulations to read as follows:

PART 219—PLANNING

Subpart A—National Forest System Land Management Planning

Sec.
219.1 Purpose and applicability.
219.2 Levels of planning and responsible officials.
219.3 Role of science in planning.
219.4 Requirements for public participation.
219.5 Planning framework.
219.6 Assessments.
219.7 New plan development or plan revision.
219.8 Sustainability.
219.9 Diversity of plant and animal communities.
219.10 Multiple Uses.
219.11 Timber requirements based on the NFMA.
219.12 Monitoring.
219.13 Plan amendment and administrative changes.
219.14 Decision documents and planning records.
219.15 Project and activity consistency with the plan.
219.16 Public notifications.
219.17 Effective dates and transition.
219.18 Severability.
219.19 Definitions.

Subpart B—Pre-Decisional Administrative Review Process

219.50 Purpose and scope.
219.51 Plans, plan amendments, or plan revisions not subject to objection.
219.52 Giving notice of a plan, plan amendment, or plan revision subject to objection before approval.
219.53 Who may file objection.
219.54 Filing objection.
219.55 Objections set aside from review.
219.56 Objection time periods and process.
219.57 Resolution of objections.
219.58 Timing of a plan, plan amendment, or plan revision decision.
219.59 Use of other administrative review processes.
219.60 Secretary's authority.
219.61 Information collection requirements.
219.62 Definitions.

Authority: 5 U.S.C. 301; 16 U.S.C. 1604, 1613.

Subpart A—National Forest System Land Management Planning

§ 219.1 Purpose and applicability.

(a) This subpart sets out the planning requirements for developing, amending, and revising land management plans (also referred to as plans) for the National Forest System (NFS), as required by the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976 (16 U.S.C. 1600 *et seq.*) (NFMA). This subpart also sets out the requirements for plan components and other content in land management plans. This part is applicable to all units of the NFS as defined by 16 U.S.C. 1609 or subsequent statute.

(b) Consistent with the Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. 528–531) (MUSYA), the Forest Service manages the NFS to sustain the multiple uses, including ecosystem services, of its renewable resources in perpetuity while maintaining the long-term health and productivity of the land. Resources are managed through a combination of approaches and concepts for the benefit of human communities and natural resources. Land management plans guide sustainable, integrated resource management of the resources within the plan area in the context of the broader landscape, giving due consideration to the relative values of the various resources in particular areas.

(c) The objective of this part is to guide the collaborative and science-based development, amendment, and revision of land management plans that promote healthy, resilient, diverse, and productive national forests and grasslands. Plans will guide management of NFS lands so that they are ecologically sustainable and contribute to social and economic sustainability, with resilient ecosystems and watersheds, diverse plant and animal communities, and the capacity to provide people and communities with a range of social, economic, and ecological benefits for the present and into the future, including clean water; habitat for fish, wildlife, and plant communities; and opportunities for recreational, spiritual, educational, and cultural sustenance.

(d) The Chief of the Forest Service must establish planning procedures for this part on plan development, plan amendment, or plan revision in the Forest Service Directive System in Forest Service Manual 1920—Land Management Planning and in Forest Service Handbook 1909.12—Land Management Planning Handbook.

(e) This part does not affect treaty rights or valid existing rights established by statute or legal instruments.

(f) During the planning process, the responsible official shall comply with Section 8106 of the Food, Conservation, and Energy Act of 2008 (25 U.S.C. 3056), Executive Order 13007 of May 24, 1996, Executive Order 13175 of November 6, 2000, laws, and other requirements with respect to disclosing or withholding under the Freedom of Information Act (5 U.S.C. 552) certain information regarding reburial sites or other information that is culturally sensitive to an Indian Tribe or Tribes.

(g) Plans must comply with all applicable laws and regulations, including NFMA, MUSYA, the Clean Air Act, the Clean Water Act, the Wilderness Act, and the Endangered Species Act.

§ 219.2 Levels of planning and responsible officials.

Forest Service planning occurs at different organizational levels and geographic scales. Planning occurs at three levels—national strategic planning, NFS unit planning, and project or activity planning.

(a) *National strategic planning.* The Chief of the Forest Service is responsible for national planning, such as preparation of the Forest Service strategic plan required under the Government Performance and Results Act of 1993 (5 U.S.C. 306; 31 U.S.C. 1115–1119; 31 U.S.C. 9703–9704), which is integrated with the requirements of the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the NFMA. The strategic plan establishes goals, objectives,

performance measures, and strategies for management of the NFS, as well as the other Forest Service mission areas: Research and Development, State and Private Forestry, and International Programs.

(b) *National Forest System unit planning.* (1) NFS unit planning results in the development, revision, or amendment of a land management plan. A land management plan provides a framework for integrated resource management and for guiding project and activity decisionmaking on a national forest, grassland, prairie, or other administrative unit. A plan reflects the unit's expected distinctive roles and contributions to the local area, region, and Nation, and the roles for which the unit is best suited, considering the Agency mission, unique capabilities, and the resources and management of other lands in the vicinity. Through the adaptive planning cycle set forth in this subpart, a plan can be changed to reflect new information and changing conditions.

(2) A plan does not authorize projects or activities or commit the Forest Service to take action. However, a plan may constrain the Agency from authorizing or carrying out actions, and projects and activities must be consistent with the plan (§ 219.15). A plan does not regulate uses by the public, but a project or activity decision that regulates a use by the public under Title 36, Code of Federal Regulations, Part 261—Prohibitions, Subpart B—Prohibitions in Areas Designated by Order, may be made contemporaneously with the approval of a plan, plan amendment, or plan revision. Plans should not repeat laws, regulations, or program management policies, practices, and procedures from the Forest Service Directive System.

(3) The supervisor of the national forest, grassland, prairie, or other comparable administrative unit is the responsible official for development and approval of a plan, plan amendment, or plan revision for lands under the responsibility of the supervisor, unless a regional forester, the Chief, the Under Secretary, or the Secretary acts as the responsible official. Two or more responsible officials may undertake joint planning over lands under their respective jurisdictions.

(4) A plan for a unit that contains an experimental area may not be approved without the concurrence of the appropriate research station director with respect to the direction applicable to that area, and a plan amendment applicable to an experimental area may not be approved without the concurrence of the appropriate research station director.

(c) *Project and activity planning.* The supervisor or district ranger is the responsible official for project and activity decisions, unless a higher-level official acts as the responsible official. Requirements for project or activity planning are established in the Forest Service Directive System. Except as provided in the plan consistency requirements in § 219.15, none of the requirements of this part apply to projects or activities.

§ 219.3 Role of science in planning.

The responsible official shall take into account the best available scientific information throughout the planning process identified in this subpart. In doing so, the responsible official shall determine what information is the most accurate, reliable, and relevant to a particular decision or action. The responsible official shall document this consideration in every assessment report (§ 219.6), plan decision document (§ 219.14), and monitoring evaluation report (§ 219.12). Such documentation must:

(a) Identify sources of data, peer reviewed articles, scientific assessments, or other scientific information relevant to the issues being considered;

(b) Describe how the social, economic, and ecological sciences were identified and appropriately interpreted and applied; and

(c) For the plan decision document, describe how scientific information was determined to be the most accurate, reliable, and relevant information available and how scientific findings or conclusions informed or were used to develop plan components and other content in the plan.

§ 219.4 Requirements for public participation.

(a) *Providing opportunities for participation.* The responsible official shall engage the public—including Tribes and Alaska Native Corporations, other Federal agencies, State and local governments, individuals, and public and private organizations or entities—early and throughout the planning process as required by this part, using collaborative processes where feasible and appropriate. When developing opportunities for public participation, the responsible official shall take into account the discrete and diverse roles, jurisdictions, responsibilities, and skills of interested and affected parties; the accessibility of the process, opportunities, and information; and the cost, time, and available staffing. The responsible official should be proactive and use contemporary tools, such as the internet, to engage the public, and should share information in an open way with interested parties.

(1) *Scope, methods, and timing.* The responsible official shall provide opportunities for participating in the assessment process; developing a plan proposal, including the monitoring program; commenting on the proposal and the disclosure of its environmental impacts in accompanying NEPA documents; and reviewing the results of monitoring information. Subject to the notification requirements in § 219.16, the responsible official has the discretion to determine the scope, methods, forum, and timing of those opportunities.

(2) *Participation opportunities for individual members of the public and entities.* The responsible official shall encourage participation by interested individuals and entities, including those interested at the local, regional, and national levels.

(3) *Participation opportunities for youth, low-income populations, and minority populations.* The responsible official shall encourage participation by youth, low-income populations, and minority populations.

(4) *Participation opportunities for private landowners.* The responsible official shall encourage participation by private landowners whose lands are in, adjacent to, or otherwise affected by, or whose actions may impact, future management actions in the plan area.

(5) *Consultation with federally recognized Indian Tribes and Alaska Native Corporations.* The Department recognizes the Federal Government's trust responsibility for federally recognized Indian Tribes. The responsible official shall honor the government-to-government relationship between federally recognized Indian Tribes and the Federal government. The responsible official shall provide to federally recognized Indian Tribes and Alaska Native Corporations the opportunity to undertake consultation in accordance with Executive Order 13175 of November 6, 2000 and 25 U.S.C. 450 note.

(6) *Participation opportunities for federally recognized Indian Tribes and Alaska Native Corporations.* The responsible official shall encourage participation in the planning process by interested or affected federally recognized Indian Tribes or Alaska Native Corporations. The responsible official may participate in planning efforts of federally recognized Indian Tribes and Alaska Native Corporations, where practicable and appropriate.

(7) *Native knowledge, indigenous ecological knowledge, and land ethics.* As part of tribal participation and consultation as set forth in paragraphs (a)(5) and (6) of this section, the responsible official shall request information about native knowledge, land ethics, cultural issues, and sacred and culturally significant sites.

(8) *Participation opportunities for other Federal agencies, federally recognized Tribes, States, counties, and local governments.* The responsible official shall provide opportunities for other government agencies to participate in planning for NFS lands. Where appropriate, the responsible official shall encourage federally recognized Tribes, States, counties, and other local governments to seek cooperating agency status in the NEPA process for a plan development, amendment, or revision. The responsible official may participate in planning efforts of States, counties, local governments, and other Federal agencies, where practicable and appropriate.

(b) *Coordination with other public planning efforts.* (1) The responsible official shall coordinate land management planning with the equivalent and related planning efforts of federally recognized Indian Tribes, Alaska Native Corporations, other Federal agencies, and State and local governments, to the extent practicable and appropriate.

(2) For plan development or revision, the responsible official shall review the planning and land use policies of federally recognized Indian Tribes, Alaska Native Corporations, other Federal agencies, and State and local governments, where relevant to the plan area. The results of this review shall be displayed in the environmental impact statement for the plan (40 CFR 1502.16(c), 1506.2). The review shall include consideration of:

(i) The objectives of federally recognized Indian Tribes, Alaska Native Corporations, other Federal agencies, and State and local governments, as expressed in their plans and policies;

(ii) The compatibility and interrelated impacts of these plans and policies;

(iii) Opportunities for the plan to address the impacts identified or contribute to joint objectives; and

(iv) Opportunities to resolve or reduce conflicts, within the context of achieving the Forest Service desired conditions or objectives.

(3) Nothing in this section should be read to indicate that the responsible official will seek to direct or control management of lands outside of the planning area, nor will the responsible official conform management to meet non-Forest Service objectives or policies.

§ 219.5 Planning framework.

(a) Planning for a national forest, grassland, prairie, or other comparable administrative unit of the NFS is an iterative process that includes assessment (§ 219.6); developing, amending, or revising a plan (§§ 219.7 and 219.13); and monitoring (§ 219.12). These three phases of the framework are complementary and may overlap. The intent of this framework is to create a responsive and agile planning process that informs integrated resource management and allows the Forest Service to adapt to changing conditions, including climate change, and improve management based on new information and monitoring.

(1) *Assessment.* An assessment is the gathering and integrating of information relevant to the planning area from many sources and the analysis of that information to identify a need to change a plan or to inform how a new plan should be proposed (§ 219.6). The responsible official shall consider and evaluate existing and possible future conditions and trends of the plan area, and assess the sustainability of social, economic, and ecological systems within the unit, in the context of the broader landscape. Based on the results of an assessment, the responsible official may identify a preliminary need to change a plan and begin a plan amendment, plan revision, or new plan development.

(2) *Plan development, plan revision, or plan amendment.* Plan revision (§ 219.7) or plan amendment (§ 219.13) begins with the identification of a preliminary need to change the existing plan. For newly created planning units, the need for planning arises with the creation of the unit, unless otherwise provided by law.

(i) The process for developing or revising a plan includes: assessment, developing a proposed plan, considering the environmental effects of the proposal, providing an opportunity to comment on the proposed plan, providing an opportunity to object before the proposal is approved, and, finally, approving the plan or plan revision. A new plan or plan revision requires preparation of an environmental impact statement.

(ii) The process for amending a plan includes: identifying a need to change the plan, developing a proposed amendment, considering the environmental effects of the proposal, providing an opportunity to comment on the proposed amendment, providing an opportunity to object before the proposal is approved, and, finally, approving the plan amendment. The appropriate NEPA documentation for an amendment may be an environmental impact statement (EIS), an environmental assessment (EA), or a categorical exclusion (CE), depending upon the scope and scale of the amendment and its likely effects.

(3) *Monitoring.* Monitoring is continuous and provides feedback for the planning cycle by testing relevant assumptions, tracking relevant conditions over time, and measuring management effectiveness (§ 219.12). The monitoring program includes unit-level and broader-scale monitoring. The unit-level monitoring program is informed by the assessment phase; developed during plan development, plan revision, or plan amendment; and implemented after plan approval. The regional forester develops broader-scale monitoring strategies. Biennial monitoring evaluation reports document whether a change to the plan or change to the monitoring program is warranted based on new information, whether a new assessment may be needed, or whether there is no need for change at that time.

(b) *Interdisciplinary team(s).* The responsible official shall establish an interdisciplinary team or teams to prepare assessments; new plans, plan amendments, and plan revisions; and unit monitoring programs.

§ 219.6 Assessments.

Assessments may range from narrow in scope to comprehensive, depending on the issue or set of issues to be evaluated, and should consider relevant ecological, economic, and social conditions, trends, and sustainability within the context of the broader landscape. The responsible official has the discretion to determine the scope, scale, and timing of an assessment, subject to the requirements of this section.

(a) *Process for plan development or revision assessments.* One or more assessments must be conducted for the development of a new plan or for a plan revision. The responsible official shall:

(1) Notify and encourage the public and appropriate Federal agencies, States, local governments, other entities, and scientists to participate in the assessment process (§§ 219.4 and 219.16).

(2) Notify and encourage potentially interested or affected federally recognized Indian Tribes and Alaska Native Corporations to participate in the assessment process (§§ 219.4 and 219.16).

(3) Coordinate with the regional forester, Agency staff from State and Private Forestry and Research and Development, and other governmental and non-governmental partners to consolidate existing information and leverage resources for additional information needs.

(4) Document the assessment in a report or set of reports available to the public. Document in the report(s) how the relevant best available scientific information was taken into account (§ 219.3), and include the report(s) in the planning record (§ 219.14).

(5) Identify in the report how a new plan should be proposed, or identify a potential need to change an existing plan, based on the assessment.

(b) *Content of assessments for plan development or revision.* In the assessment(s) for plan development or revision, the responsible official shall:

(1) Identify and evaluate information needed to understand and assess existing and potential future conditions and stressors in order to inform and develop required plan components and other content in the plan (§ 219.7), including plan components for sustainability (§ 219.8), diversity of plant and animal communities (§ 219.9), multiple uses (§ 219.10), and timber requirements based on NFMA (§ 219.11).

(2) Identify and consider relevant information contained in governmental or non-governmental assessments, plans, monitoring evaluation reports, and studies, including relevant neighboring land management plans. Such documents may include State forest assessments and strategies, the Resources Planning Act assessment, ecoregional assessments, non-governmental reports, State comprehensive outdoor recreation plans, community wildfire protection plans, and State wildlife action plans. Relevant private information will be considered if voluntarily provided.

(3) Identify the distinctive roles and contributions of the unit within the context of the broader landscape, considering the roles of the unit in providing multiple uses, including ecosystem services, from the NFS lands to the local area, region, and Nation. The unit's distinctive roles and contributions within the broader landscape are those for which the unit is best suited, considering the Agency mission, unique capabilities, and the resources and management of other lands in the vicinity.

(4) Identify potential monitoring questions or information needs to inform the development or modification of the unit's monitoring program.

(c) *Plan amendment assessments.* (1) A plan amendment must be based on a documented need to change the plan. This documentation may be a new assessment; may be a monitoring report; or may be other documentation of new information, changed conditions, or changed circumstances. Where the responsible official determines that a new assessment is needed to inform the need for an amendment, the responsible official has the discretion to determine the scope, scale, process, and content for the assessment depending on the issue or issues to be addressed.

(2) When a plan amendment is made together with, and only applies to, a project or activity decision, the analysis prepared for the project or activity may serve as the documented need to change the plan.

§ 219.7 New plan development or plan revision.

(a) *Plan revisions.* A plan revision creates a new plan for the entire unit, whether the plan revision differs from the prior plan to a small or large extent. A plan must be revised at least every 15 years (16 U.S.C. 1604(f)(5)). However, the responsible official has the discretion to determine at any time that conditions on a unit have changed significantly such that a plan must be revised. The responsible official shall base development of a proposal for plan revision on the preliminary need for change identified through the assessment process required by § 219.6.

(b) *New plan development.* New plan development is required for new NFS units. The process for developing a new plan is the same as the process for plan revision.

(c) *Process for plan development or revision.* (1) The process for developing or revising a plan includes: public notification and participation (§§ 219.4 and 219.16), assessment (§ 219.6), developing a proposed plan, considering the environmental effects of the proposal, providing an opportunity to comment on the proposed plan, providing an opportunity to object before the proposal is approved (subpart B), and, finally, approving the plan or plan revision. A new plan or plan revision requires preparation of an environmental impact statement.

(2) In developing a proposed new plan or proposed plan revision, the responsible official shall:

(i) Review relevant information from the assessment phase.

(ii) Identify the presence and consider the importance of various physical, biological, social, and cultural resources on the unit, with respect to the requirements for plan components of §§ 219.8 through 219.11.

(iii) Consider conditions and trends and stressors, with respect to the requirements for plan components of §§ 219.8 through 219.11.

(iv) Identify potential wilderness areas and consider whether to recommend any such areas for wilderness designation.

(v) Identify the eligibility of rivers for inclusion in the National Wild and Scenic Rivers System, unless a systematic inventory has been previously completed and documented and there are no changed circumstances that warrant additional review.

(vi) Identify the suitability of areas for the appropriate integration of resource management and uses, with respect to the requirements for plan components of §§ 219.8 through 219.11, including identifying lands which are not suitable for timber production (§ 219.11).

(vii) Identify the quantity of timber that can be removed from the plan area (§ 219.11(d)(4)).

(viii) Identify questions and indicators for the unit monitoring program (§ 219.12).

(ix) Identify potential other content in the plan (paragraph (e) of this section).

(d) *Plan components.* Plan components guide future project and activity decisionmaking. The plan must indicate where in the plan area specific plan components apply. Plan components may apply to the entire plan area, to specific management or geographic areas, or to other areas as identified in the plan. Every project and activity must be consistent with the applicable plan components (§ 219.15).

(1) *Required plan components.* Every plan must include the following plan components:

(i) *Desired conditions.* A desired condition is a description of specific social, economic, and/or ecological characteristics of the plan area, or a portion of the plan area, toward which management of the land and resources should be directed. Desired conditions must be described in terms that are specific enough to allow progress toward their achievement to be determined, but do not include completion dates.

(ii) *Objectives.* An objective is a concise, measurable, and time-specific statement of a desired rate of progress toward a desired condition or conditions. Objectives should be based on reasonably foreseeable budgets.

(iii) *Standards.* A standard is a mandatory constraint on project and activity decisionmaking, established to help achieve or maintain the desired condition or conditions, to avoid or

mitigate undesirable effects, or to meet applicable legal requirements.

(iv) *Guidelines.* A guideline is a constraint on project and activity decisionmaking that allows for departure from its terms, so long as the intent of the guideline is met. (§ 219.15(d)(3)). Guidelines are established to help achieve a desired condition or conditions, to avoid or mitigate undesirable effects, or to meet applicable legal requirements.

(v) *Suitability of lands.* Specific lands within a plan area may be identified as suitable for various multiple uses or activities based on the desired conditions applicable to that area. The plan may also identify lands within the plan area as not suitable for uses that are not compatible with desired conditions for those lands. Suitability does not need to be determined for every multiple use or activity, but every plan must identify those lands not suitable for timber production (§ 219.11).

(2) *Optional plan component: goals.* A plan may include goals as plan components. Goals are broad statements of intent, other than desired conditions, usually related to process or interaction with the public. Goals are expressed in broad, general terms, and have no specific dates by which they are completed.

(3) *Requirements for the set of plan components.* The set of plan components must meet the requirements set forth in this part for sustainability (§ 219.8); plant and animal diversity (§ 219.9), multiple uses (§ 219.10), and timber (§ 219.11).

(e) *Other content in the plan*—(1) *Other required content in the plan.* Every plan must:

(i) Identify watershed(s) that are a priority for maintenance or restoration;

(ii) Describe the unit's distinctive roles and contributions within the broader landscape (§ 219.6(b)(3));

(iii) Include the monitoring program required by § 219.12; and

(iv) Contain information reflecting proposed and possible actions that may occur on the unit during the life of the plan including the planned timber sale program; the expected timber harvest levels, as required by NFMA (16 U.S.C. 1604(f)(2)); and the proportion of probable methods of forest vegetation management practices expected to be used. Such information is not a commitment to take any action and is not a "proposal" as defined by the Council on Environmental Quality regulations for implementing NEPA (40 CFR 1508.23, 42 U.S.C. 4322(2)(C)).

(2) *Optional content in the plan.* A plan may include additional items, including potential management approaches or strategies; partnership opportunities or coordination activities; or criteria for priority areas or activities to achieve objectives of the plan.

§ 219.8 Sustainability.

Within Forest Service authority and consistent with the inherent capability of the plan area, the plan must provide for social, economic, and ecological sustainability, as follows:

(a) *Ecological sustainability.* (1) *Ecosystem plan components.* The plan must include plan components to maintain or restore the structure, function, composition, and connectivity of healthy and resilient terrestrial and aquatic ecosystems and watersheds in the plan area, taking into account:

(i) Landscape-scale integration of terrestrial and aquatic ecosystems;

(ii) Potential system drivers, stressors, and disturbance regimes, including climate change; how they might affect ecosystem and watershed health and resilience; and the ability of those systems on the unit to adapt to change;

(iii) Air quality; and

(iv) Wildland fire and opportunities to restore fire adapted ecosystems.

(2) *Ecosystem elements.* The plan must include plan components to maintain, protect, or restore:

(i) Aquatic elements, such as lakes, streams, wetlands, stream banks, and shorelines;

(ii) Terrestrial elements, such as forest stands, grasslands, meadows, and other habitat types;

(iii) Rare aquatic and terrestrial plant and animal communities, consistent with § 219.9;

(iv) Public water supplies, sole source aquifers, source water protection areas, groundwater, and other bodies of water (including guidance to prevent or mitigate detrimental changes in quantity, quality, and availability, including temperature changes, blockages of water courses, and deposits of sediments); and

(v) Soils and soil productivity (including guidance to reduce soil erosion and sedimentation).

(3) *Riparian areas.* The plan must include plan components to maintain, protect, or restore riparian areas. Plans must establish a default width for riparian areas around all lakes, perennial or intermittent streams, and open water wetlands, within which these plan components will apply. The default may be a standard width for all lakes, perennial or intermittent streams, and open water wetlands, or may vary based on ecologic or geomorphic factors, or the type of waterbody. The default width will apply unless the actual riparian area for a waterbody or a site has been delineated based on best available scientific information.

(b) *Social and economic sustainability.* The plan must include plan components to guide the unit's contribution to social and economic sustainability, taking into account:

(1) Social, cultural, and economic conditions relevant to the area influenced by the plan and the distinctive roles and contributions of the unit within the broader landscape;

(2) Sustainable recreational opportunities and uses;

(3) Multiple uses, including ecosystem services, that contribute to local, regional, and national economies in a sustainable manner; and

(4) Cultural and historic resources and uses.

§ 219.9 Diversity of plant and animal communities.

Within Forest Service authority and consistent with the inherent capability of the plan area, the plan must include plan components to maintain the diversity of plant and animal communities, as follows:

(a) *Ecosystem Diversity.* The plan must include plan components to maintain or restore the structure, function, composition, and connectivity of healthy and resilient terrestrial and aquatic ecosystems and watersheds in the plan area, consistent with § 219.8(a), to maintain the diversity of native species.

(b) *Species Conservation.* The plan components must provide for the maintenance or restoration of ecological conditions in the plan area to:

(1) Contribute to the recovery of threatened and endangered species;

(2) Conserve candidate species; and

(3) Maintain viable populations of species of conservation concern within the plan area. Where it is beyond the authority of the Forest Service or the inherent capability of the plan area to do so, the plan components must provide for the maintenance or restoration of ecological conditions to contribute to the extent practicable to maintaining a viable population of a species within its range. When developing such plan components, the responsible official shall coordinate to the extent practicable with other Federal, State, tribal, and private land managers having management authority over lands where the population exists.

(c) *Diversity of tree and other plant species.* The plan must include plan components to preserve, where appropriate, and to the degree practicable, the diversity of native tree and other native plant species similar to that existing in the plan area, as

required by NFMA (16 U.S.C. 1604(g)(3)(B)).

§ 219.10 Multiple uses.

In meeting the requirements of §§ 219.8 and 219.9, and within Forest Service authority, the capability of the plan area and the fiscal capability of the unit, the plan must provide for multiple uses, including ecosystem services, outdoor recreation, range, timber, watershed, wildlife and fish, as follows:

(a) *Integrated resource management.* When developing plan components for integrated resource management, to the extent relevant to the plan area and the public participation process and the requirements of §§ 219.7, 219.8, 219.9, and 219.11, the responsible official shall consider:

(1) Aesthetic values, air quality, cultural and heritage resources, ecosystem services, fish and wildlife species, forage, geologic features, grazing and rangelands, habitat and habitat connectivity, recreational values and settings, riparian areas, scenery, soil, surface and subsurface water quality, timber, trails, vegetation, viewsheds, wilderness, and other relevant resources;

(2) Renewable and nonrenewable energy and mineral resources;

(3) Sustainable management of infrastructure, such as recreational facilities and transportation and utility corridors;

(4) Opportunities to coordinate with neighboring landowners to link open spaces and take into account joint management objectives where feasible and appropriate;

(5) Habitat conditions, subject to the requirements of § 219.9, for wildlife, fish, and plants commonly enjoyed and used by the public, such as species that are hunted, fished, trapped, gathered, observed, or needed for subsistence;

(6) The landscape-scale context for management as identified in the assessment;

(7) Land ownership and access patterns relative to the plan area;

(8) Reasonably foreseeable risks to ecological, social, and economic sustainability; and

(9) Potential impacts of climate and other system drivers, stressors and disturbance regimes, such as wildland fire, invasive species, and human-induced stressors, on the unit's resources (§ 219.8).

(b) *Requirements for plan components for a new plan or plan revision.* (1) The plan components for a new plan or plan revision must provide for:

(i) Sustainable recreation, considering opportunities and access for a range of uses. The plan should identify recreational settings and desired conditions for scenic landscape character.

(ii) Protection of cultural and historic resources;

(iii) Management of areas of tribal importance;

(iv) Protection of wilderness areas as well as the protection of recommended wilderness areas to protect the ecologic and social values and character for which they might be added to the National Wilderness System;

(v) Protection of wild and scenic rivers as well as the protection of those rivers eligible for inclusion in the national wild and scenic river system to protect the values for which they might be included in the system until their suitability is determined; and

(vi) Protection and appropriate management of other designated or recommended areas that exist in the plan area, including research natural areas.

(2) Other plan components for integrated resource management to provide for multiple uses that should be included as necessary.

§ 219.11 Timber requirements based on the NFMA.

In meeting the requirements of §§ 219.8 through 219.10 and within Forest Service authority, the capability of the plan area, and the fiscal capability of the unit, the plan must provide for multiple uses and ecosystem services, including timber, as follows:

(a) *Identification of lands as not suitable and suitable for timber production.* (1) *Lands not suitable for timber production.* The responsible official may determine, considering physical, economic, and other pertinent factors, that lands are not suitable for timber production. On lands so designated, timber harvest, other than salvage sales or sales necessary to protect other multiple-use values, shall be prohibited for a period of 10 years. In addition, the plan must identify lands within the plan area as not suitable for timber production if any one of the following factors applies:

(i) Statute, executive order, or regulation prohibits timber production on the land;

(ii) The Secretary of Agriculture or the Chief of the Forest Service has withdrawn the land from timber production;

(iii) Timber production would not be compatible with the achievement of desired conditions and objectives established by the plan for those lands;

(iv) The technology is not currently available for conducting timber harvest without causing irreversible damage to soil, slope, or other watershed conditions or substantial and permanent impairment of the productivity of the land;

(v) There is no reasonable assurance that such lands can be adequately restocked within 5 years after final regeneration harvest; or

(vi) The land is not forest land as defined at § 219.19.

(2) *Lands suitable for timber production.* All lands not identified in the plan as not suitable for timber production are suited for timber production. Timber harvest on lands suitable for timber production may be authorized for timber production or for other multiple use purposes.

(3) *Review of lands not suitable for timber production.* The responsible official shall review lands identified in the plan as not suitable for timber production at least once every 10 years as required by NFMA (16 U.S.C. 1604(k)), or as otherwise prescribed by law, to determine whether conditions have changed so that they have become suitable for timber production. As a result of this 10-year review, the plan may be amended to identify such lands as suitable for timber production if there has been a change in conditions.

(b) *Harvest of trees on land not suitable for timber production.* (1) Where a plan identifies lands as not suitable for timber production, harvesting of trees for the purpose of timber production is prohibited.

(2) The identification in a plan of lands as not suitable for timber production does not preclude the harvest of trees on those lands for other purposes (16 U.S.C. 1604(k)); in particular, timber harvest may be authorized as a tool to assist in achieving or maintaining one or more applicable desired conditions or objectives of the plan. Examples of using timber harvest on lands not suited for timber production may include improving wildlife or fish habitat, thinning to reduce extreme fire risk, or restoring meadow or savanna ecosystems where trees have invaded.

(c) *Harvest for salvage, sanitation, or public health or safety.* Timber harvest may be approved for salvage, sanitation, or public health or safety, where consistent with the plan.

(d) *Limits on timber harvest on suitable and non-suitable lands.* A plan for a unit on which timber harvest may occur must have plan components to:

(1) Ensure that timber will be harvested from NFS lands only where such harvest would comply with the minimum limits identified in the NFMA (16 U.S.C. 1604(g)(3)(E) and (F)).

(2) Ensure that harvest is carried out in a manner consistent with the protection of soil, watershed, fish, wildlife, recreation, and aesthetic resources.

(3) Establish maximum size limits for areas to be cut in one harvest operation for administrative units that use clearcutting, seed tree cutting, shelterwood cutting, or other cuts designed to regenerate an even-aged stand of timber. Plan components must include standards limiting the maximum size limits for areas to be cut in one harvest operation, according to geographic areas, forest types, or other suitable classifications. This limit may be less than, but must not exceed, 60 acres for the Douglas-fir forest type of California, Oregon, and Washington; 80 acres for the southern yellow pine types of Alabama, Arkansas, Georgia, Florida, Louisiana, Mississippi, North Carolina, South Carolina, Oklahoma, and Texas; 100 acres for the hemlock-Sitka spruce forest type of coastal Alaska; and 40 acres for all other forest types except as provided in this paragraph.

(i) Cut openings larger than those specified may be permitted where larger units will produce a more desirable combination of benefits. Specifications for exceptions shall include the particular conditions under which the larger size is permitted and must set a maximum size permitted under those conditions.

(ii) Size limits exceeding those established in paragraphs (d)(3) and (d)(3)(i) of this section are permitted on an individual timber sale basis after 60 days public notice and review by the regional forester.

(iii) The plan maximum size openings shall not apply to the size of areas harvested as a result of natural catastrophic conditions such as fire, insect and disease attack, or windstorm (16 U.S.C. 1604(g)(3)(F)(iv)).

(4) Limit the quantity of timber that can be removed annually in perpetuity on a sustained-yield basis and provide for departure from this limit, as provided by NFMA. The Chief of the Forest Service must include in the Forest Service Directive System procedures for estimating the quantity of timber that can be removed annually in perpetuity on a sustained-yield basis, and exceptions, consistent with 16 U.S.C. 1611.

(5) Limit the regeneration harvest of even-aged stands of trees to stands that generally have reached the culmination of mean annual increment of growth. This requirement applies only to final regeneration harvest of even-aged stands on lands identified as suitable for timber production and where timber production is the primary purpose for the harvest. Exceptions, set out in 16 U.S.C. 1604(m), are permitted only if consistent with the land management plan. If such exceptions are anticipated, the responsible official should include those exceptions in the land management plan as standards or guidelines. The Chief of the Forest Service must include in the Forest Service Directive System, requirements for assuring that even-aged stands of trees scheduled for final regeneration harvest during the planning period have generally reached culmination of mean annual increment of growth with exceptions as permitted by the NFMA (16 U.S.C. 1604(m)).

§ 219.12 Monitoring.

(a) *Unit monitoring program.* (1) The responsible official shall develop a unit monitoring program for the plan area, and include it in the plan. The development of the monitoring program must be coordinated with the regional forester and Agency staff from State and Private Forestry, and Research and Development. Responsible officials for two or more administrative units may jointly develop their unit monitoring programs.

(2) The unit monitoring program sets out the unit monitoring questions and associated indicators. Monitoring questions and associated indicators must be designed to inform the management of resources on the unit, including by testing relevant assumptions, tracking relevant changes, and measuring management effectiveness and progress toward achieving or maintaining desired conditions or objectives. Questions and indicators should be based on one or more desired conditions, objectives, or other plan component in the plan, but not every plan component needs to have a corresponding monitoring question.

(3) The unit monitoring program should be coordinated and integrated with relevant broader-scale monitoring strategies (paragraph (b) of this section) to ensure that monitoring is complementary and efficient, and that information is gathered at scales appropriate to the monitoring questions.

(4) Subject to the requirements of paragraph (a)(5) of this section, the responsible official has the discretion to set the scope and scale of the unit monitoring program, after considering:

(i) Information needs identified through the planning process as most critical for informed management of resources on the unit;

(ii) Existing best available scientific information; and

(iii) Financial and technical capabilities of the Agency.

(5) Each unit monitoring program must contain one or more monitoring questions or indicators addressing each of the following:

(i) The status of select watershed conditions;

(ii) The status of select ecological conditions;

(iii) The status of focal species;

(iv) The status of visitor use and progress toward meeting recreational objectives;

(v) Measurable changes on the unit related to climate change and other stressors on the unit;

(vi) The carbon stored in above ground vegetation;

(vii) The progress toward fulfilling the unit's distinctive roles and contributions to ecologic, social, and economic conditions of the local area, region, and Nation; and

(viii) The effects of management systems to determine that they do not substantially and permanently impair the productivity of the land (16 U.S.C. 1604(g)(3)(C)).

(6) A range of monitoring techniques may be used to carry out the monitoring requirements in paragraph (a)(5) of this section.

(7) This section does not apply to projects or activities; project and activity monitoring may be used to gather information, but monitoring is not a prerequisite for carrying out a project or activity.

(b) *Broader-scale monitoring strategies.* (1) The regional forester shall develop a broader-scale monitoring strategy for unit monitoring questions that can best be answered at a geographic scale broader than one unit.

(2) When developing a monitoring strategy, the regional forester shall coordinate with the relevant responsible officials, Agency staff from State and Private Forestry and Research and Development, partners, and the public. Two or more regional foresters may jointly develop broader-scale monitoring strategies.

(3) Each regional forester shall ensure that the broader-scale monitoring strategy is within the financial and technical capabilities of the region and complements other ongoing monitoring efforts.

(4) Projects and activities may be carried out under plans developed, amended, or revised under this part before the regional forester has developed a broad scale monitoring strategy.

(c) *Timing and process for developing the unit monitoring program and broader-scale strategies.* (1) In the

assessment phase, the responsible official shall work with the public to identify potential monitoring needs relevant to inform effective management (§ 219.6).

(2) The responsible official shall develop the unit monitoring program as part of the planning process for a new plan development or plan revision. Where a unit's monitoring program has been developed under the provisions of a prior planning regulation and the unit has not initiated plan revision, the responsible official shall change the unit monitoring program within 4 years of the effective date of this part, or as soon as practicable, to meet the requirements of this section.

(3) The regional forester shall develop a broader-scale monitoring strategy as soon as is practicable.

(4) The responsible official and regional forester shall ensure that scientists are involved in the design and evaluation of unit and broad scale monitoring.

(5) To the extent practicable, appropriate, and relevant to the monitoring questions in the program, unit monitoring programs and broader-scale strategies must be designed to take into account:

(i) Existing national and regional inventory, monitoring, and research programs of the Agency, including from the NFS, State and Private Forestry, and Research and Development, and of other governmental and non-governmental parties;

(ii) Opportunities to design and carry out multi-party monitoring with other Forest Service units, Federal, State or local government agencies, scientists, partners, and members of the public; and

(iii) Opportunities to design and carry out monitoring with federally recognized Indian Tribes and Alaska Native Corporations.

(d) *Biennial evaluation of the monitoring information.* (1) The responsible official shall conduct a biennial evaluation of new information gathered through the unit monitoring program and relevant information from the broader-scale strategy, and shall issue a written report of the evaluation and make it available to the public. The evaluation must indicate whether a change to the plan, management activities, or monitoring program may be warranted based on the new information; whether a new assessment should be conducted; or that no amendment, revision, or administrative change is needed.

(i) The first monitoring evaluation for a plan or plan revision developed in accordance with this subpart must be completed no later than 2 years from the effective date of plan approval.

(ii) Where the monitoring program developed under the provisions of a prior planning regulation has been changed to meet the requirements of paragraph (c)(2) of this section, the first monitoring evaluation must be completed no later than 2 years from the date the change takes effect.

(iii) The monitoring evaluation report must describe how best available scientific information was taken into account (§ 219.3).

(2) The monitoring evaluation report may be incorporated into other planning documents if the responsible official has initiated a plan revision or relevant amendment.

(3) The monitoring evaluation report may be postponed for one year in case of exigencies, but notice of the postponement must be provided to the public prior to the date the report is due for that year (§ 219.16(c)(5)).

(4) The monitoring evaluation report is not a decision document representing final agency action, and is not subject to the objection provisions of subpart B.

§ 219.13 Plan amendment and administrative changes.

(a) *Plan amendment.* A plan may be amended at any time. Plan amendments may be broad or narrow, depending on the need for change, and should be used to keep plans current and help units adapt to new information or changing conditions. The responsible official has the discretion to determine whether and how to amend the plan. A plan amendment is required for the addition, modification, or removal of one or more plan components or a change in how one or more plan components apply to all or part of the plan area.

(b) *Amendment process.* The responsible official shall:

(1) Document the need to change the plan (§ 219.6(c));

(2) Provide opportunities for public participation as required in § 219.4 and public notification as required in § 219.16. The responsible official may combine processes and associated public notifications where appropriate, considering the scope and scale of the need to change the plan; and

(3) Amend plans consistent with Forest Service NEPA procedures. The appropriate NEPA documentation for an amendment may be an EIS, an EA, or a CE, depending upon the scope and scale of the amendment and its likely effects.

(c) *Administrative changes.* An administrative change is any change to a plan that is not a plan amendment or plan revision. Administrative changes include corrections of clerical errors to any part of the plan, including plan components; changes to other content in the plan other than plan components; or conformance of the plan to new statutory or regulatory requirements.

(1) A change to the monitoring program may be made as part of plan revision or amendment, but also can be made as an administrative change outside of the process for plan revision or amendment. Any change to the monitoring program may be made only after notice to the public (§ 219.16(c)(5)) of the intended change and consideration of public concerns and suggestions.

(2) All other administrative changes may be made following notice (§ 219.16(c)(5)).

§ 219.14 Decision documents and planning records.

(a) *Decision document.* The responsible official shall record approval of a new plan, plan revision, or amendment in a decision document prepared according to Forest Service NEPA procedures (36 CFR 220). The decision document must include:

(1) The rationale for approval;

(2) An explanation of how the plan components meet the sustainability requirements of § 219.8 and the diversity requirements of § 219.9, taking into account the limits of Forest Service authority and the capability of the plan area;

(3) A statement of how the plan, plan revision or plan amendment applies to approved projects and activities (§ 219.15);

(4) A discussion of how the best available scientific information was taken into account and applied in the planning process (§ 219.3);

(5) The concurrence by the appropriate research station director with any part of the plan applicable to any designated experimental forests or experimental ranges (§ 219.2(b)(4)); and

(6) The effective date of the approval.

(b) *Planning records.* (1) The responsible official shall keep the following documents readily accessible to the public by posting them online and through other means: Assessment reports (§ 219.6); plan decision documents (§ 219.14); the proposed plan, plan revision, or plan amendment; public notices and environmental documents associated with a plan; the monitoring program and monitoring evaluation reports (§ 219.12); and the plan.

(2) The planning record includes documents that support analytical conclusions made and alternatives considered throughout the planning process. The responsible official shall

make the planning record available at the office where the plan, plan revision, or amendment was developed.

§ 219.15 Project and activity consistency with the plan.

(a) *Application to existing authorizations and approved projects or activities.* Every document approving a plan, plan amendment, or plan revision must state whether the plan, plan amendment, or plan revision allows any prior approval of occupancy and use. If a plan approval document does not expressly allow such occupancy and use, the permit, contract, and other authorizing instrument for the use and occupancy must be made consistent with the plan, plan amendment, or plan revision as soon as practicable, as provided in paragraph (d) of this section, subject to valid existing rights.

(b) *Application to projects or activities authorized after plan approval.* Projects and activities authorized after approval of a plan, plan amendment, or plan revision must be consistent with the plan as provided in paragraph (d) of this section.

(c) *Resolving inconsistency.* When a proposed project or activity would not be consistent with the applicable plan components, the responsible official shall take one of the following steps, subject to valid existing rights:

(1) Modify the proposed project or activity to make it consistent with the applicable plan components;

(2) Reject the proposal or terminate the project or activity;

(3) Amend the plan so that the project or activity will be consistent with the plan as amended; or

(4) Amend the plan contemporaneously with the approval of the project or activity so that the project or activity will be consistent with the plan as amended. This amendment may be limited to apply only to the project or activity.

(d) *Determining consistency.* A project or activity approval document must describe how the project or activity is consistent with applicable plan components developed or revised in conformance with this part by meeting the following criteria:

(1) *Goals, desired conditions, and objectives.* The project or activity contributes to the maintenance or attainment of one or more goals, desired conditions, or objectives or does not foreclose the opportunity to maintain or achieve any goals, desired conditions, or objectives, over the long term.

(2) *Standards.* The project or activity complies with applicable standards.

(3) *Guidelines.* The project or activity:

(i) Is designed to comply with applicable guidelines as set out in the plan; or

(ii) Is designed in a way that is as effective in carrying out the intent of the applicable guidelines in contributing to the maintenance or attainment of relevant desired conditions and objectives, avoiding or mitigating undesirable effects, or meeting applicable legal requirements (§ 219.7(d)(1)(iv)).

(4) *Suitability.* A project or activity would occur in an area:

(i) That the plan identifies as suitable for that type of project or activity; or

(ii) For which the plan is silent with respect to its suitability for that type of project or activity.

(e) *Consistency of resource plans within the planning unit with the land management plan.* Any resource plans (e.g., travel management plans) developed by the Forest Service that apply to the resources or land areas within the planning unit must be consistent with the plan components. Resource plans developed prior to plan approval must be evaluated for consistency with the plan and amended if necessary.

§ 219.16 Public notifications.

The following public notification requirements apply to plan development, amendment, or revision. Formal notifications may be combined where appropriate.

(a) *When formal public notification is required.* Public notification must be provided at the following times:

(1) To begin the preparation of an assessment for a plan or plan revision, or, when appropriate, a plan amendment;

(2) To initiate the development of a proposed plan or plan revision, or, when appropriate, a plan amendment;

(3) To invite comments on a proposed plan, plan revision, or plan amendment, and associated environmental analysis. For a new plan, plan revision, or a plan amendment for which a draft environmental impact statement is prepared, the comment period is at least 90 days. For an amendment for which a draft environmental impact statement is not prepared, the comment period is at least 30 days;

(4) To begin the objection period for a plan, plan amendment, or plan revision before approval (§ 219.52);

(5) To approve a final plan, plan amendment, or plan revision; or

(6) To announce and describe how a plan, plan amendment, or plan revision process initiated under the provisions of a previous planning regulation will be conformed to meet the provisions of this part, when appropriate under § 219.17(b)(3).

(b) When a plan amendment is approved in a decision document approving a project or activity and the amendment applies only to the project or activity, the notification requirements of 36 CFR part 215 or part 218, subpart A, applies instead of this section.

(c) *How public notice is provided.* The responsible official should use contemporary tools to provide notice to the public. At a minimum, all public notifications required by this part must be posted online, and:

(1) When the Chief, the Under Secretary, or the Secretary is the responsible official, notice must be published in the **Federal Register**;

(2) For a new plan or plan revision, when an official other than the Chief, the Under Secretary, or the Secretary is the responsible official, notice must be published in the **Federal Register** and the applicable newspaper(s) of record;

(3) For a plan amendment when an official other than the Chief, the Under Secretary, or the Secretary is the responsible official, notices must be published in the newspaper(s) of record. Notification in the **Federal Register** may also be required by Forest Service NEPA procedures;

(4) If a plan, plan revision or plan amendment applies to two or more units, notices must be published in the **Federal Register** and the newspaper(s) of record for the applicable units; and

(5) Public notice of administrative changes, changes to the monitoring program, plan amendment assessments, or other documented need for amendment, monitoring evaluation reports, or other notices not listed in paragraph (a) of this section, may be made in any way the responsible official deems appropriate.

(d) *Content of public notices.* Public notices required by this section must clearly describe the action subject to notice and the nature and scope of the decisions to be made; identify the responsible official; describe when, where, and how the responsible official will provide opportunities for the public to participate in the planning process; and explain how to obtain additional information.

§ 219.17 Effective dates and transition.

(a) *Effective dates.* A plan, plan amendment, or plan revision is effective 30 days after publication of notice of its approval, except when a plan amendment applies to only one project or activity. In those instances the amendment and project are implemented concurrently, in accordance with administrative review

regulations at 36 CFR part 215 and 36 CFR part 218.

(b) *Plan amendment and plan revision transition.* For the purposes of this section, initiation means that the Agency has issued a notice of intent or other notice announcing the beginning of the process to develop a proposed plan, plan amendment, or plan revision.

(1) *Initiating plan development and plan revisions.* Plan development and plan revisions initiated after the effective date of this part must conform to the requirements of this part.

(2) *Initiating plan amendments.* With respect to plans approved or revised under a prior planning regulation, a 3-year transition period for plan amendments begins on the effective date of this part. During the transition period, plan amendments may be initiated under the provisions of the prior planning regulation, or may conform to the requirements of this part. Plan amendments initiated after the transition period must conform to the requirements of this part.

(3) *Plan development, plan amendments, or plan revisions initiated before this part.* For plan development, plan amendments, or plan revisions that were initiated before the effective date of this part, the responsible official may complete the plan, plan revision, or plan amendment in conformance with the provisions of the prior planning regulation, or may conform the plan, plan amendment, or plan revision to the requirements of this part. When the responsible official chooses to conform an ongoing planning process to this part, public notice must be made (§ 219.16(a)(6)).

(c) *Plans developed, amended, or revised under a prior planning regulation.* This part supersedes any prior planning regulation. For units with plans developed, amended, or revised using the provisions of a prior planning regulation, no obligations remain from any prior planning regulation, except those that are specifically included in the plan.

§ 219.18 Severability.

In the event that any specific provision of this part is deemed by a court to be invalid, the remaining provisions shall remain in effect.

§ 219.19 Definitions.

Definitions of the special terms used in this subpart are set out as follows.

Alaska native corporation. One of the regional, urban, and village native corporations formed under the Alaska Native Claims Settlement Act of 1971.

Assessment. A synthesis of information in support of land management planning to determine whether a change to the plan is needed. Assessments are not decisionmaking documents but provide current information on select issues. An assessment report on the need to change the plan may range from a many page broad scale comprehensive report to a one-page report, depending on the scope and scale of issues driving the need to change.

Collaboration. A structured manner in which a collection of people with diverse interests share knowledge, ideas, and resources while working together in an inclusive and cooperative manner toward a common purpose. Collaboration, in the context of this part, falls within the full spectrum of public engagement described in the Council on Environmental Quality's publication: Collaboration in NEPA—A Handbook for NEPA Practitioners. The Forest Service retains decisionmaking authority and responsibility for all decisions throughout the process.

Connectivity. Pertaining to the extent to which conditions exist or should be provided between separate national forest or grassland areas to ensure habitat for breeding, feeding, or movement of wildlife and fish within their home range or migration areas.

Conservation. The protection, preservation, management, or restoration of natural environments and ecological communities.

Culmination of mean annual increment of growth. See mean annual increment of growth.

Designated areas. Areas or features within a planning unit with specific management direction that are normally established through a process separate from the land management planning process. Designations may be made by statute or by an administrative process of the Federal executive branch. The Forest Service Directive System contains policy for recognition and establishment of designations. Designated areas include experimental forests, national heritage areas, national monuments, national recreational areas, national scenic trails, research natural areas, scenic byways, wild and scenic rivers, wilderness areas, and wilderness study areas.

Disturbance. Any relatively discrete event in time that disrupts ecosystem, watershed, community, or species population structure and/or function and changes resources, substrate availability, or the physical environment.

Ecological conditions. The biological and physical environment that can affect diversity of plant and animal communities and the productive capacity of ecological systems. Examples of ecological conditions include the abundance and distribution of aquatic and terrestrial habitats, connectivity, roads and other structural developments, human uses, and invasive species.

Ecological system. See ecosystem.

Economic system. The system of production, distribution, and consumption of goods and services including consideration of jobs and income.

Ecosystem. A spatially explicit, relatively homogeneous unit of the Earth that includes all interacting organisms and elements of the abiotic environment within its boundaries. An ecosystem is commonly described in terms of its:

(1) Composition. Major vegetation types, rare communities, aquatic systems, and riparian systems.

(2) Structure. Vertical and horizontal distribution of vegetation, stream habitat complexity, and riparian habitat elements.

(3) Function. Ecological processes such as stream flows, nutrient cycling, and disturbance regimes.

(4) Connectivity. Habitats that exist for breeding, feeding, or movement of wildlife and fish within species home ranges or migration areas.

Ecosystem diversity. The variety and relative extent of ecosystem types, including their composition, structure, and processes.

Ecosystem services. Benefits people obtain from ecosystems, including:

(1) *Provisioning services,* such as clean air and fresh water, as well as energy, fuel, forage, fiber, and minerals;

(2) *Regulating services,* such as long term storage of carbon; climate regulation; water filtration, purification, and storage; soil stabilization; flood control; and disease regulation;

(3) *Supporting services,* such as pollination, seed dispersal, soil formation, and nutrient cycling; and

(4) *Cultural services,* such as educational, aesthetic, spiritual, and cultural heritage values, as well as recreational experiences and tourism opportunities.

Environmental assessment (EA). See definition in § 219.62.

Environmental document. Includes an environmental assessment, environmental impact statement, finding of no significant impact, categorical exclusion, and notice of intent to prepare an environmental impact statement.

Environmental impact statement. See definition in § 219.62.

Even-aged stand. A stand of trees composed of a single age class.

Federally recognized Indian Tribe. An Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe under the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

Focal species. A small number of species selected for monitoring whose status is likely to be responsive to changes in ecological conditions and effects of management. Monitoring the status of focal species is one of many ways to gauge progress toward achieving desired conditions in the plan.

Forest land. Land at least 10 percent occupied by forest trees of any size or formerly having had such tree cover and not currently developed for non-forest uses. Lands developed for non-forest use include areas for crops; improved pasture; residential or administrative areas; improved roads of any width and adjoining road clearing; and power line clearings of any width.

Geographic area. A spatially contiguous land area identified within the planning unit. A geographic area may overlap with a management area.

Health(y). The degree of ecological integrity that is related to the completeness or wholeness of the composition, structure, and function of native ecosystems existing within the inherent capability of the land.

Landscape. A spatial mosaic of terrestrial and aquatic ecosystems, landforms, and plant communities across a defined area irrespective of ownership or other artificial boundaries and repeated in similar form throughout.

Landscape character. A combination of physical, biological, and cultural images that gives an area its visual and cultural identity and helps to define a "sense of place." Landscape character provides a frame of reference from which to determine scenic attractiveness and to measure scenic integrity.

Management area. A land area identified within the planning unit that has the same set of applicable plan components. A management area does not have to be spatially contiguous.

Mean annual increment of growth and culmination of mean annual increment of growth. Mean annual increment of growth is the total increment of increase of volume of a stand (standing crop plus thinnings) up to a given age divided by that age. Culmination of mean annual increment of growth is the age in the growth cycle of an even-aged stand at which the average annual rate of increase of volume is at a maximum. In land management plans, mean annual increment is expressed in cubic measure and is based on the expected growth of stands, according to intensities and utilization guidelines in the plan.

Monitoring. A systematic process of collecting information over time and space to evaluate effects of actions or changes in conditions or relationships.

Multiple use. The management of all the various renewable surface resources of the NFS so they are used in the combination that will best meet the needs of the American people: Making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in the use to conform to changing needs and conditions; recognizing that some lands will be used for less than all of the resources; and providing for harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output, consistent with the Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. 528–531). Ecosystem services are included as part of all the various renewable surface resources of the NFS.

National Forest System. See definition in § 219.62.

Native knowledge. A way of knowing or understanding the world, including traditional ecological and social knowledge of the environment derived from multiple generations of indigenous peoples' interactions, observations, and experiences with their ecological systems. Native knowledge is place-based and culture-based knowledge in which people learn to live in and adapt to their own environment through interactions, observations, and experiences with their ecological system. This knowledge is generally not solely gained, developed by, or retained by individuals, but is rather accumulated over successive generations and is expressed through oral traditions, ceremonies, stories, dances, songs, art, and other means within a cultural context.

Newspaper(s) of record. See definition in § 219.62.

Objection. See definition in § 219.62.

Online. See definition in § 219.62.

Participation. Activities that include a wide range of public involvement tools and processes, such as collaboration, public meetings, open houses, workshops, and comment periods.

Plan or land management plan. A document or set of documents that describe management direction for an administrative unit of the NFS.

Plan area. The National Forest System lands covered by a plan.

Plant and animal communities. A naturally occurring assemblage of plant and animal species living within a defined area or habitat.

Potential wilderness areas. All areas within the National Forest System lands that satisfy the definition of wilderness found in section 2(c) of the 1964 Wilderness Act. Inventory criteria are listed in Forest Service Handbook 1909.12—Land Management Planning Handbook, Chapter 70—Wilderness Evaluation.

Productivity. The capacity of National Forest System lands and their ecological systems to provide the various renewable resources in certain amounts in perpetuity. For the purposes of this subpart, productivity is an ecological, not an economic, term.

Project. An organized effort to achieve an outcome on NFS lands identified by location, tasks, outputs, effects, times, and responsibilities for execution.

Recreational setting. The surroundings or the environment for the recreational activities. The Forest Service uses the recreational opportunity spectrum that defines six recreational opportunity classes that provide different settings for recreational use: primitive, semi-primitive nonmotorized, semi-primitive motorized, roaded natural, rural, and urban.

Resilience. The capacity of a system to absorb disturbance and reorganize while undergoing change so as to still retain essentially the same function, structure, identity, and feedbacks.

Responsible official. See definition in § 219.62.

Restoration. The process of assisting the recovery of resilience and the capacity of a system to adapt to change if the environment where the system exists has been degraded, damaged, or destroyed. Ecological restoration focuses on reestablishing ecosystem functions by modifying or managing the composition, structure, arrangement, and processes necessary to make terrestrial and aquatic ecosystems sustainable, and resilient under current and future conditions.

Riparian Areas. Geographically delineable areas with distinctive resource values and characteristics that are comprised of the aquatic and riparian ecosystems.

Risk. A combination of the likelihood that a negative outcome will occur and the severity of the subsequent negative consequences.

Sole source aquifer. A porous geologic formation, usually consisting of sand and gravel, that holds ground water, and designated by the Environmental Protection Agency because it supplies at least 50 percent of the drinking water consumed in the area overlying the aquifer, and where contamination would present both a significant public health hazard and an economic hardship in the high cost of replacing the contaminated water.

Source water protection areas. The area delineated by a State or Tribe for a public water system (PWS) or including numerous PWSs, whether the source is ground water or surface water or both, as part of a State or tribal source water assessment and protection program (SWAP) approved by Environmental Protection Agency under section 1453 of the Safe Drinking Water Act.

Species of conservation concern. Species other than federally listed threatened or endangered species or candidate species, for which the responsible official has determined that there is evidence demonstrating significant concern about its capability to persist over the long-term in the plan area.

Sustainability. Capability of meeting the needs of the present generation without compromising the ability of future generations to meet their needs.

Sustainable recreation. The set of recreational opportunities, uses and access that, individually and combined, are ecologically, economically, and socially sustainable, allowing the responsible official to offer recreation opportunities now and into the future. Recreational opportunities can include non-motorized, motorized, developed, and dispersed recreation on land, water, and air.

System drivers. Natural or human-induced factors that directly or indirectly cause a change in an ecosystem, such as climate change, habitat change, or non-native invasive species, human population change, economic activity, or technology.

Timber harvest. The removal of trees for wood fiber use and other multiple-use purposes.

Timber production. The purposeful growing, tending, harvesting, and regeneration of regulated crops of trees to be cut into logs, bolts, or other round sections for industrial or consumer use.

Viable population. A population of a species that continues to persist over the long term with sufficient distribution to be resilient and adaptable to stressors and likely future environments.

Watershed. A region or land area drained by a single stream, river, or drainage network; a drainage basin.

Watershed condition. The state of a watershed based on physical and biogeochemical characteristics and processes.

Wild and scenic river. A river designated by Congress as part of the National Wild and Scenic Rivers System that was established in the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 (note), 1271–1287).

Wilderness. Any area of land designated by Congress as part of the National Wilderness Preservation System that was established in the Wilderness Act of 1964 (16 U.S.C. 1131–1136).

Subpart B—Pre-Decisional Administrative Review Process

§ 219.50 Purpose and scope.

This subpart establishes a pre-decisional administrative review (hereinafter referred to as objection) process for plans, plan amendments, or plan revisions. This process gives an individual or organization an opportunity for an independent Forest Service review and resolution of issues before the approval of a plan, plan amendment, or plan revision. This subpart identifies who may file objections to a plan, plan amendment, or plan revision; the responsibilities of the participants in an objection; and the procedures that apply to the review of the objection.

§ 219.51 Plans, plan amendments, or plan revisions not subject to objection.

(a) A plan, plan amendment, or plan revision is not subject to objection when the responsible official receives no formal comments (§ 219.62) on that proposal during the opportunities for public comment (§ 219.53(a)).

(b) Plans, plan amendments, or plan revisions proposed by the Secretary of Agriculture or the Under Secretary for Natural Resources and Environment, are not subject to the procedures set forth in this section. A decision by the Secretary or Under Secretary constitutes the final administrative determination of the Department of Agriculture.

(c) A plan, plan amendment, or plan revision is not subject to objection under this subpart if another administrative review process is used consistent with § 219.59.

(d) When a plan, plan amendment, or plan revision is not subject to objection under this subpart, the responsible official shall include an explanation with the signed decision document.

§ 219.52 Giving notice of a plan, plan amendment, or plan revision subject to objection before approval.

(a) The responsible official shall disclose during the NEPA scoping process and in the appropriate NEPA documents that the proposed plan, plan amendment, or plan revision is subject to the objection procedures in this subpart. This disclosure is in addition to the public notice that begins the objection filing period, as required at § 219.16.

(b) The responsible official shall make available the public notice for beginning of the objection period for a plan, plan amendment, or plan revision (§ 219.16(a)(4)) to those who have requested the environmental documents or are eligible to file an objection consistent with § 219.53.

(c) The content of the public notice for beginning of the objection period for a plan, plan amendment, or plan revision before approval (§ 219.16(a)(4)) must:

(1) Inform the public of the availability of the plan, plan amendment, or plan revision, the appropriate final environmental documents, the draft plan decision document, and any relevant assessment or monitoring evaluation report; the commencement of the 30-day objection period under 36 CFR part 219 subpart B; and the process for objecting.

(2) Include the name of the plan, plan amendment, or plan revision and the name and title of the responsible official, and instructions on how to obtain a copy of the appropriate final environmental documents; the draft plan decision document; and the plan, plan amendment, or plan revision.

(3) Include the name and address of the reviewing officer with whom an objection is to be filed. The notice must specify a street, postal, fax, and e-mail address; the acceptable format(s) for objections filed electronically; and the reviewing officer's office business hours for those filing hand-delivered objections.

(4) Include a statement that objections will be accepted only from those who have previously submitted formal comments specific to the proposed plan, plan amendment, or plan revision during any opportunity for public comment as provided in subpart A.

(5) Include a statement that the publication date of the public notice in the applicable newspaper of record (or the **Federal Register**, if the responsible official is the Chief or the Secretary) is the exclusive means for calculating the time to file an objection (§ 219.56).

(6) Include a statement that an objection, including attachments, must

be filed with the appropriate reviewing officer (§ 219.62) within 30 days of the date of publication of the public notice for the objection process.

(7) Include a statement describing the minimum content requirements of an objection (§ 219.54(c)).

§ 219.53 Who may file an objection.

(a) Individuals and organizations who have submitted substantive formal comments related to a plan, plan amendment, or plan revision during the opportunities for public comment as provided in subpart A during the planning process for that decision may file an objection. Objections must be based on previously submitted substantive formal comments unless the objection concerns an issue that arose after the opportunities for formal comment. The burden is on the objector to demonstrate compliance with requirements for objection. Objections from individuals or organizations that do not meet the requirements of this paragraph must not be accepted; however, objections not accepted must be documented in the planning record.

(b) Formal comments received from an authorized representative(s) of an organization are considered those of the organization only. Individual members of that organization do not meet objection eligibility requirements solely based on membership in an organization. A member or an individual must submit formal comments independently to be eligible to file an objection in an individual capacity.

(c) When an objection lists multiple individuals or organizations, each individual or organization must meet the requirements of paragraph (a) of this section. Individuals or organizations listed on an objection that do not meet eligibility requirements must not be considered objectors, although an objection must be accepted (if not otherwise set aside for review under § 219.55) if at least one listed individual or organization meets the eligibility requirements.

(d) Federal agencies may not file objections.

(e) Federal employees who otherwise meet the requirements of this subpart for filing objections in a non-official capacity must comply with Federal conflict of interest statutes at 18 U.S.C. 202–209 and with employee ethics requirements at 5 CFR part 2635. Specifically, employees must not be on official duty nor use government property or equipment in the preparation or filing of an objection. Further, employees must not include information unavailable to the public, such as Federal agency documents that are exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552 (b)).

§ 219.54 Filing an objection.

(a) Objections must be filed with the reviewing officer in writing. All objections must be open to public inspection during the objection process.

(b) Including documents by reference is not allowed, except for the following list of items that may be referenced by including the name, date, page number (where applicable), and relevant section of the cited document. All other documents, web links to those documents, or both must be included with the objection.

(1) All or any part of a Federal law or regulation.

(2) Forest Service Directive System documents and land management plans.

(3) Documents referenced by the Forest Service in the planning documentation related to the proposal subject to objection.

(4) Formal comments previously provided to the Forest Service by the objector during the proposed plan, plan amendment, or plan revision comment period.

(c) At a minimum, an objection must include the following:

(1) The objector's name and address (§ 219.62), along with a telephone number or e-mail address if available;

(2) Signature or other verification of authorship upon request (a scanned signature for electronic mail may be filed with the objection);

(3) Identification of the lead objector, when multiple names are listed on an objection (§ 219.62). Verification of the identity of the lead objector if requested;

(4) The name of the plan, plan amendment, or plan revision being objected to, and the name and title of the responsible official;

(5) A statement of the issues and/or the parts of the plan, plan amendment, or plan revision to which the objection applies;

(6) A concise statement explaining the objection and suggesting how the proposed plan decision may be improved. If applicable, the objector should identify how the objector believes that the plan, plan amendment, or plan revision is inconsistent with law, regulation, or policy; and

(7) A statement that demonstrates the link between prior formal comments attributed to the objector and the content of the objection, unless the objection concerns an issue that arose after the opportunities for formal comment (§ 219.53(a)).

§ 219.55 Objections set aside from review.

(a) The reviewing officer must set aside and not review an objection when one or more of the following applies:

(1) Objections are not filed in a timely manner (§ 219.56);

(2) The proposed plan, plan amendment, or plan revision is not subject to the objection procedures of this subpart pursuant to §§ 219.51 and 219.59;

(3) The individual or organization did not submit formal comments (§ 219.53) during scoping or other opportunities for public comment on the proposed decision (§ 219.16);

(4) None of the issues included in the objection is based on previously submitted substantive formal comments unless one or more of those issues arose after the opportunities for formal comment;

(5) The objection does not provide sufficient information as required by § 219.54(c);

(6) The objector withdraws the objection in writing;

(7) The objector's identity is not provided or cannot be determined from the signature (written or electronically scanned), and a reasonable means of contact is not provided (§ 219.54(c)); or

(8) The objection is illegible for any reason and a legible copy cannot easily be obtained.

(b) When an objection includes an issue that is not based on previously submitted substantive formal comments and did not arise after the opportunities for formal comment, that issue will be set aside and not reviewed. Other issues raised in the objection that meet the requirements of this subpart will be reviewed.

(c) The reviewing officer must give written notice to the objector and the responsible official when an objection is set aside from review and must state the reasons for not reviewing the objection. If the objection is set aside from review for reasons of illegibility or lack of a means of contact, the reasons must be documented in the planning record.

§ 219.56 Objection time periods and process.

(a) *Time to file an objection.* Written objections, including any attachments, must be filed within 30 days following the publication date of the public notice for a plan, plan amendment, or plan revision before approval (§§ 219.16 and 219.52). It is the responsibility of the objector to ensure that the reviewing officer receives the objection in a timely manner.

(b) *Computation of time periods.* (1) All time periods are computed using calendar days, including Saturdays,

Sundays, and Federal holidays in the time zone of the reviewing officer. However, when the time period expires on a Saturday, Sunday, or Federal holiday, the time is extended to the end of the next Federal working day (11:59 p.m. for objections filed by electronic means such as e-mail or facsimile machine).

(2) The day after publication of the public notice for a plan, plan amendment, or plan revision before approval (§§ 219.16 and 219.52), is the first day of the objection filing period.

(3) The publication date of the public notice for a plan, plan amendment, or plan revision before approval (§§ 219.16 and 219.52), is the exclusive means for calculating the time to file an objection. Objectors must not rely on dates or timeframe information provided by any other source.

(c) *Evidence of timely filing.* The objector is responsible for filing the objection in a timely manner. Timeliness must be determined by one of the following indicators:

(1) The date of the U.S. Postal Service postmark for an objection received before the close of the fifth business day after the objection filing date;

(2) The electronically generated delivery date and time for e-mail and facsimiles;

(3) The shipping date for delivery by private carrier for an objection received before the close of the fifth business day after the objection filing date; or

(4) The official agency date stamp showing receipt of hand delivery.

(d) *Extensions.* Time extensions for filing are not permitted except as provided at paragraph (b)(1) of this section.

(e) *Reviewing officer role and responsibilities.* The reviewing officer is the United States Department of Agriculture (USDA) or Forest Service official having the delegated authority and responsibility to review an objection filed under this subpart. The reviewing officer is a line officer at the next higher administrative level above the responsible official; except that for a plan amendment, that next higher-level line officer may delegate their reviewing officer authority and responsibility to a line officer at the same administrative level as the responsible official. Any delegation of reviewing officer responsibilities must be made prior to the public notification of an objection filing period (§ 219.52).

(f) *Notice of objections filed.* Within 10 days after the close of the objection period, the responsible official shall publish a notice of all objections in the applicable newspaper of record and post the notice online.

(g) *Response to objections.* The reviewing officer must issue a written response to the objector(s) concerning their objection(s) within 90 days of the end of the objection-filing period. The reviewing officer has the discretion to extend the time when it is determined to be necessary to provide adequate response to objections or to participate in discussions with the parties. The reviewing officer must notify all parties (lead objectors and interested persons) in writing of any extensions.

§ 219.57 Resolution of objections.

(a) *Meetings.* Prior to the issuance of the reviewing officer's written response, either the reviewing officer or the objector may request to meet to discuss issues raised in the objection and potential resolution. The reviewing officer must allow other interested persons to participate in such meetings. An interested person must file a request to participate in an objection within 10 days after publication of the notice of objection by the responsible official (§ 219.56(f)). The responsible official shall be a participant in all meetings involving the reviewing officer, objectors, and interested persons. During meetings with objectors and interested persons, the reviewing officer may choose to use alternative dispute resolution methods to resolve objections. All meetings are open to observation by the public.

(b) *Response to objections.* (1) The reviewing officer must render a written response to the objection(s) within 90 days of the close of the objection-filing period, unless the allowable time is extended as provided at § 219.56(g). A written response must set forth the reasons for the response but need not be a point-by-point response, and may contain instructions to the responsible official. In cases involving more than one objection to a plan, plan amendment, or plan revision, the reviewing officer may consolidate objections and issue one or more responses. The response must be sent to the objecting party(ies) by certified mail, return receipt requested, and posted online.

(2) The reviewing officer's review of and response to the objection(s) is limited to only those issues and concerns submitted in the objection(s).

(3) The response of the reviewing officer will be the final decision of the Department of Agriculture on the objection.

§ 219.58 Timing of a plan, plan amendment, or plan revision decision.

(a) The responsible official may not issue a decision document concerning a plan, plan amendment, or plan revision subject to the provisions of this subpart until the reviewing officer has responded in writing to all objections.

(b) A decision by the responsible official approving a plan, plan amendment, or plan revision must be consistent with the reviewing officer's response to objections.

(c) When no objection is filed within the 30-day time period, the reviewing officer must notify the responsible official. The responsible official's approval of the plan, plan amendment, or plan revision in a plan decision document consistent with § 219.14, may occur on, but not before, the fifth business day following the end of the objection-filing period.

§ 219.59 Use of other administrative review processes.

(a) Where the Forest Service is a participant in a multi-Federal agency effort that would otherwise be subject to objection under this subpart, the reviewing officer may waive the objection procedures of this subpart and instead adopt the administrative review procedure of another participating Federal agency. As a condition of such a waiver, the responsible official for the Forest Service must have agreement with the responsible official of the other agency or agencies that a joint agency response will be provided to those who file for administrative review of the multi-agency effort. When such an agreement is reached, the responsible official for the Forest Service shall ensure public notice required in § 219.52 sets forth which administrative review procedure is to be used.

(b) When a plan amendment is approved in a decision document approving a project or activity and the amendment applies only to the project or activity, the administrative review process of 36 CFR part 215 or part 218, subpart A, applies instead of the objection process established in this subpart. When a plan amendment applies to all future projects or activities, the objection process established in this subpart applies only to the plan amendment decision; the review process of 36 CFR part 215 or part 218 would apply to the project or activity part of the decision.

§ 219.60 Secretary's authority.

Nothing in this subpart restricts the Secretary of Agriculture from exercising any statutory authority regarding the protection, management, or administration of NFS lands.

§ 219.61 Information collection requirements.

This subpart specifies the information that objectors must give in an objection to a plan, plan amendment, or plan revision (§ 219.54(c)). As such, these rules contain information collection requirements as defined in 5 CFR part 1320 and have been approved by Office of Management and Budget and assigned control number 0596–0158.

§ 219.62 Definitions.

Definitions of the special terms used in this subpart are set out as follows.

Address. An individual's or organization's current mailing address used for postal service or other delivery services. An e-mail address is not sufficient.

Decision memo. A concise written record of the responsible official's decision to implement an action that is categorically excluded from further analysis and documentation in an environmental impact statement (EIS) or environmental assessment (EA), where the action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment, and does not give rise to extraordinary circumstances in which a normally excluded action may have a significant environmental effect.

Environmental assessment (EA). A public document that provides sufficient evidence and analysis for determining whether to prepare an environmental impact statement (EIS) or a finding of no significant impact (FONSI), aids an agency's compliance with the National Environmental Policy Act (NEPA) when no EIS is necessary, and facilitates preparation of a statement when one is necessary (40 CFR 1508.9; FSH 1909.15, Chapter 40).

Environmental impact statement (EIS). A detailed written statement as required by section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 (40 CFR 1508.11; 36 CFR part 220).

Formal comments. Written comments submitted to, or oral comments recorded by, the responsible official or his designee during an opportunity for public participation provided during the planning process (§§ 219.4 and 219.16), and attributed to the individual or organization providing them.

Lead objector. For an objection submitted with multiple individuals, multiple organizations, or combination of individuals and organizations listed, the individual or organization identified to represent all other objectors for the purposes of communication, written or otherwise, regarding the objection.

Line officer. A Forest Service official who serves in a direct line of command from the Chief.

Name. The first and last name of an individual or the name of an organization. An electronic username is insufficient for identification of an individual or organization.

National Forest System. The National Forest System includes national forests, national grasslands, and the National Tall Grass Prairie.

Newspaper(s) of record. The newspaper of record is the principal newspapers of general circulation annually identified and published in the **Federal Register** by each regional forester to be used for publishing notices as required by 36 CFR 215.5. The newspaper(s) of record for projects in a plan area is (are) the newspaper(s) of record for notices related to planning.

Objection. The written document filed with a reviewing officer by an individual or organization seeking pre-decisional administrative review of a plan, plan amendment, or plan revision.

Objection period. The 30-calendar-day period following publication of a public notice in the applicable newspaper of record (or the **Federal Register**, if the responsible official is the Chief or the Secretary) of the availability of the appropriate environmental documents and draft decision document, including a plan, plan amendment, or plan revision during which an objection may be filed with the reviewing officer.

Objection process. Those procedures established for pre-decisional administrative review of a plan, plan amendment, or plan revision.

Objector. An individual or organization who meets the requirements of § 219.53, and files an objection that meets the requirements of §§ 219.54 and 219.56.

Online. Refers to the appropriate Forest Service Web site or future electronic equivalent.

Responsible official. The official with the authority and responsibility to oversee the planning process and to approve a plan, plan amendment, and plan revision.

Reviewing officer. The USDA or Forest Service official having the delegated authority and responsibility to review an objection filed under this subpart.

Dated: February 7, 2011.

Harris D. Sherman,

Under Secretary, NRE.

[FR Doc. 2011–2989 Filed 2–11–11; 8:45 am]

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Part IV

Department of Defense

Science and Technology Reinvention Laboratory (STRL) Personnel Management Demonstration Project, Department of the Navy (DON), Naval Air System Command (NAVAIR) Naval Air Warfare Center, Aircraft Division (NAWCAD), and Naval Air Warfare Center, Weapons Division (NAWCWD); Notice

DEPARTMENT OF DEFENSE

Office of the Secretary

Science and Technology Reinvention Laboratory (STRL) Personnel Management Demonstration Project, Department of the Navy (DON), Naval Air System Command (NAVAIR) Naval Air Warfare Center, Aircraft Division (NAWCAD), and Naval Air Warfare Center, Weapons Division (NAWCWD)

AGENCY: Office of the Deputy Under Secretary of Defense (Civilian Personnel Policy), (DUSD (CPP)), DoD.

ACTION: Notice.

SUMMARY: Section 342(b) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 1995, Public Law (Pub. L.) 103–337 (10 U.S.C. 2358 note), as amended by section 1109 of NDAA for FY 2000, Public Law 106–65, and section 1114 of NDAA for FY 2001, Public Law 106–398, authorizes the Secretary of Defense to conduct personnel demonstration projects at DoD laboratories designated as Science and Technology Reinvention Laboratories (STRLs). The above-cited legislation authorizes DoD to conduct demonstration projects to determine whether a specified change in personnel management policies or procedures would result in improved Federal personnel management. Section 1105 of the NDAA for FY 2010, Public Law 111–84, 123 Stat. 2486, October 28, 2009, designates additional DoD laboratories as STRLs for the purpose of designing and implementing personnel management demonstration projects for conversion of employees from the personnel system which applied on October 28, 2009. The NAWCAD and the NAWCWD are listed in subsection 1105(a) of NDAA for FY 2010 as two of the newly designated STRLs. These two STRLs will be the participants in the demonstration project proposal described in this **Federal Register** Notice (FRN).

DATES: Implementation of this demonstration project will begin no earlier than March 1, 2011.

FOR FURTHER INFORMATION CONTACT:

NAVAIR: Mr. Richard Cracraft, Naval Air Warfare Center, Weapons Division (NAWCWD), Code 730000D, 1 Administration Circle, Building 00464, China Lake, CA 93555–6100.

DoD: Ms. Betty A. Duffield, CPMS–PSSC, Suite B–200, 1400 Key Boulevard, Arlington, VA 22209–5144.

SUPPLEMENTARY INFORMATION:

1. Background

Since 1966, many studies of Department of Defense (DoD) laboratories have been conducted on laboratory quality and personnel. Almost all of these studies have recommended improvements in civilian personnel policy, organization, and management. Pursuant to the authority provided in section 342(b) of Public Law 103–337, as amended, a number of DoD STRL personnel demonstration projects were approved. These projects are "generally similar in nature" to the Department of Navy's "China Lake" Personnel Demonstration Project. The terminology, "generally similar in nature," does not imply an emulation of various features, but rather implies a similar opportunity and authority to develop personnel flexibilities that significantly increase the decision authority of laboratory commanders and/or directors. The STRL Personnel Management Demonstration Projects involve broad-banded pay systems and simplified classification; compensation linked to performance, including contribution-based pay; recruitment and staffing changes; and enhanced training and development including critical skills training, Voluntary Emeritus Corps, and sabbaticals.

This demonstration project involves: (1) Two appointment authorities (permanent and modified term); (2) extended probationary period for newly hired employees; (3) pay banding; (4) streamlined delegated examining; (5) modified reduction-in-force (RIF) procedures; (6) simplified job classification; (7) a mission aligned objectives and compensation based appraisal system; (8) market based starting salaries; (9) academic degree and certificate training; (10) sabbaticals; and (11) a Voluntary Emeritus Corps.

2. Overview

The covered organizations transitioned to the National Security Personnel System (NSPS) late in 2008. Subsequently, section 1113 of NDAA for FY 2010, Public Law 111–84,123 Stat. 2486, required all employees to exit NSPS by no later than January 1, 2012. Another section of NDAA for FY 2010, section 1105, identifies NAWCAD and NAWCWD as STRLs and requires them to convert to an STRL demonstration project within 18 months of enactment of NDAA for FY 2010. DoD published notice in 75 FR 55160, September 9, 2010, that Section 1105 of the NDAA for FY 2010, Public Law 111–84, 123 Stat. 2486, October 28, 2009, designated NAWCAD and NAWCWD as new STRLs in subsection 1105(a) of NDAA for FY 2010 and further provided notice of the intent of the Naval Air Warfare Center (NAWC) to model and implement an STRL Personnel Management Demonstration project based on the flexibilities in use by the other STRL laboratories and demonstration projects. Relative to NAWC's intent to model and implement a new demonstration project, DoD received comments from 14 people during the public comment period which ended on October 12, 2010. All comments were carefully considered. The following summary addresses the pertinent comments received, provides responses, and notes resultant changes to the original NAWC project plan published in 75 FR 55160, September 9, 2010. Several commenters addressed more than one topic and each topic was counted separately. Thus, the total number of comments exceeds the number of individual commenters.

A. General Issues

In reviewing the comment submissions, several recurring themes were discerned that spanned multiple sections of the proposed regulation and which were not necessarily aimed directly at the substance of the proposed regulation. General issues identified included: (1) Requests for a return to the former demonstration project (officially identified as the Navy Personnel Management Demonstration Project but generally recognized as the China Lake Demo, which became a permanent Alternative Personnel System); (2) the perceived similarity of some aspects between this STRL and the National Security Personnel System (NSPS) and the rescinding of NSPS; (3) transparency and fairness; and (4) a request for the comment period to be extended.

(1) Return to the Former Navy Personnel Management Demonstration Project

Comments: Three comments were received expressing the benefits and value of the Navy Personnel Management Demonstration Project and its tried and tested positive outcomes. Two of these also asked that it be reinstated.

Response: While there is no question about the value and benefits that were realized under the Navy Personnel Management Demonstration Project, it is not possible to return to it. NDAA 2010 specifically states that NAWCAD and NAWCWD were to exit NSPS and transition to a Science and Technology Reinvention Laboratory Demonstration Project and that the organizations had 18 months from signature of the NDAA to implement this decision.

(2) Perceived Similarities Between STRL and NSPS

Comments: Ten commenters made the comparison that this STRL demonstration project is similar to or the same as NSPS and will thus not be a success.

Response: The proposed STRL provisions are based on concepts proven over more than 25 years for the Navy Demonstration Project and more than 10 years by the multiple STRLs in Army, Air Force and Navy who have operating demonstration projects. There are both conceptual similarities and differences between the NAWC STRL, NSPS, the other existing STRL demonstration projects, and the Navy Personnel Management Demonstration Project that covered Space and Naval Warfare Systems Command (SPAWAR) organizations as well as NAWCWD for more than 25 years. For instance, the NAWC STRL has a five-level performance rating system, so did the Navy Personnel Management Demonstration Project and so does NSPS. The STRL has five occupational families: Scientific and Engineering (S&E), S&E Technician, Technical Specialist, Business Professional & Program Management, and Administrative Support as did the Navy Personnel Management Demonstration Project; NSPS has four: Standard Career Group, Scientific and Engineering Career Group, Medical Career Group and Investigative and Protective Services Career Group. The STRL will have hiring flexibilities that neither the Navy Personnel Management Demonstration Project nor NSPS had available. These flexibilities, such as the proposed Direct Hire Authority for Scientists and Engineers with Advanced Degrees, Distinguished Scholastic Achievement Appointment Authority (DSAA) for Scientific and Engineering Positions, and Non-Citizen Hiring flexibilities are only available to laboratories covered by STRL demonstration projects.

(3) Transparency and Fairness

Several comments were received that addressed the topics of the transparency and fairness of the STRL.

Comments: Four of the comments spoke to protecting the integrity of the STRL and the need for credible unbiased oversight and employee protections. Some expressed a concern for the possibility that the STRL personnel system for the laboratories could be sub optimized due to efforts to reconcile differences with the other personnel systems (General Schedule (GS), Interim GS, Federal Wage System (FWS), Senior Executive Service (SES), and Scientific and Professional (ST)) in place across NAVAIR.

Response: DoD actively monitors the new STRLs which are also subject to periodic evaluations by DoD. Congress maintains oversight through a mandatory 5-year report and evaluation of each new STRL as well as a mandatory annual report on demonstration project activities. Any major changes that are made to the approved regulations require notification to the appropriate stakeholders and possible publication of a **Federal Register** Notice (FRN).

(4) Extension of the Comment Period

Comments: Two commenters asked for an extension to the comment period.

Response: Unfortunately there is no opportunity to extend the comment period as the NDAA 2010 requires that the STRL demonstration project be implemented and conversion from NSPS occur no later than 18 months after enactment of NDAA for FY 2010 or by 28 April 2011.

B. Participating Organizations and Employees

Three comments were received that relate to the definition of the organizations participating and the coverage of the STRL.

(1) Definition of the Organizations Participating

Comments: The section on participating organizations, section D should be corrected as it inaccurately identifies each Warfare Center site as a 'business unit.'

Response: This correction has been made.

(2) Coverage of the STRL

Comments: One commenter questioned the organizational coverage of the field sites by the STRL and another requested a provision that would allow employees to opt out of the STRL. Another commenter suggested that STRL positions be filled by former military who had successful military careers and that other civilian employees be excluded from coverage to avoid impacts on their productivity.

Response: The NDAA identified NAWCAD and NAWCWD as the organizations to be covered by an STRL. Each of these organizations includes more than one geographic location. All locations and civilian employees covered by NSPS are required by the Congressional mandate to convert to the STRL Demonstration Project. Employees covered by other personnel systems such as those in health care, medical, intelligence, SES, FWS, and ST are excepted from conversion to the Demonstration Project. The provisions of the STRL do not apply to any bargaining unit employees within NAWCAD or NAWCWD until a mutual agreement is reached between the STRL organization and the applicable exclusive representative. The obligation to consult and/or negotiate with all labor organizations is established by 5 U.S.C. 4703(f) and 7117, as applicable.

C. Project Design

Comments: Three comments were received on this subject. One comment requested that the STRL provide for every optional OPM benefit. The other two comments request that the STRL provision include medical and legal support to employees in the STRL and that medical testing should be conducted to identify whether employees have disabilities that prevent them from performing successfully under the STRL.

Response: STRL demonstration projects are prohibited by law from making any changes in the areas of employee benefits, employee leave, equal employment opportunity, political activity, merit system principles, or other prohibited personnel practices.

D. Pay Banding

There were six comments on the proposed pay banding. Four identified the pay bands as being too broad and two addressed the use of a supervisory and managerial pay band.

(1) Pay Bands Are Too Broad

Comments: Four comments noted that the proposed STRL pay bands are too broad and will have negative impacts on financial systems and the ability to appropriately recognize employees' progression to higher levels of work and that the provision for more promotion opportunities could be seen as a positive by the workforce. Examples of specific comments include: "Broad pay bands, such as were designed in NSPS and seem to be continuing into STRL, cause stabilized rate setting concerns and instability in our net operating results. When the salary range of the band fluctuates so wildly (salary ranges with a span of $50K or more) it is hard to set the rates to minimize the stabilized rate variance to any degree of certainty. This presents a problem particularly in NWCF facilities where workload can vary by millions between those being charged at stabilized rates versus accelerated labor. A change in the workforce shifting from assumptions used when weighting the stabilized

rates will cause net operating result gains or losses that have the potential to impact future year rates, compounding the problem."; "Thirdly, the STRL paybands are still too broad. While the attempt has been made to restructure the NSPS paybands, the lack of built in checks and balances for salary control remains unaddressed." and "The last point revolves around employee morale. Employees crave promotion recognition. Additional bands meet that need. * * * As it is in the current STRL pay band proposal, promoting once takes them from a GS 1–4 pay band to being capable of moving all the way to a GS 11 with only one promotion."

Response: We concur with these recommendations and have modified the pay band levels by adding additional levels within each of the occupational families with the exception of the Administrative Support family. The number of pay levels within the Supervision & Management pay schedule also remains the same. All levels now have a base pay span of less than $50,000 and the additional levels provide for more promotional opportunities while still meeting the need for broad bands to facilitate the ability to quickly move employees to areas of mission need when necessary.

(2) Supervisory Pay Bands

Comments: Two comments were submitted and questioned the utility of a supervisory and managerial pay band. They spoke to the blended nature of the work of many positions which include both supervisory and non-supervisory duties with emphasis on the technical workforce in the laboratories and the difficulties of drawing distinctions in the value of these two elements. One commenter made reference to the former Navy Personnel Management (China Lake) Demonstration Project and its experience in this area where there was no separate pay schedule for supervisory positions.

Response: The establishment of a separate supervisory pay schedule is not incompatible with the STRL and does not define how the organization values or compensates different types of work. One of the differences between the China Lake demonstration project and the STRL is the coverage. The STRL covers two large organizations with multiple diverse sites and the flexibilities adopted under the STRL must be broad enough to address the needs of each. The China Lake Demo was originally designed for and applied to one part of what is today NAWCWD. The establishment of a separate pay schedule recognizes the differences inherent in supervisory and non-supervisory work but also allows flexibility for the organizations to compensate both types of positions appropriately.

E. Classification

Four comments addressed the topic of position classification. Three speak to the position series used by the STRL and the other focuses on the method of actually creating and assigning pay schedules and pay bands to positions.

(1) Occupational Series

Comments: These comments advocated the use of the established OPM series and one of the three also suggested the establishment of a single multi-disciplinary series for all supervisory/managerial positions covered by the STRL.

Response: The STRL has adopted the use of Office of Personnel Management (OPM) standard series and titling practices. This STRL demonstration project did not identify supervision and management as a separate occupational family because all supervisory/managerial positions do not have knowledge, skills, and qualifications requirements similar enough to be classed together. Each occupational family is built around a body of knowledge and area of expertise, e.g., Scientific and Engineering as compared to Business and Program Management. Supervision and management, while arguably a body of knowledge, is not separate unto itself but rather spans all of the occupational families that are identified under the STRL.

(2) Classification Standards and Position Descriptions

Comments: This comment spoke to the streamlined procedures of the China Lake classification system and the ease of application and consistency it brought to creating position descriptions.

Response: The FRN speaks at a high level and the flexibilities as proposed allow for the streamlined classification procedures available in the former China Lake system while also allowing room for the adoption of additional features if desired. The specific system and procedures used to create and classify positions will be included in internal operating issuances.

F. Mission Aligned Objectives and Compensation

Eleven comments were submitted on the performance management aspects of the STRL. Three addressed the timing of the beginning and end of the annual performance cycle. One spoke to employee self assessments. One commented on the proposed pay pool process. Five expressed thoughts on the performance pay outcomes. The final one identified a concern with the proposed request for reconsideration regulation.

(1) Annual Performance Cycle Begin and End Dates

Comments: These comments identified concerns with the current performance rating cycle and payout date. The timing of the end of the performance cycle to coincide with the end of the financial fiscal year has a significant workload impact on employees and the organization. At this time of year, the pay pools have to work with estimated salary values for the January increase since the official figures are not normally published until late November or December. Furthermore, moving the cycle dates and payout to a schedule that permitted the payout to occur before the holiday period could be desirable from the employees' perspective.

Response: The difficulties presented by the timing of the current cycle are recognized and the FRN is purposefully silent on the specific timing of the performance period to permit the organizations the flexibility of evaluating other options and changing the cycle if warranted.

(2) Self Assessments

Comments: It was recommended that employees have the choice to submit written statements of accomplishments at mid-year and end-of-year performance milestones rather than being required to provide them.

Response: We concur that there are circumstances which may prohibit the submission of written statements and that employees should have a choice in this matter. The appropriate changes have been made in the relevant section to make the submission of written statements permissive rather than required.

(3) Pay Pools

Comments: The comment questioned the cost/benefit value of the pay pool process when the cost of the process is compared to the amount of money available to allocate in the payout process.

Response: The experience of all the demonstration projects is that the startup learning curve associated with new performance systems and pay pools is fairly steep but it does return to more reasonable levels after two or three cycles. This initial investment is more than returned in out-year benefits. The demonstration project performance

system delivers increased focus on what is expected to be accomplished and enhanced rewards for those who contribute the most. Pay pools are charged primarily with ensuring that the appraisals and ratings assigned to each employee are appropriate and rating benchmarks are applied consistently across the organization. Establishing this shared understanding of the broad benchmarks and their application to specific accomplishments is one of the Pay Pool Managers' and Panels' core responsibilities and while important, the specific amount of money in the pay pool fund is secondary and subordinate to this.

(4) Performance Payout Determination

Comments: Five comments expressed thoughts in this area. Two spoke specifically to the overlapping payout points available for Partial Mission Success and Mission Success ratings. One of the two commented that 0 payout points for an employee with a Mission Success rating was the wrong decision and the other commented that there should be a lesser reward for Partial Mission Success vs. Mission Success and suggested that the Partial Mission Success should receive one-half of any January pay increase as well as 0 payout points. Two spoke to the complexity of the proposed payout point computations and one of these suggested a fixed dollar value for payout points similar to one of the former demonstration projects. The final comment expressed concern with the variance in the payout point value that can occur between pay pools.

Response: The Partial Mission Success rating is applicable for those situations where less than was needed was accomplished but some work was accomplished that did contribute to the mission. There is merit in the recommendation to have the payout for this to be at a lesser level and other STRL demonstration projects do have this flexibility available and consideration may be given to adopting this flexibility at a later date.

The inclusion of the 0 payout points option for Mission Success provides the flexibility for the supervisor and pay pool panel to appropriately rate and compensate those situations where Mission Success has been fully achieved but the employee is already adequately compensated for that level of work and neither an increase in salary beyond the equivalent of the annual general pay increase or a bonus is warranted for the accomplishments for that year. The employee would receive the full January general increase authorized for all employees so they do not fall behind; but all jobs, no matter what the compensation system, reach a plateau where salary growth levels off; some at the top of the pay scale and others at different points.

There is a degree of complexity in the computation of the payout point value and it can vary by pay pool due to the factors required for the calculation. The design provides for a variable pay point value to allow the ratings to be paramount and drive the outcomes rather than be limited by the payout. The method chosen to implement this capability is one that is similar to a process with which the organization is familiar and has applied successfully in the past.

(5) Requests for Reconsideration

Comments: One commenter spoke to this area pointing out that it is not reasonable for a Pay Pool Manager to be the final deciding official on requests for reconsideration for those cases where they are also the rating official or immediate supervisor.

Response: Concur that it is not reasonable for a Pay Pool Manager to be the final deciding official on requests for reconsideration for those cases where they are also the rating official or immediate supervisor. The appropriate changes have been made in the relevant section to adopt this recommendation.

G. Hiring Authority

Three comments were submitted on the hiring authorities for the STRL. Two requested additional hiring flexibilities: one for acquisition workforce jobs and one for re-employed annuitants. The second comment spoke to the tension between the need to tailor the features of the STRL demonstration project to the specific requirements of the proposing organization and the DON's desire to standardize HR operations across the component.

(1) Hiring Flexibilities for Re-Employed Annuitants

Comments: The Naval Air Warfare Center Commanders should have the flexibility to approve the re-employment of retired civil service employees for purpose of delivering on the mission. The current process for hiring re-employed annuitants is lengthy, time-consuming and inconsistent with the pressures from the Chief of Naval Operations to deliver rapid, capable, warfighting solutions to our men and women in uniform.

Response: There is no question about the loss of intellectual capital or the need to be able to draw upon the expertise of those who have retired when necessary. These needs can be met following our existing processes. While the current process to approve the appointment of reemployed annuitants is perceived by some as being lengthy and time consuming, it is designed to preserve the interests of the Department of the Navy and ensure appointments of this nature are made only after very deliberate and careful thought is given to workforce requirements, succession planning, alternative sources of candidates, and the intent of this hiring flexibility.

(2) Hiring Flexibilities for Acquisition Workforce Positions

Comments: The comment requests consideration to include direct hire authority for 1102 series positions for individuals who possess an advanced degree. 1102s are one of the critical occupational series at NAWCAD and are also some of the most difficult to fill. Having this authority will greatly reduce cycle time and help hire qualified candidates in this career field in support of the warfighter.

Response: There is no question about the critically of the acquisition workforce to mission accomplishment or the difficulty in finding candidates for these positions; however, the authority being requested is essentially already in place under the Expedited Hiring Authority for Select Defense Acquisition Workforce Positions and this STRL demonstration project will rely on this authority to meet these needs.

(3) STRL Flexibilities and Standardized Business Processes

Comments: One commenter addressed the requirement to follow the Department of Navy's common business processes, systems, and tools in carrying out hiring authorities and expressed concern that the use of common processes and tools designed for the entire Navy is limiting and unresponsive to the creative problem solving and unique business processes needed to expedite solutions and provide rapid response to the war fighter.

Response: DON's common business processes balance the need for flexibility with fiscal constraints, cost of doing business, consistency across the Component, Hiring Reform initiatives and metrics.

H. Internal Placement

Three comments were submitted on this topic. One each addressing standardized business processes, promotions, and reassignments.

(1) STRL Flexibilities and Standardized Business Processes

Comments: The comment is the same as the comment under Hiring Authority above.

Response: The Warfare Centers do need responsive business processes that are adaptable to their requirements in acquiring the skills and talent needed to react quickly to the needs of the warfighter. DON's common business processes will be relied upon to address this need.

(2) Promotions

Comments: The comment expressed concern about scientific, engineering, and/or technical career paths being blocked due to the effects of the STRL's proposed demonstration project provisions.

Response: The comment did not provide any specifics about which provisions were of concern or examples of situations where promotion or career advancement would be impacted by the STRL Demonstration Project so it can only be assumed that the concern relates to the broad pay bands. As noted in an earlier section, the pay bands have been modified to include additional levels which allow more promotional opportunities.

(3) Reassignment

Comments: One comment received expressed concern on the limit of 5% upon reassignment believing it is unduly restrictive and does not allow management to use the broad pay band flexibilities and suggests this authority be increased up to 10%.

Response: The STRL Demonstration Project is a mission aligned system, moving to a culture where salary increases are driven by accomplishments and contributions to achieve the mission and away from a longevity and position-based system. Providing flexibility to adjust salary up to 5% for a reassignment maintains the distinction between reassignment and promotion. This allows management to assign work within a broad pay band range. At the same time, it incentivizes employees to seek and accept new work assignments, tasks, projects, responsibilities, etc., consistent with what would be available in the range of work within a pay band, while maintaining a distinction between the percentage increases for reassignments and percentage increases for promotions. The STRL demonstration project will proceed with the 5% increase as proposed.

I. Pay Administration

Two comments were received addressing this subject. Both are from sites that will have GS and STRL covered employees in the same work group and each expressed concern about the differing compensation outcomes that are inherent in the STRL vs GS and the potential impacts these might have.

Comments: The comments express concern that due to pay banding the STRL Demonstration Project will not provide results in base pay increases that are equal to those possible under the GS for entry-level employees and the perceived disadvantages that control points place on the STRL employee.

Response: Under the STRL Demonstration Project starting salaries can be more market sensitive and are not held to step 1 if a higher entry salary is appropriate for that occupation. Comparisons of salary outcomes were completed to compare STRL pay progression scenarios to normal GS scenarios to ensure that there were no unintended outcomes for new hires into the STRL as compared to their counterparts in other systems and that STRL Mission Success performers would generally maintain equity with the other compensation systems. The comparisons looked for both unintended negative consequences as well as unintended windfall benefits. The principal difference between GS and STRL is that GS is longevity based while the STRL Demonstration Project is performance based and it is possible for the highest contributors to the mission to move forward at a faster pace.

As noted earlier, no matter what the compensation system, over time positions reach a plateau where salary growth levels off; some at the top of the pay scale and others at other points.

J. Reduction-in-Force (RIF) Procedures

Two comments were submitted on the topic of RIF. One addressing competitive areas and the other the employee support mechanisms used in RIF.

(1) Competitive Areas

Comments: The current **Federal Register** notice requires separate competitive areas within the STRL workforce by occupational families. To allow for greater flexibility within individual geographic locations, it is recommended that the language be changed to reflect that separate competitive areas may be established within the STRL workforce by occupational families.

Response: We concur with the rationale and need for this authority. The appropriate changes have been made in the relevant section to allow this flexibility.

(1) Employee Support Mechanisms

Comments: The comment suggested drawing upon government experience with demotions, RIF's, firings, etc., and incorporating the same employee support mechanisms into the STRL Demonstration Project.

Response: The STRL has incorporated broad lessons learned from the other STRLs, the Navy Personnel Management Demonstration Project, and GS in the areas of RIF with the intent of minimizing what is a very impactful and disruptive process for the workforce and the organization.

K. Training

Six comments were submitted on the topic of training. Three comments addressed the content of the training. One suggested employees be tested. One addressed remedial training and the final one spoke to the cost of providing training.

Comments: The three comments that address training content suggested drawing materials and lessons learned from other demonstration projects and systems such as the military evaluation system to enhance the training. Another comment suggested employees be tested for suitability and ability to perform the STRL tasks and responsibilities. One addressed the need for remedial training and the final one spoke to the cost of providing training on the STRL Demonstration Project vice returning to the China Lake demo which would minimize training costs.

Response: Training materials and content cannot be finalized until the STRL is approved but the suggestion to draw upon other materials and lessons learned is a good one and will continue to be a practice as the STRL and the associated training requirements are finalized.

The process for determining suitability is nuanced and not amenable to standardized testing. Assessments to determine ability must be developed and validated through a rigorous process. Currently Office of Personnel Management in conjunction with other Executive Agencies is pursuing the viability of such assessment instruments. Pending the outcome of their efforts the STRL's may adapt the recommended instruments. As noted above implementation and sustainment training are still being designed and cannot be finalized until the STRL itself is approved but the availability of training post conversion to refresh and enhance the necessary skills for

employees and supervisors is part of that design process.

Cost of training, both in terms of the dollars spent and the impact on the productivity of the workforce is clearly an important consideration. These factors are being taken into consideration in the training design but delivery of the knowledge and skills needed are also a critical factor. The STRL Demonstration Project training will build upon the training that NAVAIR has already completed. Many of the skills needed are applicable under any of the demonstration projects (including NSPS) and provide a good foundation to build upon and will not need to be re-taught.

L. Automation Support

Comments: One comment was received on this topic. Concern is expressed about the nature and features of the information technology (IT) tool that will be used to support the STRL performance system and that it might be as resource intensive and as rigid, restrictive, and difficult to use as the Performance Appraisal Application (PAA) was under NSPS. The comment notes that no information was provided in the September FRN on this subject.

Response: The IT tool that will support the NAWC STRL performance system will be specific to NAWC requirements and hosted within NAVAIR. Ease of use and flexibility have been identified as two of the key performance requirements. Specific information about the tool was not provided in the FRN because that level of detail is not appropriate for this document. Preliminary requirements identification has been initiated and does incorporate input provided by NAWCAD and NAWCWD employee and supervisor focus group meetings as well as input from a variety of leadership briefings.

M. Evaluation Plan

Comments: One comment was received on this topic. It stated that the STRL Demonstration Project should include provisions for metrics regarding comparison of health and stress between STRL situations and the former demo project situations (which focused upon retention and rewarding of employees based upon engineering, scientific, technical, and similar abilities and capabilities).

Response: The STRL provisions for evaluation of the demonstration projects were provided by DoD. This evaluation plan was developed by a joint OPM/DoD Evaluation Committee and approved by the Office of Defense Research & Engineering. This evaluation plan has been applied at the existing STRLs and will be applied to the new ones that are currently being established.

3. Access to Flexibilities of Other STRLs

Flexibilities published in this **Federal Register** shall be available for use by the STRLs previously enumerated in section 9902(c)(2) of title 5, United States Code, which are now designated in section 1105 of the NDAA for FY 2010, Public Law 111–84, 123 Stat. 2486, October 28, 2009, if they wish to adopt them in accordance with DoD Instruction 1400.37; pages 73248 to 73252 of volume 73, **Federal Register**; and the fulfilling of any collective bargaining obligations.

Dated: February 8, 2011.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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I. Executive Summary

NAWCAD is an organization within NAVAIR dedicated to maintaining a center of excellence for fixed- and rotary-wing aircraft and their propulsion systems, avionics systems, training systems, take-off and landing systems, and associated support and equipment including air traffic control and communications and ship/shore/air operations. NAWCAD has three primary locations: Patuxent River, MD; Lakehurst, NJ; and Orlando, FL. These facilities support research, development, test, evaluation, engineering, and fleet support of Navy and Marine Corps air vehicle systems and trainers. NAWCAD is a world leader in Naval aviation whose products and services include: aircraft, avionics, air-launched weapons, electronic warfare systems, cruise missiles, unmanned aerial vehicles, launch and arresting gear, training equipment and facilities, and all other equipment related to Navy and Marine Corps air power. The mission of the NAWCAD is to be the Navy's principal research, development/test, evaluation, engineering, and fleet support activity for naval aircraft, engines, avionics, aircraft support systems, and ship/shore/air operations. NAWCAD is the steward of the ranges, test facilities, laboratories, and aircraft necessary to support the Fleet's acquisition requirements.

NAWCWD is an organization within NAVAIR dedicated to maintaining a center of excellence in weapons development for the DON. NAWCWD has two locations: China Lake, CA hosting the land test range and Point Mugu, CA hosting the sea test range. NAWCWD is a world leader in Research, Development, Acquisition, Test, and Evaluation (RDA, T&E) of guided missiles, advanced weapons and systems, complex software integration on tactical aircraft, energetic materials, and subsystems. It is also a Center of Excellence for weapons and armaments and live-fire survivability testing. The mission of the NAWCWD is to provide Navy and Marine Corps warriors with effective, affordable, integrated warfare systems, and lifecycle support to ensure battlespace dominance. The NAWCWD is the steward of the ranges, test facilities, and laboratories necessary to support the Fleet's acquisition requirements.

The goal of this demonstration project is to enhance and sustain the quality and professionalism of the covered organizations' workforces through improvements in the efficiency and effectiveness of the human resource system. The project interventions will strive to achieve the best workforce for the mission, adjust the workforce for change, and improve workforce satisfaction. This demonstration project is built on the concepts, and uses much of the same language, as the other STRL demonstration projects already in place in DoD and is guided by 25 years of experience in operating the Navy's "China Lake" demonstration project. The results of the project will be evaluated within five years of implementation.

II. Introduction

A. Purpose

The purpose of the project is to demonstrate that the effectiveness of DoD STRLs can be enhanced by expanding opportunities available to employees and by allowing greater managerial control over personnel functions through a more responsive and flexible personnel system. Federal laboratories need more efficient, cost effective, and timely processes and methods to acquire and retain a highly creative, productive, educated, and trained workforce. This project, in its entirety, attempts to improve employees' opportunities and provide managers, at the lowest practical level, the authority, control, and flexibility needed to achieve the highest quality organization and hold them accountable for the proper exercise of this authority within the framework of an improved personnel management system.

Many aspects of a demonstration project are experimental. Modifications may be made from time to time as experience is gained, results are analyzed, and conclusions are reached on how the system is working. The provisions of this project plan will not be modified, or extended to individuals or groups of employees not included in the project plan without the approval of the ODUSD(CPP). The provisions of DoDI 1400.37 are to be followed for any modifications, adoptions, or changes to this demonstration project plan.

B. Problems With the Present System

The current Civil Service General Schedule (GS) system has existed in essentially the same form since 1949. Work is classified into one of fifteen overlapping pay ranges that correspond with the fifteen grades. Base pay is set at one of those fifteen grades and the ten interim steps within each grade. The Classification Act of 1949 rigidly defines types of work by occupational series and grade, with very precise qualifications for each job. This system does not quickly or easily respond to new ways of designing work and changes in the work itself.

The performance management model that has existed since the passage of the Civil Service Reform Act in 1980 has come under extreme criticism. Employees frequently report there is inadequate communication of performance expectations and feedback on performance. There are perceived inaccuracies in performance ratings with general agreement that the ratings are inflated and often unevenly distributed by grade, occupation, and geographic location.

The present reduction-in-force (RIF) process is unresponsive to requirements for work force restructuring and requires enhancement to provide better retention of the highest performing employees with mission appropriate skills.

The need to change the current hiring system is essential as the covered organizations must be able to recruit and retain scientific, engineering, acquisition, skilled technical, and other professional, administrative, and support employees. The covered organizations must be able to compete with the private sector for the best talent and be able to make job offers in a timely manner with the attendant bonuses and incentives to attract high quality employees.

Current limitations on training, retraining, and otherwise developing employees make it difficult to correct skill imbalances and to prepare current employees for new lines of work to meet changing missions and emerging technologies.

C. Changes Required/Expected Benefits

1. The primary benefit expected from this demonstration project is greater organizational effectiveness through increased employee satisfaction. The Department of the Navy "China Lake" and NIST demonstration projects produced impressive statistics on increased job satisfaction and quality of

employees versus that for the Federal workforce in general. This project will demonstrate that a human resource system tailored to the mission and needs of the covered organizations' workforce will facilitate increased:

a. Quality in the workforce and resultant products,

b. Timeliness of key personnel processes,

c. Retention of "excellent performers,"

d. Success in recruitment of personnel with critical skills,

e. Management authority and accountability,

f. Satisfaction of customers, and

g. Workforce satisfaction with the personnel management system.

2. An evaluation model was developed for the Director of Defense, Research and Engineering (DDR&E) in conjunction with STRLs, service representatives, and the Office of Personnel Management (OPM). The model, as modified in this plan, will measure the effectiveness of this demonstration project and will be used to measure the results of specific personnel system changes.

D. Participating Organizations

NAWCAD and NAWCWD are Warfare Centers within the Naval Air Systems Command and are composed of five diverse major geographic locations. The locations are: Lakehurst, NJ, Patuxent River, MD; Orlando, FL; China Lake, CA; and Pt. Mugu, CA. Additionally, there are employees in a variety of other geographic locations shown in Appendix A. It should be noted that sites with fewer than 10 people may change. Successor organizations will continue coverage in the demonstration project.

E. Participating Employees and Union Representation

This demonstration project will cover approximately 8,400 NAWCAD and NAWCWD civilian employees under title 5 U.S.C. in the occupations listed in Appendix B. The project plan does not cover members of the Senior Executive Service (SES), Scientific and Professional (ST) employees, Federal Wage System (FWS) employees, employees presently covered by the Defense Civilian Intelligence Personnel System (DCIPS), or DON centrally funded interns.

The details and provisions covered under this Personnel Management Demonstration Project do not apply to any bargaining unit within NAWCAD or NAWCWD until a mutual agreement is reached between the STRL organization and the applicable exclusive representative. This demonstration project will not cover any bargaining unit members at implementation. If there is interest on the part of any of NAWCAD's or NAWCWD's bargaining units at any of their sites in participating in the NAWCAD or NAWCWD STRL demonstration project, negotiations would begin after publication of this **Federal Register** notice. The covered STRL organizations will fulfill their obligation to consult and/or negotiate with all labor organizations in accordance with 5 U.S.C. 4703(f) and 7117, as applicable.

F. Project Design

An overarching objective in the project design has been the development of a personnel system that provides a maximum opportunity for adaptability to meet the variety of requirements of organizations engaged in missions ranging from RDA, T&E of guided missiles, advanced weapons and systems, complex software integration on tactical aircraft, energetic materials and subsystems to fixed- and rotary-wing aircraft and their propulsion systems, avionics systems, training systems, take-off and landing systems, associated support and equipment including air traffic control and communications, and ship/shore/air operations. This demonstration project is built upon the successes of the many demonstration projects that have preceded it and adapts many of the provisions and features that have been shown to be successful in these other STRL demonstration projects to the NAWCAD and NAWCWD organizations.

G. Personnel Management Board

1. The covered organizations will create a Personnel Management Board to oversee and monitor the fair, equitable, and consistent implementation of the provisions of the demonstration project to include establishment of internal controls and accountability. Members of the board are senior leaders appointed by the Executive Directors of the covered organizations. As needed, ad hoc members will serve in an advisory capacity to the Board.

2. The board will execute the following:

a. Establish policies and issue guidance on the composition of pay pools in accordance with the guidelines of this proposal and internal procedures;

b. Review operation of pay pools and provide guidance to Pay Pool Managers;

c. Oversee disputes in pay pool issues;

d. Establish policies and issue guidance on the formulation and execution of the civilian pay budget;

e. Establish policies and issue guidance on the awards pools;

f. Establish policies and issue guidance on hiring and promotion base pay as well as exceptions to pay-for-performance base pay increases;

g. Establish policies and issue guidance on classification review and oversight, monitoring and adjusting classification practices and deciding board classification issues;

h. Approve major changes in position structure;

i. Address issues associated with multiple pay systems during the demonstration project;

j. Establish policies and issue guidance on and approve Standard Performance Elements and Benchmarks;

k. Assess the need for changes to demonstration project procedures and policies;

l. Ensure in-house budget discipline;

m. Establish policies and issue guidance for workforce staffing and budget plans;

n. Develop policies and procedures for administering Developmental Opportunity Programs;

o. Ensure that all employees are treated in a fair and equitable manner in accordance with the policies, regulations and guidelines covering this demonstration project; and,

p. Monitor the evaluation of the project.

III. Personnel System Changes

A. Pay Banding

The design of the pay banding system has the benefit of being preceded by exhaustive studies of pay banding systems currently practiced in the Federal sector. The pay banding system will replace both the current NSPS and GS structure. The flexibilities in this pay banding section are similar in nature to the authority granted to: The Naval Ocean Systems Center, San Diego, California 92152 and the Naval Weapons Center, China Lake, California 93555, 45 FR 26504, April 18, 1980.

1. Occupational Families

Occupations with similar characteristics will be grouped together into one of five occupational families with pay band levels designed to facilitate pay progression. Progression through the band depends on individual achievement, contribution to the mission goals, and accomplishment of higher level, broader scope, more difficult work assignments. Each occupational family will be composed of pay bands corresponding to recognized advancement and career progression expected within the

occupations. These pay bands will replace individual grades and will not be the same for each occupational family. Each occupational family will be divided into three to six pay bands with each pay band covering the same base pay range that would be covered by one or more GS grades. Employees track into an occupational family based on their current series as provided in Appendix B. Note that where the current series does not exist outside of NSPS the employee will be placed in the appropriate OPM series before being placed into an STRL occupational family. Upon conversion into the demonstration project each employee is assured an initial placement in the STRL demonstration project without a loss in pay. The upper and lower pay rate for base pay of each band is defined by the GS rate for the grade and step as indicated in Figure 1 except for Pay Band VI of the Supervision and Management pay schedule. Comparison to the GS grades and NSPS pay bands was used in setting the upper and lower base pay dollar limits of the pay band levels. However, once employees are moved into the demonstration project, GS grades and NSPS pay bands will no longer apply. The current occupations have been examined, and their characteristics and distribution have served as guidelines in the development of the following five occupational families:

a. Scientific and Engineering (S&E) (Pay Plan DP): This occupational family includes technical professional positions, such as engineers, physicists, chemists, mathematicians, operations research analysts, and computer scientists. Specific course work or educational degrees are required for these occupations. Five bands have been established for the S&E occupational family:

(1) Band I is a student trainee developmental track covering GS–1, step 1, through GS–4, step 10.

(2) Band II is a developmental track covering GS–5, step 1, through GS–9, step 10.

(3) Band III is an intermediate developmental track covering GS–9, step 1, through GS–11, step 10.

(4) Band IV is a full-performance technical track covering GS–12, step 1, through GS–13, step 10.

(5) Band V includes senior technical positions covering GS–14, step 1, through GS–15, step 10.

b. S&E Technician (Pay Plan DT): This occupational family includes technician positions, such as engineering technicians, electronics technicians, physical science technicians, mathematic technicians, and geodetic technicians. These occupations require practical technical expertise in scientific or engineering support but specific course work or educational degrees are not required for these occupations. Five bands have been established for the S&E Technician occupational family:

(1) Band I is an entry level trainee developmental track covering GS–1, step 1, through GS–4, step 10.

(2) Band II is a developmental/full performance track covering GS–5, step 1, through GS–8, step 10.

(3) Band III is a full-performance technical track covering GS–9, step 1 through GS–10, step 10.

(4) Band IV is a senior technical track covering GS–11, step 1 through GS–12, step 10.

(5) Band V is an expert technical track covering GS–12, step 1, through GS–13, step 10.

c. Technical Specialist (Pay Plan DS): This occupational family includes such positions as logistics management specialists, equipment specialists, computer specialists, and telecommunications specialists. Employees in these positions may or may not require specific course work or educational degrees. Six bands have been established for this occupational family:

(1) Band I is a student trainee developmental track covering GS–1, step 1, through GS–4, step 10.

(2) Band II is a developmental/full performance track covering GS–5, step 1, through GS–8, step 10.

(3) Band III is a developmental/full performance track covering GS–9, step 1, through GS–10, step 10.

(4) Band IV is a full performance track covering GS–11, step 1, through GS–12, step 10.

(5) Band V is a senior specialist track covering GS–12, step 1, through GS–13, step 10.

(6) Band VI is an expert specialist track covering GS–14, step 1, through GS–15, step 10.

d. Business Professional and Program Management (Pay Plan DA): This occupational family includes such positions as program managers, program acquisition specialists, budget officers, financial managers, accountants, administrative officers, human resources specialists, and management analysts. Employees in these positions may or may not require specific course work or educational degrees. Six bands have been established for this occupational family:

(1) Band I is a student trainee developmental track covering GS–1, step 1, through GS–4, step 10.

(2) Band II is a developmental/full performance track covering GS–5, step 1, through GS–8, step 10.

(3) Band III is a developmental/full performance track covering GS–9, step 1, through GS–10, step 10.

(4) Band IV is a full performance track covering GS–11, step 1, through GS–12, step 10.

(5) Band V is a senior specialist track covering GS–12, step 1, through GS–13, step 10.

(6) Band VI is an expert specialist track covering GS–14, step 1, through GS–15, step 10.

e. Administrative Support (Pay Plan DG): This occupational family is composed of positions for which specific course work or an educational degree is not required. Clerical work usually involves the processing and maintenance of records. Assistant work requires knowledge of methods and procedures within a specific administrative area. This family includes such positions as secretaries, office managers, office automation clerks, security technician, safety technician, library technician and budget/program/computer assistants. Six bands have been established for this occupational family:

(1) Band I includes entry-level/developmental positions covering GS–1, step 1, through GS–3, step 10.

(2) Band II * includes developmental and low-range full-performance positions covering GS–4, step 1, through GS–5, step 10.

(3) Band III * includes mid-range full-performance technicians/assistants/secretaries covering GS–5, step 1, through GS–6, step 10.

(4) Band IV * includes high-range full-performance technicians/assistants/secretaries covering GS–6, step 1, through GS–7, step 10.

(5) Band V includes senior technicians/assistants/secretaries covering GS–8, step 1, through GS–9, step 10.

(6) Band VI includes expert technicians/assistants/secretaries covering GS–10, step 1, through GS–11, step 10.

* Band III overlaps with band II and IV. These bands replicate a feature used by the Navy's "China Lake" project.

f. The Supervision and Management pay band includes all employees performing supervisory functions. This pay band is not applicable to team leaders. To be classified to these pay bands the supervisor must perform the full range of supervisory duties. To meet the full range of supervisory duties the supervisor must perform 3 of the first 4, and a total of 6 or more of the following:

(1) Plan work and prepare performance plans covering work to be accomplished by subordinates, set and adjust short-term priorities, and prepare schedules for completion of work;

(2) Assign work to subordinates based on priorities, selective consideration of the difficulty and requirements of assignments, and the capabilities of employees;

(3) Evaluate work performance of subordinates and recommend official performance ratings;

(4) Give advice, counsel, or instruction to employees on both work and administrative matters;

(5) Interview candidates for positions in the unit; recommend appointment, promotion, or reassignment to such positions;

(6) Hear and resolve complaints from employees, referring group grievances and more serious unresolved complaints to a higher level supervisor or manager;

(7) Effect minor disciplinary measures, such as warnings and reprimands, recommending other action in more serious cases;

(8) Identify developmental and training needs of employees, providing or arranging for needed development and training;

(9) Find ways to improve production or increase the quality of the work directed; and

(10) Make appropriate distinctions in levels of performance while equitably applying performance standards.

A supervisory position cannot be established on the basis of only one subordinate position. These pay bands can include any series.

(1) Band II is a supervision and management track covering GS–6, step 1, through GS–8, step 10.

(2) Band III is a supervision and management track covering GS–9, step 1, through GS–12, step 10.

(3) Band IV is a supervision and management track covering GS–13, step 1, through GS–14, step 10.

(4) Band V is a supervision and management track covering GS–14, step 1, through GS–15, step 10.

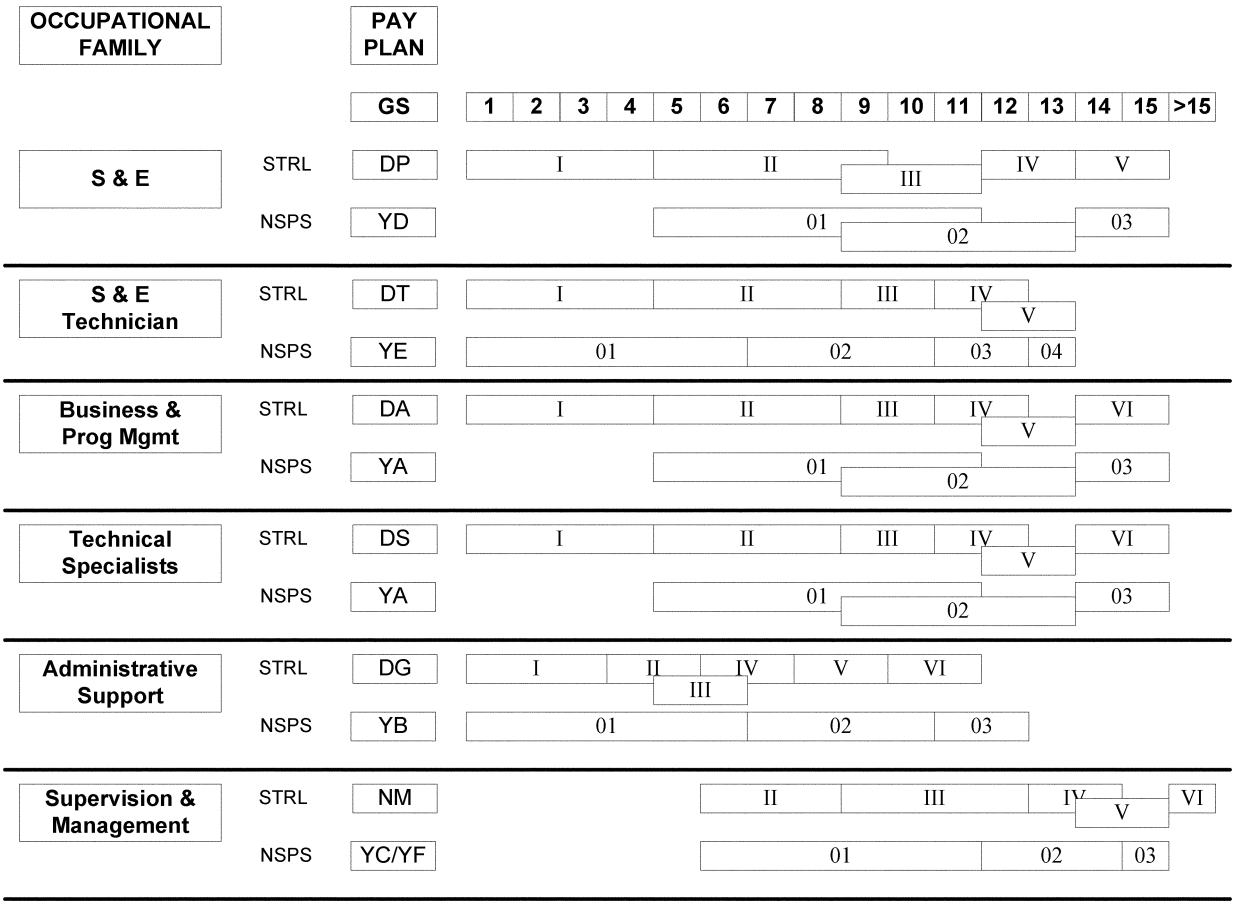
(5) Band VI is reserved for those S&E professional positions classified above GS–15.

* Band IV overlaps with band V. These bands replicate a feature used by the NAVSEA Warfare Centers' STRL demonstration project.

2. Pay Band Design

The demonstration project pay bands for the occupational families and how they relate to the current GS and NSPS framework are shown in Figure 1.

Figure 1. STRL Pay Bands Compared to NSPS and GS



3. Above GS–15 Positions

The pay banding plan for the Supervision and Management pay schedule includes a pay band VI to provide the ability to accommodate positions having duties and responsibilities that exceed the GS–15 classification criteria. This pay band is based on the Above GS–15 Position concept found in other STRL personnel management demonstration projects that was created to solve a critical classification problem. The STRLs have positions warranting classification above GS–15 because of their technical expertise requirements including inherent supervisory and managerial responsibilities. However, these positions are not considered to be appropriately classified as Scientific and Professional Positions (STs) because of the degree of supervision and level of managerial responsibilities. Neither are these positions appropriately classified as Senior Executive Service (SES) positions because of their requirement for advanced specialized scientific or engineering expertise and because the positions are not at the level of general managerial authority and impact required for an SES position.

The original Above GS–15 Position concept was to be tested for a five-year period. The number of trial positions was set at 40 with periodic reviews to determine appropriate position requirements. The Above GS–15 Position concept is currently being evaluated by DoD management for its effectiveness; continued applicability to the current STRL scientific, engineering, and technology workforce needs; and appropriate allocation of billets based on mission requirements. The degree to which the laboratory plans to participate in this concept and develop classification, compensation and performance management policy, guidance, and implementation processes will be based on the final outcome of the DoD evaluation. Additional guidance will be included in NAWCAD/NAWCWD internal issuances.

B. Classification

The flexibilities in this Classification section are similar in nature to the authority granted to the Naval Ocean Systems Center, San Diego, California 92152 and the Naval Weapons Center, China Lake, California 93555, 45 FR 26504, April 18, 1980.

1. Occupational Series

The present GS classification system has over 400 occupational series, which are divided into 23 occupational groupings. The covered organizations currently have positions in approximately 132 occupational series that fall into 21 occupational groupings. All positions listed in Appendix B will be in the classification structure. Provisions will be made for including other occupations in response to changing missions.

2. Classification Standards and Position Descriptions

The present system of OPM classification standards will be used for the identification of proper series and occupational titles of positions within the demonstration project. Current OPM position classification standards will not be used to grade positions in this project. However, the grading criteria in those standards will be used as a framework to develop new and simplified standards for the purpose of pay band determinations. The objective is to record the essential criteria for each pay band within each occupational family by stating the characteristics of the work, the responsibilities of the position, and the competencies required. New position descriptions will replace the current job descriptions. The classification standard for each pay band will serve as an important component in the new position description, which will also include position-specific information, and provide selective placement factors and other data element information pertinent to the job.

Specialty area codes (SAC) written as narrative descriptions and assigned a specific identification code may be used to further differentiate types of work and the competencies required for particular positions within an occupational family and pay band. Each code represents a specialization or type of work within the occupation.

3. Fair Labor Standards Act

Fair Labor Standards Act (FLSA) exemption and non-exemption determinations will be consistent with criteria found in 5 CFR part 551. All employees are covered by the FLSA unless they meet the criteria for exemption. The duties and responsibilities outlined in the classification standards for each pay band will be compared to the FLSA criteria. As a general rule, the FLSA status can be matched to occupational family and pay band as indicated in Figure 2. For example, positions classified in Pay Band I of the S&E occupational family are typically nonexempt, meaning they are covered by the overtime entitlements prescribed by the FLSA. An exception to this guideline includes supervisors/managers whose primary duty meets the definitions outlined in the OPM GS Supervisory Guide. Therefore, supervisors/managers in any of the pay bands who meet the foregoing criteria are exempt from the FLSA. Supervisors with classification authority will make the determinations on a case-by-case basis by comparing assigned duties and responsibilities to the classification standards for each pay band and the 5 CFR part 551 FLSA criteria. Additionally, the advice and assistance of the servicing Human Resources Office (HRO) and the servicing Human Resources Service Center (HRSC) can be obtained in making determinations. The benchmark position descriptions will not be the sole basis for the determination; the actual duties performed are the controlling criteria. Exemption criteria will be narrowly construed and applied only to those employees who clearly meet the spirit of the exemption.

Figure 2 – Typical FLSA Status

(Pay Bands)

Occupational Family \ Level	I	II	III	IV	V	VI
S&E	N	N/E	N/E	E	E	
S&E Tech	N	N/E	N/E	N/E	E	
Tech Spec	N	N/E	N/E	N/E	E	E
Bus/Prog Mgmt	N	N/E	N/E	N/E	E	E
Admin Sup	N	N	N	N	N/E	N/E
Supv/Mgr		E	E	E	E	E

N—Non-Exempt from FLSA; E—Exempt from FLSA; N/E—Exemption status determined on a case-by-case basis.

Note: Although typical exemption status under the various pay bands is shown in the above table, actual FLSA exemption determinations are made on a case-by-case basis.

4. Classification Authority

The covered organizations' Executive Directors will have delegated classification authority for all pay bands with the exception of Supervision and Management band VI and may, in turn, re-delegate this authority to appropriate levels. Position descriptions will be developed to assist managers in exercising delegated position classification authority. Managers will identify the occupational family, job series, functional code, specialty work code, pay band level, and the appropriate acquisition codes. Human resources specialists will provide ongoing consultation and guidance to managers and supervisors throughout the classification process. These decisions will be documented on the position description.

5. Classification Appeals

Classification appeals under this demonstration project will be processed using the following procedures: An employee may appeal the determination of occupational family, occupational series, position title, and pay band of his/her position at any time. An employee must formally raise the area of concern to supervisors in the immediate chain of command, either verbally or in writing. If the employee is not satisfied with the supervisory response, he/she may then appeal to the Executive Director of his/her organization. If the employee is not satisfied with the Executive Director's response, he/she may then appeal to the DoD appellate level. Appeal decisions rendered by DoD will be final and binding on all administrative, certifying, payroll, disbursing, and accounting officials of the government. Classification appeals are not accepted on positions which exceed the equivalent of a GS–15 level. Additional guidance will be included in the NAWCAD/NAWCWD internal issuances.

An employee may not appeal the accuracy of the position description, the demonstration project classification criteria, or the pay-setting criteria; the assignment of occupational series to the occupational family; the propriety of a pay schedule; or matters covered by an administrative or negotiated grievance procedure; or an alternative dispute resolution procedure.

The evaluations of classification appeals under this demonstration project are based upon the demonstration project classification criteria. Case files will be forwarded for adjudication through the HRO/HRSC providing personnel service and will include copies of appropriate demonstration project criteria.

C. Mission Aligned Objectives and Compensation

1. Overview

The purpose of mission aligned objectives and compensation is to directly link the work of the employee to the mission of the organization and provide a mechanism for recognizing the impact of the employee's accomplishments and contributions to help achieve that mission. It also provides an effective, efficient, and flexible method for assessing, compensating, and managing the covered organization's workforce. It is essential for the development of a highly productive workforce and to provide management at the lowest practical level, the authority, control, and flexibility needed to achieve a quality organization and meet mission requirements. Mission aligned objectives and compensation allows for more employee involvement in the assessment process, strives to increase communication between supervisor and employee, promotes a clear accountability of performance, facilitates employee career progression, and provides an understandable and rational basis for pay changes by linking mission directly to both annual evaluations and compensation outcomes.

The mission aligned objectives and compensation system uses annual payouts that are based on the employee's accomplishments and contributions to mission

accomplishment rather than within-grade increases, quality step increases, promotions from one grade to another where both grades are now in the same pay band (*i.e.,* there are no within-band promotions) and performance awards. In addition to objectives, other factors that can be considered in determining overall payout include organizational performance, team performance, or a combination of individual performance, contribution, and/or compensation. If elements other than the employee's individual accomplishments and contributions against their objectives and their compensation will be taken into consideration this must be a part of the written performance plan. The employee must be advised of the applicability of these factors within the same time requirements as the individual mission objectives. The normal rating period will be one year. Objectives, representing joint efforts of employees and their supervisors, must be in place within 30 days from the beginning of each rating period and the minimum rating period will be 90 days. First-time hires into demonstration project positions must have plans in place within 30 days of the effective date of their entry into the demonstration project and current demonstration project employees who change positions during the performance year should have their plans updated with new objectives no later than 30 days after assignment to the new position. Mission aligned compensation and rewards payouts can be in the form of increases to base pay and/or in the form of bonuses that are not added to base pay but rather are given as a lump sum cash bonus. Other awards such as special acts, time-off awards, etc., will be retained separately from the pay-for-performance payouts.

Employee's who do not meet the 90-day minimum requirement will be ineligible for a normal rating and will be given a presumptive rating. They may receive only the general pay increase and they may also receive title 5 cash awards if appropriate.

The system will have the flexibility to be modified, if necessary, as more experience is gained under the project. The flexibilities in this Mission Aligned Objectives and Compensation section are similar in nature to the authority granted to: (1) The Naval Ocean Systems Center, San Diego, California 92152 and the Naval Weapons Center, China Lake, California 93555, 45 FR 26504, April 18, 1980, and (2) the Army Research Laboratory (ARL), 65 FR 3500, January 21, 2000.

2. Individual Mission Objectives (IMO)

Individual mission objectives will be directly related to achieving the mission of the employee's organization. They define a target level of activity, expressed as a tangible, measurable objective, against which actual achievement can be compared. These objectives will specifically identify what is expected of the employee during the rating period and will typically consist of three to ten results-oriented statements. It is expected that these objectives will also incorporate important behavioral practices such as teamwork and cooperation where they are key to successful accomplishment of the assignment. A Supervision/EEO objective is mandatory for all managers/supervisors. The employee and his/her supervisor will jointly develop the employee's individual mission objectives at the beginning of the rating period. These are to be reflective of the employee's duties/responsibilities, pay band and pay level in the band as well as the mission/organizational goals and priorities. Objectives will be reviewed annually and revised upon changes in pay reflecting increased responsibilities commensurate with pay increases. Use of generic one-size-fits-all objectives will be avoided, as individual mission objectives are to define an individual's specific responsibilities and expected accomplishments for the performance year. In contrast, rating benchmarks as described in the next paragraph will identify characteristics, against which the accomplishment of objectives will be measured. As a part of this demonstration project, training focused on overall organizational objectives and the development of individual mission objectives will be held for both supervisors and employees.

Individual mission objectives may be jointly modified, changed or deleted as appropriate during the rating cycle. As a general rule, objectives should only be changed when circumstances outside the employee's control prevent or hamper the accomplishment of the original objectives. It is also appropriate to change objectives when mission or workload shifts occur.

All objectives are critical. A critical mission objective is defined as an attribute of job performance that is of sufficient importance that achievement below the minimally acceptable level requires remedial action and may be the basis for removing an employee from his/her position. Non-critical objectives will not be used. Each of the objectives may be assigned a weight, which reflects its importance in accomplishing an individual's mission objectives. The minimum weight assigned may not be less than 10%. The sum of the weights for all of the elements must equal 100. At the beginning of the rating period, higher level managers will review the objectives and weights assigned to employees within the pay pool, to verify consistency and appropriateness

3. Rating Benchmarks

Rating benchmarks define characteristics that will be used to evaluate the employee's success in accomplishing his/her individual mission objectives. The use of characteristics for scoring purposes helps to ensure comparable scores are assigned while accommodating diverse individual objectives. A single set of rating benchmarks for each band or rating benchmarks by career stage may be used for evaluating the annual performance of all NAWCAD and NAWCWD personnel covered by this plan. An example of each type of benchmark is shown at Appendices D and E. The set of benchmarks used may evolve over time, based on experience gained during each rating cycle. This evolution is essential to capture the critical characteristics the organization encourages in its workforce toward meeting individual and organizational objectives. This is particularly true in an environment where technology and work processes are changing at an increasingly rapid pace. The Personnel Management Board will annually review the set of benchmarks and set them for the entire organization before the beginning of the rating period.

4. Performance Feedback and Formal Ratings

The most effective means of communication is person-to-person discussion between supervisors and employees of requirements, performance goals, and desired results. Employees and supervisors alike are expected to actively participate in these discussions for optimum clarity regarding expectations and identify potential obstacles to meeting goals. In addition, employees should explain (to the extent possible) what they need from their supervisor to support goal accomplishment. The timing of these discussions will vary based on the nature of work performed, but will occur at least at the mid-point and end of the rating period. The supervisor and employee will discuss job performance and accomplishments in relation to the expectations in the mission aligned objectives. At least one review, normally the mid-point review, will be documented as a formal progress review. More frequent, task specific,

discussions may be appropriate in some organizations. In cases where work is accomplished by a team, team discussions regarding goals and expectations will be appropriate. The employee may provide a statement of his/her accomplishments to the supervisor at both the mid-point and end of the rating period.

At the end of the rating period, following a review of the employee's accomplishments, the supervisor will rate each of the individual mission objectives. Benchmark performance standards will be developed that describe the level of performance associated with a score. Using these benchmarks, the supervisor decides where the achievements and contributions of the employee most closely match the benchmarks and assigns an appropriate score. It should be noted that these scores are not discussed with the employee or considered final until all scores are reconciled and approved by the Pay Pool Manager. The rating scores will then be multiplied by the objective-weighting factor to determine the weighted score expressed to two decimal points. The weighted scores for each objective will then be totaled to determine the employee's overall appraisal score and rounded to a whole number as follows: if the first two digits to the right of the decimal are .51 or higher, it will be rounded to the next higher whole number; if the first two digits to the right of the decimal are .50 or lower, then the decimal value is truncated.

The covered STRL organizations will use a five-level rating methodology with associated payout point ranges in which level five signifies the highest level of performance. The rater will prepare and recommend the rating, number of payout points, and the distribution of the payout between base pay increase and bonus, as applicable, for each employee. These recommendations will then be reviewed by the pay pool panel to ensure equitable rating criteria and methodologies have been applied to all pay pool employees. The final determination of the rating, number of payout points, and payout distribution will be a function of the pay pool panel process and will be approved by the Pay Pool Manager. The criteria used to determine the number and distribution of payout points to assign an employee may include assessment of the employee's contribution towards achieving the mission, the employee's type and level of work, the employee's current compensation and the criticality of their contribution to mission success, consideration of specific achievements, or other job-related significant accomplishments or contributions. The proposed rating and payout point schema is:

Rating	Description	Payout points
5	Exceptional	5, 6
4	Exceeds Mission Expectations.	3, 4
3	Mission Success	0, 1, 2
2	Partial Mission Success.	0
1	Unacceptable	0

Employees with a total score of two or above will receive the equivalent of the authorized GS January general pay increase (GPI). Employees with a score of one will not receive the January GPI. A rating of one or below will result in a rating of Unacceptable, and the employee will not receive the January GPI and will require administrative action to address the performance deficiency. A score of one or below on a single objective will also result in a rating of Unacceptable.

Employees in receipt of a Letter of Warning of Unacceptable Performance at the end of the performance year will have their rating deferred until the end of the improvement period. At the end of the improvement period, the supervisor will assign a final rating and submit it to the pay pool panel for consideration.

5. Pay Pools

Following the initial scoring of each employee by the rater, the rating officials in an organizational unit, along with their next level of supervision, will review and compare recommended ratings to ensure consistency and equity of the ratings. In this step, each employee's individual mission objectives, accomplishments, preliminary scores, and pay are compared. Through discussion and consensus building, consistent and equitable ratings are reached. Managers will not prescribe a distribution of ratings. The Pay Pool Manager will then chair a final review with the rating officials who report directly to him or her to validate these ratings and resolve any scoring issues. If consensus cannot be reached in this process, the Pay Pool Manager makes all final decisions. After this reconciliation process is complete, ratings are finalized. Payouts proceed according to each employee's final rating and payout distribution. Upon approval of this plan, implementing procedures and regulations will provide details on this process to employees and supervisors.

The covered organizations' employees will be placed into pay pools. Neither the Pay Pool Manager, supervisors, or pay pool panel members within a pay pool will in any way recommend or participate in setting their own rating or individual payout except for the normal employee self-assessment process. Pay pools are combinations of organizational units (e.g., level 3 competencies (divisions), level 4 competencies (branches), and level 5 competencies (sections)), functional categories or other groupings of employees that are defined for the purpose of determining payouts under the mission aligned objectives and compensation system. The guidelines in the next paragraph are provided for determining pay pools. These guidelines will normally be followed. However, the Executive Directors of the covered organizations may deviate from the guidelines if there is a compelling need to do so.

The Executive Directors of the covered organizations will establish pay pools. Typically, pay pools will have between 35 and 300 employees. A pay pool should be large enough to encompass a reasonable distribution of ratings but not so large as to compromise rating consistency. Large pay pools may use sub pay pools subordinate to the pay pool due to the size of the pay pool population, the complexity of the mission, or other similar criteria. Pay pool panel members will not serve on pay pools where their own ratings and payouts are determined. Supervisors and non-supervisors may be placed in separate pay pools. Decisions regarding the amount and distribution of the payouts are based on the employee's most recent rating of record for the performance year, the criteria listed in section III.C.4 above, the type and nature of the funding available to the pay pool, and the number of payout points assigned by the pay pool. Additional guidance on pay pool design and composition will be included in NAWCAD/NAWCWD internal issuances.

Funds within a pay pool available for performance payouts are calculated from anticipated pay increases under the existing system and divided into two components, base pay and bonus. The funds within a pay pool used for base pay increases are those that would have been available from within-grade increases, quality step increases and promotions under the GS system (excluding the costs of promotions still provided under the pay banding system). This amount will initially be defined based on historical data and will initially be set at no less than 2.4% of total base pay annually. The funds

available to be used for bonus payouts are funded separately within the constraints of the organization's overall award budget. This amount will initially be defined based on historical data and will initially be set at no less than one percent of total base pay annually. As changes in the demographics of the workforce or other exigencies occur, adjustments may be made to these two factors. The sum of these two factors is referred to as the pay pool percentage factor. The Personnel Management Board will annually review the pay pool funding and recommend adjustments to the Executive Directors to ensure cost discipline over the life of the demonstration project. Cost discipline is assured within each pay pool by limiting the total base pay increase to the funds allocated by the Personnel Management Board.

6. Performance Payout Determination

The payout an employee will receive is based on the total performance rating from the mission aligned objectives and compensation assessment process. An employee will receive a payout as a percentage of base pay. This percentage is based on the number of payout points that equates to their final appraisal score.

The value of a payout point cannot be exactly determined until the rating and reconciliation process is completed and all scores are finalized. The payout point value is expressed as a percentage. The formula that computes the value of each payout point uses base pay rates and is based on:

a. The sum of the base pay of all the employees in the pay pool times the pay pool percentage factor;

b. The employee's base pay;

c. The number of payout points awarded to each employee in the pay pool; and

c. The total number of payout points awarded in the pay pool.

This formula assures that each employee within the pool receives a payout point amount equal to all others in the same pool who are at the same rate of base pay and receiving the same score. The formula is shown in Figure 3.

Figure 3. Formula

$$\text{Payout Point Value} = \frac{\text{(Sum of base pay for employees in pool) * (pay pool percentage factor)}}{\text{Sum of (base pay * payout points earned) for each employee}}$$

An individual payout is calculated by first multiplying the payout points earned by the payout point value and multiplying that product by base pay. An adjustment is then made to account for locality pay or staffing supplement. A Pay Pool Manager is accountable for staying within pay pool limits and final decisions on base pay increases and/or bonuses to individuals based on rater recommendations, the final score, the pay pool funds available, and the employee's base pay.

7. Base Pay Increases and Bonuses

The amount of money available for the performance payouts is divided into two components, base pay increases and bonuses. The base pay and bonus funds are based on the pay pool funding formula established annually. Once the individual performance amounts have been determined, the next step is to determine what portion of each payout will be in the form of a base pay increase as opposed to a bonus payment. The payouts made to employees from the pay pool may be a mix of base pay and bonus, such that all of the allocated funds are disbursed. To continue to provide performance incentives while also ensuring cost discipline, base pay increases may be limited or capped. Certain employees will not be able to receive the projected base pay increase due to base pay caps. Base pay is capped when an employee reaches the maximum rate of base pay in an assigned pay band or when a control point applies (*see* below). Also, for employees receiving retained rates above the applicable pay band maximum, the entire performance payout will be in the form of a bonus payment.

When capped, the total payout an employee receives will be in the form of a bonus versus the combination of base pay and bonus. Bonuses are cash payments and are not part of the base pay for any purpose (*e.g.,* lump sum payments of annual leave on separation, life insurance, and retirement). The maximum base pay rate under this demonstration project will be the unadjusted base pay rate of GS–15, Step 10, except for employees in Pay Band VI of the Supervision and Management pay schedule.

8. Extraordinary Achievement Allowance (EAA)

a. NAWCAD and NAWCWD will employ an Extraordinary Achievement Allowance designed to optimize organizational effectiveness. An EAA is defined as a temporary monetary allowance up to 25 percent of base pay, which, when added to an employee's rate of base pay, may not exceed the rate of basic pay for Executive Level IV. It is paid on either a bi-weekly basis concurrent with normal pay days or as a lump sum following completion of a designated contribution period, or combination of these, at the discretion of the Executive Director/Commanding Officer of the appropriate Naval Air Warfare Center. It is not base pay for any purpose, e.g., retirement, life insurance, severance pay, promotion, or any other payment or benefit calculated as a percentage of base pay. The EAA will be available to certain employees whose present contributions are worthy of a higher career level and whose level of achievement is expected to continue at the higher career level for at least one year.

b. Award of the EAA will generally be appropriate under the following circumstances: (1) Employees have reached the top of their target career levels, (2) when it is not certain that the higher level contributions will continue indefinitely (*e.g.,* a special project expected to be of one to five-year duration), (3) when no further promotion or base pay opportunities are available, or externally imposed limits make changes to higher career levels unavailable, and (4) when the approval time required to effect the action will unreasonably delay appropriate compensation for the employee's achievements but in all situations, when current market conditions compensate similar contributions at a greater rate in private industry and academia than the organization is able to do under normal compensation conditions.

c. To be eligible for EAA, employees must meet the criteria below:

(1) Employees in the S&E, Technical, and Business Professional and Program Management career tracks are eligible for the EAA if their contribution to the

organization is deemed worthy, as determined by the appropriate NAWC Executive Director/Commander.

(2) Employees may receive an EAA for up to five years. The EAA authorization will be reviewed and reauthorized as necessary, but at least annually at the time of the Mission Aligned Objectives and Compensation System appraisal through nomination by the Pay Pool Manager and approval by the appropriate Executive Director/Commander.

(3) Monetary payment may be up to 25 percent of base pay.

(4) Nominees are required to sign a statement indicating they understand that the EAA is a temporary allowance; it is not a part of base pay for any purpose; it is subject to review at any time, but at least on an annual basis, and the reduction or termination of the EAA is neither appealable nor grievable.

All other details regarding nomination, termination, reduction, allocation, and budget determination will be stipulated by internal business rules, policies, or procedures established by the Personnel Management Board.

9. Pay Growth Within a Pay Band

As a compensation management tool the Personnel Management Board may establish pay ranges appropriate for a group or class of positions within a pay band or pay bands. Advancement of pay beyond the assigned pay range will generally require approval above the Pay Pool Manager prior to finalizing the pay pool decisions. The request must demonstrate that the complexity and responsibility of the position have substantially changed and the duties of the position are expected to continue at this level in the future thus warranting assignment of the position to a higher pay range. Control points may apply in every occupational family and pay band. Additional guidance will be included in NAWCAD/NAWCWD internal issuances.

10. Awards

To provide additional flexibility in motivating and rewarding individuals and groups, some portion of the performance award budget will be reserved for special acts and other categories as they occur. Awards may include, but are not limited to, special acts, patents, invention awards, suggestions, on-the-spot, and time-off. The funds available to be used for traditional title 5 U.S.C. awards are separately funded within the constraints of the organization's budget.

While not directly linked to the Mission Aligned Objectives and Compensation system, this additional flexibility is important to encourage outstanding accomplishments and innovation in achieving the diverse mission of the covered organizations. Additionally, to foster and encourage teamwork among its employees, organizations may give group awards. Thus, a team leader may recommend and a supervisor may allocate a sum of money to a team for outstanding performance.

The NAWCAD and NAWCWD Commanders will have the authority to grant special act awards to covered employees of up to $25,000 IAW the criteria of SECNAVINST 12451.3. This authority may be delegated to the Executive Directors of the covered organizations.

11. General Pay Increase

Employees who receive an unacceptable rating of record will not receive performance payouts or any portion of the general pay increase and as a result will "migrate" downward in the pay band. This occurs because the rate of base pay in a pay band increases as the result of the general pay increase (5 U.S.C. 5303). If their performance rating continues as Unacceptable, employees who reach the bottom of the overlapping pay scales (they remain identified in the higher classification level as long they are covered in that range) will cross the line into the next lower classification level without specific adverse or performance based action. This migration is necessary for an employee whose performance over a period of time has been deficient enough to merit the employee's placement in lower level duties/responsibilities where new opportunities for acceptable performance exist, Clearly the employee who has experienced several performance evaluations and who, in each case, has been given a year to demonstrate improvement has been provided equal or better "due process" than the obviously unsatisfactory employee who is accorded immediate adverse or performance-based action procedures and downgraded or removed after the required 30-day notice period. Further, it should be noted that in these instances the employee's pay will remain constant, the downward migration results from the need to comply with statutory pay levels. Adverse or performance-based action procedures will cover demotion between levels or removal where performance is clearly so unsatisfactory as to preclude retention in the current pay band or as an employee.

12. Requests for Reconsideration

An employee may request reconsideration of the rating-of-record received under the mission aligned objectives and compensation system. A rating of record or job objective rating may be reconsidered by request of an employee only through the process specified in this subpart and implementing issuances. This process will be the sole and exclusive agency administrative process for employees to request reconsideration of a rating of record. Consistent with this part, Pay Pool Managers will make the decision on reconsiderations of rating of record. In cases where the Pay Pool Manager is also the first line supervisor or rating official, the request for reconsideration will be referred to a different Pay Pool Manager or higher level supervisor above the Pay Pool Manager. Pay Pool Managers' decisions are final. A payout point assignment determination, payout distribution determination, or any other payout matter will not be subject to the reconsideration process or any other agency administrative grievance system.

In the event a reconsideration or negotiated grievance decision results in an adjusted rating of record the revised rating will be referred to the Pay Pool Manager for recalculation of the employee's performance payout amount and distribution. Any adjustment to base pay will be retroactive to the effective date of the performance payout. Base pay adjustments will be based on the payout point range appropriate for the adjusted rating of record. Payout point values for the adjusted rating of record will reflect the payout point value paid to other members across the pay pool for that rating cycle. Decisions made through the reconsideration process or a negotiated grievance procedure will not result in recalculation of the payout made to other employees in the pay pool.

13. Adverse Actions

Except where specifically waived or modified in this plan, adverse action procedures under 5 CFR part 752 remain unchanged.

D. Hiring Authority

Competitive service positions will be filled through Merit Staffing, direct-hire authority, or Delegated Examining.

1. Qualifications

The qualifications required for placement into a position in a pay band within an occupational family will be determined using the OPM "Operating Manual: Qualifications Standards for General Schedule Positions." Since the

pay bands are anchored to the GS grade levels, the minimum qualification requirements for a position will be the requirements corresponding to the lowest GS grade incorporated into that pay band. For example, for a position in the S&E occupational family Pay Band II, individuals must meet the basic requirements for a GS–5 as specified in the OPM "Qualification Standard for Professional and Scientific Positions."

Selective factors may be established for a position in accordance with the OPM's "Operating Manual: Qualifications Standards for General Schedule Positions," when determined to be critical to successful job performance. These factors will become part of the minimum requirements for the position, and applicants must meet them in order to be eligible. If used, selective factors will be stated as part of the qualification requirements in vacancy announcements and recruiting bulletins.

2. Delegated Examining

NAWCAD and NAWCWD propose to demonstrate a streamlined examining process for both permanent and non-permanent positions. This authority will be supported by the applicable servicing Human Resource Offices and Human Resources Service Centers in accordance with the Department of Navy's common business processes, systems, and tools. The "Rule of Three" will be eliminated. When there are no more than 15 qualified applicants and no preference eligibles, all eligible applicants are immediately referred to the selecting official without rating and ranking. Rating and ranking will be required only when the number of qualified candidates exceeds 15 or there is a mix of preference and non-preference applicants. Statutes and regulations covering veterans' preference will be observed in the selection process and when rating and ranking are required. If the candidates are rated and ranked, a random number selection method will be used to determine which applicants will be referred when scores are tied after the rating process. Veterans will be referred ahead of non-veterans with the same score. Additional guidance on operating processes will be included in NAWCAD/NAWCWD internal issuances.

3. Distinguished Scholastic Achievement Appointment Authority (DSAA) for Scientific and Engineering Positions

The covered organizations will use the Distinguished Scholastic Achievement Appointment Authority. The DSAA uses an alternative examining process, which provides the authority to appoint individuals with undergraduate or graduate degrees through the doctoral level to professional positions up to the equivalent of GS–12 (DP–04 or DS–04/05). This enables the covered organizations to respond quickly to hiring needs for eminently qualified candidates possessing distinguished scholastic achievements. Candidates may be appointed provided they meet the minimum standards for the position as published in OPM's "Operating Manual: Qualifications Standards for General Schedule Positions" and the candidate has a cumulative grade point average of 3.5 (on a 4.0 scale) or better in their field of study (or other equivalent score) or are within the top 10 percent of a university's major school of graduate studies for professional occupations, etc.

4. Legal Authority

For actions taken under the auspices of the demonstration project, the legal authority, Public Law 103–337, as amended, will be used. For all other actions, the nature of action codes and legal authority codes prescribed by OPM, DoD, or DON will continue to be used.

5. Expanded Term Appointments

NAWCAD and NAWCWD conduct a variety of projects that range from three to six years. The current four-year limitation on term appointments, as described in 5 CFR part 316, often forces the termination of term employees prior to completion of projects they were hired to support. This disrupts the research and development process and affects the organization's ability to accomplish the mission and serve its customers. Under the demonstration project, the covered organizations will have authority to hire individuals under a modified term appointment for a period of more than one year but not more than five years when the need for an employee's services is not permanent. These appointments may be extended one additional year, for a total of 6 years. The Executive Directors are authorized to extend term appointments. Employees hired under the modified term appointment authority are in a non-permanent status, but may be eligible for conversion to career-conditional or career appointments in the competitive service. To be converted, the employee must have (1) been selected for the term position under competitive procedures, with the announcement specifically stating that the individual(s) selected for the term position may be eligible for conversion to a career-conditional or career appointment at a later date; (2) served a minimum of two years of continuous service in the term position; and (3) be performing at the acceptable level of performance with a current rating of record of Mission Success or higher.

6. Extended Probationary Period

The purpose of extending the probationary period and trial period is to allow supervisors an adequate period of time to fully evaluate an employee's ability to complete a cycle of work and to fully assess an employee's contribution and conduct.

a. Competitive Service

NAWCAD and NAWCWD will implement an extended initial probationary period for competitive service employees. The one-year probationary period will be extended to three years for newly appointed career-conditional, career employees and the one-year trial period will be extended to three years for newly appointed term employees to positions classified to series in the Science and Engineering, Business and Program Management, and Technical Specialist occupational families. For employees in positions classified to series in the S&E Technician and Administrative Support occupational families the one-year probationary period will be extended to two years for newly appointed career-conditional, career employees and the one-year trial period will be extended to two years for newly appointed term employees. The term newly appointed includes conversion to new appointments, including conversions from term appointments and the excepted service, for this purpose.

Employees who have completed an initial probationary or trial period prior to their conversion into the NAWC STRL will not be required to serve a new or extended initial probationary or trial period. Employees who are serving an initial probationary or trial period upon conversion into the NAWC's STRL will serve the time remaining on their initial probationary period or trial and may have their initial probationary or trial period extended in accordance with the demonstration project regulation and implementing issuances.

If a probationary or trial employee's performance is determined to be Mission Success or higher and the supervisor expects that the Mission Success or higher performance will continue into the future, the supervisor has the option of ending the probationary or trial period at an earlier date, but not before the employee has

completed one year of continuous service. If the probationary or trial period is terminated before the end of the two- or three-year period, the immediate supervisor will provide written reasons for his/her decision to the next level of supervision for concurrence prior to implementing the action.

Aside from extending the time period for all newly appointed career-conditional, career and term employees all other features of the initial probationary period as defined in 5 CFR part 315 and trial period as described in 5 CFR part 316 are retained including the potential to remove an employee without providing the full substantive and procedural rights afforded a non-probationary employee.

b. Excepted Service

NAWCAD and NAWCWD will implement an extended initial trial period for excepted service employees who are appointed on a permanent or conditional basis or who are given a time-limited appointment lasting three or more years. The trial period will be three years for newly appointed excepted service employees to positions classified to series in the Science and Engineering, Business and Program Management, and Technical Specialist occupational families. For employees in positions classified to series in the S&E Technician and Administrative Support occupational families the trial period will be extended to two years for newly appointed excepted service employees. The term newly appointed includes conversion to new appointments for this purpose.

Employees who have completed an initial trial period prior to their conversion into the NAWC STRL will not be required to serve a new or extended initial trial period. Employees who are serving an initial trial period upon conversion into the NAWC's STRL will serve the time remaining on their initial trial period and may have their initial trial period extended in accordance with the demonstration project regulation and implementing issuances.

If a trial employee's performance is determined to be Mission Success or higher and the supervisor expects that the Mission Success or higher performance will continue into the future, prior to the end of the two- or three-year trial period, a supervisor has the option of ending the trial period at an earlier date, but not before the employee has completed one year of continuous service. If the trial period is terminated before the end of the two- or three-year period, the immediate supervisor will provide written reasons for his/her decision to the next level of supervision for concurrence prior to implementing the action.

7. Termination of Probationary Employees

Probationary employees may be terminated when they fail to demonstrate proper conduct, technical competency, and/or acceptable performance for continued employment, and for conditions arising before employment. When a supervisor decides to terminate an employee during the probationary period because his/her work performance or conduct is unacceptable, the supervisor shall terminate the employee's services by written notification stating the reasons for termination and the effective date of the action. The information in the notice shall, at a minimum, consist of the supervisor's conclusions as to the inadequacies of the employee's performance or conduct, or those conditions arising before employment that support the termination.

8. Supervisory Probationary Periods

NAWCAD and NAWCWD will implement an extended supervisory probationary period. The probationary period for new supervisors will be two years. Except for the increased length, supervisory probationary periods will be made consistent with 5 CFR part 315. Employees who have successfully completed an initial probationary period for supervisory positions will not be required to complete an additional two-year probationary period for initial appointment to a supervisory position. Employees who are serving an initial supervisory probationary period upon conversion into the NAWC's STRL will serve the time remaining on their initial supervisory probationary period and may have their supervisory probationary period extended in accordance with the demonstration project regulation and implementing issuances. If, during this probationary period, the decision is made to return the employee to a non-supervisory position for reasons related to supervisory performance and/or conduct, the employee will be returned to a comparable position of no lower base pay than the position from which promoted or reassigned immediately prior to the supervisory assignment.

9. Volunteer Emeritus Corps

a. NAWCAD and NAWCWD will implement a Voluntary Emeritus Corps. Under the demonstration project, the Executive Directors of the covered organizations will have the authority to offer retired or separated employees voluntary positions. This authority may be delegated only to members of the Senior Executive Service (SES). Voluntary Emeritus Corps assignments are not considered employment by the Federal government except for purposes of injury compensation. Thus, such assignments do not affect an employee's entitlement to buyouts or severance payments based on an earlier separation from Federal service. To be accepted into the Volunteer Emeritus Corps, a volunteer must be recommended by a NAWCAD or NAWCWD manager to the NAWCAD or NAWCWD Executive Director or an SES member to whom this authority has been delegated. Not everyone who applies is entitled to an emeritus position. The responsible official will document acceptance or rejection of the applicant. For acceptance, documentation must be retained throughout the assignment. For rejection, documentation will be maintained for two years.

b. To ensure success and encourage participation, the volunteer's Federal retirement pay (whether military or civilian) will not be affected while serving in a voluntary capacity. Retired or separated Federal employees may accept an emeritus position without a break or mandatory waiting period. Voluntary Emeritus Corps volunteers will not be permitted to monitor contracts on behalf of the Government or to participate on any contracts or solicitations where a conflict of interest exists. The volunteers may be required to submit a financial disclosure form annually. The same rules that currently apply to source selection members will apply to volunteers. An agreement will be established among the volunteer, the responsible official, and the servicing HRO. The agreement must be finalized before the assumption of duties and shall include:

(1) A statement that the voluntary assignment does not constitute an appointment in the Civil Service is without compensation, and the volunteer waives any claims against the Government based on the voluntary assignment;

(2) A statement that the volunteer will be considered a Federal employee only for the purpose of injury compensation;

(3) The volunteer's work schedule;

(4) Length of agreement (defined by length of project or time defined by weeks, months, or years);

(5) Support provided by the organization (travel, administrative support, office space, and supplies);

(6) A statement of duties;

(7) A statement providing that no additional time will be added to a volunteer's service credit for such

purposes as retirement, severance pay, and leave as a result of being a volunteer;

(8) A provision allowing either party to void the agreement with two working days written notice;

(9) The level of security access required by the volunteer (any security clearance required by the position will be managed by the employing organization);

(10) A provision that any publication(s) resulting from his/her work will be submitted to the NAWCAD or NAWCWD Executive Director for review and approval;

(11) A statement that he/she accepts accountability for loss or damage to Government property occasioned by his/her negligence or willful action;

(12) A statement that his/her activities on the premises will conform to the regulations and requirements of the organization;

(13) A statement that he/she will not release any sensitive or proprietary information without the written approval of the employing organization and further agrees to execute additional non-disclosure agreements as appropriate, if required, by the nature of the anticipated services; and,

(14) A statement that he/she agrees to disclose any inventions made in the course of work performed at the NAWCAD or NAWCWD. The NAWCAD or NAWCWD Executive Director has the option to obtain title to any such invention on behalf of the U.S. Government. Should the NAWCAD or NAWCWD Executive Director elect not to take title, the NAWCAD or NAWCWD shall, at a minimum, retain a non-exclusive, irrevocable, paid-up, royalty-free license to practice or have practiced the invention worldwide on behalf of the U.S. Government.

Exceptions to the provisions in this procedure may be granted by the NAWCAD or NAWCWD Executive Director on a case-by-case basis.

10. Direct Hire Authority for Scientists and Engineers With Advanced Degrees for Scientific and Engineering Positions

a. Background

The NAWCAD and NAWCWD Laboratories have an urgent need for direct hire authority to appoint qualified candidates possessing an advanced degree to permanent and temporary scientific and engineering positions. The market is extremely competitive with industry and academia for the small supply of highly-qualified and security clearable candidates with a Masters Degree or PhD in science or engineering. There are 35,000 scientists and engineers employed in the DoD laboratories; 27% hold Masters Degrees, while 10% are in possession of a PhD The NAWCAD and NAWCWD Laboratories jointly employ 5974 scientists and engineers; 29% holding Masters Degrees, while 4% are in possession of a PhD Over the next five years, the NAWCAD and NAWCWD Laboratories plan to hire approximately 2,240 of the country's best and brightest scientists and engineers (S&Es) just to keep pace with attrition. This number does not include the impact that several actions such as the Base Realignment and Closure of weapons and armament work to China Lake, California that will result in a need to hire additional scientists and engineers above normal attrition levels. Statistics indicate that the available pool of advanced degree, clearable candidates is substantially diminished by the number of non-U.S. citizens granted degrees by U.S. institutions. For instance, in 2006, 20% of Masters Degrees in science and over 35% of PhDs in science were awarded to temporary residents.

It is expected that this hiring authority, together with streamlined recruitment processes, will be very effective in hiring candidates possessing a PhD and accelerating the hiring process. For instance, under a similar authority found in the NDAA for FY 2009, section 1108 (Pub. L. 110–417), October 28, 2009, one STRL had fifteen PhD selectees in 2009 for the sixteen vacancies for which they were using this hiring authority. Another STRL, using this expedited hiring authority in calendar year 2009, made thirty firm hiring offers in an average of thirteen days from receipt of paper work in the Human Resources Office. Of these thirty selectees, twenty-three possessed PhDs.

This authority will be administered by the servicing Human Resources Office and Human Resources Service Center in accordance with the Department of Navy's common business processes, systems, and tools and be consistent with veterans' preference and merit system principles. Use of this appointing authority must comply with veterans' preference and merit systems principles when recruiting and appointing candidates with advanced degrees to covered occupations. Qualified candidates possessing an advanced degree may be appointed to both competitive and excepted service without regard to the provisions of subchapter 1 of chapter 33 of title 5, United States Code, other than sections 3303, 3321, and 3328 of such title.

The hiring threshold for this authority shall be consistent with DoD policy and legislative language as expressed in any National Defense Authorization Act addressing such.

When completing the personnel action, the following will be given as the authority for the Career-Conditional, Career, Term, Temporary, or special demonstration project appointment authority: Section 1108, NDAA for FY 09. Evaluation of this hiring authority will include information and data on its use such as numerical limitation, hires made, declinations, how many veterans hired, declinations, difficulties encountered, and/or recognized efficiencies.

b. Definitions

(1) Scientific and engineering positions are defined as all professional positions in scientific and engineering occupations (with a positive education requirement) utilized by the laboratory.

(2) An advanced degree is a Master's or higher degree from an accredited college or university in a field of scientific or engineering study directly related to the duties of the position to be filled.

(3) Qualified candidates are defined as candidates who:

(a) Meet the minimum standards for the position as published in OPM's operating manual, "Qualification Standards for General Schedule Positions," or the laboratory's demonstration project qualification standards specific to the position to be filled;

(b) Possess an advanced degree; and

(c) Meet any selective factors.

(4) The term "employee" is defined by Section 2105 of title 5, U.S.C.

11. Non-citizen Hiring

Where Executive Orders or other regulations limit hiring non-citizens to the excepted service, both NAWCAD and NAWCWD will have the authority to approve the hiring of non-citizens into competitive service positions when qualified U.S. citizens are not available, and the candidate meets all applicable immigration and security requirements. If a non-citizen candidate is the only qualified candidate for the position, the candidate may be appointed. The selection is subject to approval by the NAWCAD and NAWCWD Executive Director/Commanding Officer or approving manager, as delegated by the appropriate Center Executive Director/Commanding Officer. This authority may only be delegated to members of the Senior Executive Service (SES).

E. Internal Placement

1. Employees Hired From Outside the NAWC STRL

Employees entering into the NAWC from non-STRL pay systems or from other Federal activities not as the result of a mass organizational conversion will be moved into the demonstration project in the career path and at the level and pay consistent with the duties and responsibilities of the STRL position and individual qualifications.

When an employee is permanently placed (except by conversion under section V.A or by promotion under section II.E.2) in an STRL position from a GS or FWS position through a management-directed action (except for actions taken for misconduct or unacceptable performance), including a management directed reassignment or realignment, or any placement as a result of a reduction in force (RIF), or placement via the Priority Placement Program (PPP), Reemployment Priority List (RPL), or Interagency Career Transition Assistance Plan (ICTAP), the employee will receive a WGI adjustment. The WGI adjustment is calculated based on the number of calendar days between the effective date of the employee's last equivalent increase and the date of conversion into NSPS, regardless of the number of days in a non-pay status (if any). The maximum adjustment may not exceed a full WGI.

An employee who enters into an STRL position from a GS or FWS position through an employee-initiated reassignment, promotion, or change to lower grade may, at the discretion of the authorized management official, also receive a WGI adjustment equivalent increase as described in the paragraph above. The decision to grant this increase will be reviewed and approved by an official who is at a higher level than the official who made the initial decision.

In either case, this increase occurs before any other discretionary reassignment increases provided under the STRL, may not cause the employee's base salary to exceed the maximum rate of the assigned pay band, and is in addition to any other discretionary reassignment increase the employee may be eligible to receive.

2. Promotion

A promotion is the movement of an employee to a higher pay band in the same occupational family or to a higher pay band in a different occupational family. It also includes movement of an employee currently covered by a non-demonstration project personnel system to a demonstration project position in a pay band with a higher level of work. Positions with known promotion potential to a specific band within an occupational family will be identified when they are filled. Not all positions in an occupational family will have promotion potential to the same band. Movement from one occupational family to another will depend upon individual competencies, qualifications, and the needs of the organization. Supervisors may consider promoting qualified employees at any time, since promotions are not directly tied to the mission aligned objectives and compensation system. Progression within a pay band is based upon performance base pay increases; as such, these actions are not considered promotions and are not subject to the provisions of this section. Promotions will follow Merit System Principles and basic Federal merit promotion policy that provides for competitive and non-competitive promotions.

To be promoted competitively or non-competitively from one band to the next, an employee must meet the minimum qualifications for the job and have a current rating of record of Mission Success or better or equivalent under a different performance appraisal system. If an employee does not have a current performance rating, the employee will be treated the same as an employee with a rating of record of Mission Success as long as there is no documented evidence of less than acceptable performance.

Higher pay band or higher level of work means a pay band designated to be a higher level of work than an employee's currently assigned band, based on the demonstration classification structure and career progression patterns, either within or across varying pay schedules and career groups, regardless of the specific earning potential of the band. When moving from a non-demonstration position to a demonstration position, the band of the demonstration position is determined to be at a higher level of work than the grade or level of the non-demonstration position based on application of the demonstration classification structure and career progression patterns. Additional guidance will be included in NAWCAD/NAWCWD internal issuances.

3. Reassignment

A reassignment occurs when an employee moves, voluntarily or involuntarily, to a different position or set of duties within his/her pay band or to a position in a comparable pay band, or from a non-demonstration project position to a demonstration project position at a comparable level of work, on either a temporary or permanent basis. The employee must meet the qualifications requirements for the occupational family and pay band. When an employee is reassigned either within his/her current pay band or to a comparable pay band, an authorized management official will set pay at an amount no less than the employee's current base pay.

Comparable pay band or comparable level of work means pay bands with the equivalent level of work, based on the demonstration classification structure and career progression patterns, within and across varying pay schedules and career groups, regardless of the specific earning potential of the bands. When moving from a non-demonstration position to a demonstration position, the band of the demonstration position is determined to be at a comparable level of work to the grade or level of the non-demonstration position based on application of the demonstration classification structure and career progression patterns. Additional guidance will be included in NAWCAD/NAWCWD internal issuances.

4. Demotion or Placement in a Lower Pay Band

A demotion is the placement of an employee into a lower pay band or movement from a non-demonstration project position to a demonstration project position at a lower level of work. Demotions may be for cause (performance or conduct) or for reasons other than cause (e.g., erosion of duties, reclassification of duties to a lower pay band, application under competitive announcements, at the employee's request, or placement actions resulting from RIF procedures).

Lower pay band or lower level of work means a pay band designated to be a lower level of work than an employee's currently assigned band, based on the demonstration classification structure and career progression patterns, either within or across varying pay schedules and career groups, regardless of the specific earning potential of the band. When moving from a non-demonstration position to a demonstration position, the band of the demonstration position is determined to be at a lower level of work than the grade or level of the non-demonstration position based on application of the demonstration classification structure and career progression patterns. Additional guidance will be included in NAWCAD/NAWCWD internal issuances.

5. Simplified Assignment Process

Today's environment of downsizing and workforce fluctuations mandates that the organization have maximum flexibility to assign duties and responsibilities to individuals. Pay banding can be used to address this need, as it enables the organization to have maximum flexibility to assign an employee with or without a change in base pay, within broad descriptions, consistent with the needs of the organization and the individual's qualifications and level. Subsequent assignments to projects, tasks, or functions anywhere within the organization requiring the same level, area of expertise, and qualifications would not constitute an assignment outside the scope or coverage of the current position description. For instance, a technical expert could be assigned to any project, task, or function requiring similar technical expertise. Likewise, a manager could be assigned to manage any similar function or organization consistent with that individual's qualifications. This flexibility allows broader latitude in assignments and further streamlines the administrative process and system.

6. Details and Temporary Promotions

NAWCAD and NAWCWD will implement an Expanded Detail and Temporary Promotion Authority providing the authority (1) to effect details up to one year to specified positions at the same or similar level; and (2) to effect details or temporary promotions to a higher pay band position up to one year within a 24-month period without competition. The specifics of these authorities will be stipulated by local business rules, policies, or procedures as organizational experience dictates.

7. Exceptions to Competitive Procedures

The following actions are exceptions to competitive procedures:

a. Re-promotion to a position which is in the same pay band or GS equivalent and occupational family as the employee previously held on a permanent basis within the competitive service.

b. Promotion, reassignment, demotion, transfer, or reinstatement to a position having promotion potential no greater than the potential of a position an employee currently holds or previously held on a permanent basis in the competitive service.

c. A position change permitted by reduction-in-force procedures.

d. Promotion without current competition when the employee was appointed through competitive procedures to a position with a documented target level.

e. A temporary promotion, or detail to a position in a higher pay band, up to one year in a 24-month period.

f. A promotion due to the reclassification of positions based on accretion (addition) of duties.

g. A promotion resulting from the correction of an initial classification error or the issuance of a new classification standard.

h. Consideration of a candidate who did not receive proper consideration in a competitive promotion action.

Additional guidance will be included in NAWCAD/NAWCWD internal issuances.

F. Pay Administration

1. General

Pay administration policies will be established by the Personnel Management Board. These policies will be exempt from DON pay setting policies, but will conform to basic governmental pay setting policy except for flexibilities contained herein. Employees whose performance is acceptable will receive the full annual general pay increase and the full locality pay. The covered organizations may make full use of recruitment, retention, and relocation incentive payments as provided for by OPM. Pay retention will follow current law and regulations at 5 U.S.C. 5362 and 5363 and 5 CFR part 536, except as described in this regulation and waived or modified in section IX, the waiver section of this plan. Pay band retention will not be used in this demonstration project.

2. Locality Pay

Employees with a performance rating of Partial Mission Success or better will be entitled to the locality pay authorized for their official duty station in accordance with 5 CFR 531 subpart F. Employees with a performance rating of Unacceptable will be entitled to only the locality pay increase; they cannot receive any other pay increase or award. In addition, the locality-adjusted pay of any employee may not exceed the rate for Executive Level IV. Geographic movement within the demonstration project will result in the employee's locality pay being recomputed using the newly applicable locality pay percentage, which may result in a higher or lower locality pay and, thus, a higher or lower adjusted base pay.

3. Pay and Compensation Ceilings

An employee's total monetary compensation paid in a calendar year may not exceed the base pay of Level I of the Executive Schedule consistent with 5 U.S.C. 5307 and 5 CFR part 530 subpart B. In addition, each pay band will have its own pay ceiling, just as grades do in the GS. Base pay rates for the various pay bands will be directly keyed to the GS rates, except for the Pay Band VI of the Supervision and Management pay schedule. Other than where a retained rate applies, base pay will be limited to the maximum base pay payable for each pay band.

4. Pay Setting for Appointment

Employees whose appointment to a demonstration project position is their initial appointment to the Federal service may have pay set at the lowest base pay in the band or anywhere within the band consistent with the special qualifications of the individual and the unique requirements of the position. These special qualifications may be in the form of education, training, experience, or any combination thereof that is pertinent to the position in which the employee is being placed. Both national and local labor market conditions and pay rates may also be taken into consideration to ensure that the Warfare Centers are able to compete for the talent, skills, abilities, and competencies needed to enable them to remain on the cutting edge of science and technology. Guidance on pay setting for new hires will be established by the Personnel Management Board. Highest Previous Rate (HPR) will be considered in placement actions authorized under rules similar to the HPR rules in 5 CFR 531.221. Use of HPR will be at the supervisor's discretion, but if used, HPR is subject to policies established by the Personnel Management Board.

5. Pay Setting for Promotion

The minimum base pay increase upon promotion to a higher pay band will be 6% or the minimum base pay rate of the new pay band, whichever is greater. The maximum amount of the pay increase may not exceed 20%, or other such amount as established by the Personnel Management Board. The maximum base pay increase for promotion may be exceeded when necessary to allow for the minimum base pay increase. For employees covered by a staffing supplement, the demonstration extended base pay is considered base pay for promotion calculations. When a temporary promotion is terminated, the employee's pay entitlements will be re-determined based on the employee's position of record, with appropriate adjustments to reflect pay events during the temporary promotion, subject to the

specific policies and rules established by the Personnel Management Board. The Personnel Management Board may establish additional pay setting policies for promotions, including increasing the promotion amount beyond 20% with the approval of the NAWCAD and NAWCWD Commanders or Executive Directors. In no case may those adjustments increase the base pay for the position of record beyond the applicable maximum base pay for the pay band.

6. Pay Setting for Reassignment

a. Covered organizations may choose to adopt the flexibility to pay an increase in base pay upon reassignment. If adopted, such an increase will be subject to the specific guidelines established by the Personnel Management Board and will not exceed 5% as a cost containment measure. A reassignment may be effected without a change in base pay. Employees may be eligible for an increase to base pay upon temporary or permanent reassignment as described in section III.E.3. A decision to increase an employee's base pay under this section will be based upon clear Personnel Management Board business rules that will define criteria necessary to justify a pay increase.

Examples of criteria may include, but are not limited to, one or more of the following factors:

(1) A determination that an employee's responsibilities will significantly increase;

(2) Critical mission or business requirements;

(3) Need to advance multi-functional competencies;

(4) Labor market conditions, e.g., availability of candidates and labor market rates;

(5) Reassignment from a nonsupervisory to a supervisory position;

(6) Employee's past and anticipated performance and contribution;

(7) Physical location of position;

(8) Specialized skills, knowledge, or education possessed by the employee in relation to those required by the position; and

(9) Base pay of other employees in the organization performing similar work.

b. When an employee is reassigned within his/her current pay band or to a comparable pay band, an authorized management official will set pay at an amount no less than the employee's current base pay and may increase the employee's current base pay by up to and including 5%. If the employee's current base pay exceeds the maximum of the new pay band, no increase can be provided. There is no limit to the number of times an employee can be reassigned, but local business rules will be established to monitor and control all cases that receive reassignment base pay changes to ensure fairness and consistency across the workforce.

7. Pay Setting for Demotion or Placement in a Lower Pay Band

Employees demoted for cause (performance or conduct) are not entitled to pay retention and will receive a minimum of a 5% decrease in base pay or the minimum rate of the lower pay band whichever is greater. Employees demoted for reasons other than cause (*e.g.,* erosion of duties, reclassification of duties to a lower pay band, application under competitive announcements, at the employee's request, or placement actions resulting from RIF procedures) may be entitled to pay retention in accordance with the provisions of 5 U.S.C. 5363 and 5 CFR part 536, except as waived or modified in sections III.F.11 and IX of this plan.

Employees, who receive an unacceptable rating, do not receive performance payouts or the general pay increase. This action may result in base pay that is identified in a lower pay band. This occurs because the minimum rate of base pay in a pay band increases as the result of the general pay increase (5 U.S.C. 5303) while the employee's pay does not change. The employee will be placed in the lower pay band and their salary will remain unchanged. This situation (a reduction-in-band level with no reduction in pay as a result of an unacceptable rating) will not be considered an adverse performance based action.

8. Staffing Supplements

At the time of conversion or OPM approval of a new SSR that would be applicable to covered employees, the NAWCAD and NAWCWD may incorporate the use of special salary rates (SSR) in demonstration project pay ranges. Currently there are no NSPS Targeted Local Market Supplements in use by NAWCAD or NAWCWD so no employees converting from NSPS will be affected if staffing supplements are not implemented at conversion. If staffing supplements are adopted, either at the time of conversion or later, NAWCAD and NAWCWD will implement them via an extension to the demonstration pay ranges and a supplement to a covered employee's salary. Employees assigned to occupational categories and geographic areas where GS SSRs apply may be entitled to a staffing supplement if the maximum adjusted base pay rate for the demonstration band to which the employee is assigned is exceeded by a GS special rate for the employee's occupational category and geographic area. The Personnel Management Board may establish additional policies and provide guidance on the use and application of the staffing supplement including provisions for in band adjustments and limiting application of this feature to fewer occupations than covered by the GS SSR. An extension to the demonstration pay ranges will be used to extend the maximum salary of the pay band for those occupations for which a staffing supplement is approved. The increase of an employee's base pay into this extension will be determined by the annual performance assessment and payout, there is no automatic entitlement to a staffing supplement. Only if an employee's annual assessment and associated payout would cause their base pay to fall within the area of the staffing supplement extension to the pay range for the pay band would they be paid at this level.

The extension to the pay range will be the maximum special salary rate for the banded grades. An employee's base pay is increased by the standard locality increase until the base pay exceeds the maximum GS basic pay for the banded grades. If the employee's base pay will exceed the maximum GS basic pay for the banded grades then the staffing supplement will be applied when authorized. The staffing supplement percent will be set equal to the locality percent and the staffing supplement and payout is calculated as shown in the following example.

Scenario:

Top of regular RUS pay range is $74,628.

NAWC has adopted a pay scale extension for RUS 2210s and 0856s.

Top of extended pay range is $78,445 (equal to the relevant GS RUS SSR).

A RUS 0856 employee is at top of normal pay scale. Their pay before payout is:

STRL base pay = $65,371.

STRL locality pay = $9,257 (Locality % = 14.16%, same as GS).

STRL adjusted base pay = $74,628.

This employee receives a performance rating of Exceeds Mission Expectations (4) and receives 3 payout points. The distribution of the payout is 70% salary and 30% bonus. Each payout point is valued at 2%.

New base pay calculation:

65371 * (1 + (3 * .02 * .7) = 68116.582; rounded to 68117.

(base pay increase after payout = 3 payout points * 2% pay point value * 70% allocated to salary. Note the remainder will be paid as bonus.)

RUS locality percent = 14.16%.

Staffing supplement percent = 14.16%.

Staffing supplement calculation:

68117 * .1416 = 9645.3672; rounded to 9645.

(new base pay * staffing supplement percent).

New adjusted base pay calculation:

68117 + 9645 = $77,672.

(new base pay + staffing supplement).

If the pay scale extension is discontinued or reduced either because the GS SSR has been discontinued or reduced, for NAWC budgetary constraints, or other NAWC managerial decisions, the employees receiving a staffing supplement will receive retained pay. There will be no change in the adjusted base pay when placed on pay retention.

9. Educational Pay Adjustment

NAWCAD and NAWCWD will establish an educational base pay adjustment which is separate from the incentive pay process and may not cause the employee's pay to exceed the maximum base pay rate of his or her assigned pay band. An educational pay adjustment is defined as an increase in an employee's base pay by other than the incentive pay process within the employee's current band level to an amount which does not exceed the top of the band. The educational pay adjustment may be used to adjust the pay of individuals who have acquired a level of mission-related education that would otherwise make the employee qualified for an appointment at a higher level and would be used in lieu of a new appointment. For example, this authority may be used to adjust the pay of graduate level Student Career Experience Program (SCEP) students or employees who have obtained an advanced degree, e.g., a PhD in a field related to the work of their position or the mission of their organization. An employee may receive an educational base pay adjustment or a reassignment base pay increase but not both at the same time.

10. Developmental Promotions

NAWCAD and NAWCWD will employ developmental promotions to achieve compensation growth commensurate to an employee's progression while in developmental assignments. A developmental promotion is an increase to base pay that may be provided to employees participating in NAWCAD and NAWCWD training programs or in other developmental capacities as determined by Personnel Management Board policy. Developmental promotions recognize growth and development in the acquisition of job related competencies combined with successful performance of job objectives. The use of developmental promotions is limited to (1) employees in a developmental pay band of a non-supervisory pay schedule and who are in developmental or trainee level positions; and (2) employees in positions which are assigned to a Student Career Experience Program (SCEP).

Standards by which developmental promotion increases are provided and criteria by which additional base pay increases will be determined will be established and documented in internal business rules, policies, or procedures. The amount of the developmental promotion increase generally will not exceed 20 percent of an employee's base pay The decision to grant a developmental promotion exceeding 20 percent of an employee's base pay must be made on a case-by-case basis and approved by the appropriate Executive Director/Commanding Officer or their delegate as established by internal business rules, policies, or procedures. This authority may be delegated only to members of the Senior Executive Service (SES). The amount of the developmental promotion increase may not cause the employee's base pay to exceed the top of the employee's pay band or that set by internal business rule, policy, or procedure. To qualify for a developmental promotion, an employee must have a rating of record of Mission Success or better. A developmental promotion may be awarded to an employee who does not have a rating of record if an authorizing official conducts a performance assessment and determines that the employee is performing at the Mission Success level or better. This performance assessment does not constitute a rating of record. If an employee has a current performance rating below Mission Success and the supervisor believes the employee's performance has improved to the Mission Success level or better; the employee has demonstrated this improved performance for 90 days or more; and it is expected that this level of performance will continue, the supervisor may conduct a performance assessment and forward it to the Pay Pool Manager for approval. If the Pay Pool Manager concurs with the supervisor's assessment then the employee may be given a developmental promotion. There is no entitlement to an additional assessment beyond the annual assessment; this decision is totally at managerial discretion. If an additional assessment is made, it is not a rating of record and there will be no retroactive pay changes associated with it.

A developmental promotion increase may not be granted unless an employee is in a pay and duty status under the NAWCAD/NAWCWD STRL demonstration project on the effective date of the increase.

11. Pay Retention

Pay retention will follow current law and regulations at 5 U.S.C. 5362 and 5363, and 5 CFR part 536, except as waived or modified in the Staffing Supplements section and section IX of this plan. Pay band (grade) retention does not apply under this demonstration project. The NACWAD or NAWCWD Executive Director may also grant pay retention to employees who meet general eligibility requirements, but do not have specific entitlement by law, provided they are not specifically excluded.

G. Employee Development

1. Expanded Developmental Opportunity Program

The Expanded Developmental Opportunity Program will be available to all demonstration project employees. Expanded developmental opportunities complement existing developmental opportunities such as long-term training, rotational job assignments, and developmental assignments to DON/DoD, and self-directed study via correspondence courses and local colleges and universities. Each developmental opportunity must result in a product, service, report, or study that will benefit the NAWCAD or NAWCWD or customer organization as well as increase the employee's individual effectiveness. The developmental opportunity period will not result in loss of (or reduction) in base pay, leave to which the employee is otherwise entitled, or credit for service time. The positions of employees on expanded developmental opportunities may be back-filled (*i.e.,* with temporarily assigned, detailed, or promoted employees or with term employees). However, that position or its equivalent must be made available to the employee upon return from the developmental period. The Personnel Management Board will provide written guidance for employees on application procedures and develop a process that will be used to review and evaluate applicants for development opportunities.

a. Sabbaticals

The Executive Directors of the covered organizations have the

authority to grant paid or unpaid sabbaticals to all career employees. The purpose of a sabbatical will be to permit an employee to engage in study or uncompensated work experience that will benefit the organization and contribute to the employee's development and effectiveness. Each sabbatical must result in a product, service, report, or study that will benefit the NAWCAD or NAWCWD mission as well as increase the employee's individual effectiveness. Various learning or developmental experiences may be considered, such as advanced academic teaching; research; self-directed or guided study; and on-the-job work experience.

One paid sabbatical of up to twelve months in duration or one unpaid sabbatical of up to six months in a calendar year may be granted to an employee in any seven-year period. Employees will be eligible to request a sabbatical after completion of seven years of Federal service. Employees approved for a paid sabbatical must sign a service obligation agreement to continue in service in the covered organizations for a period of three times the length of the sabbatical. If an employee voluntarily leaves the covered organizations before the service obligation is completed he/she is liable for repayment of expenses incurred by the covered organizations that are associated with training during the sabbatical. Expenses do not include salary costs. The Executive Directors of the covered organizations have the authority to waive this requirement. Criteria for such waivers will be addressed in the operating procedures. Specific procedures will be developed for processing sabbatical applications upon implementation of the demonstration project.

b. Critical Skills Training (Training for Degrees)

The Executive Directors of the covered organizations have the authority to approve academic degree training consistent with 5 U.S.C. 4107. Training is an essential component of an organization that requires continuous acquisition of advanced and specialized knowledge. Degree training is also a critical tool for recruiting and retaining employees with or acquiring critical skills. Academic degree training will ensure continuous acquisition of advanced specialized knowledge essential to the organization and ability to recruit and retain personnel critical to the present and future requirements of the organization. Degree or certificate payment may not be authorized where it would result in a tax liability for the employee without the employee's express and written consent. Any variance from this policy must be rigorously determined and documented. Guidelines will be developed to ensure competitive approval of degree or certificate payment and that those decisions are fully documented. Employees approved for degree training must sign a service obligation agreement to continue in service in the covered organizations for a period of three times the length of the training period. If an employee voluntarily leaves the NAWCAD or NAWCWD before the service obligation is completed, he/she is liable for repayment of expenses incurred by the covered organizations related to the critical skills training. Expenses do not include salary costs. The Executive Directors of the covered organizations have the authority to waive this requirement. Criteria for such waivers will be addressed in the STRL internal operating procedures.

H. Reduction-in-Force (RIF) Procedures

RIF procedures will be used when an employee faces separation or downgrading due to lack of work, shortage of funds, reorganization, insufficient personnel ceiling, the exercise of re-employment or restoration rights, or furlough for more than 30 calendar days or more than 22 discontinuous days. The procedures in 5 CFR part 351 will generally be followed with some modifications pertaining to the competitive areas, assignment rights, the addition of a performance sub-group and grade/pay band retention. Modified term appointment employees are in Tenure Group III for RIF purposes. RIF procedures are not required when separating these employees when their appointments expire.

1. Competitive Areas

Separate RIF competitive areas for demonstration and non-demonstration project employees will be established at each geographic location. Within the demonstration project separate competitive areas may be established for each demonstration occupational family. Demonstration supervisors will be placed in the competitive area for their occupational family but in separate competitive levels within that career field. Bumps and retreats will occur only within the same competitive area and only to positions for which the employee meets all qualification standards including medical and/or physical qualifications.

Within each competitive area, competitive levels will be established based on the occupational family, pay band, series and SAC so that positions are similar enough in duties and qualifications that employees can perform the duties and responsibilities of any other position in the competitive level upon assignment to it, without any loss of productivity beyond what is normally expected. For S&E competitive levels the Warfare Centers may also choose to use the OPM classification functional code as a defining element.

2. Assignment Rights

An employee may displace another employee by bump or retreat to one pay band below the employee's existing pay band. A preference eligible with a compensable service-connected disability of 30 percent or more may retreat to positions two pay bands below his/her current band.

3. Crediting Performance in RIF

Reductions in force are accomplished using the existing procedures with the retention factors of: Tenure, veterans' preference, performance, and length of service, in that order. The performance subgroup will be based on the most recent three ratings of record during the preceding four years. There will be three groupings within the performance subgroup: Mission Superior (H), Mission Success (S) and Mission Deficiency (L). The most recent ratings of records will be combined to determine the performance subgroup. The High subgroup will include those employees who have consistently demonstrated superior performance. The Mission Success subgroup will include the next level of demonstrated performance and the Mission Deficiency subgroup will include those who have failed to achieve expected levels of performance for one or more years. Additional guidance on determining performance subgroups will be included in NAWCAD/NAWCWD internal issuances.

Employees who have been rated under different patterns of summary rating levels and have at least the equivalent of a rating of record of three will receive RIF appraisal credit for the non-demonstration performance ratings equivalent to Mission Success based on the demonstration project's modal score for the employee's competitive area. If the employee received less than the equivalent of Mission Success then that rating will be compared to the demonstration project one or two rating and best fit chosen. Additional guidance on ratings equivalency will be included in NAWCAD/NAWCWD internal issuances.

In some cases, an employee may not have three ratings of record. If an

employee has fewer than three annual ratings of record, then for each missing rating, RIF appraisal credit will be based on the demonstration project's modal score for the most recently completed appraisal period on record for the employee's competitive area. For an employee who has no ratings of record, all credit will be based on the repeated use of a single modal rating from the most recently completed appraisal period on record for the employee's competitive area.

An employee who has received a written decision that his/her performance is unacceptable has no bump or retreat rights. An employee who has been demoted for unacceptable performance, and as of the date of the issuance of the RIF notice has not received a performance rating in the position to which demoted, will receive the same credit granted for a Level 3 rating of record. An employee with a current unacceptable rating of record has assignment rights only to a position held by another employee who has an unacceptable rating of record.

IV. Implementation Training

Critical to the success of the demonstration project is the training developed to promote understanding of the broad concepts and finer details needed to implement and successfully execute this project. A new pay banding schema and performance management system both represent significant cultural change to the organization. Training will be tailored to address employee concerns and encourage comprehensive understanding of the demonstration project. Training will be required both prior to implementation and at various times during the life of the demonstration project. A training program will begin prior to implementation and will include modules tailored for employees, supervisors, senior managers, and administrative staff. Typical modules are:

1. An overview of the demonstration project personnel system;
2. How employees are converted into and out of the system;
3. Pay banding;
4. The mission aligned objectives and compensation system;
5. Defining mission aligned performance objectives;
6. How weights may be used with the mission aligned performance objectives;
7. Assessing performance—giving feedback;
8. New position descriptions; and
9. Demonstration project administration and formal evaluation.

Various types of training are being considered including videos, on-line tutorials, and train-the-trainer concepts.

V. Movement Into and Out of the Demonstration Project

A. Conversion From NSPS to the Demonstration Project

1. Placement Into Demonstration Project Pay Plans and Pay Bands

The employee's NSPS occupational series, pay plan, pay band, and supervisory code will be considered upon converting into the demonstration project as follows:

a. Determine the appropriate demonstration project pay plan. Employees will be converted into a pay plan based on the occupational series of their position. There is a separate pay plan for supervisors; conversion to that pay plan will be without regard to the occupational series. In cases where the employee is assigned to a NSPS-unique occupational series, a corresponding OPM occupational series must be identified using OPM GS classification standards and guidance to determine the proper demonstration project pay plan.

b. Determine the appropriate pay band. The appropriate pay band will be determined by establishing the corresponding demonstration project pay band for the employee's NSPS position using demonstration project pay band definitions, classification standards, and guidance. Once the demonstration project pay band has been determined, the employee's position will be placed in the demonstration project pay band. In cases where a demonstration project pay band overlaps more than one NSPS pay band, placement will be made using demonstration project pay band definitions and classification criteria to determine the appropriate pay band in which to place the position.

2. Pay Upon Conversion

Conversion from NSPS into the demonstration project will be accomplished with full employee pay protection. Adverse action provisions will not apply to the conversion action. In accordance with section 1113(c)(1) of NDAA 2010, which prohibits a loss of or decrease in pay upon transition from NSPS, employees converting to the demonstration project will retain the adjusted salary (as defined in 5 CFR 9901.304) from their NSPS permanent position at the time the position converts. Upon conversion, the retained NSPS adjusted salary may not exceed Level IV of the Executive Schedule plus 5 percent. If the employee's base pay exceeds the maximum rate for his or her assigned demonstration project pay band, the employee will be placed on indefinite pay retention until an event, as described in 5 CFR 536.308, results in a loss of eligibility for or termination of pay retention. Increases to the retained rate after conversion will be in accordance with applicable regulations; however, for any NSPS employee whose retained rate exceeds EX–IV upon conversion, any adjustment to the retained rate in accordance with applicable pay retention regulations may not cause the employee's adjusted pay to exceed EX–IV plus 5 percent.

NAWCAD and NAWCWD do not have any employees who are covered by an NSPS targeted local market supplement (TLMS) but if such coverage occurs between the date of this FRN and conversion to the demonstration project such employees will no longer be covered by a TLMS. Instead they may receive a locality or similar supplement (*e.g.,* a staffing supplement), or pay retention, if applicable. The adjusted base pay will not change upon conversion.

Once converted, employees may receive other adjustments and/or differentials, as applicable, as described in this regulation or an implementing issuance.

3. Fair Labor Standards Act (FLSA) Status

Since FLSA provisions were not waived under NSPS and duties do not change upon conversion to the demonstration project, the FLSA status determination will remain the same upon conversion. Employees will be converted to the demonstration project with the same FLSA status they had under NSPS.

4. Transition Equity

During the first the 12 months following conversion to the demonstration project, management may approve certain adjustments within the pay band for pay equity reasons stemming from conversion. For example, if an employee would have been otherwise promoted but demonstration project pay band placement no longer merits promotion, a pay equity adjustment may be authorized provided the adjustment does not cause the employee's base pay to exceed the maximum rate of his or her assigned pay band and the employee's performance warrants an adjustment. The decision to grant a pay equity adjustment is at the sole discretion of management and is not subject to employee appeal procedures.

During the first 18 months following conversion, management may approve promotions of less than 6% or increases in base pay of not more than 20% percent provided the adjustment does not cause the employee's base pay to exceed the maximum rate of his or her assigned pay band. The employee's performance must warrant an adjustment and these actions will be limited to those necessary to mitigate compensation inequities that are directly related to the transition/conversion from NSPS to the demonstration project. For instance, inappropriate "leap-frogging" of more senior employees by more junior employees when the inversion of compensation levels are not warranted by performance or mission accomplishment outcomes. The Personnel Management Board will establish policy and guidance for this provision and this guidance will be included in NAWCAD/NAWCWD internal issuances.

5. Converting Employees on NSPS Term and Temporary Appointments

a. Employees serving under term appointments at the time of conversion to the demonstration project will be converted to a modified term appointment provided they were hired for their current positions under competitive procedures. These employees will be eligible for conversion to career or career-conditional appointments in the competitive service provided they:

(1) have served two years of continuous service in the term position;

(2) were selected for the term position under competitive procedures; and

(3) are performing at a NSPS Valued Performer, demonstration Mission Success, or equivalent level under another system. Additional guidance will be included in NAWCAD/NAWCWD internal conversion issuances.

Converted term employees who do not meet these criteria may continue on their term appointment up to the not-to-exceed date established under NSPS. Extensions of term appointments for employees who do not meet the above criteria may be granted after conversion in accordance with the provision of this regulation.

b. Employees serving under temporary appointments under NSPS when their organization converts to the demonstration project will be converted and may continue on their temporary appointment up to the not-to-exceed date established under NSPS. Extensions of temporary appointments after conversion may be granted in accordance with 5 CFR 213.104 for excepted service employees and 5 CFR part 316, subpart D, for competitive service employees.

6. Probationary Periods

a. Initial probationary period. Employees who have completed an initial probationary period prior to conversion from NSPS will not be required to serve a new or extended initial probationary period. Employees who are serving an initial probationary period upon conversion from NSPS will serve the time remaining on their initial probationary period and may have their initial probationary period extended in accordance with the demonstration project regulation and implementing issuances.

b. Supervisory probationary period. NSPS employees who have completed a supervisory probationary period prior to conversion from NSPS will not be required to serve a new or extended supervisory probationary period. NSPS employees who are serving a supervisory probationary period upon conversion from NSPS will serve the time remaining on their supervisory probationary period.

B. Conversion From Other Personnel Systems

Employees who enter this demonstration project from other personnel systems (e.g., Defense Civilian Intelligence Personnel System, DoD Civilian Acquisition Workforce Demonstration Project, or other STRLs) due to a reorganization, mandatory conversion, Base Closure and Realignment Commission decision, or other directed action will be converted into the NAVAIR STRL demonstration project via movement of their positions using an appropriate Nature of Action Code. Employees' positions will be classified based upon the position classification criteria and pay band definitions under the laboratory demonstration project rules and their pay, upon conversion, maintained under applicable pay setting rules.

C. Movement Out of the NAVAIR STRL Demonstration Project

1. Termination of Coverage Under the NAVAIR STRL Demonstration Project Pay Plans

In the event employees' coverage under the NAVAIR STRL demonstration project pay plans is terminated, employees move with their demonstration project positions to another system applicable to NAVAIR STRL employees. The grade of their demonstration project position in the new system will be based upon the position classification criteria of the gaining system. Employees when converted to their positions classified under the new system will be eligible for pay retention under 5 CFR part 536, if applicable.

2. Determining a GS-equivalent Grade and GS-equivalent Rate of Pay for Pay Setting Purposes When a NAVAIR Employee's Coverage by a Demonstration Project Pay Plan Terminates or the Employee Voluntarily Exits the NAVAIR STRL Demonstration Project

a. If a demonstration project employee is moving to a GS or other pay system position, the following procedures will be used to translate the employee's project pay band to a GS-equivalent grade and the employee's project base pay to the GS-equivalent rate of pay for pay setting purposes. The equivalent GS grade and GS rate of pay must be determined before movement out of the demonstration project and any accompanying geographic movement, promotion, or other simultaneous action. For lateral reassignments, the equivalent GS grade and rate will become the employee's converted GS grade and rate after leaving the demonstration project (before any other action). For transfers, promotions, and other actions, the converted GS grade and rate will be used in applying any GS pay administration rules applicable in connection with the employee's movement out of the project (*e.g.,* promotion rules, highest previous rate rules, pay retention rules), as if the GS converted grade and rate were actually in effect immediately before the employee left the demonstration project.

b. Equivalent GS-Grade-Setting Provisions

An employee in a pay band corresponding to a single GS grade is provided that grade as the GS-equivalent grade. An employee in a pay band corresponding to two or more grades is determined to have a GS-equivalent grade corresponding to one of those grades according to the following rules:

(1) The employee's adjusted base pay under the demonstration project (including any locality payment or staffing supplement) is compared with step 4 rates in the highest applicable GS rate range. For this purpose, a GS rate range includes a rate in:

(a) the GS base schedule;

(b) the locality rate schedule for the locality pay area in which the position is located; or

(c) the appropriate special rate schedule for the employee's occupational series, as applicable.

If the series is a two-grade interval series, only odd-numbered grades are considered below GS–11.

(2) If the employee's adjusted base pay under the demonstration project equals or exceeds the applicable step 4 adjusted base pay rate of the highest GS grade in the band, the employee is converted to that grade.

(3) If the employee's adjusted base pay under the demonstration project is lower than the applicable step 4 adjusted base pay rate of the highest grade, the adjusted base pay under the demonstration project is compared with the step 4 adjusted base pay rate of the second highest grade in the employee's pay band. If the employee's adjusted base pay under the demonstration project equals or exceeds the step 4 adjusted base pay rate of the second highest grade, the employee is converted to that grade.

(4) This process is repeated for each successively lower grade in the band until a grade is found in which the employee's adjusted base pay under the demonstration project rate equals or exceeds the applicable step 4 adjusted base pay rate of the grade. The employee is then converted at that grade. If the employee's adjusted base pay is below the step 4 adjusted base pay rate of the lowest grade in the band, the employee is converted to the lowest grade.

(5) Exception: An employee will not be provided a lower grade than the grade held by the employee immediately preceding a conversion, lateral reassignment, or lateral transfer into the project, unless since that time the employee has either undergone a reduction in band or a reduction within the same pay band due to unacceptable performance.

c. Equivalent GS-Rate-of-Pay-Setting Provisions

An employee's pay within the converted GS grade is set by converting the employee's demonstration project rates of pay to GS rates of pay in accordance with the following rules:

(1) The pay conversion is done before any geographic movement or other pay-related action that coincides with the employee's movement or conversion out of the demonstration project.

(2) An employee's adjusted base pay under the demonstration project (i.e., including any locality payment or staffing supplement) is converted to a GS adjusted base pay rate on the highest applicable GS rate range for the converted GS grade. For this purpose, a GS rate range includes a rate range in:

(a) the GS base schedule,

(b) an applicable locality rate schedule, or

(c) an applicable special rate schedule.

(3) If the highest applicable GS rate range is a locality pay rate range, the employee's adjusted base pay under the demonstration project is converted to a GS locality rate of pay. If this rate falls between two steps in the locality-adjusted schedule, the rate must be set at the higher step. The converted GS unadjusted rate of base pay would be the GS base rate corresponding to the converted GS locality rate (i.e., same step position).

(4) If the highest applicable GS rate range is a special rate range, the employee's adjusted base pay under the demonstration project is converted to a special rate. If this rate falls between two steps in the special rate schedule, the rate must be set at the higher step. The converted GS unadjusted rate of base pay will be the GS rate corresponding to the converted special rate (i.e., same step position).

(d) Employees with Pay Retention: If an employee is receiving a retained rate under the demonstration project, the employee's GS-equivalent grade is the highest grade encompassed in his or her pay band level. Demonstration project operating procedures will outline the methodology for determining the GS-equivalent pay rate for an employee retaining a rate under the demonstration project.

3. Supervision and Management Pay Band VI Employees

The Above GS–15 Position concept is currently being evaluated by DoD management for its effectiveness; continued applicability to the current STRL scientific, engineering, and technology workforce needs; and appropriate allocation of billets based on mission requirements. The nature and extent of the conversion out of the demonstration project process for employees in these positions will be determined by the final DoD guidance. Additional guidance may be included in NAWCAD/NAWCWD internal issuances.

4. Employees With Pay Retention

If an employee is receiving a retained rate under the demonstration project, the employee's GS-equivalent grade is the highest grade encompassed in his or her pay band level. Demonstration project operating procedures will outline the methodology for determining the GS-equivalent pay rate for an employee retaining a rate under the demonstration project.

5. Within-Grade Increase—Equivalent Increase Determinations

Service under the demonstration project is creditable for within-grade increase purposes upon conversion back to the GS pay system. Performance pay increases (including a zero increase) under the demonstration project are equivalent increases for the purpose of determining the commencement of a within-grade increase waiting period under 5 CFR 531.405(b).

D. Personnel Administration

All personnel laws, regulations, and guidelines not waived by this plan will remain in effect. Basic employee rights will be safeguarded and Merit System Principles will be maintained. Servicing HRSCs will continue to process personnel-related actions and provide other appropriate services.

E. Automation Support

1. General

One of the major goals of the demonstration project is to streamline the personnel processes to increase cost effectiveness. Automation must play an integral role in achieving that goal. Without the necessary automation to support the interventions proposed for the demonstration project, optimal cost benefit cannot be realized. In addition, adequate information to support decision-making must be available to managers if line management is to assume greater authority and responsibility for human resources management. Automation to support the demonstration project is required at the DON and DoD level, (in the form of changes to the Defense Civilian Personnel Data System) to facilitate processing and reporting of demonstration project personnel actions, and may be ultimately required by the Naval Air Warfare Centers to assist in processing of a variety of personnel-related actions in order to facilitate management processes and decision-making.

2. Defense Civilian Personnel Data System (DCPDS)

DCPDS is the Department of Defense's authoritative personnel data system and program of record and, as such, will be the system of choice for the STRL labs.

F. Experimentation and Revision

Many aspects of a demonstration project are experimental. Modifications may be made from time to time as experience is gained, results are analyzed, and conclusions are reached on how the new system is working. DoDI 1400.37, July 28, 2009, provides

instructions for adopting other STRL flexibilities, making minor changes to an existing demonstration project, and requesting new initiatives.

VI. Project Duration

Public Law 103–337 removed any mandatory expiration date for this demonstration. The covered organizations, DON and DoD will ensure this project is evaluated for the first five years after implementation in accordance with 5 U.S.C. 4703. Modifications to the original evaluation plan or any new evaluation will ensure the project is evaluated for its effectiveness, its impact on mission, and any potential adverse impact on any employee groups. Major changes and modifications to the interventions would be made if formative evaluation data warranted and will be published in the **Federal Register** to the extent required. At the five-year point, the demonstration will be reexamined for permanent implementation, modification and additional testing, or termination of the entire demonstration project.

VII. Evaluation Plan

A. Overview

Chapter 47 of 5 U.S.C. requires that an evaluation be performed to measure the effectiveness of the demonstration project and its impact on improving public management. A comprehensive evaluation plan for the entire demonstration program, originally covering 24 DoD laboratories, was developed by a joint OPM/DoD Evaluation Committee in 1995. This plan was submitted to the Office of Defense Research & Engineering and was subsequently approved. The main purpose of the evaluation is to determine whether the waivers granted result in a more effective personnel system and improvements in ultimate outcomes (*i.e.,* organizational effectiveness, mission accomplishment, and customer satisfaction).

B. Evaluation Model

Appendix C shows an intervention model for the evaluation of the demonstration project. The model is designated to evaluate two levels of organizational performance: Intermediate and ultimate outcomes. The intermediate outcomes are defined as the results from specific personnel system changes and the associated waivers of law and regulation expected to improve human resource (HR) management (*i.e.,* cost, quality, timeliness). The ultimate outcomes are determined through improved organizational performance, mission accomplishment, and customer satisfaction. Although it is not possible to establish a direct causal link between changes in the HR management system and organizational effectiveness, it is hypothesized that the new HR system will contribute to improved organizational effectiveness.

Organizational performance measures established by the organization will be used to evaluate the impact of a new HR system on the ultimate outcomes. The evaluation of the new HR system for any given organization will take into account the influence of three factors on organizational performance: Context, degree of implementation, and support of implementation. The context factor refers to the impact which intervening variables (*i.e.,* downsizing, changes in mission, or the economy) can have on the effectiveness of the program. The degree of implementation considers the extent to which the:

(1) HR changes are given a fair trial period;

(2) Changes are implemented; and

(3) Changes conform to the HR interventions as planned.

The support of implementation factor accounts for the impact that factors such as training, internal regulations and automated support systems have on the support available for program implementation. The support for the program implementation factor can also be affected by the personal characteristics (*e.g.,* attitudes) of individuals who are implementing the program.

The degree to which the project is implemented and operated will be tracked to ensure that the evaluation results reflect the project as it was intended. Data will be collected to measure changes in both intermediate and ultimate outcomes, as well as any unintended outcomes, which may happen as a result of any organizational change. In addition, the evaluation will track the impact of the project and its interventions on veterans and other protected groups, the Merit Systems Principles, and the Prohibited Personnel Practices. Additional measures may be added to the model in the event that changes or modifications are made to the demonstration plan.

The intervention model at Appendix C will be used to measure the effectiveness of the personnel system interventions implemented. The intervention model specifies each personnel system change or "intervention" that will be measured and shows:

(1) The expected effects of the intervention,

(2) The corresponding measures, and

(3) The data sources for obtaining the measures.

Although the model makes predictions about the outcomes of specific interventions, causal attributions about the full impact of specific interventions will not always be possible for several reasons. For example, many of the initiatives are expected to interact with each other and contribute to the same outcomes. In addition, the impact of changes in the HR system may be mitigated by context variables (*e.g.,* the job market, legislation, and internal support systems) or support factors (*e.g.,* training and automation support systems).

C. Evaluation

A modified quasi-experimental design will be used for the evaluation of the STRL Personnel Demonstration Program. Because most of the eligible laboratories are participating in the program, a title 5 U.S.C. comparison group will be compiled from the Central Personnel Data File (CPDF). This comparison group will consist of workforce data from Government-wide research organizations in civilian Federal agencies with missions and job series matching those in the DoD laboratories. This comparison group will be used primarily in the analysis of pay banding costs and turnover rates.

D. Method of Data Collection

Data from several sources will be used in the evaluation. Information from existing management information systems and from personnel office records will be supplemented with perceptual survey data from employees to assess the effectiveness and perception of the project. The multiple sources of data collection will provide a more complete picture as to how the interventions are working. The information gathered from one source will serve to validate information obtained through another source. In so doing, the confidence of overall findings will be strengthened as the different collection methods substantiate each other.

Both quantitative and qualitative data will be used when evaluating outcomes. The following data will be collected:

(1) Workforce data;

(2) Personnel office data;

(3) Employee attitude surveys;

(4) Focus group data;

(5) Local site historian logs and implementation information;

(6) Customer satisfaction surveys; and

(7) Core measures of organizational performance.

The evaluation effort will consist of two phases, formative and summative

evaluation, covering at least five years to permit inter- and intra-organizational estimates of effectiveness. The formative evaluation phase will include baseline data collection and analysis, implementation evaluation, and interim assessments. The formal reports and interim assessments will provide information on the accuracy of project operation, and current information on impact of the project on veterans and protected groups, Merit System Principles, and Prohibited Personnel Practices. The summative evaluation will focus on an overall assessment of project outcomes after five years. The final report will provide information on how well the HR system changes achieved the desired goals, which interventions were most effective, and whether the results can be generalized to other Federal installations.

VIII. Demonstration Project Costs

A. Cost Discipline

An objective of the demonstration project is to ensure in-house cost discipline. A baseline will be established at the start of the project and salary expenditures will be tracked yearly. Implementation costs (including project development, automation costs, and evaluation costs) are considered one-time costs and will not be included in the cost discipline. The Personnel Management Board will track personnel cost changes and recommend adjustments if required to achieve the objective of cost discipline.

B. Developmental Costs

Costs associated with the development of the personnel demonstration project include software automation, training, and project evaluation. All funding will be provided through the organization's budget. The projected annual expenses are summarized in Table 1. Project evaluation costs are not expected to continue beyond the first five years unless the results warrant further evaluation.

TABLE 1—PROJECTED DEVELOPMENT COSTS

[In thousands of dollars]

	FY10	FY11	FY12	FY13	FY14
Software Development & Automation	$150	$650	$200	$150	$100
Training Development & Workforce Training	300	1,000	400	100	100
Project Evaluation	0	0	100	100	100
Totals	450	1,650	700	350	300

IX. Required Waivers to Law and Regulation

Public Law 106–398 gave the DoD the authority to experiment with several personnel management innovations. In addition to the authorities granted by the law, the following are waivers of law and regulation that will be necessary for implementation of the demonstration project. In due course, additional laws and regulations may be identified for waiver request. The following waivers and adaptations of certain title 5 U.S.C. and title 5 CFR provisions are required only to the extent that these statutory provisions limit or are inconsistent with the actions contemplated under this demonstration project. Nothing in this plan is intended to preclude the demonstration project from adopting or incorporating any law or regulation enacted, adopted, or amended after the effective date of this demonstration project.

A. Waivers to Title 5, U.S.C.

Chapter 5, section 552a: Records. Waive to the extent required to clarify that volunteers under the Voluntary Emeritus Corps are considered employees of the Federal Government for purposes of this section.

Chapter 31, section 3111: Acceptance of volunteer service. Waive to allow for a Volunteer Emeritus Corps in addition to student volunteers.

Chapter 33, subchapter I—Examination, Certification, and Appointment: Waived except for sections 3302, 3321, and 3328to allow for direct hire authority for scientists and engineers with advanced degrees for professional positions.

Chapter 33, section 3317(a): Competitive service, certification from register (in so far as "rule of three" is eliminated under the demonstration project).

Chapter 33, subchapter 1, section 3318(a): Competitive Service, Selection from Certificate. Waived in its entirety to eliminate the requirement for selection using the "rule of three." Veterans' preference provisions remain unchanged.

Chapter 33, section 3321: Competitive Service; Probationary Period. This section waived to the extent necessary to replace grade with "pay band level" and allow probationary periods of up to 3 years.

Chapter 33, section 3341: Details. Waived as necessary to extend the time limits for details.

Chapter 35, section 3502: Waived to the extent to allow for performance retention subgroups and 3502(c) waived in its entirety.

Chapter 41, section 4108(a)–(c): Waived to the extent necessary to require the employee to continue in the service of the covered organizations for the period of the required service and to the extent necessary to permit the Executive Director of the covered organizations, to waive in whole or in part a right of recovery.

Chapter 43, section 4302: Waived to the extent necessary to substitute "pay band" for "grade."

Chapter 43, section 4303: Waived to the extent necessary to (1) substitute "pay band" for "grade" and (2) provide that moving to a lower pay band as a result of not receiving the general pay increase because of poor performance is not an action covered by the provisions of sections 4303(a)–(d).

Chapter 43, section 4304(b)(1) and (3): Responsibilities of the OPM. Waived in its entirety to remove the responsibilities of the OPM with respect to the performance appraisal system.

Chapter 45, section 4502: Limitation of cash awards to $10K. Waived to allow NAWCAD and NAWCWD Commanders to approve awards up to $25K.

Chapter 51 Classification, section 5101–5112: Purpose; Definitions, application; Determination of applicability; Basis for grading positions; Standards for classification of positions; Basis for classifying positions; Classification of positions; Classification of positions above GS–15; Review of classification of positions, Revocation and restoration of authority to classify positions, and General authority of the Office of Personnel Management:—Waived to the extent that white collar employees will be covered by pay banding and to the extent that classification appeals will be decided by

the NAWC Executive Director with final appeal to the Department of Defense.

Chapter 53, sections 5301, 5302(1), (8) and (9), 5303, and 5304: Pay Comparability System. Waived to the extent necessary to allow (1) demonstration project employees to be treated as GS employees, (2) basic rates of pay under the demonstration project to be treated as scheduled rates of pay, and (3) the demonstration project pay system to be adjusted by the GS annual adjustments to pay schedules.

Chapter 53, section 5305: Special Pay Authority. Waived to the extent necessary to allow for use of a staffing supplement in lieu of the special pay authority.

Chapter 53, sections 5331–5336: GS Pay Rates. Waived in its entirety to allow for the demonstration project's pay banding system and pay provisions.

Chapter 53, sections 5361–5366: Grade and Pay Retention. Waived to the extent necessary to: (1) Replace "grade" with "pay band;" (2) allow demonstration project employees to be treated as GS employees; (3) provide that an employee on pay retention whose rating of record is "Unacceptable" is not entitled to 50 percent of the amount of the increase in the maximum rate of base pay payable for the pay band of the employee's position; (4) provide that pay retention does not apply to reduction in base pay due solely to the reallocation of demonstration project pay rates in the implementation of a staffing supplement; (5) allow no provision of grade or pay band retention under this demonstration project and (6) allow demonstration project employees receiving a staffing supplement to retain the adjusted base pay if the staffing supplement is discontinued or reduced. This waiver applies to ST employees only if they move to a GS-equivalent position within the demonstration project under conditions that trigger entitlement to pay retention.

Chapter 55, section 5542(a)(1)–(2): Overtime rates; computation. Waived to the extent necessary to provide that the GS–10 minimum special rate (if any) for the special rate category to which a project employee belongs is deemed to be the "applicable special rate" in applying the pay cap provisions in 5 U.S.C. 5542.

Chapter 55, section 5545(d): Hazardous duty differential. Waived to the extent necessary to allow demonstration project employees to be treated as GS employees.

Chapter 55, section 5547(a)–(b): Limitation on premium pay. Waived to the extent necessary to provide that the GS–15 maximum special rate (if any) for the special rate category to which a project employee belongs is deemed to be the "applicable special rate" in applying the pay cap provisions in 5 U.S.C. 5547.

Chapter 57, section 5753, 5754, and 5755: Recruitment and relocation, bonuses, incentives, and supervisory differentials. Waived to the extent necessary to allow employees and positions under the demonstration project to be treated as employees and positions under the GS.

Chapter 59, section 5941: Allowances based on living costs and conditions of environment; employees stationed outside continental U.S. or Alaska. Waived to the extent necessary to provide that cost-of-living allowances paid to employees under the demonstration project are paid in accordance with regulations prescribed by the President (as delegated to OPM).

Chapter 75, sections 7501(1), 7511(a)(1)(A)(ii), and 7511(a)(1)(C)(ii): Adverse Actions—Definitions. Waived to the extent necessary to allow for up to a three-year probationary period and to permit termination during the extended probationary period without using adverse action procedures for those employees serving a probationary period under an initial appointment except for those with veterans' preference.

Chapter 75, section 7512(3): Adverse actions. Waived to the extent necessary to replace "grade" with "pay band."

Chapter 75, section 7512(4): Adverse actions. Waived to the extent necessary to provide that adverse action provisions do not apply to (1) conversions from GS special rates or NSPS Targeted Local Market Supplements to demonstration project pay, as long as total pay is not reduced and (2) reductions in pay due to the removal of a supervisory or team leader pay adjustment upon voluntary movement to a non-supervisory or non-team leader position.

B. Waivers to Title 5, CFR

Part 293, subpart D: Personnel Records. Employee Performance File System Records. Waived to the extent necessary to be consistent with the demonstration project's mission aligned objectives and compensation system and to allow definition and establishment of its automated system of records and retention requirements.

Part 300, sections 300.601 through 300.605: Time-in-Grade restrictions. Waived to eliminate time-in-grade restrictions in the demonstration project.

Part 308, sections 308.101 through 308.103: Volunteer service. Waived to allow for a Voluntary Emeritus Corps in addition to student volunteers.

Part 315, section 315.801(a), 315.801(b)(1), (c), and (e), and 315.802(a) and (b)(1): Probationary period and Length of probationary period. Waived to the extent necessary to allow for up to a three-year probationary period and to permit termination during the extended probationary period without using adverse action procedures for those employees serving a probationary period under an initial appointment except for those with veterans' preference.

Part 315, section 315.901: Statutory requirement. Waived to the extent necessary to replace "grade" with "pay band."

Part 315, section 315.905 Length of the probationary period. Waived to the extent necessary to allow for a two-year supervisory/managerial probationary period.

Part 316, section 316.301: Purpose and duration. Waived to the extent necessary to allow for term appointments for more than four years.

Part 316, section 316.303: Tenure of term employees. Waived to the extent necessary to allow term employees to acquire competitive status.

Part 316, section 316.304: Trial Period. Waived to the extent necessary to allow for up to a three-year trial period.

Part 332, section 332.402: "Rule of three" will not be used in the demonstration project. When there are no more than 15 qualified applicants and no preference eligible, all eligible applicants are referred to the selection official without rating or rankings. Statutes and regulations covering veterans' preference are observed in the selection process and when rating and ranking are required.

Part 332, section 332.404: Order of selection from certificates. Waived to the extent necessary to eliminate the requirement for selection using the "rule of three."

Part 335, section 335.103: Agency promotion programs. Waived to the extent necessary to extend the length of details and temporary promotions without requiring competitive procedures.

Part 337, section 337.101(a): Rating applicants. Waived to the extent necessary to allow referral without rating when there are 15 or fewer qualified candidates and no qualified preference eligibles.

Part 340, subpart A, subpart B, and subpart C: Other than Full-Time Career Employment. These subparts are waived

to the extent necessary to allow a Volunteer Emeritus Corps.

Part 351, section 351.401: Determining retention standing. Waived to the extent necessary to allow use of performance subgroups in determining retention standing.

Part 351, section 351.402(b): Competitive area. Waived to the extent necessary to allow separate competitive areas for demonstration and non-demonstration project employees and to allow separate competitive areas for each demonstration occupational family.

Part 351, section 351.403: Competitive level. Waived to the extent necessary to replace "grade" with "pay band" and to allow use of demonstration project criteria, such as specialty area code, to be used in the definition of competitive levels.

Part 351, section 351.501: Order of retention—competitive service. Waived as necessary to allow use of performance subgroups in determining retention standing and allow no additional years of service based on performance.

Part 351, section 351.502: Order of retention—excepted service. Waived as necessary to allow use of performance subgroups in determining retention standing and allow no additional years of service based on performance.

Part 351, section 351.504: Credit for performance. Waived as necessary to allow for use of performance subgroups rather than adding years of service based on performance.

Part 351, section 351.701: Assignment involving displacement. Waived to the extent that bump and retreat rights are limited to one pay band with the exception of 30 percent preference eligibles who are limited to two bands (or equivalent of five grades), and to limit the assignment rights of employees with an unacceptable current rating of record to a position held by another employee with an unacceptable rating of record.

Part 410, section 410.309: Agreements to continue in service. Waived to the extent necessary to allow the Executive Directors of the covered organizations to determine requirements related to continued service agreements.

Part 430, subpart B: Performance Appraisal for GS, Prevailing Rate, and Certain Other Employees. Waived to the extent necessary to be consistent with the demonstration project's mission aligned objectives and compensation system.

Part 430, section 430.208(a)(1) and (2): Rating Performance. Waived to allow presumptive ratings for new employees hired 90 days or less before the end of the appraisal cycle or for other situations not providing adequate time for an appraisal.

Part 432, Performance based reduction-in-grade and removal actions: Modified to the extent that an employee may be removed, reduced in pay band level with a reduction in pay, reduced in pay without a reduction in pay band level and reduced in pay band level without a reduction in pay based on unacceptable performance. Also, modified to delete reference to critical element. For employees who are reduced in pay band level without a reduction in pay, Sections 432.105 and 432.106(a) do not apply.

Part 432, section 432.102: Coverage. Waived to the extent that the term "grade" is replaced with "pay band."

Part 432, section 432.104: Addressing unacceptable performance. References to "critical elements" are deleted as all elements are critical and adding that the employee may be "reduced in pay band level, or pay, or removed" if performance does not improve to an acceptable level during a reasonable opportunity period.

Part 432, section 432.105(a)(2): Proposing and taking action based on unacceptable performance: Waive "If an employee has performed acceptably for 1 year" to allow for "within two years from the beginning of a PIP."

Part 451, subpart A, section 451.103(c)(2): Waived with respect to performance awards under the NAVAIR Extraordinary Achievement Allowance and demo incentive awards authority.

Part 451, subpart A, section 451.106 and 451.107: Waived to allow the NAWCAD and NAWCWD Commanders authority to grant special act awards to covered employees of up to $25,000.

Part 511, subpart A, subpart B, and subpart F: Classification within the General Schedule. Waived in its entirety.

Part 530, subpart C: Special Rate Schedules for Recruitment and Retention. Waived in its entirety to allow for staffing supplements.

Part 531, subpart B.: Determining Rate of Basic Pay. Waived to the extent necessary to allow for pay setting, including educational pay adjustments and pay for performance under the provisions of the demonstration project.

Part 531, subparts D and E: Within-Grade Increases, and Quality Step Increases. Waived in its entirety.

Part 531, subpart F: Locality-Based Comparability Payments. Waived to the extent necessary to allow (1) demonstration project employees, except employees in Pay Band VI of the Supervision and Management pay schedule, to be treated as GS employees and (2) base rates of pay under the demonstration project to be treated as scheduled annual rates of pay.

Part 536: Grade and Pay Retention. Waived to the extent necessary to (1) replace "grade" with "pay band;" (2) provide that pay retention provisions do not apply to conversions from GS special rates to demonstration project pay, as long as total pay is not reduced, and to movement from a supervisory position to a non-supervisory position, as long as total pay is not reduced; (3) allow demonstration project employees to be treated as GS employees; (4) provide that pay retention provisions do not apply to movements to a lower pay band as a result of not receiving the general increase due to an annual performance rating of "Unacceptable;" (5) provide that an employee on pay retention whose rating of record is "Unacceptable" is not entitled to 50 percent of the amount of the increase in the maximum rate of base pay payable for the pay band of the employee's position; (6) allow no provision of grade or pay band retention under this demonstration project; (7) provide that pay retention does not apply to reduction in base pay due solely to the reallocation of demonstration project pay rates in the implementation of a staffing supplement and (8) allow demonstration project employees receiving a staffing supplement to retain the adjusted base pay if the staffing supplement is discontinued or reduced. This waiver applies to ST employees only if they move to a GS equivalent position within the demonstration project under conditions that trigger entitlement to pay retention.

Part 550, sections 550.105 and 550.106: Bi-weekly and annual maximum earnings limitations. Waived to the extent necessary to provide that the GS–15 maximum special rate (if any) for the special rate category to which a project employee belongs is deemed to be the "applicable special rate" in applying the pay cap provisions in 5 U.S.C. 5547.

Part 550, section 550.703: Definitions. Waived to the extent necessary to modify the definition of "reasonable offer" by replacing "two grade or pay levels" with "one band level" and "grade or pay level" with "band level."

Part 550, section 550.902: Definitions. Waived to the extent necessary to allow demonstration project employees to be treated as GS employees. This waiver does not apply to employees in Pay Band V of the S&E occupational family.

Part 575, subparts A, B, C, and D: Recruitment Incentives, Relocation Incentives, Retention Incentives. Waived to the extent necessary to allow

employees and positions under the demonstration project covered by pay banding to be treated as employees and positions under the GS.

Part 591, subpart B: Cost-of-Living Allowance and Post Differential—Non-foreign Areas. Waived to the extent necessary to allow (1) demonstration project employees to be treated as employees under the GS and (2) employees in Band V of the S&E occupational family to be treated as ST employees for the purposes of these provisions.

Part 752, sections 752.101, 752.201, 752.301 and 752.401: Principal statutory requirements and Coverage. Waived to the extent necessary to allow for up to a three-year probationary period and to permit termination during the extended probationary period without using adverse action procedures for those employees serving a probationary period under an initial appointment except for those with veterans' preference.

Part 752, section 752.401: Coverage. Waived to the extent necessary to replace "grade" with "pay band," and to provide that a reduction in pay band level is not an adverse action if it results from the employee's rate of base pay being exceeded by the minimum rate of base pay for his/her pay band.

Part 752, section 752.401(a)(4): Coverage. Waived to the extent necessary to provide that adverse action provisions do not apply to (1) conversions from GS special rates or NSPS Targeted Local Market Supplements to demonstration project pay, as long as total pay is not reduced and (2) movement from a supervisory pay band to a non-supervisory pay band as long as total pay is not reduced.

Appendix A: NAWCAD and NAWCWD Duty Locations

GSA geographic location code	Duty location
011716073	Hoover, AL
011730089	Huntsville, AL
012585089	Redstone Arsenal, AL
040530019	Tucson, AZ
040620027	Yuma, AZ
060543073	Camp Pendleton, CA
060675029	China Lake, CA
060860073	Coronado, CA
061077029	Edwards AFB, CA
061090025	El Centro, CA
061264073	Fallbrook, CA
061880031	Lemoore, CA
062090013	Martinez, CA
062194073	Miramar Naval Air Sta., CA
062250053	Monterey, CA
062341073	Naval Air Station, CA
062622111	Oxnard AFB, CA
062700037	Pasadena, CA
062861073	Point Loma Complex, CA
062862111	Point Mugu, CA
062890111	Port Hueneme, CA
063260073	San Diego, CA
063397111	San Nicolas Island, CA
090260011	Groton, CT
110010001	Washington, DC
110400001	Wash Navy Yard, DC
120000091	Okaloosa Cnty, FL
120485031	Cecil Field, FL
120935091	Eglin A.F.B., FL
121130001	Gainesville, FL
121510031	Jacksonville, FL
121972031	Mayport, FL
122070113	Milton, FL
122156033	Naval Air Station, FL
122161095	Naval Warfare Center, FL
122162031	Naval Aviation Depot, FL
122164031	Naval Air Station, FL
122360095	Orlando, FL
122490033	Pensacola, FL
122811085	Sewalls Point, FL
122950057	Tampa, FL
130280121	Atlanta, GA
133015039	Kings Bay, GA
153500003	Kaneohe, HI
158206003	Pearl Harbor Naval Base, HI
173595097	Great Lakes, IL
181055101	Crane, IN
182210097	Indianapolis, IN
221690071	New Orleans, LA
231150005	Brunswick, ME
240840017	Indian Head, MD
241096037	Patuxent River, MD
241364037	Saint Inigoes, MD
241480009	Solomons, MD
250478017	Hanscom Fields, MA
281590075	Meridian, MS
297080510	St Louis, MO
320090001	Fallon, NV
330360013	New London, NH
341580029	Lakehurst, NJ
342095029	Naval Air Warfare Center, NJ
362840103	Huntington, NY
370885049	Cherry Point, NC
371670051	Fayetteville, NC
371685051	Fort Bragg, NC
372330133	Jacksonville, NC
372894049	Marine Corps Air Station, NC
392090113	Dayton, OH
399165113	Wright Patterson AFB, OH
404725109	Tinker AFB, OK
421230055	Chambersburg, PA
421657089	Coolbaugh Township, PA
422063091	Dresher, PA
424800071	Manheim, PA
425698101	Philadelphia, PA
425699041	Naval Support Activity, PA
426540101	Philadelphia, PA
426600003	Pittsburgh, PA
428475089	Tobyhanna, PA
429420111	Windber, PA
440136005	Naval Base, RI
450140013	Beaufort, SC
451040045	Greenville, SC
470092031	Arnold AFB, TN
471660157	Millington, TN
472470031	Tullahoma, TN
480150375	Amarillo, TX
480260439	Arlington, TX
481550273	Corpus Christi, TX
481730113	Dallas, TX
482450439	Fort Worth, TX
483700273	Kingsville, TX
491560049	Provo, UT
510000013	Arlington, VA
510702810	Damneck Nav Fac, VA
511220059	Herndon, VA
511686710	Naval Base, VA
511687013	Arlington, VA
511720700	Newport News, VA
511760710	Norfolk, VA
511822810	Oceana Nav Air Sta, VA
511906013	Pentagon, VA
512010153	Quantico, VA
512540810	Virginia Beach, VA
512564001	Wallops Island, VA
512690199	Yorktown, VA
530105035	Bangor, WA
531960033	Seattle, WA
532508029	Whidbey Island NAS, WA
GM9000000	Stuttgart, Germany
GQ0100000	Agana, GUAM
JA0600000	Atsugi, Japan
JA2600000	Futemma, Japan
JA3800000	Iwakuni, Japan
JA3825000	Iwakuni Marine Corps Air Stn, Japan
JA3950000	Kadena AF Okinawa, Japan
JA5615000	Okinawa Island, Japan
NO6000000	Oslo, Norway

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Appendix B: Occupational Series by Occupational Family

NAWCAD/WD - STRL Series Included with-in Occupational Families									
S & E (DP)	0170	0180	0193	0199	0401	0403	0408	0413	0499
	0701	799	0801	0803	0806	0808	0810	0819	0830
	0850	0854	0855	0861	0893	0896	0899	1301	1306
	1310	1313	1320	1321	1340	1350	1360	1384	1399
	1515	1520	1529	1550	1599				
S & E TECHNICIAN (DT)	0802	0818	0856	0895	0899	1060	1099	1152	1199
	1311	1341	1374	1399	1521	1599	1960	1999	
BUSINESS & PROGRAM MANAGEMENT (DA)	0018	0028	0080	0099	0132	0199	0201	0260	0299
	0301	0340	0341	0343	0399	0501	0505	0510	0560
	0599	0905	0950	0999	1001	1010	1035	1040	1071
	1082	1083	1084	1099	1101	1102	1103	1199	1222
	1299	1410	1412	1499	1601	1640	1699	1750	1799
	1801	1899	2003	2010	2099	2101	2199		
TECHNICAL SPECIALIST (DS)	0301	0346	0391	0392	0399	0560	0599	1040	1099
	1150	1199	1670	1699	1910	1999	2101	2152	2181
	2199	2210	2299						
ADMIN SUPPORT (DG)	0019	0086	0099	0203	0299	0302	0303	0304	0305
	0309	0318	0322	0326	0344	0361	0394	0399	0503
	0525	0540	0544	0561	0599	0986	0999	1105	1106
	1107	1108	1199	1411	1499	1603	1699	2005	2099
	2204	2299							

Supervision & Management (NM)	**The Supervision & Management pay plan does not represent an occupational family. Supervisory and managerial positions are classified to an appropriate series for the scientific, engineering, technical, business, or administrative work of the position and will be placed in the occupational family covering that series. The Supervision & Management pay plan was created with cognizance that this is a separate line of work with different qualifications and grade level and banding requirements.**

Appendix C: Intervention Model

Intervention	Expected Effects	Measures	Data Sources
1. COMPENSATION			
a. Pay banding	Increased organizational flexibility	Perceived flexibility	Attitude survey
	Reduced administrative workload, paper work reduction	Actual/perceived time savings	Personnel office data, PME results, attitude survey
	Advanced in-hire rates	Starting salaries of banded v. non-banded employees	Workforce data
	Slower pay progression at entry levels	Progression of new hires over time by band, career path	Workforce data
	Increased pay potential	Mean salaries by band, group, demographics Total payroll costs	Workforce data Personnel office data
	Increased satisfaction with advancement	Employee perceptions of advancement	Attitude survey
	Increased pay satisfaction	Pay satisfaction, internal/external equity	Attitude survey
	Improved recruitment	Offer/acceptance ratios; Percent declinations	Personnel office data
b. Conversion buy-in	Employee acceptance	Employee perceptions of equity, fairness Cost as a percent of payroll	Attitude survey Workforce data
c. Pay differentials/ adjustments	Increased incentive to accept supervisory/team leader positions	Perceived motivational power	Attitude survey

Intervention	Expected Effects	Measures	Data Sources
2. PERFORMANCE MANAGEMENT			
a. Cash awards/ bonuses	Reward/motivate performance	Perceived motivational power	Attitude survey
	To support fair and appropriate distribution of awards	Amount and number of awards by group, demographics	Workforce data
		Perceived fairness of awards	Attitude survey
		Satisfaction with monetary awards	Attitude survey
b. Performance based pay progression	Increased pay-performance link	Perceived pay-performance link	Attitude survey
		Perceived fairness of ratings	Attitude survey
	Improved performance feedback	Satisfaction with ratings	Attitude survey
		Employee trust in supervisors	Attitude survey
		Adequacy of performance feedback	Attitude survey
	Decreased turnover of high performers/Increased turnover of low performers	Turnover by performance rating scores	Workforce data
	Differential pay progression of high/low performers	Pay progression by performance scores, career path	Workforce data

Intervention	Expected Effects	Measures	Data Sources
	Alignment of organizational and individual performance objectives and results	Linkage of performance objectives to strategic plans/goals	Performance objectives, strategic plans
	Increased employee involvement in performance planning and assessment	Perceived involvement Performance management	Attitude survey/focus groups Personnel regulations
c. New appraisal process	Reduced administrative burden	Employee and supervisor perceptions of revised procedures	Attitude survey
	Improved communication	Perceived fairness of process	Focus groups
d. Performance development	Better communication of performance expectations	Feedback and coaching procedures used Time, funds spent on training by demographics	Focus groups Personnel office data Training records
	Improved satisfaction and quality of workforce	Perceived workforce quality	Attitude survey
3. "WHITE COLLAR" CLASSIFICATION			
a. Improved classification systems with generic standards	Reduction in amount of time and paperwork spent on classification	Time spent on classification procedures Reduction of paperwork/number of personnel actions (classification/promotion)	Personnel office data Personnel office data

Intervention	Expected Effects	Measures	Data Sources
	Ease of use	Managers' perceptions of time savings, ease of use	Attitude survey
b. Classification authority delegated to managers	Increased supervisory authority/accountability	Perceived authority	Attitude survey
	Decreased conflict between management and personnel staff	Number of classification disputes/appeals pre/post Management satisfaction with service provided by personnel office	Personnel records Attitude survey
	No negative impact on internal pay equity	Internal pay equity	Attitude survey
c. Dual career ladder	Increased flexibility to assign employees	Assignment flexibility	Focus groups, surveys
	Improved internal mobility	Perceived internal mobility	Attitude survey
	Increased pay equity	Perceived pay equity	Attitude survey
	Flatter organization	Supervisory/non-supervisory ratios	Workforce data Attitude survey
	Improved quality of supervisory staff	employee perceptions of quality or supervisory	Attitude survey
4. Modified RIF			
	Minimize loss of high performing employees with needed skills	Separated employees by demographics, performance scores	Workforce dataAttitude survey/focus group

Intervention	Expected Effects	Measures	Data Sources
	Contain cost and disruption	Satisfaction with RIF Process	Attitude survey/focus group
		Cost comparison of traditional vs. Modified RIF	Personnel office/budget Data
		Time to conduct RIF - personnel office data	Personnel office data
		Number of Appeals/reinstatements	Personnel office data
5. Hiring Authority			
a. Delegated Examining	Improved ease and timeliness of hiring process	Perceived flexibility in authority to hire	Attitude survey
	Improved recruitment of employees in shortage categories	Offer/accept ratios	Personnel office data
		Percent declinations	Personnel office data
		Timeliness of job offers	Personnel office data
		GPAs of new hires, educational levels	Personnel office data
	Reduced administrative workload/paperwork reduction	Actual/perceived skills	Attitude survey
b. Term Appointment Authority	Increased capability to expand and contract workforce	Number/percentage of conversions from modified term to permanent appointments	Workforce data Personnel office data

Intervention	Expected Effects	Measures	Data Sources
c. Flexible Probationary Period	Expanded employee assessment	Average conversion period to permanent status	Workforce data Personnel office data
		Number/percentage of employees completing probationary period	Workforce data Personnel office data
		Number of separations during probationary period	Workforce data Personnel office data
6. Expanded Development Opportunities			
a. Sabbaticals	Expanded range of professional growth and development	Number and type of opportunities taken	Workforce data
	Application of enhanced knowledge and skills to work product	Employee and supervisor perceptions	Attitude survey
b. Critical Skills Training	Improved organizational effectiveness	Number and type of trainingPlacement of employees, skills imbalances correctedEmployee and supervisor perceptionsApplication of knowledge gained from training	Personnel office dataPersonnel office dataAttitude surveyAttitude survey/ focus group
7. Combination Of All Interventions			
All	Improved organizational effectiveness	Combination of personnel measures	All data sources

Intervention	Expected Effects	Measures	Data Sources
	Improved management of workforce	Employee/Management job satisfaction (intrinsic/extrinsic)	Attitude survey
	Improved planning	Planning procedures Perceived effectiveness of planning procedures	Strategic planning documents Attitude survey
	Improved cross functional coordination	Actual/perceived coordination	Organizational charts
	Increased product success	Customer satisfaction	Customer satisfaction surveys
	Cost of innovation	Project training/ development costs (staff salaries, contract cost, training hours per employee)	Demo project office records Contract documents
8. Context:			
Regionalization	Reduced servicing ratios/ costs	HR servicing ratios Average cost per employee served	Personnel office data, workforce data Personnel office data, workforce data
	No negative impact on service quality	Service quality, timeliness	Attitude survey/focus groups

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Appendix D: Individual Pay Band Level Rating Benchmarks Examples

These are examples for illustration purposes only, the actual benchmarks may be different from what is shown here. These are an example showing a benchmark for each pay band level in an occupational family:

Scientific and Engineering (S&E) (Pay Plan DP)

Example Rating Benchmarks

Band II

Level 3:

- With guidance, effectively achieved the stated objective.
- With guidance, organized and prioritized own tasks to deliver the objective, adjusting work plans and overcoming obstacles as necessary.
- Demonstrated high standards of personal and professional conduct and represented the organization or work unit effectively.

Level 5:

Additions at the Level 5:

- Contributed results beyond what was expected; results were far superior in quality, quantity, timeliness and/or impact to the stated objective.
- Exhibited the highest standards of professionalism.

Band III

Level 3:

- Effectively achieved the stated objective, anticipating and overcoming significant obstacles. Adapts established methods and procedures when needed.
- Results were technically sound, accurate, thorough, documented, and met applicable authorities, standards, policies, procedures and guidelines.
- Planned, organized prioritized, and scheduled own work activities to deliver the objective in a timely and effective manner, making adjustments to respond to changing situations and anticipating and overcoming difficult obstacles as necessary.
- Demonstrated high standards of personal and professional conduct and represented the organization or work unit effectively.

Level 5:

Additions at the Level 5:

- Contributed results beyond what was expected; results were far superior in quality, quantity, and/or impact to the stated objective to what would be expected at this level.
- Exhibited the highest standards of professionalism.

Appendix E: Career Stage Rating Benchmarks Examples

These are examples for illustration purposes only, the actual benchmarks may be different from what is shown here. These are an example showing benchmarks by career stage, which may cover multiple pay band levels in multiple occupational families:

Example Rating Benchmarks

Career Stage: Journey.

Objective Rating: 1.

Performance Standard:

- Failed to achieve all or part of the stated critical element; or
- Failed to provide products that were sound, accurate, thorough and documented, and regularly failed to meet applicable authorities, standards, policies, procedures and guidelines; or
- Failed to plan, organize, prioritize, and schedule own work activities to deliver the critical element in a timely and effective

manner. Relied on others to frequently assist with or redo work assignments; or

• Demonstrated poor cooperation or inability to work with others.

Career Stage: Journey.

Objective Rating: 3.

Performance Standard:

• Effectively accomplished the stated critical element by achieving results that were technically sound, accurate, thorough, and documented and met applicable authorities, standards, policies, procedures and guidelines.

• Planned, organized, prioritized and scheduled own work activities to deliver the critical element in a timely and effective manner, making adjustments to respond to changing situations as necessary.

• Demonstrated high standards of teamwork and cooperation.

Career Stage: Journey.

Objective Rating: 5.

Performance Standard:

(Measured in addition to the above)

• Achieved outcomes and results that are far superior in quality, quantity, timeliness and/or impact to what would ordinarily be expected at this level.

• Accomplishments and outcomes were of such magnitude that they contributed to the organization exceeding its mission goals and objectives for the year.

• Persisted in overcoming obstacles and put forth extra effort to accomplish difficult assignments.

• Represented the organization or work unit effectively through model team cooperation.

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Part V

Department of Housing and Urban Development

Federal Property Suitable as Facilities To Assist the Homeless; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5477–N–06]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7262, Washington, DC 20410; telephone (202) 708–1234; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD reviewed in 2009 for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property.

In accordance with 24 CFR 581.3(b) landholding agencies are required to notify HUD by December 31, 2008, the current availability status and classification of each property controlled by the Agencies that were published by HUD as suitable and available which remain available for application for use by the homeless.

Pursuant to 24 CFR 581.8(d) and (e) HUD is required to publish a list of those properties reported by the Agencies and a list of suitable/unavailable properties including the reasons why they are not available.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Rita, Division of Property Management, Program Support Center, HHS, Room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Air Force:* Mr. Robert Moore, Air Force Real Property Agency, 143 Billy Mitchell Blvd., San Antonio, TX 78226, (210) 925–3047; *Army:* Ms. Veronica Rines, Department of the Army, Office of the Assistant Chief of Staff for Installation Management, DAIM–ZS, Room 8536, 2511 Jefferson Davis Hwy, Arlington, VA 22202; *COE:* Mr. Scott Whiteford, Army Corps of Engineers, Real Estate, CEMP–CR, 441 G Street, NW., Washington, DC 20314; (202) 761–5542; *GSA:* Mr. Gordon Creed, Acting Deputy Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th & F Streets, NW., Washington, DC 20405; (202) 501–0084; *Interior:* Mr. Michael Wright, Acquisition & Property Management, Department of the Interior, 1849 C Street, NW., Washington, DC 20240; (202) 208–5399; *Navy:* Mr. Albert Johnson, Director of Real Estate, Department of the Navy, Naval Facilities Engineering Command, Washington Navy Yard, 1330 Patterson Ave., SW., Suite 1000, Washington, DC 20374; (202) 685–9305; *Veterans Affairs:* Mr. George L. Szwarcman, Acting Director, Real Property, Department of Veterans Affairs, 811 Vermont Avenue, NW., Room 555, Washington, DC 20420; (202) 461–8234; (These are not toll-free numbers).

Dated: February 3, 2011.

Robyn Raysor,

Deputy Director for Special Needs Assistance Program.

TITLE V PROPERTIES REPORTED IN YEAR 2010 WHICH ARE SUITABLE AND AVAILABLE

Alabama

VA

Land

VA Medical Center
Property Number: 97199010053
VAMC
Tuskegee Co: Macon AL 36083
Status: Underutilized
Comments: 40 acres, buffer to VA Medical Center, potential utilities, undeveloped

Alaska

Army

Building

Bldg. 00001
Property Number: 21200340075
Kiana Natl Guard Armory
Kiana AK 99749
Status: Excess
Comments: 1200 sq. ft., butler bldg., needs repair, off-site use only

Bldg. 00001
Property Number: 21200710051
Holy Cross Armory
High Cross AK 99602
Status: Excess
Comments: 1200 sq. ft. armory, off-site use only

Bldg. 136
Property Number: 21200820147
Ft. Richardson
Ft. Richardson AK 99505
Status: Excess
Comments: 2383 sq. ft., most recent use—housing, off-site use only

Arizona

Bldg. S–306
Property Number: 21199420346
Yuma Proving Ground
Yuma Co: Yuma/La Paz AZ 85365–9104
Status: Unutilized
Comments: 4103 sq. ft., 2-story, needs major rehab, off-site use only

Bldg. 503, Yuma Proving Ground
Property Number: 21199520073
Yuma Co: Yuma AZ 85365–9104
Status: Underutilized
Comments: 3789 sq. ft., 2-story, major structural changes required to meet floor loading code requirements, presence of asbestos, off-site use only

Bldg. 43002
Property Number: 21200440066
Fort Huachuca
Cochise AZ 85613–7010
Status: Excess
Comments: 23,152 sq. ft., presence of asbestos/lead paint, most recent use—dining, off-site use only

Bldg. 90551
Property Number: 21200920001
Fort Huachuca
Cochise AZ 85613
Status: Excess

Comments: 1270 sq. ft., most recent use—office, off-site use only

California

Air Force

Facility 1
Property Number: 18200830012
OTHB Radar Site
Tulelake CA 91634
Status: Unutilized
Comments: 7920 sq. ft., most recent use—communications

Facility 2
Property Number: 18200830014
OTHB Radar Site
Tulelake CA 91634
Status: Unutilized
Comments: 900 sq. ft., most recent use—veh maint shop

Facilities 3, 4
Property Number: 18200830015
OTHB Radar Site
Tulelake CA 91634
Status: Unutilized
Comments: 4160 sq. ft. each, most recent use—communications

Facility 1
Property Number: 18200830016
OTHB Radar Site
Christmas Valley CA 97641
Status: Unutilized
Comments: 16,566 sq. ft., most recent use—communications

Facility 2
Property Number: 18200830017
OTHB Radar Site
Christmas Valley CA 97641
Status: Unutilized
Comments: 900 sq. ft., most recent use—veh maint shop

Facility 4
Property Number: 18200830018
OTHB Radar Site
Christmas Valley CA 97641
Status: Unutilized
Comments: 14,190 sq. ft., most recent use—communications

Facility 6
Property Number: 18200830019
OTHB Radar Site
Christmas Valley CA 97641
Status: Unutilized
Comments: 14,190 sq. ft., most recent use—transmitter bldg.

Land

Parcels L1 & L2
Property Number: 18200820034
George AFB
Victorville CA 92394
Status: Excess
Comments: 157 acres/desert, pump-and-treat system, groundwater restrictions, AF access rights, access restrictions, environmental concerns

Army

Building

Bldgs. 18026, 18028
Property Number: 21200130081
Camp Roberts
Monterey CA 93451–5000
Status: Excess
Comments: 2024 sq. ft. sq. ft., concrete, poor condition, off-site use only

Bldg. 00052
Property Number: 21200930002
Moffett Community Housing
Vernon Ave.
Santa Clara CA 94035
Status: Unutilized
Comments: 4530 sq ft., most recent use—mini mart/meeting rooms, off-site use only

COE

4 Bldgs.
Property Number: 31200840001
OTH–B Radar Site
Tulelake CA 91634
Status: Unutilized
Comments: Most recent use—communications/vehicle maint., off-site use only

GSA

Land

Drill Site #3A
Property Number: 54201040004
Ford City CA 93268
Status: Surplus
Comments: 2.07 acres, mineral rights, utility easements
GSA Number: 9–B–CA–1673–AG

Drill Site #4
Property Number: 54201040005
Ford City CA 93268
Status: Surplus
Comments: 2.21 acres, mineral rights, utility easements
GSA Number: 9–B–CA–1673–AB

Drill Site #6
Property Number: 54201040006
Ford City CA 93268
Status: Surplus
Comments: 2.13 acres, mineral rights, utility easements
GSA Number: 9–B–CA–1673–AC

Drill Site #9
Property Number: 54201040007
Ford City CA 93268
Status: Surplus
Comments: 2.07 acres, mineral rights, utility easements
GSA Number: 9–B–CA–1673–AH

Drill Site #20
Property Number: 54201040008
Ford City CA 93268
Status: Surplus
Comments: 2.07 acres, mineral rights, utility easements
GSA Number: 9–B–CA–1673–AD

Drill Site #22
Property Number: 54201040009
Ford City CA 93268
Status: Surplus
Comments: 2.07 acres, mineral rights, utility easements
GSA Number: 9–B–CA–1673–AF

Drill Site #24
Property Number: 54201040010
Ford City CA 93268
Status: Surplus
Comments: 2.06 acres, mineral rights, utility easements
GSA Number: 9–B–CA–1673–AE

Drill Site #26
Property Number: 54201040011
Ford City CA 93268
Status: Surplus
Comments: 2.07 acres, mineral rights, utility easements
GSA Number: 9–B–CA–1673–AA

Colorado

Air Force

Building

7 Bldgs.
Property Number: 18201020002
U.S. Air Force Academy
El Paso CO 80840
Location: 6501, 6502, 6503, 6504, 6505, 6507, and 6508
Status: Unutilized
Comments: 2222 sq. ft. each

Bldg. 6506
Property Number: 18201020019
US Air Force Academy
El Paso CO 80840
Status: Unutilized
Comments: 2222 sq. ft.

Army

Bldg. 00127
Property Number: 21200420179
Pueblo Chemical Depot
Pueblo CO 81006
Status: Unutilized
Comments: 8067 sq. ft., presence of asbestos, most recent use—barracks, off-site use only

Bldg. 01516
Property Number: 21200640116
Fort Carson
El Paso CO 80913
Status: Unutilized
Comments: 723 sq. ft., needs repair, most recent use—storage, off-site use only

VA

Bldg. 2
Property Number: 97200430001
VAMC
2121 North Avenue
Grand Junction Co: Mesa CO 81501
Status: Unutilized
Comments: 3298 sq. ft., needs major rehab, presence of asbestos/lead paint

Bldg. 3
Property Number: 97200430002
VAMC
2121 North Avenue
Grand Junction Co: Mesa CO 81501
Status: Unutilized
Comments: 7275 sq. ft., needs major rehab, presence of asbestos/lead paint

Georgia

Army

Bldg. 322
Property Number: 21199720156
Fort Benning
Ft. Benning Co: Muscogee GA 31905
Status: Unutilized
Comments: 9600 sq. ft., needs rehab, most recent use—admin., off-site use only

Bldg. 2593
Property Number: 21199720167
Fort Benning
Ft. Benning Co: Muscogee GA 31905
Status: Unutilized
Comments: 13644 sq. ft., needs rehab, most recent use—parachute shop, off-site use only

Bldg. 2595

Property Number: 21199720168
Fort Benning
Ft. Benning Co: Muscogee GA 31905
Status: Unutilized
Comments: 3356 sq. ft., needs rehab, most recent use—chapel, off-site use only

Bldg. 4232
Property Number: 21199830291
Fort Benning
null Co: Muscogee GA 31905
Status: Unutilized
Comments: 3720 sq. ft., needs rehab, most recent use—maint. bay, off-site use only

Bldgs. 5974–5978
Property Number: 21199930135
Fort Benning
Ft. Benning Co: Muscogee GA 31905
Status: Unutilized
Comments: 400 sq. ft., most recent use—storage, off-site use only

Bldg. 5993
Property Number: 21199930136
Fort Benning
Ft. Benning Co: Muscogee GA 31905
Status: Unutilized
Comments: 960 sq. ft., most recent use—storage, off-site use only

Bldg. T–1003
Property Number: 21200030085
Fort Stewart
Hinesville Co: Liberty GA 31514
Status: Excess
Comments: 9267 sq. ft., poor condition, most recent use—admin., off-site use only

Bldg. T0130
Property Number: 21200230041
Fort Stewart
Hinesville Co: Liberty GA 31314–5136
Status: Excess
Comments: 10,813 sq. ft., off-site use only

Bldg. T0157
Property Number: 21200230042
Fort Stewart
Hinesville Co: Liberty GA 31314–5136
Status: Excess
Comments: 1440 sq. ft., off-site use only

Bldgs. T291, T292
Property Number: 21200230044
Fort Stewart
Hinesville Co: Liberty GA 31314–5136
Status: Excess
Comments: 5220 sq. ft. each, off-site use only

Bldg. T0295
Property Number: 21200230045
Fort Stewart
Hinesville Co: Liberty GA 31314–5136
Status: Excess
Comments: 5220 sq. ft., off-site use only

Bldg. 4476
Property Number: 21200420034
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905
Status: Excess
Comments: 3148 sq. ft., most recent use—veh. maint. shop, off-site use only

Bldg. 9029
Property Number: 21200420050
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905
Status: Excess
Comments: 7356 sq. ft., most recent use—heat plant bldg., off-site use only

Bldg. T924
Property Number: 21200420194
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Comments: 9360 sq. ft., most recent use—warehouse, off-site use only

Bldg. 00924
Property Number: 21200510065
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Comments: 9360 sq. ft., most recent use—warehouse, off-site use only

Bldg. 08585
Property Number: 21200530078
Hunter Army Airfield
Savannah Co: Chatham GA 31409
Status: Excess
Comments: 165 sq. ft., most recent use—plant, off-site use only

Bldg. 01150
Property Number: 21200610037
Hunter Army Airfield
Savannah Co: Chatham GA 31409
Status: Excess
Comments: 137 sq. ft., most recent use—flam mat storage, off-site use only

Bldg. 01151
Property Number: 21200610038
Hunter Army Airfield
Savannah Co: Chatham GA 31409
Status: Excess
Comments: 78 sq. ft., most recent use—flam mat storage, off-site use only

Bldg. 01153
Property Number: 21200610039
Hunter Army Airfield
Savannah Co: Chatham GA 31409
Status: Excess
Comments: 211 sq. ft., most recent use—flam mat storage, off-site use only

Bldg. 01530
Property Number: 21200610048
Fort Stewart
Liberty GA 31314
Status: Excess
Comments:

Bldg. 08032
Property Number: 21200610051
Fort Stewart
Liberty GA 31314
Status: Excess
Comments: 2592 sq. ft., needs rehab, most recent use—storage/stable, off-site use only

Bldg. 07783
Property Number: 21200640093
Fort Stewart
Hinesville GA 31314
Status: Excess
Comments: 8640 sq. ft., most recent use—maintenance hangar, off-site use only

Bldg. 08061
Property Number: 21200640094
Fort Stewart
Hinesville GA 31314
Status: Excess
Comments: 1296 sq. ft., most recent use—weather station, off-site use only

Bldg. 00100
Property Number: 21200740052
Hunter Army Airfield
Chatham GA 31409
Status: Excess
Comments: 10893 sq. ft., most recent use—battalion hdqts., off-site use only

Bldg. 00129
Property Number: 21200740053
Hunter Army Airfield
Chatham GA 31409
Status: Excess
Comments: 4815 sq. ft., presence of asbestos, most recent use—religious education facility, off-site use only

Bldg. 00145
Property Number: 21200740054
Hunter Army Airfield
Chatham GA 31409
Status: Excess
Comments: 11590 sq. ft., presence of asbestos, most recent use—post chapel, off-site use only

Bldg. 00811
Property Number: 21200740055
Hunter Army Airfield
Chatham GA 31409
Status: Excess
Comments: 42853 sq. ft., most recent use—co hq bldg, off-site use only

Bldg. 00812
Property Number: 21200740056
Hunter Army Airfield
Chatham GA 31409
Status: Excess
Comments: 1080 sq. ft., most recent use—power plant, off-site use only

Bldg. 00850
Property Number: 21200740057
Hunter Army Airfield
Chatham GA 31409
Status: Excess
Comments: 108,287 sq. ft., presence of asbestos, most recent use—aircraft hangar, off-site use only

Bldg. 00860
Property Number: 21200740058
Hunter Army Airfield
Chatham GA 31409
Status: Excess
Comments: 10679 sq. ft., presence of asbestos, most recent use—maint. hangar, off-site use only

Bldg. 01028
Property Number: 21200740059
Hunter Army Airfield
Chatham GA 31409
Status: Excess
Comments: 870 sq ft., most recent use—storage, off-site use only

Bldg. 00955
Property Number: 21200740060
Fort Stewart
Hinesville GA 31314
Status: Excess
Comments: 120 sq. ft., most recent use—storage, off-site use only

Bldg. 00957
Property Number: 21200740061
Fort Stewart
Hinesville GA 31314
Status: Excess
Comments: 6072 sq. ft., most recent use—recycling facility, off-site use only

Bldg. 00971
Property Number: 21200740062
Fort Stewart
Hinesville GA 31314
Status: Excess
Comments: 4000 sq. ft., most recent use—vehicle maint., off-site use only

Bldg. 01015
Property Number: 21200740063
Fort Stewart
Hinesville GA 31314
Status: Excess
Comments: 7496 sq. ft., most recent use—storage, off-site use only

Bldg. 01209
Property Number: 21200740064
Fort Stewart
Hinesville GA 31314
Status: Excess
Comments: 4786 sq. ft., presence of asbestos, most recent use—vehicle maint., off-site use only

Bldg. 07335
Property Number: 21200740065
Fort Stewart
Hinesville GA 31314
Status: Excess
Comments: 4400 sq. ft., most recent use—chapel, off-site use only

Bldg. 245
Property Number: 21200740178
Fort Benning
Ft. Benning GA 31905
Status: Unutilized
Comments: 1102 sq. ft., most recent use—fld ops, off-site use only

Bldg. 2748
Property Number: 21200740180
Fort Benning
Ft. Benning GA 31905
Status: Unutilized
Comments: 3990 sq. ft., most recent use—office, off-site use only

Bldg. 3866
Property Number: 21200740182
Fort Benning
Ft. Benning GA 31905
Status: Unutilized
Comments: 944 sq. ft., most recent use—office, off-site use only

Bldg. 8682
Property Number: 21200740183
Fort Benning
Ft. Benning GA 31905
Status: Unutilized
Comments: 780 sq. ft., most recent use—admin., off-site use only

Bldg. 10800
Property Number: 21200740184
Fort Benning
Ft. Benning GA 31905
Status: Unutilized
Comments: 16,628 sq. ft., off-site use only

Bldgs. 11302, 11303, 11304
Property Number: 21200740185
Fort Benning
Ft. Benning GA 31905
Status: Unutilized
Comments: Various sq. ft., most recent use—ACS center, off-site use only

Bldg. 0297
Property Number: 21200810045
Ft. Benning
Chattahoochie GA 31905
Status: Excess
Comments: 4839 sq. ft., most recent use—riding stable, off-site use only

Bldg. 3819
Property Number: 21200810046
Ft. Benning
Chattahoochie GA 31905
Status: Excess
Comments: 4241 sq. ft., most recent use—training, off-site use only

Bldg. 10802
Property Number: 21200810047
Ft. Benning
Chattahoochie GA 31905
Status: Excess
Comments: 3182 sq. ft., most recent use—storage, off-site use only

Bldg. 00926
Property Number: 21200840061
Hunter Army Airfield
Savannah GA 31409
Status: Excess
Comments: 1752 sq. ft., most recent use—BN, HQ bldg., off-site use only

Bldg. 01021
Property Number: 21200840062
Hunter Army Airfield
Savannah GA 31409
Status: Excess
Comments: 6855 sq. ft., most recent use—admin., presence of asbestos, off-site use only

Bldg. 07335
Property Number: 21200840063
Fort Stewart
Hinesville GA 31314
Status: Excess
Comments: 4400 sq. ft., most recent use—chapel, off-site use only

Bldg. 07778
Property Number: 21200840064
Fort Stewart
Hinesville GA 31314
Status: Excess
Comments: 1189 sq. ft., most recent use—admin., off-site use only

7 Bldgs.
Property Number: 21200840065
Fort Stewart
Hinesville GA 31314
Location: 12601, 12602, 12603, 12605, 12606, 12607, 12609
Status: Excess
Comments: 2953 sq. ft. each, presence of asbestos, most recent use—barracks, off-site use only

9 Bldgs.
Property Number: 21200840066
Fort Stewart
Hinesville GA 31314
Location: 12610, 12611, 12612, 12613, 12614, 12615, 12616, 12617, 12618
Status: Excess
Comments: 2953 sq. ft., presence of asbestos, most recent use—barracks, off-site use only

Bldg. 12619
Property Number: 21200840067
Fort Stewart
Hinesville GA 31314
Status: Excess
Comments: 3099 sq. ft., presence of asbestos, most recent use—barracks, off-site use only

Bldg. 12682
Property Number: 21200840068
Fort Stewart
Hinesville GA 31314
Status: Excess
Comments: 120 sq. ft., presence of asbestos, most recent use—fuel/POL bldg., off-site use only

Hawaii

Air Force

Bldg. 849
Property Number: 18200330008
Bellows AFS
Bellows AFS HI
Status: Unutilized
Comments: 462 sq. ft., concrete storage facility, off-site use only

Army

P–88
Property Number: 21199030324
Aliamanu Military Reservation
Honolulu Co: Honolulu HI 96818
Location:
Approximately 600 feet from Main Gate on Aliamanu Drive.
Status: Unutilized
Comments: 45,216 sq. ft. underground tunnel complex, pres. of asbestos clean-up required of contamination, use of respirator required by those entering property, use limitations

Illinois

Bldg. AR112
Property Number: 21200110081
Sheridan Reserve
Arlington Heights IL 60052–2475
Status: Unutilized
Comments: 1000 sq. ft., off-site use only

Bldgs. 634, 639
Property Number: 21200740186
Fort Sheridan
Ft. Sheridan IL 60037
Status: Unutilized
Comments: 3731/3706 sq. ft., most recent use—classroom/storage, off-site use only

Indiana

VA

Bldg. 105, VAMC
Property Number: 97199230006
East 38th Street
Marion Co: Grant IN 46952
Status: Excess
Comments: 310 sq. ft., 1 story stone structure, no sanitary or heating facilities, Natl Register of Historic Places

Bldg. 10
Property Number: 97199810002
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953
Status: Underutilized
Comments: 16,361 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places

Bldg. 11
Property Number: 97199810003
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953
Status: Underutilized
Comments: 16,361 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places

Bldg. 18
Property Number: 97199810004
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953
Status: Underutilized

Comments: 13,802 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places

Bldg. 25
Property Number: 97199810005
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953
Status: Unutilized
Comments: 32,892 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places

Bldg. 1
Property Number: 97200310001
N. Indiana Health Care System
Marion Co: Grant IN 46952
Status: Unutilized
Comments: 20,287 sq. ft., needs extensive repairs, presence of asbestos, most recent use—patient ward

Bldg. 3
Property Number: 97200310002
N. Indiana Health Care System
Marion Co: Grant IN 46952
Status: Unutilized
Comments: 20,550 sq. ft., needs extensive repairs, presence of asbestos, most recent use—patient ward

Bldg. 4
Property Number: 97200310003
N. Indiana Health Care System
Marion Co: Grant IN 46952
Status: Unutilized
Comments: 20,550 sq .ft., needs extensive repairs, presence of asbestos, most recent use—patient ward

Bldg. 13
Property Number: 97200310004
N. Indiana Health Care System
Marion Co: Grant IN 46952
Status: Unutilized
Comments: 8971 sq. ft., needs extensive repairs, presence of asbestos, most recent use—office

Bldg. 42
Property Number: 97200310007
N. Indiana Health Care System
Marion Co: Grant IN 46952
Status: Unutilized
Comments: 5025 sq. ft., needs extensive repairs, presence of asbestos, most recent use—office

Bldg. 60
Property Number: 97200310008
N. Indiana Health Care System
Marion Co: Grant IN 46952
Status: Unutilized
Comments: 18,126 sq. ft., needs extensive repairs, presence of asbestos, most recent use—office

Bldg. 122
Property Number: 97200310009
N. Indiana Health Care System
Marion Co: Grant IN 46952
Status: Unutilized
Comments: 37,135 sq. ft., needs extensive repairs, presence of asbestos, most recent use—dining hall/kitchen

Iowa

Army

Bldg. 00691
Property Number: 21200510073
Iowa Army Ammo Plant
Middletown Co: Des Moines IA 52638
Status: Unutilized
Comments: 2581 sq. ft. residence, presence of lead paint, possible asbestos

Bldg. 00691
Property Number: 21200520113
Iowa Army Ammo Plant
Middletown Co: Des Moines IA 52638
Status: Unutilized
Comments: 2581 sq. ft., presence of asbestos/lead paint, most recent use—residential

VA

Land

40.66 acres
Property Number: 97199740002
VA Medical Center
1515 West Pleasant St.
Knoxville Co: Marion IA 50138
Status: Unutilized
Comments: Golf course, easement requirements

Kansas

Army

Building

Bldgs. 7224, 7227, 7612, 7618
Property Number: 21200930010
Fort Riley
Geary KS 66442
Status: Unutilized
Comments: 52,027/41,892 sq. ft., concrete block, most recent use—residential, off-site use only

Kentucky

COE

Green River Lock #3
Property Number: 31199010022
Rochester Co: Butler KY 42273
Location: SR 70 west from Morgantown, KY., approximately 7 miles to site.
Status: Unutilized
Comments: 980 sq. ft.; 2 story wood frame; two story residence; potential utilities; needs major rehab

Land

Tract 2625
Property Number: 31199010025
Barkley Lake, Kentucky, and Tennessee
Cadiz Co: Trigg KY 42211
Location: Adjoining the village of Rockcastle
Status: Excess
Comments: 2.57 acres; rolling and wooded

Tract 2709–10 and 2710–2
Property Number: 31199010026
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211
Location: 2½ miles in a southerly direction from the village of Rockcastle
Status: Excess
Comments: 2.00 acres; steep and wooded

Tract 2708–1 and 2709–1
Property Number: 31199010027
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211
Location: 2½ miles in a southerly direction from the village of Rockcastle
Status: Excess
Comments: 3.59 acres; rolling and wooded; no utilities

Tract 2800
Property Number: 31199010028
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211
Location: 4½ miles in a southeasterly direction from the village of Rockcastle
Status: Excess
Comments: 5.44 acres; steep and wooded

Tract 2915
Property Number: 31199010029
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211
Location: 6½ miles west of Cadiz
Status: Excess
Comments: 5.76 acres; steep and wooded; no utilities

Tract 2702
Property Number: 31199010031
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211
Location: 1 mile in a southerly direction from the village of Rockcastle
Status: Excess
Comments: 4.90 acres; wooded; no utilities

Tract 4318
Property Number: 31199010032
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212
Location: Trigg Co. adjoining the city of Canton, KY. on the waters of Hopson Creek
Status: Excess
Comments: 8.24 acres; steep and wooded

Tract 4502
Property Number: 31199010033
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212
Location: 3½ miles in a southerly direction from Canton, KY
Status: Excess
Comments: 4.26 acres; steep and wooded

Tract 4611
Property Number: 31199010034
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212
Location: 5 miles south of Canton, KY
Status: Excess
Comments: 10.51 acres; steep and wooded; no utilities

Tract 4619
Property Number: 31199010035
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212
Location: 4 ½ miles south from Canton, KY
Status: Excess
Comments: 2.02 acres; steep and wooded; no utilities

Tract 4817
Property Number: 31199010036
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212
Location: 6½ miles south of Canton, KY
Status: Excess
Comments: 1.75 acres; wooded

Tract 1217
Property Number: 31199010042
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030
Location: On the north side of the Illinois Central Railroad
Status: Excess
Comments: 5.80 acres; steep and wooded

Tract 1906
Property Number: 31199010044
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030
Location: Approximately 4 miles east of Eddyville, KY

Status: Excess
Comments: 25.86 acres; rolling steep and partially wooded; no utilities

Tract 1907
Property Number: 31199010045
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42038
Location: On the waters of Pilfen Creek, 4 miles east of Eddyville, KY
Status: Excess
Comments: 8.71 acres; rolling steep and wooded; no utilities

Tract 2001 #1
Property Number: 31199010046
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030
Location: Approximately 4½ miles east of Eddyville, KY
Status: Excess
Comments: 47.42 acres; steep and wooded; no utilities

Tract 2001 #2
Property Number: 31199010047
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030
Location: Approximately 4½ miles east of Eddyville, KY
Status: Excess
Comments: 8.64 acres; steep and wooded; no utilities

Tract 2005
Property Number: 31199010048
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030
Location: Approximately 5½ miles east of Eddyville, KY
Status: Excess
Comments: 4.62 acres; steep and wooded; no utilities

Tract 2307
Property Number: 31199010049
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030
Location: Approximately 7½ miles southeasterly of Eddyville, KY
Status: Excess
Comments: 11.43 acres; steep; rolling and wooded; no utilities

Tract 2403
Property Number: 31199010050
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030
Location: 7 miles southeasterly of Eddyville, KY
Status: Excess
Comments: 1.56 acres; steep and wooded; no utilities

Tract 2504
Property Number: 31199010051
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030
Location: 9 miles southeasterly of Eddyville, KY
Status: Excess
Comments: 24.46 acres; steep and wooded; no utilities

Tract 214
Property Number: 31199010052
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045
Location: South of the Illinois Central Railroad, 1 mile east of the Cumberland River
Status: Excess
Comments: 5.5 acres; wooded; no utilities

Tract 215
Property Number: 31199010053
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045
Location: 5 miles southwest of Kuttawa
Status: Excess
Comments: 1.40 acres; wooded; no utilities

Tract 241
Property Number: 31199010054
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045
Location: Old Henson Ferry Road, 6 miles west of Kuttawa, KY
Status: Excess
Comments: 1.26 acres; steep and wooded; no utilities

Tracts 306, 311, 315 and 325
Property Number: 31199010055
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045
Location: 2.5 miles southwest of Kuttawa, KY. on the waters of Cypress Creek
Status: Excess
Comments: 38.77 acres; steep and wooded; no utilities

Tracts 2305, 2306, and 2400–1
Property Number: 31199010056
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030
Location: 6½ miles southeasterly of Eddyville, KY
Status: Excess
Comments: 97.66 acres; steep rolling and wooded; no utilities

Tracts 5203 and 5204
Property Number: 31199010058
Barkley Lake, Kentucky and Tennessee
Linton Co: Trigg KY 42212
Location: Village of Linton, KY state highway 1254
Status: Excess
Comments: 0.93 acres; rolling, partially wooded; no utilities

Tract 5240
Property Number: 31199010059
Barkley Lake, Kentucky and Tennessee
Linton Co: Trigg KY 42212
Location: 1 mile northwest of Linton, KY
Status: Excess
Comments: 2.26 acres; steep and wooded; no utilities.

Tract 4628
Property Number: 31199011621
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212
Location: 4½ miles south from Canton, KY
Status: Excess
Comments: 3.71 acres; steep and wooded; subject to utility easements

Tract 4619–B
Property Number: 31199011622
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212
Location: 4½ miles south from Canton, KY
Status: Excess
Comments: 1.73 acres; steep and wooded; subject to utility easements

Tract 2403–B
Property Number: 31199011623
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42038
Location: 7 miles southeasterly from Eddyville, KY
Status: Unutilized
Comments: 0.70 acres, wooded; subject to utility easements

Tract 241–B
Property Number: 31199011624
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045
Location: South of Old Henson Ferry Road, 6 miles west of Kuttawa, KY
Status: Excess
Comments: 11.16 acres; steep and wooded; subject to utility easements

Tracts 212 and 237
Property Number: 31199011625
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045
Location: Old Henson Ferry Road, 6 miles west of Kuttawa, KY
Status: Excess
Comments: 2.44 acres; steep and wooded; subject to utility easements

Tract 215–B
Property Number: 31199011626
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045
Location: 5 miles southwest of Kuttawa
Status: Excess
Comments: 1.00 acres; wooded; subject to utility easements

Tract 233
Property Number: 31199011627
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045
Location: 5 miles southwest of Kuttawa
Status: Excess
Comments: 1.00 acres; wooded; subject to utility easements

Tract N–819
Property Number: 31199140009
Dale Hollow Lake Project
Illwill Creek, Hwy 90
Hobart Co: Clinton KY 42601
Status: Underutilized
Comments: 91 acres, most recent use—hunting, subject to existing easements

Louisiana

Army

Building

Bldg. 8423, Fort Polk
Property Number: 21199640528
Ft. Polk Co: Vernon Parish LA 71459
Status: Underutilized
Comments: 4172 sq. ft., most recent use—barracks

Bldg. T7125
Property Number: 21200540088
Fort Polk
Ft. Polk LA 71459
Status: Unutilized
Comments: 1875 sq. ft., off-site use only

Bldgs. T7163, T8043
Property Number: 21200540089
Fort Polk
Ft. Polk LA 71459
Status: Unutilized
Comments: 4073/1923 sq. ft., off-site use only

Maine

Air Force

Bldgs 1, 2, 3, 4
Property Number: 18200840009
OTH–B Radar Site

Columbia Falls ME
Status: Unutilized
Comments: various sq. ft., most recent use—storage/office

Maryland

Army

Bldg. 0459B
Property Number: 21200120106
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Status: Unutilized
Comments: 225 sq. ft., poor condition, most recent use—equipment bldg., off-site use only

Bldg. 00785
Property Number: 21200120107
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Status: Unutilized
Comments: 160 sq. ft., poor condition, most recent use—shelter, off-site use only

Bldg. E5239
Property Number: 21200120113
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Status: Unutilized
Comments: 230 sq. ft., most recent use—storage, off-site use only

Bldg. E5317
Property Number: 21200120114
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Status: Unutilized
Comments: 3158 sq. ft., presence of asbestos/lead paint, most recent use—lab, off-site use only

Bldg. E5637
Property Number: 21200120115
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Status: Unutilized
Comments: 312 sq. ft., presence of asbestos/lead paint, most recent use—lab, off-site use only

Bldg. 219
Property Number: 21200140078
Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755
Status: Unutilized
Comments: 8142 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 294
Property Number: 21200140081
Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755
Status: Unutilized
Comments: 3148 sq. ft., presence of asbestos/lead paint, most recent use—entomology facility, offsite use only

Bldg. 1007
Property Number: 21200140085
Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755
Status: Unutilized
Comments: 3108 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 2214
Property Number: 21200230054
Fort George G. Meade
Fort Meade Co: Anne Arundel MD 20755
Status: Unutilized
Comments: 7740 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—storage, offsite use only

Bldg. 00375
Property Number: 21200320107
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 64 sq. ft., most recent use—storage, off-site use only

Bldg. 0385A
Property Number: 21200320110
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 944 sq. ft., off-site use only

Bldg. 00523
Property Number: 21200320113
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 3897 sq. ft., most recent use—paint shop, off-site use only

Bldg. 0700B
Property Number: 21200320121
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 505 sq. ft., off-site use only

Bldg. 01113
Property Number: 21200320128
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 1012 sq. ft., off-site use only

Bldgs. 01124, 01132
Property Number: 21200320129
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 740/2448 sq. ft., most recent use—lab, off-site use only

Bldg. 03558
Property Number: 21200320133
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 18,000 sq. ft., most recent use—storage, off-site use only

Bldg. 05262
Property Number: 21200320136
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 864 sq. ft., most recent use—storage, off-site use only

Bldg. 05608
Property Number: 21200320137
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 1100 sq. ft., most recent use—maint bldg., off-site use only

Bldg. E5645
Property Number: 21200320150
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 548 sq. ft., most recent use—storage, off-site use only

Bldg. 00435
Property Number: 21200330111
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 1191 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 0449A
Property Number: 21200330112
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 143 sq. ft., needs rehab, most recent use—substation switch bldg., off-site use only

Bldg. 0460
Property Number: 21200330114
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 1800 sq. ft., needs rehab, most recent use—electrical EQ bldg., off-site use only

Bldg. 00914
Property Number: 21200330118
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: Needs rehab, most recent use—safety shelter, off-site use only

Bldg. 00915
Property Number: 21200330119
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 247 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 01189
Property Number: 21200330126
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 800 sq. ft., needs rehab, most recent use—range bldg., off-site use only

Bldg. E1413
Property Number: 21200330127
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: Needs rehab, most recent use—observation tower, off-site use only

Bldg. E3175
Property Number: 21200330134
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 1296 sq. ft., needs rehab, most recent use—hazard bldg., off-site use only

4 Bldgs.
Property Number: 21200330135
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Location: E3224, E3228, E3230, E3232, E3234
Status: Unutilized
Comments: sq. ft. varies, needs rehab, most recent use—lab test bldgs., off-site use only

Bldg. E3241
Property Number: 21200330136
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 592 sq. ft., needs rehab, most recent use—medical res bldg., off-site use only

Bldg. E3300
Property Number: 21200330139
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005

Status: Unutilized
Comments: 44,352 sq. ft., needs rehab, most recent use—chemistry lab, off-site use only

Bldg. E3335
Property Number: 21200330144
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 400 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldgs. E3360, E3362, E3464
Property Number: 21200330145
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 3588/236 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. E3542
Property Number: 21200330148
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 1146 sq. ft., needs rehab, most recent use—lab test bldg., off-site use only

Bldg. E4420
Property Number: 21200330151
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 14,997 sq. ft., needs rehab, most recent use—police bldg., off-site use only

4 Bldgs.
Property Number: 21200330154
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Location: E5005, E5049, E5050, E5051
Status: Unutilized
Comments: sq. ft. varies, needs rehab, most recent use—storage, off-site use only

Bldg. E5068
Property Number: 21200330155
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 1200 sq. ft., needs rehab, most recent use—fire station, off-site use only

Bldgs. 05448, 05449
Property Number: 21200330161
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 6431 sq. ft., needs rehab, most recent use—enlisted UHP, off-site use only

Bldg. 05450
Property Number: 21200330162
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 2730 sq. ft., needs rehab, most recent use—admin., off-site use only

Bldgs. 05451, 05455
Property Number: 21200330163
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 2730/6431 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 05453
Property Number: 21200330164
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 6431 sq. ft., needs rehab, most recent use—admin., off-site use only

Bldg. E5609
Property Number: 21200330167
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 2053 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. E5611
Property Number: 21200330168
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 11,242 sq. ft., needs rehab, most recent use—hazard bldg., off-site use only

Bldg. E5634
Property Number: 21200330169
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 200 sq. ft., needs rehab, most recent use—flammable storage, off-site use only

Bldg. E5654
Property Number: 21200330171
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 21,532 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. E5942
Property Number: 21200330176
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 2147 sq. ft., needs rehab, most recent use—igloo storage, off-site use only

Bldgs. E5952, E5953
Property Number: 21200330177
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 100/24 sq. ft., needs rehab, most recent use—compressed air bldg., off-site use only

Bldgs. E7401, E7402
Property Number: 21200330178
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 256/440 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. E7407, E7408
Property Number: 21200330179
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 1078/762 sq. ft., needs rehab, most recent use—decon facility, off-site use only

Bldg. 3070A
Property Number: 21200420055
Aberdeen Proving Ground
Harford MD 21005
Status: Unutilized
Comments: 2299 sq. ft., most recent use—heat plant, off-site use only

Bldg. E5026 P
Property Number: 21200420056
Aberdeen Proving Ground
Harford MD 21005
Status: Unutilized
Comments: 20,536 sq. ft., most recent use—storage, off-site use only

Bldg. 05261
Property Number: 21200420057
Aberdeen Proving Ground
Harford MD 21005
Status: Unutilized
Comments: 10067 sq. ft., most recent use—maintenance, off-site use only

Bldg. E5876
Property Number: 21200440073
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 1192 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 00688
Property Number: 21200530080
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 24,192 sq. ft., most recent use—ammo, off-site use only

Bldg. 04925
Property Number: 21200540091
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 1326 sq. ft., off-site use only

Bldg. 00255
Property Number: 21200720052
Aberdeen Proving Ground
Harford MD 21005
Status: Unutilized
Comments: 64 sq. ft., most recent use—storage, off-site use only

Bldg. 00638
Property Number: 21200720053
Aberdeen Proving Ground
Harford MD 21005
Status: Unutilized
Comments: 4295 sq. ft., most recent use—storage, off-site use only

Bldg. 00721
Property Number: 21200720054
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 135 sq. ft., most recent use—storage, off-site use only

Bldgs. 00936, 00937
Property Number: 21200720055
Aberdeen Proving Ground
Harford MD 21005
Status: Unutilized
Comments: 2000 sq. ft., most recent use—storage, off-site use only

Bldgs. E1410, E1434
Property Number: 21200720056
Aberdeen Proving Ground
Harford MD 21005
Status: Unutilized
Comments: 2276/3106 sq. ft., most recent use—laboratory, off-site use only

Bldg. 03240
Property Number: 21200720057
Aberdeen Proving Ground
Harford MD 21005
Status: Unutilized
Comments: 10,049 sq. ft., most recent use—office, off-site use only

Bldg. E3834
Property Number: 21200720058
Aberdeen Proving Ground
Harford MD 21005
Status: Unutilized
Comments: 72 sq. ft., most recent use—office, off-site use only

Bldgs. E4465, E4470, E4480
Property Number: 21200720059
Aberdeen Proving Ground
Harford MD 21005
Status: Unutilized
Comments: 17658/16876/17655 sq. ft., most recent use—office, off-site use only

Bldgs. E5137, 05219
Property Number: 21200720060
Aberdeen Proving Ground
Harford MD 21005
Status: Unutilized
Comments: 3700/8175 sq. ft., most recent use—office, off-site use only

Bldg. E5236
Property Number: 21200720061
Aberdeen Proving Ground
Harford MD 21005
Status: Unutilized
Comments: 10,325 sq. ft., most recent use—storage, off-site use only

Bldg. E5282
Property Number: 21200720062
Aberdeen Proving Ground
Harford MD 21005
Status: Unutilized
Comments: 4820 sq. ft., most recent use—hazard bldg., off-site use only

Bldgs. E5736, E5846, E5926
Property Number: 21200720063
Aberdeen Proving Ground
Harford MD 21005
Status: Unutilized
Comments: 1069/4171/11279 sq. ft., most recent use—storage, off-site use only

Bldg. E6890
Property Number: 21200720064
Aberdeen Proving Ground
Harford MD 21005
Status: Unutilized
Comments: 1 sq. ft., most recent use—impact area, off-site use only

Bldg. 00310
Property Number: 21200820077
Aberdeen Proving Ground
Harford MD 21005
Status: Unutilized
Comments: 56516 sq. ft., most recent use—admin., off-site use only

Bldg. 00315
Property Number: 21200820078
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 74396 sq. ft., most recent use—mach shop, off-site use only

Bldg. 00338
Property Number: 21200820079
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 45443 sq. ft., most recent use—gnd tran eqp, off-site use only

Bldg. 00360
Property Number: 21200820080
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 15287 sq. ft., most recent use—general inst., off-site use only

Bldg. 00445
Property Number: 21200820081
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 6367 sq. ft., most recent use—lab, off-site use only

Bldg. 00851
Property Number: 21200820082
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 694 sq. ft., most recent use—range bldg., off-site use only

E1043
Property Number: 21200820083
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 5200 sq. ft., most recent use—lab, off-site use only

Bldg. 01089
Property Number: 21200820084
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 12369 sq. ft., most recent use—veh maint, off-site use only

Bldg. 01091
Property Number: 21200820085
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 2201 sq. ft., most recent use—storage, off-site use only

Bldg. E1386
Property Number: 21200820086
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 251 sq. ft., most recent use—eng/mnt, off-site use only

5 Bldgs.
Property Number: 21200820087
Aberdeen Proving Ground
Harford MD
Location: E1440, E1441, E1443, E1445, E1455
Status: Unutilized
Comments: 112 sq. ft., most recent use—safety shelter, off-site use only

Bldg. E1467, E1485
Property Number: 21200820088
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 160/800 sq. ft., most recent use—storage, off-site use only

Bldg. E1521
Property Number: 21200820090
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 1200 sq. ft., most recent use—overhead protection, off-site use only

Bldg. E1570
Property Number: 21200820091
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 47027 sq. ft., most recent use—office, off-site use only

Bldg. E1572
Property Number: 21200820092
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 1402 sq. ft., most recent use—maint., off-site use only

4 Bldgs.
Property Number: 21200820093
Aberdeen Proving Ground
Harford MD
Location: E1645, E1675, E1677, E1930
Status: Unutilized
Comments: Various sq. ft., most recent use—office, off-site use only

Bldg.. E2160, E2184, E2196
Property Number: 21200820094
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 12440/13816 sq. ft., most recent use—storage, off-site use only

Bldg. E2174
Property Number: 21200820095
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 132 sq. ft., off-site use only

Bldgs. 02208, 02209
Property Number: 21200820096
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 11566/18085 sq. ft., most recent use—lodging, off-site use only

Bldg. 02353
Property Number: 21200820097
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 19252 sq. ft., most recent use—veh maint, off-site use only

Bldgs. 02482, 02484
Property Number: 21200820098
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 8359 sq. ft., most recent use—gen purp, off-site use only

Bldg. 02483
Property Number: 21200820099
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 1360 sq. ft., most recent use—heat plt, off-site use only

Bldg.. 02504, 02505
Property Number: 21200820100
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 11720/17434 sq. ft., most recent use—lodging, off-site use only

Bldg.. 02831, E3488
Property Number: 21200820101
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 576/64 sq. ft., most recent use—access cnt fac, off-site use only

Bldg. 2831A
Property Number: 21200820102
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 1200 sq. ft., most recent use—overhead protection, off-site use only

Bldg. 03320
Property Number: 21200820103
Aberdeen Proving Ground
Harford MD

Status: Unutilized
Comments: 10600 sq. ft., most recent use—admin, off-site use only

Bldg. E3466
Property Number: 21200820104
Aberdeen Proving Ground
Aberdeen MD
Status: Unutilized
Comments: 236 sq. ft., most recent use—protective barrier, off-site use only

4 Bldgs.
Property Number: 21200820105
Aberdeen Proving Ground
Harford MD
Location: E3510, E3570, E3640, E3832
Status: Unutilized
Comments: Various sq. ft., most recent use—lab, off-site use only

Bldg. E3544
Property Number: 21200820106
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 5400 sq. ft., most recent use—ind waste, off-site use only

Bldgs. E3561, 03751
Property Number: 21200820107
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 64/189 sq. ft., most recent use—access cnt fac, off-site use only

Bldg. 03754
Property Number: 21200820108
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 324 sq. ft., most recent use—classroom, off-site use only

Bldg. 3823A
Property Number: 21200820109
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 113 sq. ft., most recent use—shed, off-site use only

Bldg. E3948
Property Number: 21200820110
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 3420 sq. ft., most recent use—emp chg fac, off-site use only

4 Bldgs.
Property Number: 21200820111
Aberdeen Proving Ground
Harford MD
Location: E5057, E5058, E5246, 05258
Status: Unutilized
Comments: Various sq. ft., most recent use—storage, off-site use only

Bldgs. E5106, 05256
Property Number: 21200820112
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 18621/8720 sq. ft., most recent use—office, off-site use only

Bldg. E5126
Property Number: 21200820113
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 17664 sq. ft., most recent use—heat plt, off-site use only

Bldg. E5128
Property Number: 21200820114
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 3750 sq. ft., most recent use—substation, off-site use only

Bldg. E5188
Property Number: 21200820115
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 22790 sq. ft., most recent use—lab, off-site use only

Bldg. E5179
Property Number: 21200820116
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 47335 sq. ft., most recent use—info sys, off-site use only

Bldg. E5190
Property Number: 21200820117
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 874 sq. ft., most recent use—storage, off-site use only

Bldg. 05223
Property Number: 21200820118
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 6854 sq. ft., most recent use—gen rep inst, off-site use only

Bldgs. 05259, 05260
Property Number: 21200820119
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 10067 sq. ft., most recent use—maint, off-site use only

Bldgs. 05263, 05264
Property Number: 21200820120
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 200 sq. ft., most recent use—org space, off-site use only

5 Bldgs.
Property Number: 21200820121
Aberdeen Proving Ground
Harford MD
Location: 05267, E5294, E5327, E5441, E5485
Status: Unutilized
Comments: Various sq. ft., most recent use—storage, off-site use only

Bldg. E5292
Property Number: 21200820122
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 1166 sq. ft., most recent use—comp rep inst, off-site use only

Bldg. E5380
Property Number: 21200820123
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 9176 sq. ft., most recent use—lab, off-site use only

Bldg. E5452
Property Number: 21200820124
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 9623 sq. ft., off-site use only

Bldg. 05654
Property Number: 21200820125
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 38 sq. ft. most recent use—shed, off-site use only

Bldg. 05656
Property Number: 21200820126
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 2240 sq. ft., most recent use—overhead protection off-site use only

5 Bldgs.
Property Number: 21200820127
Aberdeen Proving Ground
Harford MD
Location: E5730, E5738, E5915, E5928, E6875
Status: Unutilized
Comments: Various sq. ft., most recent use—storage, off-site use only

Bldg. E5770
Property Number: 21200820128
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 174 sq. ft., most recent use—cent wash, off-site use only

Bldg. E5840
Property Number: 21200820129
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 14200 sq. ft., most recent use—lab, off-site use only

Bldg. E5946
Property Number: 21200820130
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 2147 sq. ft., most recent use—igloo str, off-site use only

Bldg. E6872
Property Number: 21200820131
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 1380 sq. ft., most recent use—dispatch, off-site use only

Bldgs. E7331, E7332, E7333
Property Number: 21200820132
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: Most recent use—protective barrier, off-site use only

Bldg. E7821
Property Number: 21200820133
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 3500 sq. ft., most recent use—xmitter bldg, off-site use only

Bldg. 02483
Property Number: 21200920025
Aberdeen Proving Ground
Harford MD 21005
Status: Unutilized
Comments:1360 sq. ft., most recent use—heat plt bldg., off-site use only

Bldg. 03320
Property Number: 21200920026
Aberdeen Proving Ground
Harford MD 21005
Status: Unutilized
Comments: 10,600 sq. ft., most recent use—admin., off-site use only

Land

2 acres
Property Number: 21200640095
Fort Meade
Odenton Rd/Rt 175
Ft. Meade MD 20755
Status: Unutilized
Comments: Light industrial

16 acres
Property Number: 21200640096
Fort Meade
Rt 198/Airport Road
Ft. Meade MD 20755
Status: Unutilized
Comments: light industrial

Mississippi

GSA

Building

James O. Eastland
Property Number: 54201040020
245 East Capitol St.
Jackson Co: Hinds MS 39201–2409
Location: Federal Bldg. and Courthouse
Status: Excess
Comments: 14,000 sq. ft., current/recent use: gov't offices and courtrooms, asbestos identified behind walls, and historic bldg. preservation covenants will be included in the Deed of Conveyance
GSA Number: 4–G–MS–0567–AA

Missouri

Air Force

Land

Communications Site
Property Number: 18200710001
County Road 424
Dexter Co: Stoddard MO
Status: Unutilized
Comments: 10.63 acres

Outer Marker Annex
Property Number: 18200940001
Whiteman AFB
Knob Noster MO 65336
Status: Unutilized
Comments: 0.75 acres, most recent use—communication

Annex No. 3
Property Number: 18201020001
Whiteman AFB
Knob Noster MO 65336
Status: Underutilized
Comments: 9 acres

Missouri

Army

Building

Bldg. T1497
Property Number: 21199420441
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Underutilized
Comments: 4720 sq. ft., 2-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only

Bldg. T2139
Property Number: 21199420446
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Underutilized
Comments: 3663 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only

Bldg. T2385
Property Number: 21199510115
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473
Status: Excess
Comments: 3158 sq. ft., 1-story, wood frame, most recent use—admin., to be vacated 8/95, off-site use only

Bldg. 2167
Property Number: 21199820179
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comments: 1296 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldgs. 2192, 2196, 2198
Property Number: 21199820183
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comments: 4720 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only

12 Bldgs
Property Number: 21200410110
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Location: 07036, 07050, 07054, 07102, 07400, 07401, 08245, 08249, 08251, 08255, 08257, 08261
Status: Unutilized
Comments: 7152 sq. ft. 6 plex housing quarters, potential contaminants, off-site use only

6 Bldg
Property Number: 21200410111
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Location: 07044, 07106, 07107, 08260, 08281, 08300
Status: Unutilized
Comments: 9520 sq ft., 8 plex housing quarters, potential contaminants, off-site use only

15 Bldgs
Property Number: 21200410112
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Location: 08242, 08243, 08246–08248, 08250, 08252–08254, 08256, 08258–08259, 08262–08263, 08265
Status: Unutilized
Comments: 4784 sq ft., 4 plex housing quarters, potential contaminants, off-site use only

Bldgs 08283, 08285
Property Number: 21200410113
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Status: Unutilized
Comments: 2240 sq ft, 2 plex housing quarters, potential contaminants, off-site use only

15 Bldgs
Property Number: 21200410114
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–0827
Location: 08267, 08269, 08271, 08273, 08275, 08277, 08279, 08290, 08296, 08301
Status: Unutilized
Comments: 4784 sq ft., 4 plex housing quarters, potential contaminants, off-site use only

Bldg 09432
Property Number: 21200410115
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Status: Unutilized
Comments: 8724 sq ft., 6-plex housing quarters, potential contaminants, off-site use only

Bldgs. 5006 and 5013
Property Number: 21200430064
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Status: Unutilized
Comments: 192 sq. ft., needs repair, most recent use—generator bldg., off-site use only

Bldgs. 13210, 13710
Property Number: 21200430065
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Status: Unutilized
Comments: 144 sq. ft. each, needs repair, most recent use—communication, off-site use only

Montana

Bldg. 00405
Property Number: 21200130099
Fort Harrison
Ft. Harrison Co: Lewis/Clark MT 59636
Status: Unutilized
Comments: 3467 sq. ft., most recent use—storage, security limitations

Bldg. T0066
Property Number: 21200130100
Fort Harrison
Ft. Harrison Co: Lewis/Clark MT 59636
Status: Unutilized
Comments: 528 sq. ft., needs rehab, presence of asbestos, security limitations

Bldg. 00001
Property Number: 21200540093
Sheridan Hall USARC
Helena MT 59601
Status: Unutilized
Comments: 19,321 sq. ft., most recent use—Reserve Center

Bldg. 00003
Property Number: 21200540094
Sheridan Hall USARC
Helena MT 59601
Status: Unutilized

Comments: 1950 sq. ft., most recent use—maintenance/storage

COE

Bldg. 1
Property Number: 31200040010
Butte Natl Guard
Butte Co: Silverbow MT 59701
Status: Unutilized
Comments: 22799 sq. ft., presence of asbestos, most recent use—cold storage, off-site use only

Bldg. 2
Property Number: 31200040011
Butte Natl Guard
Butte Co: Silverbow MT 59701
Status: Unutilized
Comments: 3292 sq. ft., most recent use—cold storage, off-site use only

Bldg. 3
Property Number: 31200040012
Butte Natl Guard
Butte Co: Silverbow MT 59701
Status: Unutilized
Comments: 964 sq. ft., most recent use—cold storage, off-site use only

Bldg. 4
Property Number: 31200040013
Butte Natl Guard
Butte Co: Silverbow MT 59701
Status: Unutilized
Comments: 72 sq. ft., most recent use—cold storage, off-site use only

Bldg. 5
Property Number: 31200040014
Butte Natl Guard
Butte Co: Silverbow MT 59701
Status: Unutilized
Comments: 1286 sq. ft., most recent use—cold storage, off-site use only

New Jersey

Bldg. 732
Property Number: 21199740315
Armament R Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Status: Unutilized
Comments: 9077 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 816C
Property Number: 21200130103
Armament R, D, Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Status: Unutilized
Comments: 144 sq. ft., most recent use—storage, off-site use only

5 Bldgs.
Property Number: 21200940032
Picatinny Arsenal
Dover NJ 07806
Location: 3710, 3711, 3712, 3713, 3714
Status: Unutilized
Comments: Residential trailers, needs rehab, off-site use only

Bldgs. 3704, 3706
Property Number: 21201010016
Picatinny Arsenal
Dover NJ 07806
Status: Unutilized
Comments: 768 sq. ft. residential trailers, needs rehab, off-site use only

New Mexico

Bldg. 34198
Property Number: 21200230062
White Sands Missile Range
Dona Ana NM 88002
Status: Excess
Comments: 107 sq. ft., most recent use—security, off-site use only

New York

Air Force

Bldg. 240
Property Number: 18200340023
Rome Lab
Rome Co: Oneida NY 13441
Status: Unutilized
Comments: 39108 sq. ft., presence of asbestos, most recent use—Electronic Research Lab

Bldg. 247
Property Number: 18200340024
Rome Lab
Rome Co: Oneida NY 13441
Status: Unutilized
Comments: 13199 sq. ft., presence of asbestos, most recent use—Electronic Research Lab

Bldg. 248
Property Number: 18200340025
Rome Lab
Rome Co: Oneida NY 13441
Status: Unutilized
Comments: 4000 sq. ft., presence of asbestos, most recent use—Electronic Research Lab

Bldg. 302
Property Number: 18200340026
Rome Lab
Rome Co: Oneida NY 13441
Status: Unutilized
Comments: 10288 sq. ft., presence of asbestos, most recent use—communications facility

Army

Bldg.1227
Property Number: 21200440074
U.S. Military Academy
Highlands Co: Orange NY 10996–1592
Status: Unutilized
Comments: 3800 sq. ft., needs repair, possible asbestos/lead paint, most recent use—maintenance, off-site use only

Bldg. 2218
Property Number: 21200510067
Stewart Newburg USARC
New Windsor Co: Orange NY 12553–9000
Status: Unutilized
Comments: 32,000 sq. ft., poor condition, requires major repairs, most recent use—storage/services

7 Bldgs.
Property Number: 21200510068
Stewart Newburg USARC
New Windsor Co: Orange NY 12553–9000
Location: 2122, 2124, 2126, 2128, 2106, 2108, 2104
Status: Unutilized
Comments: Sq. ft. varies, poor condition, needs major repairs, most recent use—storage/services

Bldg. 1230
Property Number: 21200940014
U.S. Army Garrison
Orange NY 10996
Status: Unutilized
Comments: 4538 sq. ft., possible asbestos/lead paint, most recent use—clubhouse, off-site use only

Bldg. 4802
Property Number: 21201010019
Fort Drum
Jefferson NY 13602
Status: Unutilized
Comments: 3300 sq. ft., most recent use—hdgts. facility, off-site use only

Bldgs. 4813
Property Number: 21201010020
Fort Drum
Jefferson NY 13602
Status: Unutilized
Comments: 750 sq. ft., most recent use—wash rack, off-site use only

Bldg. 4814
Property Number: 21201010021
Fort Drum
Jefferson NY 13602
Status: Unutilized
Comments: 2592 sq. ft., most recent use—item repair, off-site use only

Bldgs. 1240, 1255
Property Number: 21201010022
Fort Drum
Jefferson NY 13602
Status: Unutilized
Comments: Various sq. ft., most recent use—vehicle maint. facility, off-site use only

6 Bldgs.
Property Number: 21201010023
Fort Drum
Jefferson NY 13602
Location: 1248, 1250, 1276, 2361, 4816, 4817
Status: Unutilized
Comments: Various sq. ft., most recent use—storage, off-site use only

Bldg. 1050
Property Number: 21201010024
Fort Drum
Jefferson NY 13602
Status: Unutilized
Comments: 1493 sq. ft., most recent use—training, off-site use only

Bldg. 10791
Property Number: 21201010025
Fort Drum
Jefferson NY 13602
Status: Unutilized
Comments: 72 sq. ft., most recent use—smoking shelter, off-site use only

VA

Bldg. 3
Property Number: 97200520001
VA Medical Center
Batavia Co: Genesee NY 14020
Status: Unutilized
Comments: 5840 sq. ft., needs rehab, presence of asbestos, most recent use—offices, eligible for Natl Register of Historic Places 1/5/2011, Renovated and currently using it for MCCF and VISN Finance

North Carolina

Air Force

Land

0.14 acres
Property Number: 18200810001
Pope AFB
Pope AFB NC
Status: Excess
Comments: Most recent use—middle marker, easement for entry

GSA

Building

Greensboro Federal Bldg.
Property Number: 54201040018
320 Federal Place
Geensboro NC 27401
Status: Excess
Comments: 94,809 sq. ft. office bldg., major structural issues exist with exterior brick facade
GSA Number: 4–G–NC–750

Ohio

Army

Land

Land
Property Number: 21200340094
Defense Supply Center
Columbus Co: Franklin OH 43216–5000
Status: Excess
Comments: 11 acres, railroad access

COE

Building

Barker Historic House
Property Number: 31199120018
Willow Island Locks and Dam
Newport Co: Washington OH 45768–9801
Location: Located at lock site, downstream of lock and dam structure
Status: Unutilized
Comments: 1600 sq. ft. bldg. with ½ acre of land, 2 story brick frame, needs rehab, on Natl Register of Historic Places, no utilities, off-site use only
Bldg. MURDOT–23142
Property Number: 31201020001
5153 State Rd
Dover OH 44622
Status: Unutilized
Comments: 664 sq. ft. office bldg., presence of asbestos/lead paint, off-site use only

Oklahoma

Army

Bldg. T–838, Fort Sill
Property Number: 21199220609
838 Macomb Road
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 151 sq. ft., wood frame, 1 story, off-site removal only, most recent use—vet facility (quarantine stable).

Bldg. T–954, Fort Sill
Property Number: 21199240659
954 Quinette Road
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 3571 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—motor repair shop.

Bldg. T–3325, Fort Sill
Property Number: 21199240681
3325 Naylor Road
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 8832 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—warehouse.

Bldg. T–4226
Property Number: 21199440384
Fort Sill
Lawton Co: Comanche OK 73503
Status: Unutilized
Comments: 114 sq. ft., 1-story wood frame, possible asbestos and lead paint, most recent use—storage, off-site use only

Bldg. P–1015, Fort Sill
Property Number: 21199520197
Lawton Co: Comanche OK 73501–5100
Status: Unutilized
Comments: 15402 sq. ft., 1-story, most recent use—storage, off-site use only

Bldg. P–366, Fort Sill
Property Number: 21199610740
Lawton Co: Comanche OK 73503
Status: Unutilized
Comments: 482 sq. ft., possible asbestos, most recent use—storage, off-site use only

Building P–5042
Property Number: 21199710066
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 119 sq. ft., possible asbestos and leadpaint, most recent use—heatplant, off-site use only

4 Buildings
Property Number: 21199710086
Fort Sill
Lawton Co: Comanche OK 73503–5100
Location: T–6465, T–6466, T–6467, T–6468
Status: Unutilized
Comments: Various sq. ft., possible asbestos and leadpaint, most recent use—range support, off-site use only

Bldg. T–810
Property Number: 21199730350
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 7205 sq. ft., possible asbestos/lead paint, most recent use—hay storage, off-site use only

Bldgs. T–837, T–839
Property Number: 21199730351
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: Approx. 100 sq. ft. each, possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. P–934
Property Number: 21199730353
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 402 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. T–1468, T–1469
Property Number: 21199730357
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 114 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–1470
Property Number: 21199730358
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 3120 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. T–1954, T–2022
Property Number: 21199730362
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: Approx. 100 sq. ft. each, possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–2184
Property Number: 21199730364
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 454 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. T–2186, T–2188, T–2189
Property Number: 21199730366
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 1656–3583 sq. ft., possible asbestos/lead paint, most recent use—vehicle maint. shop, off-site use only

Bldg. T–2187
Property Number: 21199730367
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 1673 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. T–2291 thru T–2296
Property Number: 21199730372
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 400 sq. ft. each, possible asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. T–3001, T–3006
Property Number: 21199730383
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: Approx. 9300 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–3314
Property Number: 21199730385
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 229 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. T–5041
Property Number: 21199730409
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 763 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–5420
Property Number: 21199730414
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 189 sq. ft., possible asbestos/lead paint, most recent use—fuel storage, off-site use only

Bldg. T–7775
Property Number: 21199730419
Fort Sill

Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 1452 sq. ft., possible asbestos/lead paint, most recent use—private club, off-site use only
4 Bldgs.
Property Number: 21199910133
Fort Sill
P–617, P–1114, P–1386, P–1608
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 106 sq. ft., possible asbestos/lead paint, most recent use—utility plant, off-site use only

Bldg. P–746
Property Number: 21199910135
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 6299 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only

Bldg. P–2582
Property Number: 21199910141
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 3672 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only

Bldg. P–2914
Property Number: 21199910146
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 1236 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. P–5101
Property Number: 21199910153
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 82 sq. ft., possible asbestos/lead paint, most recent use—gas station, off-site use only

Bldg. S–6430
Property Number: 21199910156
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 2080 sq. ft., possible asbestos/lead paint, most recent use—range support, off-site use only

Bldg. T–6461
Property Number: 21199910157
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 200 sq. ft., possible asbestos/lead paint, most recent use—range support, off-site use only

Bldg. T–6462
Property Number: 21199910158
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 64 sq. ft., possible asbestos/lead paint, most recent use—control tower, off-site use only

Bldg. P–7230
Property Number: 21199910159
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 160 sq. ft., possible asbestos/lead paint, most recent use—transmitter bldg., off-site use only

Bldg. S–4023
Property Number: 21200010128
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 1200 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. P–747
Property Number: 21200120120
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 9232 sq. ft., possible asbestos/lead paint, most recent use—lab, off-site use only

Bldg. P–842
Property Number: 21200120123
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 192 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–911
Property Number: 21200120124
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 3080 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. P–1672
Property Number: 21200120126
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 1056 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. S–2362
Property Number: 21200120127
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 64 sq. ft., possible asbestos/lead paint, most recent use—gatehouse, off-site use only

Bldg. P–2589
Property Number: 21200120129
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 3672 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. 00937, 00957
Property Number: 21200710104
Fort Sill
Lawton OK 73501
Status: Unutilized
Comments: 1558 sq. ft., most recent use—storage shed, off-site use only

Bldg.01514
Property Number: 21200710105
Fort Sill
Lawton OK 73501
Status: Unutilized
Comments: 1602 sq. ft., most recent use—storage, off-site use only

Bldg. 05685
Property Number: 21200820152
Fort Sill
Lawton OK 73501
Status: Unutilized
Comments: 24,072 sq. ft., concrete block/w brick, off-site use only

Bldg. 07480
Property Number: 21200920002
Fort Sill
Lawton OK 73501
Status: Unutilized
Comments: 1200 sq. ft., most recent use—recreation, off-site use only

Bldgs. 01509, 01510
Property Number: 21200920060
Fort Sill
Lawton OK 73501
Status: Unutilized
Comments: Various sq. ft., most recent use—vehicle maint. shop, off-site use only

4 Bldgs.
Property Number: 21200920061
Fort Sill
2591, 2593, 2595, 2604
Lawton OK 73501
Status: Unutilized
Comments: Various sq. ft., most recent use—classroom/admin, off-site use only

Bldg. 06456
Property Number: 21200930003
Fort Sill
Lawton OK 73501
Status: Unutilized
Comments: 413 sq. ft. range support facility, off-site use only

COE

Land

Pine Creek Lake
Property Number: 31199010923
Section 27
(See County) Co: McCurtain OK
Status: Unutilized
Comments: 3 acres; no utilities; subject to right of way for Oklahoma State Highway 3

Oregon

GSA

Building

Residence Property Number: 54201040012
140 Government Road
Malheur Natl Forest
John Day OR 97845
Status: Excess
Comments: 1560 sq. ft., presence of asbestos/lead paint, off-site use only
GSA Number: 9–A–OR–0786–AA

Pennsylvania

COE

Mahoning Creek Reservoir Property Number: 31199210008
New Bethlehem Co: Armstrong PA 16242
Status: Unutilized
Comments: 1015 sq. ft., 2 story brick residence, off-site use only

Dwelling
Property Number: 31199620008
Lock 6, Allegheny River, 1260 River Rd.
Freeport Co: Armstrong PA 16229–2023
Status: Unutilized

Comments: 2652 sq. ft., 3-story brick house, in close proximity to Lock and Dam, available for interim use for nonresidential purposes

Dwelling
Property Number: 31199710009
Lock 4, Allegheny River
Natrona Co: Allegheny PA 15065–2609
Status: Unutilized
Comments: 1664 sq. ft., 2-story brick residence, needs repair, off-site use only

Dwelling #1
Property Number: 31199740002
Crooked Creek Lake
Ford City Co: Armstrong PA 16226–8815
Status: Excess
Comments: 2030 sq. ft., most recent use—residential, good condition, off-site use only

Dwelling #2
Property Number: 31199740003
Crooked Creek Lake
Ford City Co: Armstrong PA 16226–8815
Status: Excess
Comments: 3045 sq. ft., most recent use—residential, good condition, off-site use only

Govt Dwelling Property Number: 31199740005
East Branch Lake
Wilcox Co: Elk PA 15870–9709
Status: Underutilized
Comments: Approx. 5299 sq. ft., 1-story, most recent use—residence, off-site use only

Dwelling #1
Property Number: 31199740006
Loyalhanna Lake
Saltsburg Co: Westmoreland PA 15681–9302
Status: Excess
Comments: 1996 sq. ft., most recent use—residential, good condition, off-site use only

Dwelling #2
Property Number: 31199740007
Loyalhanna Lake
Saltsburg Co: Westmoreland PA 15681–9302
Status: Excess
Comments: 1996 sq. ft., most recent use—residential, good condition, off-site use only

Dwelling #2
Property Number: 31199740009
Lock 6, 1260 River Road
Freeport Co: Armstrong PA 16229–2023
Status: Excess
Comments: 2652 sq. ft., most recent use—residential, good condition, off-site use only

Residence A
Property Number: 31200410007
2045 Pohopoco Drive
Lehighton Co: Carbon PA 18235
Status: Unutilized
Comments: 1200 sq. ft., presence of asbestos, off-site use only

BEL–007
Property Number: 31201030001
2145 Pohopco Dr.
Lehighton PA 18235
Status: Unutilized
Comments: 1188 sq. ft., off-site use only

Land

Mahoning Creek Lake
Property Number: 31199010018
New Bethlehem Co: Armstrong PA 16242–9603
Location: Route 28 north to Belknap, Road #4
Status: Excess
Comments: 2.58 acres; steep and densely wooded

Tracts 610, 611, 612
Property Number: 31199011001
Shenango River Lake
Sharpsville Co: Mercer PA 16150
Location: I–79 North, I–80 West, Exit Sharon. R18 North 4 miles, left on R518, right on Mercer Avenue.
Status: Excess
Comments: 24.09 acres; subject to flowage easement

Tracts L24, L26
Property Number: 31199011011
Crooked Creek Lake
Null Co: Armstrong PA 03051
Location: Left bank—55 miles downstream of dam.
Status: Unutilized
Comments: 7.59 acres; potential for utilities

Portion of Tract L–21A
Property Number: 31199430012
Crooked Creek Lake, LR 03051
Ford City Co: Armstrong PA 16226
Status: Unutilized
Comments: Approximately 1.72 acres of undeveloped land, subject to gas rights

South Carolina

Air Force

Building

256 Housing Units
Property Number: 18200920001
Charleston AFB
South Side Housing
Charleston SC
Status: Excess
Comments: Various sq. ft., presence of asbestos/lead paint, off-site use only

GSA

Naval Health Clinic
Property Number: 54201040013
3600 Rivers Ave.
Charleston SC 29405
Status: Excess
Comments: Redetermination: 399,836 sq. ft., most recent use: office
GSA Number: 4–N–SC–0606

South Dakota

Army

Bldg. 03001
Property Number: 21200740187
Jonas H. Lien AFRC
Sioux Falls SD 57104
Status: Unutilized
Comments: 33282 sq. ft., most recent use—training center

Bldg. 03003
Property Number: 21200740188
Jonas H. Lien AFRC
Sioux Falls SD 57104
Status: Unutilized
Comments: 4675 sq. ft., most recent use—vehicle maint. shop

COE

Land

Portion/Tract A127
Property Number: 31200940001
Gavins Point Dam
Yankton SD
Status: Unutilized
Comments: 0.3018 acre, road right of way

Tennessee

Army

Building

Bldg. Trail
Property Number: 21200920010
Fort Campbell
Montgomery TN 42223
Status: Excess
Comments: 2104 sq. ft., double-wide trailer, off-site use only

Land

Parcel No. 1
Property Number: 21200920003
Fort Campbell
Tract No. 13M–3
Montgomery TN 42223
Status: Excess
Comments: 6.89 acres/thick vegetation

Parcel No. 2
Property Number: 21200920004
Fort Campbell
Tract Nos. 12M–16B & 13M–3
Montgomery TN 42223
Status: Excess
Comments: 3.41 acres/wooded

Parcel No. 3
Property Number: 21200920005
Fort Campbell
Tract No. 12M–4
Montgomery TN 42223
Status: Excess
Comments: 6.56 acre/wooded

Parcel No. 4
Property Number: 21200920006
Fort Campbell
Tract Nos. 10M–22 &10M–23
Montgomery TN 42223
Status: Excess
Comments: 5.73 acres/wooded

Parcel No. 5
Property Number: 21200920007
Fort Campbell
Tract No. 10M–20
Montgomery TN 42223
Status: Excess
Comments: 3.86 acres/wooded

Parcel No. 7
Property Number: 21200920008
Fort Campbell
Tract No. 10M–10
Montgomery TN 42223
Status: Excess
Comments: 9.47 acres/wooded

Parcel No. 8
Property Number: 21200920009
Fort Campbell
Tract No. 8M–7
Montgomery TN 42223
Status: Excess
Comments: 15.13 acres/wooded

Parcel No. 6
Property Number: 21200940013
Fort Campbell
Hwy 79

Montgomery TN 42223
Status: Excess
Comments: 4.55 acres, wooded w/dirt road/ fire break

COE

Tract 6827
Property Number: 31199010927
Barkley Lake
Dover Co: Stewart TN 37058
Location:
2 ½ miles west of Dover, TN.
Status: Excess
Comments: .57 acres; subject to existing easements.

Tracts 6002–2 and 6010
Property Number: 31199010928
Barkley Lake
Dover Co: Stewart TN 37058
Location:
3 ½ miles south of village of Tabaccoport.
Status: Excess
Comments: 100.86 acres; subject to existing easements.

Tract 11516
Property Number: 31199010929
Barkley Lake
Ashland City Co: Dickson TN 37015
Location:
1/2 mile downstream from Cheatham Dam
Status: Excess
Comments: 26.25 acres; subject to existing easements.

Tract 2319
Property Number: 31199010930
J. Percy Priest Dam and Resorvoir
Murfreesboro Co: Rutherford TN 37130
Location:
West of Buckeye Bottom Road
Status: Excess
Comments: 14.48 acres; subject to existing easements.

Tract 2227
Property Number: 31199010931
J. Percy Priest Dam and Resorvoir
Murfreesboro Co: Rutherford TN 37130
Location:
Old Jefferson Pike
Status: Excess
Comments: 2.27 acres; subject to existing easements.

Tract 2107
Property Number: 31199010932
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130
Location:
Across Fall Creek near Fall Creek camping area.
Status: Excess
Comments: 14.85 acres; subject to existing easements.

Tracts 2601, 2602, 2603, 2604
Property Number: 31199010933
Cordell Hull Lake and Dam Project
Doe Row Creek
Gainesboro Co: Jackson TN 38562
Location:
TN Highway 56
Status: Unutilized
Comments: 11 acres; subject to existing easements.

Tract 1911
Property Number: 31199010934
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130
Location:
East of Lamar Road
Status: Excess
Comments: 6.92 acres; subject to existing easements.

Tract 7206
Property Number: 31199010936
Barkley Lake
Dover Co: Stewart TN 37058
Location:
2 ½ miles SE of Dover, TN.
Status: Excess
Comments: 10.15 acres; subject to existing easements.

Tracts 8813, 8814
Property Number: 31199010937
Barkley Lake
Cumberland Co: Stewart TN 37050
Location:
1 ½ miles East of Cumberland City.
Status: Excess
Comments: 96 acres; subject to existing easements.

Tract 8911
Property Number: 31199010938
Barkley Lake
Cumberland City Co: Montgomery TN 37050
Location:
4 miles east of Cumberland City.
Status: Excess
Comments: 7.7 acres; subject to existing easements.

Tract 11503
Property Number: 31199010939
Barkley Lake
Ashland City Co: Cheatham TN 37015
Location:
2 miles downstream from Cheatham Dam.
Status: Excess
Comments: 1.1 acres; subject to existing easements.

Tracts 11523, 11524
Property Number: 31199010940
Barkley Lake
Ashland City Co: Cheatham TN 37015
Location:
2 ½ miles downstream from Cheatham Dam.
Status: Excess
Comments: 19.5 acres; subject to existing easements.

Tract 6410
Property Number: 31199010941
Barkley Lake
Bumpus Mills Co: Stewart TN 37028
Location:
4 ½ miles SW. of Bumpus Mills.
Status: Excess
Comments: 17 acres; subject to existing easements.

Tract 9707
Property Number: 31199010943
Barkley Lake
Palmyer Co: Montgomery TN 37142
Location:
3 miles NE of Palmyer, TN. Highway 149
Status: Excess
Comments: 6.6 acres; subject to existing easements.

Tract 6949
Property Number: 31199010944
Barkley Lake
Dover Co: Stewart TN 37058
Location:
1 ½ miles SE of Dover, TN.
Status: Excess
Comments: 29.67 acres; subject to existing easements.

Tracts 6005 and 6017
Property Number: 31199011173
Barkley Lake
Dover Co: Stewart TN 37058
Location:
3 miles south of Village of Tobaccoport.
Status: Excess
Comments: 5 acres; subject to existing easements.

Tracts K–1191, K–1135
Property Number: 31199130007
Old Hickory Lock and Dam
Hartsville Co: Trousdale TN 37074
Status: Underutilized
Comments: 54 acres, (portion in floodway), most recent use—recreation

Tract A–102
Property Number: 31199140006
Dale Hollow Lake Project
Canoe Ridge, State Hwy 52
Celina Co: Clay TN 38551
Status: Underutilized
Comments: 351 acres, most recent use—hunting, subject to existing easements

Tract A–120
Property Number: 31199140007
Dale Hollow Lake Project
Swann Ridge, State Hwy No. 53
Celina Co: Clay TN 38551
Status: Underutilized
Comments: 883 acres, most recent use—hunting, subject to existing easements

Tract D–185
Property Number: 31199140010
Dale Hollow Lake Project
Ashburn Creek, Hwy No. 53
Livingston Co: Clay TN 38570
Status: Underutilized
Comments: 97 acres, most recent use—hunting, subject to existing easements

Texas

Air Force

0.13 acres
Property Number: 18200810002
DYAB, Dyess AFB
Tye Co: Taylor TX 79563
Status: Unutilized
Comments: Most recent use—middle marker, access limitation

Army

Building

Bldg. 7137, Fort Bliss
Property Number: 21199640564
El Paso Co: El Paso TX 79916
Status: Unutilized
Comments: 35,736 sq. ft., 3-story, most recent use—housing, off-site use only

Bldg. 92043
Property Number: 21200020206
Fort Hood
Ft. Hood Co: Bell TX 76544
Status: Unutilized
Comments: 450 sq. ft., most recent use—storage, off-site use only

Bldg. 92044
Property Number: 21200020207
Fort Hood
Ft. Hood Co: Bell TX 76544
Status: Unutilized

Comments: 1920 sq. ft., most recent use—admin., off-site use only

Bldg. 92045
Property Number: 21200020208
Fort Hood
Ft. Hood Co: Bell TX 76544
Status: Unutilized
Comments: 2108 sq. ft., most recent use—maint., off-site use only

Bldg. 56305
Property Number: 21200220143
Fort Hood
Ft. Hood Co: Bell TX 76544
Status: Unutilized
Comments: 2160 sq. ft., most recent use—admin., off-site use only

Bldgs. 56620, 56621
Property Number: 21200220146
Fort Hood
Ft. Hood Co: Bell TX 76544
Status: Unutilized
Comments: 1120 sq. ft., most recent use—shower, off-site use only

Bldgs. 56626, 56627
Property Number: 21200220147
Fort Hood
Ft. Hood Co: Bell TX 76544
Status: Unutilized
Comments: 1120 sq. ft., most recent use—shower, off-site use only

Bldg. 56628
Property Number: 21200220148
Fort Hood
Ft. Hood Co: Bell TX 76544
Status: Unutilized
Comments: 1133 sq. ft., most recent use—shower, off-site use only

Bldgs. 56636, 56637
Property Number: 21200220150
Fort Hood
Ft. Hood Co: Bell TX 76544
Status: Unutilized
Comments: 1120 sq. ft., most recent use—shower, off-site use only

Bldg. 56638
Property Number: 21200220151
Fort Hood
Ft. Hood Co: Bell TX 76544
Status: Unutilized
Comments: 1133 sq. ft., most recent use—shower, off-site use only

Bldgs. 56703, 56708
Property Number: 21200220152
Fort Hood
Ft. Hood Co: Bell TX 76544
Status: Unutilized
Comments: 1306 sq. ft., most recent use—shower, off-site use only

Bldg. 56758
Property Number: 21200220154
Fort Hood
Ft. Hood Co: Bell TX 76544
Status: Unutilized
Comments: 1133 sq. ft., most recent use—shower, off-site use only

Bldgs. P6220, P6222
Property Number: 21200330197
Fort Sam Houston
Camp Bullis
San Antonio Co: Bexar TX
Status: Unutilized
Comments: 384 sq. ft., most recent use—carport/storage, off-site use only

Bldgs. P6224, P6226
Property Number: 21200330198
Fort Sam Houston
Camp Bullis
San Antonio Co: Bexar TX
Status: Unutilized
Comments: 384 sq. ft., most recent use—carport/storage, off-site use only

Bldg. 92039
Property Number: 21200640101
Fort Hood
Ft. Hood Co: Bell TX 76544
Status: Excess
Comments: 80 sq. ft., most recent use—storage, off-site use only

Bldgs. 04281, 04283
Property Number: 21200720085
Fort Hood
Bell TX 76544
Status: Excess
Comments: 4000/8020 sq. ft., most recent use—storage shed, off-site use only

Bldg. 04284
Property Number: 21200720086
Fort Hood
Bell TX 76544
Status: Excess
Comments: 800 sq. ft., presence of asbestos, most recent use—storage shed, off-site use only

Bldg. 04285
Property Number: 21200720087
Fort Hood
Bell TX 76544
Status: Excess
Comments: 8000 sq. ft., most recent use—storage shed, off-site use only

Bldg. 04286
Property Number: 21200720088
Fort Hood
Bell TX 76544
Status: Excess
Comments: 36,000 sq. ft., presence of asbestos, most recent use—storage shed, off-site use only

Bldg. 04291
Property Number: 21200720089
Fort Hood
Bell TX 76544
Status: Excess
Comments: 6400 sq. ft., presence of asbestos, most recent use—storage shed, off-site use only

Bldg. 4410
Property Number: 21200720090
Fort Hood
Bell TX 76544
Status: Excess
Comments: 12,956 sq. ft., presence of asbestos, most recent use—simulation center, off-site use only

Bldgs. 10031, 10032, 10033
Property Number: 21200720091
Fort Hood
Bell TX 76544
Status: Excess
Comments: 2578/3383 sq. ft., presence of asbestos, most recent use—admin., off-site use only

Bldgs. 56524, 56532
Property Number: 21200720092
Fort Hood
Bell TX 76544
Status: Excess
Comments: 600 sq. ft., presence of asbestos, most recent use—dining, off-site use only

Bldg. 56435
Property Number: 21200720093
Fort Hood
Bell TX 76544
Status: Excess
Comments: 3441 sq. ft., presence of asbestos, most recent use—barracks, off-site use only

Bldg. 05708
Property Number: 21200720094
Fort Hood
Bell TX 76544
Status: Excess
Comments: 1344 sq. ft., most recent use—community center, off-site use only

Bldg. 90001
Property Number: 21200720095
Fort Hood
Bell TX 76544
Status: Excess
Comments: 3574 sq. ft., presence of asbestos, most recent use—transmitter bldg., off-site use only

Bldg. 93013
Property Number: 21200720099
Fort Hood
Bell TX 76544
Status: Excess
Comments: 800 sq. ft., most recent use—club, off-site use only

5 Bldgs.
Property Number: 21200740195
Fort Hood
Bell TX 76544
Location: 56541, 56546, 56547, 56548, 56638
Status: Excess
Comments: 1120/1133 sq. ft., presence of asbestos, most recent use—lavatory, off-site use only

4 Bldgs.
Property Number: 21200810048
Fort Hood
Bell TX 76544
Location: 00229, 00230, 00231, 00232
Status: Unutilized
Comments: Various sq. ft., presence of asbestos, most recent use—training aids center, off-site use only

Bldg. 00324
Property Number: 21200810049
Fort Hood
Bell TX 76544
Status: Unutilized
Comments: 13,319 sq. ft., most recent use—roller skating rink, off-site use only

Bldgs. 00710, 00739, 00741
Property Number: 21200810050
Fort Hood
Bell TX 76544
Status: Unutilized
Comments: Various sq. ft., presence of asbestos, most recent use—repair shop, off-site use only

5 Bldgs.
Property Number: 21200810051
Fort Hood
Bell TX 76544
Location: 00711, 00712, 02219, 02612, 05780
Status: Unutilized
Comments: Various sq. ft., presence of asbestos, most recent use—storage, off-site use only

Bldg. 00713
Property Number: 21200810052
Fort Hood

Bell TX 76544
Status: Unutilized
Comments: 3200 sq. ft., presence of asbestos, most recent use—hdqts. bldg., off-site use only

Bldgs. 1938, 04229
Property Number: 21200810053
Fort Hood
Bell TX 76544
Status: Unutilized
Comments: 2736/9000 sq. ft., presence of asbestos, most recent use—admin., off-site use only

Bldgs. 02218, 02220
Property Number: 21200810054
Fort Hood
Bell TX 76544
Status: Unutilized
Comments: 7289/1456 sq. ft., presence of asbestos, most recent use—museum, off-site use only

Bldg. 0350
Property Number: 21200810055
Fort Hood
Bell TX 76544
Status: Unutilized
Comments: 28,290 sq. ft., presence of asbestos, most recent use—veh. maint. shop, off-site use only

Bldg. 04449
Property Number: 21200810056
Fort Hood
Bell TX 76544
Status: Unutilized
Comments: 3822 sq. ft., most recent use—police station, off-site use only

Bldg. 91077
Property Number: 21200810057
Fort Hood
Bell TX 76544
Status: Unutilized
Comments: 3200 sq. ft., presence of asbestos, most recent use—educational facility, off-site use only

Bldg. 1610
Property Number: 21200810059
Fort Bliss
El Paso TX 79916
Status: Excess
Comments: 11056 sq. ft., concrete/stucco, most recent use—gas station/store, off-site use only

Bldg. 1680
Property Number: 21200810060
Fort Bliss
El Paso TX 79916
Status: Excess
Comments: 3690 sq. ft., concrete/stucco, most recent use—restaurant, off-site use only

12 Bldgs.
Property Number: 21200820153
Fort Hood
Ft. Hood TX 76544
Location: 56522, 56523, 56525, 56533, 56534, 56535, 56539, 56542, 56543, 56544, 56545, 56549
Status: Excess
Comments: 600/607 sq. ft., presence of asbestos, most recent use—dining, off-site use only

10 Bldgs.
Property Number: 21200820154
Fort Hood
Ft. Hood TX 76544
Location: 56622, 56623, 56624, 56625, 56629, 56632, 56633, 56634, 56635, 56639
Status: Excess
Comments: 500/507 sq. ft., presence of asbestos, most recent use—dining, off-site use only

6 Bldgs.
Property Number: 21200840070
Fort Hood
Bell TX 76544
Location: 56412, 57023, 57024, 57025, 57009, 57010
Status: Excess
Comments: Presence of asbestos, most recent use—storage, off-site use only

9 Bldgs.
Property Number: 21200840071
Fort Hood
Bell TX 76544
Location: 56529, 56618, 56702, 56710, 56752, 56753, 56754, 56755, 56759
Status: Excess
Comments: Presence of asbestos, most recent use—dining facility, off-site use only

Bldgs. 56703
Property Number: 21200840072
Fort Hood
Bell TX 76544
Status: Excess
Comments: 1306 sq. ft., presence of asbestos, most recent use—shower, off-site use only

Bldg. 57005
Property Number: 21200840073
Fort Hood
Bell TX 76544
Status: Excess
Comments: 500 sq. ft., presence of asbestos, most recent use—water supply/treatment, off-site use only

Land

1 acre
Property Number: 21200440075
Fort Sam Houston
San Antonio Co: Bexar TX 78234
Status: Excess
Comments: 1 acre, grassy area

GSA

Building

FAA Outermarker
Property Number: 54201040019
13418 Kuykendahl Rd
Houston TX 77090
Status: Surplus
Comments: 48 sq. ft, construction/alteration prohibited unless a determination of no hazard to air navigation is issued by the FAA, restrictions imposed by ordinances of the city of Houston, possible abestos/PCBs

GSA Number: 7–U–TX–1128

Land

FAA Outermarker
Property Number: 54201040002
Rt. 156/Rt. 407
Justin TX 76247
Status: Surplus
Comments: 0.38 acre, FAA restrictions
GSA Number: 7–U–TX–1127

VA

Land
Property Number: 97199010079
Olin E. Teague Veterans Center
1901 South 1st Street
Temple Co: Bell TX 76504
Status: Underutilized
Comments: 13 acres, portion formerly landfill, portion near flammable materials, railroad crosses property, potential utilities.

Utah

Army

Building

Bldg. 00001
Property Number: 21200740196
Borgstrom Hall USARC
Ogden UT 84401
Status: Excess
Comments: 16543 sq. ft., most recent use—training center, off-site use only

Bldg. 00002
Property Number: 21200740197
Borgstrom Hall USARC
Ogden UT 84401
Status: Excess
Comments: 3842 sq. ft., most recent use—vehicle maint. shop, off-site use only

Bldg. 00005
Property Number: 21200740198
Borgstrom Hall USARC
Ogden UT 84401
Status: Excess
Comments: 96 sq. ft., most recent use—storage, off-site use only

Virginia

Fort Story
Property Number: 21200720065
Ft. Story VA 23459
Status: Unutilized
Comments: 525 sq. ft., most recent use—power plant, off-site use only

Bldg. 01633
Property Number: 21200720076
Fort Eustis
Ft. Eustis VA 23604
Status: Unutilized
Comments: 240 sq. ft., most recent use—storage, off-site use only

Bldg. 02786
Property Number: 21200720084
Fort Eustis
Ft. Eustis VA 23604
Status: Unutilized
Comments: 1596 sq. ft., most recent use—admin., off-site use only

Bldg. P0838
Property Number: 21200830005
Fort Eustis
Ft. Eustis VA 23604
Status: Unutilized
Comments: 576 sq. ft., most recent use—rec shelter, off-site use only

Interior

Tract 05–151, Qtrs. 11
Property Number: 61201040001
National Park Service
Spotsylvania VA 22553
Status: Excess
Comments: 1642 sq. ft., off-site use only

Washington

Army

Bldg. CO909, Fort Lewis
Property Number: 21199630205

Ft. Lewis Co: Pierce WA 98433–9500
Status: Unutilized
Comments: 1984 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 1164, Fort Lewis
Property Number: 21199630213
Ft. Lewis Co: Pierce WA 98433–9500
Status: Unutilized
Comments: 230 sq. ft., possible asbestos/lead paint, most recent use—storehouse, off-site use only

Bldg. 1307, Fort Lewis
Property Number: 21199630216
Ft. Lewis Co: Pierce WA 98433–9500
Status: Unutilized
Comments: 1092 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 1309, Fort Lewis
Property Number: 21199630217
Ft. Lewis Co: Pierce WA 98433–9500
Status: Unutilized
Comments: 1092 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 2167, Fort Lewis
Property Number: 21199630218
Ft. Lewis Co: Pierce WA 98433–9500
Status: Unutilized
Comments: 288 sq. ft., possible asbestos/lead paint, most recent use—warehouse, off-site use only

Bldg. 4078, Fort Lewis
Property Number: 21199630219
Ft. Lewis Co: Pierce WA 98433–9500
Status: Unutilized
Comments: 10200 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—warehouse, off-site use only

Bldg. 9599, Fort Lewis
Property Number: 21199630220
Ft. Lewis Co: Pierce WA 98433–9500
Status: Unutilized
Comments: 12366 sq. ft., possible asbestos/lead paint, most recent use—warehouse, off-site use only

Bldg. A1404, Fort Lewis
Property Number: 21199640570
Ft. Lewis Co: Pierce WA 98433
Status: Unutilized
Comments: 557 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. EO347
Property Number: 21199710156
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Unutilized
Comments: 1800 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. B1008, Fort Lewis
Property Number: 21199720216
Ft. Lewis Co: Pierce WA 98433
Status: Unutilized
Comments: 7387 sq. ft., 2-story, needs rehab, possible asbestos/lead paint, most recent use—medical clinic, off-site use only

Bldgs. CO509, CO709, CO720
Property Number: 21199810372
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Unutilized
Comments: 1984 sq. ft., possible asbestos/lead paint, needs rehab, most recent use—storage, off-site use only

Bldg. 5162
Property Number: 21199830419
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Unutilized
Comments: 2360 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—office, off-site use only

Bldg. 5224
Property Number: 21199830433
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Unutilized
Comments: 2360 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—educ. fac., off-site use only

Bldg. U001B
Property Number: 21199920237
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 54 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

Bldg. U001C
Property Number: 21199920238
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Unutilized
Comments: 960 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—supply, off-site use only

10 Bldgs.
Property Number: 21199920239
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Location: U002B, U002C, U005C, U015I, U016E, U019C, U022A, U028B, 0091A, U093C
Status: Excess
Comments: 600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

6 Bldgs.
Property Number: 21199920240
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Location: U003A, U004B, U006C, U015B, U016B, U019B
Status: Unutilized
Comments: 54 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

Bldg. U004D
Property Number: 21199920241
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Unutilized
Comments: 960 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—supply, off-site use only

Bldg. U005A
Property Number: 21199920242
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Unutilized
Comments: 360 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

7 Bldgs.
Property Number: 21199920245
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Location: U014A, U022B, U023A, U043B, U059B, U060A, U101A
Status: Excess
Comments: Needs repair, presence of asbestos/lead paint, most recent use—ofc/tower/support, off-site use only

Bldg. U015J
Property Number: 21199920246
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 144 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, off-site use only

Bldg. U018B
Property Number: 21199920247
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Unutilized
Comments: 121 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

Bldg. U018C
Property Number: 21199920248
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Unutilized
Comments: 48 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only

Bldg. U024D
Property Number: 21199920250
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Unutilized
Comments: 120 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—ammo bldg., off-site use only

Bldg. U027A
Property Number: 21199920251
Fort Lewis
Ft. Lewis Co: Pierce WA
Status: Excess
Comments: 64 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tire house, off-site use only

Bldg. U031A
Property Number: 21199920253
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 3456 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—line shed, off-site use only

Bldg. U031C
Property Number: 21199920254
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Unutilized
Comments: 32 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only

Bldg. U040D
Property Number: 21199920255
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 800 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

Bldgs. U052C, U052H
Property Number: 21199920256
Fort Lewis
Ft. Lewis Co: Pierce WA 98433

Status: Excess
Comments: Various sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

Bldgs. U035A, U035B
Property Number: 21199920257
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 192 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, offsite use only

Bldg. U035C
Property Number: 21199920258
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 242 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

Bldg. U039A
Property Number: 21199920259
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

Bldg. U039B
Property Number: 21199920260
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 1600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—grandstand/bleachers, off-site use only

Bldg. U039C
Property Number: 21199920261
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support, off-site use only

Bldg. U043A
Property Number: 21199920262
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 132 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

Bldg. U052A
Property Number: 21199920263
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 69 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, offsite use only

Bldg. U052E
Property Number: 21199920264
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. U052G
Property Number: 21199920265
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 1600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only

3 Bldgs.
Property Number: 21199920266
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Location: U058A, U103A, U018A
Status: Excess
Comments: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

Bldg. U059A
Property Number: 21199920267
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 16 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, offsite use only

Bldg. U093B
Property Number: 21199920268
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 680 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

4 Bldgs.
Property Number: 21199920269
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Location: U101B, U101C, U507B, U557A
Status: Excess
Comments: 400 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only

Bldg. U110B
Property Number: 21199920272
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 138 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support, off-site use only

6 Bldgs.
Property Number: 21199920273
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Location: U111A, U015A, U024E, U052F, U109A, U110A
Status: Excess
Comments: 1000 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support/shelter/mess, off-site use only

Bldg. U112A
Property Number: 21199920274
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 1600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only

Bldg. U115A
Property Number: 21199920275
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, offsite use only

Bldg. U507A
Property Number: 21199920276
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 400 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support, off-site use only

Bldg. C0120
Property Number: 21199920281
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 384 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—scale house, off-site use only

Bldg. 01205
Property Number: 21199920290
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 87 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storehouse, off-site use only

Bldg. 01259
Property Number: 21199920291
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 16 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, offsite use only

Bldg. 01266
Property Number: 21199920292
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 45 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, offsite use only

Bldg. 1445
Property Number: 21199920294
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 144 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—generator bldg., off-site use only

Bldgs. 03091, 03099
Property Number: 21199920296
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: various sq. ft., needs repair, presence of asbestos/lead paint, most recent use—sentry station, off-site use only

Bldg. 4040
Property Number: 21199920298
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 8326 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shed, offsite use only

Bldgs. 4072, 5104
Property Number: 21199920299
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 24/36 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only

Bldg. 4295
Property Number: 21199920300
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess

Comments: 48 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, offsite use only

Bldg. 6191
Property Number: 21199920303
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 3663 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—exchange branch, off-site use only

Bldgs. 08076, 08080
Property Number: 21199920304
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 3660/412 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only

Bldg. 08093
Property Number: 21199920305
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 289 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—boat storage, off-site use only

Bldg. 8279
Property Number: 21199920306
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 210 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—fuel disp. fac., off-site use only

Bldgs. 8280, 8291
Property Number: 21199920307
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 800/464 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 8956
Property Number: 21199920308
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 100 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 9530
Property Number: 21199920309
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 64 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—sentry station, off-site use only

Bldg. 9574
Property Number: 21199920310
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 6005 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—veh. shop., off-site use only

Bldg. 9596
Property Number: 21199920311
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—gas station, off-site use only

West Virginia

COE

Bldg. WIN–01–S–09
Property Number: 31201030006
Winfield Locks & Dam
Redhouse WV 25168
Status: Unutilized
Comments: 1872 sq. ft., most recent use—storage, off-site use only

Wisconsin

VA

Land

VA Medical Center
Property Number: 97199010054
County Highway E
Tomah Co: Monroe WI 54660
Status: Underutilized
Comments: 12.4 acres, serves as buffer between center and private property, no utilities.

TITLE V PROPERTIES REPORTED IN YEAR 2010 WHICH ARE SUITABLE AND UNAVAILABLE

Alabama

Army

Building

Bldg. 01433
Property Number: 21200220098
Fort Rucker
Ft. Rucker Co: Dale AL 36362
Status: Excess
Reason: being utilized

Bldg. 30105
Property Number: 21200510052
Fort Rucker
Ft. Rucker Co: Dale AL 36362
Status: Excess
Reason: occupied

Bldg. 40115
Property Number: 21200510053
Fort Rucker
Ft. Rucker Co: Dale AL 36362
Status: Excess
Reason: occupied

Bldg. 25303
Property Number: 21200520074
Fort Rucker
Dale AL 36362
Status: Excess
Reason: occupied

Bldg. 25304
Property Number: 21200520075
Fort Rucker
Dale AL 36362
Status: Excess
Reason: occupied

Alaska

GSA

Salmonberry Qtrs.
Property Number: 54200940001
157 Salmonberry
Bethel AK 99559
Status: Excess
GSA Number: 9–U–AK–825
Reason: expression of interest

Dalton-Cache Border Station
Property Number: 54201010019
Mile 42 Haines Highway
Haines AK 99827
Status: Excess
GSA Number: 9–G–AK–0833
Reason: advertised for sale

Arizona

Army

Bldg. 22529
Property Number: 21200520077
Fort Huachuca
Cochise AZ 85613–7010
Status: Excess
Reason: occupied

Bldg. 22541
Property Number: 21200520078
Fort Huachuca
Cochise AZ 85613–7010
Status: Excess
Reason: occupied

Bldg. 30020
Property Number: 21200520079
Fort Huachuca
Cochise AZ 85613–7010
Status: Excess
Reason: occupied

Bldg. 30021
Property Number: 21200520080
Fort Huachuca
Cochise AZ 85613–7010
Status: Excess
Reason: occupied

Bldg. 22040
Property Number: 21200540076
Fort Huachuca
Cochise AZ 85613
Status: Excess
Reason: occupied

Bldg. 22540
Property Number: 21200620067
Fort Huachuca
Cochise AZ 85613–7010
Status: Excess
Reason: occupied

GSA

Land

Salt River Project
Property Number: 54200920001
Pecos/Alma School Road
#USBR–08–020
Chander AZ 85225
Status: Surplus
GSA Number: 9–I–AZ–0850
Reason: expression of interest

0.23 acres
Property Number: 54201010005
87th Ave.
Glendale AZ
Status: Excess
GSA Number: 9–I–AZ–853
Reason: expression of interest

Guadalupe Road Land
Property Number: 54201010012
Ironwood Road
Apache Junction AZ 95971
Status: Surplus
GSA Number: 9–AZ–851–1
Reason: expression of interest

Houston Road Land

Property Number: 54201010013
Ironwood Road
Apache Junction AZ 85278
Status: Surplus
GSA Number: 9–AZ–854
Reason: expression of interest

Land
Property Number: 54201010014
95th Ave/Bethany Home Rd
Glendale AZ 85306
Status: Surplus
GSA Number: 9–AZ–852
Reason: expression of interest

0.30 acre
Property Number: 54201030010
Bethany Home Road
Glendale AZ 85306
Status: Excess
GSA Number: 9–I–AZ–0859
Reason: expression of interest

California

GSA

Building

Defense Fuel Support Pt.
Property Number: 54200810001
Estero Bay Facility
Morro Bay CA 93442
Status: Surplus
GSA Number: 9–N–CA–1606
Reason: sale in progress

Former SSA Bldg.
Property Number: 54201020002
1230 12th Street
Modesto CA 95354
Status: Surplus
GSA Number: 9–G–CA–1610
Reason: Expressions of interest

Quincy Scaling Station
Property Number: 54200930004
1495 E. Main St.
Quincy CA 95971
Status: Surplus
GSA Number: 9–A–CA–1679–1
Reason: expression of interest

Parcel F–2 Right of Way
Property Number: 54201030012
Seal Beach CA 90740
Status: Surplus
GSA Number: 9–N–CA–1508–AI
Reason: expression of interest

Parcel F–4 Right of Way
Property Number: 54201030014
Seal Beach CA
Status: Surplus
GSA Number: 9–N–CA–1508–AK
Reason: expression of interest

Colorado

Army

Bldg. S6264
Property Number: 21200340084
Fort Carson
Ft. Carson Co: El Paso CO 80913
Status: Unutilized
Reason: occupied

Bldg. S6285
Property Number: 21200420176
Fort Carson
Ft. Carson Co: El Paso CO 80913
Status: Unutilized
Reason: in use

Bldg. S6287
Property Number: 21200420177
Fort Carson
Ft. Carson Co: El Paso CO 80913
Status: Unutilized
Reason: in use

Bldg. 06225
Property Number: 21200520084
Fort Carson
El Paso CO 80913–4001
Status: Unutilized
Reason: occupied

Georgia

Bldg. T201
Property Number: 21200420002
Hunter Army Airfield
Garrison Co: Chatham GA 31409
Status: Excess
Reason: in use

Bldg. T234
Property Number: 21200420008
Hunter Army Airfield
Garrison Co: Chatham GA 31409
Status: Excess
Reason: in use

Bldg. T702
Property Number: 21200420010
Hunter Army Airfield
Garrison Co: Chatham GA 31409
Status: Excess
Reason: in use

Bldg. T703
Property Number: 21200420011
Hunter Army Airfield
Garrison Co: Chatham GA 31409
Status: Excess
Reason: in use

Bldg. T704
Property Number: 21200420012
Hunter Army Airfield
Garrison Co: Chatham GA 31409
Status: Excess
Reason: in use

Bldg. P813
Property Number: 21200420013
Hunter Army Airfield
Garrison Co: Chatham GA 31409
Status: Excess
Reason: in use

Bldgs. S843, S844, S845
Property Number: 21200420014
Hunter Army Airfield
Garrison Co: Chatham GA 31409
Status: Excess
Reason: in use

Bldg. P925
Property Number: 21200420015
Hunter Army Airfield
Garrison Co: Chatham GA 31409
Status: Excess
Reason: in use

Bldg. P1277
Property Number: 21200420024
Hunter Army Airfield
Garrison Co: Chatham GA 31409
Status: Excess
Reason: in use

Bldg. T1412
Property Number: 21200420025
Hunter Army Airfield
Garrison Co: Chatham GA 31409
Status: Excess
Reason: in use

Bldg. 8658
Property Number: 21200420029
Hunter Army Airfield
Garrison Co: Chatham GA 31409
Status: Excess
Reason: in use

Bldg. 8659
Property Number: 21200420030
Hunter Army Airfield
Garrison Co: Chatham GA 31409
Status: Excess
Reason: in use

Bldgs. 8675, 8676
Property Number: 21200420031
Hunter Army Airfield
Garrison Co: Chatham GA 31409
Status: Excess
Reason: in use

Bldg. 5978
Property Number: 21200420038
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905
Status: Excess
Reason: in use

Bldg. 5993
Property Number: 21200420041
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905
Status: Excess
Reason: in use

Bldg. 5994
Property Number: 21200420042
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905
Status: Excess
Reason: in use

Bldg. 5995
Property Number: 21200420043
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905
Status: Excess
Reason: in use

Bldg. T01
Property Number: 21200420181
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. T04
Property Number: 21200420182
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. T05
Property Number: 21200420183
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. T06
Property Number: 21200420184
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. T55
Property Number: 21200420187
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. T85
Property Number: 21200420188
Fort Stewart

Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. T131
Property Number: 21200420189
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. T132
Property Number: 21200420190
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. T157
Property Number: 21200420191
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. 01002
Property Number: 21200420197
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. 01003
Property Number: 21200420198
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. 19101
Property Number: 21200420215
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. 19102
Property Number: 21200420216
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. T19111
Property Number: 21200420217
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. 19112
Property Number: 21200420218
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. 19113
Property Number: 21200420219
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. T19201
Property Number: 21200420220
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. 19202
Property Number: 21200420221
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. 19204 thru 19207
Property Number: 21200420222
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldgs. 19208 thru 19211
Property Number: 21200420223
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. 19212
Property Number: 21200420224
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. 19213
Property Number: 21200420225
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. 19214
Property Number: 21200420226
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. 19215
Property Number: 21200420227
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. 19216
Property Number: 21200420228
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. 19217
Property Number: 21200420229
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. 19218
Property Number: 21200420230
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldgs. 19219, 19220
Property Number: 21200420231
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. 19223
Property Number: 21200420232
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. 19225
Property Number: 21200420233
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. 19226
Property Number: 21200420234
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. T19228
Property Number: 21200420235
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. 19229
Property Number: 21200420236
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. 19232
Property Number: 21200420237
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. 19233
Property Number: 21200420238
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. 19236
Property Number: 21200420239
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. 19238
Property Number: 21200420240
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. 01674
Property Number: 21200510056
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905
Status: Unutilized
Reason: occupied

Bldg. 01675
Property Number: 21200510057
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905
Status: Unutilized
Reason: occupied

Bldg. 01676
Property Number: 21200510058
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905
Status: Unutilized
Reason: occupied

Bldg. 01677
Property Number: 21200510059
Fort Benning
Ft. Benning GA 31905
Status: Unutilized
Reason: occupied

Bldg. 01678
Property Number: 21200510060
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905
Status: Unutilized
Reason: occupied

Bldg. 00051
Property Number: 21200520087

Fort Stewart
Liberty GA 31314
Status: Excess
Reason: occupied

Bldg. 00052
Property Number: 21200520088
Fort Stewart
Liberty GA 31314
Status: Excess
Reason: occupied

Bldg. 00053
Property Number: 21200520089
Fort Stewart
Liberty GA 31314
Status: Excess
Reason: occupied

Bldg. 00054
Property Number: 21200520090
Fort Stewart
Liberty GA 31314
Status: Excess
Reason: occupied

Bldg. 01243
Property Number: 21200610040
Hunter Army Airfield
Savannah Co: Chatham GA 31409
Status: Excess
Reason: occupied

Bldg. 01244
Property Number: 21200610041
Hunter Army Airfield
Savannah Co: Chatham GA 31409
Status: Excess
Reason: occupied

Bldg. 01318
Property Number: 21200610042
Hunter Army Airfield
Savannah Co: Chatham GA 31409
Status: Excess
Reason: occupied

Bldg. 00612
Property Number: 21200610043
Fort Stewart
Liberty GA 31314
Status: Excess
Reason: occupied

Bldg. 00614
Property Number: 21200610044
Fort Stewart
Liberty GA 31314
Status: Excess
Reason: occupied

Bldg. 00618
Property Number: 21200610045
Fort Stewart
Liberty GA 31314
Status: Excess
Reason: occupied

Bldg. 00628
Property Number: 21200610046
Fort Stewart
Liberty GA 31314
Status: Excess
Reason: occupied

Bldg. 01079
Property Number: 21200610047
Fort Stewart
Liberty GA 31314
Status: Excess
Reason: occupied

Bldg. 07901
Property Number: 21200610049
Fort Stewart
Liberty GA 31314
Status: Excess
Reason: occupied

Bldg. 08031
Property Number: 21200610050
Fort Stewart
Liberty GA 31314
Status: Excess
Reason: occupied

Bldg. 08081
Property Number: 21200610052
Fort Stewart
Liberty GA 31314
Status: Excess
Reason: occupied

Bldg. 08252
Property Number: 21200610053
Fort Stewart
Liberty GA 31314
Status: Excess
Reason: occupied

GSA

Ft. Benning Railroad Corridor
Property Number: 54201030006
Cusseta Road
Columbus GA 31401
Status: Excess
GSA Number: 4–D–GA–0518AD
Reason: conveyence pending

Hawaii

Navy

Land

Property Record 1–11032
Property Number: 77201040011
Naval Station
Pearl Harbor HI 96818
Status: Unutilized
Reason: leased

Illinois

COE

Building

Bldg. 7
Property Number: 31199010001
Ohio River Locks No. 53
Grand Chain Co: Pulaski IL 62941–9801
Status: Unutilized
Reason: project integrity and security; safety liability

Bldg. 6
Property Number: 31199010002
Ohio River Locks No. 53
Grand Chain Co: Pulaski IL 62941–9801
Status: Unutilized
Reason: project integrity and security; safety liability

Bldg. 5
Property Number: 31199010003
Ohio River Locks No. 53
Grand Chain Co: Pulaski IL 62941–9801
Status: Unutilized
Reason: project integrity and security; safety liability

Bldg. 4
Property Number: 31199010004
Ohio River Locks No. 53
Grand Chain Co: Pulaski IL 62941–9801
Status: Unutilized
Reason: project integrity and security; safety liability

Bldg. 3 Property Number: 31199010005
Ohio River Locks No. 53
Grand Chain Co: Pulaski IL 62941–9801
Status: Unutilized
Reason: project integrity and security; safety liability

Bldg. 2
Property Number: 31199010006
Ohio River Locks No. 53
Grand Chain Co: Pulaski IL 62941–9801
Status: Unutilized
Reason: project integrity and security; safety liability

Bldg. 1
Property Number: 31199010007
Ohio River Locks No. 53
Grand Chain Co: Pulaski IL 62941–9801
Status: Unutilized
Reason: project integrity and security; safety liability

Iowa

GSA

U.S. Army Reserve
Property Number: 54200920017
620 West 5th St.
Garner IA 50438
Status: Excess
GSA Number: 7–D–IA–0510
Reason: expression of interest

Former SSA Bldg.
Property Number: 54201020005
3012 Division Street
Burlington IA 52601
Status: Excess
GSA Number: 7–G–IA–0508
Reason: advertised for sale

VA

Land

38 acres
Property Number: 97199740001
VA Medical Center
1515 West Pleasant St.
Knoxville Co: Marion IA 50138
Status: Unutilized
Reason: Enhanced-Use Legislation potential

Louisiana

Army

Building

Bldg. T401
Property Number: 21200540084
Fort Polk
Ft. Polk LA 71459
Status: Unutilized
Reason: occupied

Bldgs. T406, T407, T411
Property Number: 21200540085
Fort Polk
Ft. Polk LA 71459
Status: Unutilized
Reason: occupied

Bldg. T412
Property Number: 21200540086
Fort Polk
Ft. Polk LA 71459
Status: Unutilized
Reason: occupied

Bldgs. T414, T421
Property Number: 21200540087
Fort Polk
Ft. Polk LA 71459
Status: Unutilized
Reason: occupied

GSA

FAA Outermarker
Property Number: 54201030007
St. Charles Parish
New Orleans LA 70094
Status: Excess
GSA Number: 7–U–LA–574–1
Reason: advertised for sale

Maryland

Army

Bldg. 8608
Property Number: 21200410099
Fort George G. Meade
Ft. Meade MD 20755–5115
Status: Unutilized
Reason: occupied

Bldg. 8612
Property Number: 21200410101
Fort George G. Meade
Ft. Meade MD 20755–5115
Status: Unutilized
Reason: occupied

Bldg. 0001A
Property Number: 21200520114
Federal Support Center
Olney Co: Montgomery MD 20882
Status: Unutilized
Reason: occupied

Bldg. 0001C
Property Number: 21200520115
Federal Support Center
Olney Co: Montgomery MD 20882
Status: Unutilized
Reason: occupied

Bldgs. 00032, 00H14, 00H24
Property Number: 21200520116
Federal Support Center
Olney Co: Montgomery MD 20882
Status: Unutilized
Reason: occupied

Bldgs. 00034, 00H016
Property Number: 21200520117
Federal Support Center
Olney Co: Montgomery MD 20882
Status: Unutilized
Reason: occupied

Bldgs. 00H10, 00H12
Property Number: 21200520118
Federal Support Center
Olney Co: Montgomery MD 20882
Status: Unutilized
Reason: occupied

GSA

Appraisers Store
Property Number: 54201030016
Baltimore MD 21202
Status: Excess
GSA Number: 4–G–MD–0623
Reason: expression of interest

Massachusetts

Land

FAA Site
Property Number: 54200830026
Massasoit Bridge Rd.
Nantucket MA 02554
Status: Surplus
GSA Number: MA–0895
Reason: expression of interest

Michigan

Army

Building

Bldg. 00001
Property Number: 21200510066
Sheridan Hall USARC
501 Euclid Avenue
Helena Co: Lewis MI 59601–2865
Status: Unutilized
Reason: Federal interest

GSA

Social Security Bldg.
Property Number: 54200720020
929 Stevens Road
Flint MI 48503
Status: Excess
GSA Number: 1–G–MI–822
Reason: expression of interest

CPT George S. Crabbe USARC
Property Number: 54201030018
2901 Webber Street
Saginaw MI
Status: Excess
GSA Number: 1–D–MI–835
Reason: expression of interest

Land

Former Elf Comm. Facility
Property Number: 54200840012
3041 County Road
Republic MI 49879
Status: Excess
GSA Number: 1–N–MI–0827
Reason: conveyance pending

VA

VA Medical Center
Property Number: 97199010015
5500 Armstrong Road
Battle Creek Co: Calhoun MI 49016
Status: Underutilized
Reason: being used for patient and program activities.

Missouri

Army

Building

Bldg. 1230
Property Number: 21200340087
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Status: Unutilized
Reason: occupied

Bldg. 1621
Property Number: 21200340088
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Status: Unutilized
Reason: occupied

Bldg. 5760
Property Number: 21200410102
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Status: Unutilized
Reason: occupied

Bldg. 5762
Property Number: 21200410103
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Status: Unutilized
Reason: occupied

Bldg. 5763
Property Number: 21200410104
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Status: Unutilized
Reason: occupied

Bldg. 5765
Property Number: 21200410105
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Status: Unutilized
Reason: occupied

Bldg. 5760
Property Number: 21200420059
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Status: Unutilized
Reason: in use

Bldg. 5762
Property Number: 21200420060
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Status: Unutilized
Reason: in use

Bldg. 5763
Property Number: 21200420061
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Status: Unutilized
Reason: in use

Bldg. 5765
Property Number: 21200420062
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Status: Unutilized
Reason: in use

Bldg. 00467
Property Number: 21200530085
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743
Status: Unutilized
Reason: occupied

GSA

Federal Bldg/Courthouse
Property Number: 54200840013
339 Broadway St.
Cape Girardeau MO 63701
Status: Excess
GSA Number: 7–G–MO–0673
Reason: Expression of interest

Land

Tract LLWAS K3
Property Number: 54200940004
Mexico City Ave.
Kansas City MO 64153
Status: Surplus
GSA Number: 7–U–MO–0687AA
Reason: expression of interest

Montana

VA

Building

VA MT Healthcare
Property Number: 97200030001

210 S. Winchester
Miles City Co: Custer MT 59301
Status: Underutilized
Reason: transfer to Custer County

New Hampshire

GSA

Federal Building
Property Number: 54200920006
719 Main St.
Parcel ID: 424–124–78
Laconia NH 03246
Status: Excess
GSA Number: 1–G–NH–0503
Reason: expression of interest

New Jersey

Camp Petricktown Sup. Facility
Property Number: 54200740005
US Route 130
Pedricktown NJ 08067
Status: Excess
GSA Number: 1–D–NJ–0662
Reason: expression of interest

New York

Army

Bldgs. 1511–1518
Property Number: 21200320160
U.S. Military Academy
Training Area
Highlands Co: Orange NY 10996
Status: Unutilized
Reason: occupied

Bldgs. 1523–1526
Property Number: 21200320161
U.S. Military Academy
Training Area
Highlands Co: Orange NY 10996
Status: Unutilized
Reason: occupied

Bldgs. 1704–1705, 1721–1722
Property Number: 21200320162
U.S. Military Academy
Training Area
Highlands Co: Orange NY 10996
Status: Unutilized
Reason: occupied

Bldg. 1723
Property Number: 21200320163
U.S. Military Academy
Training Area
Highlands Co: Orange NY 10996
Status: Unutilized
Reason: occupied

Bldgs. 1706–1709
Property Number: 21200320164
U.S. Military Academy
Training Area
Highlands Co: Orange NY 10996
Status: Unutilized
Reason: occupied

Bldgs. 1731–1735
Property Number: 21200320165
U.S. Military Academy
Training Area
Highlands Co: Orange NY 10996
Status: Unutilized
Reason: occupied

North Carolina

Bldg. N4116
Property Number: 21200240087
Fort Bragg
Ft. Bragg Co: Cumberland NC 28310
Status: Excess
Reason: mission use

Ohio

COE

Bldg.—Berlin Lake
Property Number: 31199640001
7400 Bedell Road
Berlin Center Co: Mahoning OH 44401–9797
Status: Unutilized
Reason: utilized as construction office

GSA

Oxford USAR Facility
Property Number: 54201010007
6557 Todd Road
Oxford OH 45056
Status: Excess
GSA Number: 1–D–OH–833
Reason: Expression of interest

Belmont Cty Memorial USAR Ctr
Property Number: 54201020008
5305 Guernsey St.
Bellaire OH 43906
Status: Excess
GSA Number: 1–D–OH–837
Reason: conveyance in progress

Army Reserve Center
Property Number: 54201020009
5301 Hauserman Rd.
Parma Co: Cuyahoga OH 44130
Status: Excess
GSA Number: I–D–OH–842
Reason: expression of interest

2LT George F. Pennington USARC
Property Number: 54201020010
2164 Harding Hwy. E.
Marion OH 43302
Status: Excess
GSA Number: I–D–OH–838
Reason: Expression of Interest

VA
Bldg. 116
Property Number: 97199920002
VA Medical Center
Dayton Co: Montgomery OH 45428
Status: Unutilized
Reason: preexisting agreement

Oregon

GSA

3 Bldgs/Land
Property Number: 54200840003
OTHR–B Radar
Cty Rd 514
Christmas Valley OR 97641
Status: Excess
GSA Number: 9–D–OR–0768
Reason: expression of interest

U.S. Customs House
Property Number: 54200840004
220 NW 8th Ave.
Portland OR
Status: Excess
GSA Number: 9–D–OR–0733
Reason: expression of interest

Pennsylvania

COE

Tract 403A
Property Number: 31199430021
Grays Landing Lock Project
Greensboro Co: Greene PA 15338
Status: Unutilized
Reason: to be transferred to Borough

Tract 403B
Property Number: 31199430022
Grays Landing Lock Project
Greensboro Co: Greene PA 15338
Status: Unutilized
Reason: to be transferred to Borough

Tract 403C
Property Number: 31199430023
Grays Landing Lock Project
Greensboro Co: Greene PA 15338
Status: Unutilized
Reason: to be transferred to Borough

Land

East Branch Clarion River Lake
Property Number: 31199011012
Wilcox Co: Elk PA
Status: Underutilized
Reason: location near damsite

Dashields Locks and Dam
Property Number: 31199210009
(Glenwillard, PA)
Crescent Twp. Co: Allegheny PA 15046–0475
Status: Unutilized
Reason: leased to Township

GSA

approx. 16.88
Property Number: 54200820011
271 Sterrettania Rd.
Erie PA 16506
Status: Surplus
GSA Number: 4–D–PA–0810
Reason: advertised for sale

VA

VA Medical Center
Property Number: 97199010016
New Castle Road
Butler Co: Butler PA 16001
Status: Underutilized
Reason: used as natural drainage for facility property.

Land No. 645
Property Number: 97199010080
VA Medical Center
Highland Drive
Pittsburgh Co: Allegheny PA 15206
Status: Unutilized
Reason: property is essential to security and safety of patients.

Land—34.16 acres
Property Number: 97199340001
VA Medical Center
1400 Black Horse Hill Road
Coatesville Co: Chester PA 19320
Status: Underutilized
Reason: needed for mission related functions

South Dakota

Air Force

Tract 133
Property Number: 18200310004
Ellsworth AFB
Box Elder Co: Pennington SD 57706
Status: Unutilized
Reason: special legislation

Tract 67
Property Number: 18200310005
Ellsworth AFB
Box Elder Co: Pennington SD 57706
Status: Unutilized
Reason: mission purpose

Tennessee

GSA

Building

NOAA Admin. Bldg.
Property Number: 54200920015
456 S. Illinois Ave.
Oak Ridge TN 38730
Status: Excess
GSA Number: 4–B–TN–0664–AA
Reason: Federal interest

Texas

Army

Bldgs. 4219, 4227
Property Number: 21200220139
Fort Hood
Ft. Hood Co: Bell TX 76544
Status: Unutilized
Reason: admin use

Bldgs. 4229, 4230, 4231
Property Number: 21200220140
Fort Hood
Ft. Hood Co: Bell TX 76544
Status: Unutilized
Reason: admin use

Bldgs. 4244, 4246
Property Number: 21200220141
Fort Hood
Ft. Hood Co: Bell TX 76544
Status: Unutilized
Reason: admin use

Bldgs. 4260, 4261, 4262
Property Number: 21200220142
Fort Hood
Ft. Hood Co: Bell TX 76544
Status: Unutilized
Reason: admin use

Bldg. 04335
Property Number: 21200440090
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Bldg. 04465
Property Number: 21200440094
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Bldg. 04468
Property Number: 21200440096
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Bldgs. 04475–04476
Property Number: 21200440098
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Bldg. 04477
Property Number: 21200440099
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Bldg. 07002
Property Number: 21200440100
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Bldg. 57001 Property Number: 21200440105
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Bldgs. 125, 126
Property Number: 21200620075
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Bldg. 190
Property Number: 21200620076
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Bldg. 02240
Property Number: 21200620078
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Bldg. 04164
Property Number: 21200620079
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Bldgs. 04218, 04228
Property Number: 21200620080
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Bldg. 04272
Property Number: 21200620081
Fort Hood
Bell TX 76544
Status: Excess
Reason: not occupied

Bldg. 04415
Property Number: 21200620083
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

4 Bldgs
Property Number: 21200620084
Fort Hood
04419, 04420, 04421, 04424
Bell TX 76544
Status: Excess
Reason: occupied

4 Bldgs.
Property Number: 21200620085
Fort Hood
04425, 04426, 04427, 04429
Bell TX 76544
Status: Excess
Reason: occupied

Bldg. 04430
Property Number: 21200620087
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Bldg. 04434
Property Number: 21200620088
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Bldg. 04439
Property Number: 21200620089
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Bldgs. 04470, 04471
Property Number: 21200620090
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Bldg. 04493
Property Number: 21200620091
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Bldg. 04494
Property Number: 21200620092
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Bldg. 04632
Property Number: 21200620093
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Bldg. 04640
Property Number: 21200620094
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Bldg. 04645
Property Number: 21200620095
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Bldg. 04906
Property Number: 21200620096
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Bldg. 20121
Property Number: 21200620097
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Bldg. 91052
Property Number: 21200620101
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Bldg. 1345
Property Number: 21200740070
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldgs. 1348, 1941
Property Number: 21200740071
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 1919
Property Number: 21200740072
Fort Hood

Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 1943
Property Number: 21200740073
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 1946
Property Number: 21200740074
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 4205
Property Number: 21200740075
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 4207
Property Number: 21200740076
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 4208
Property Number: 21200740077
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldgs. 4210, 4211, 4216
Property Number: 21200740078
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 4219A
Property Number: 21200740079
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 04252
Property Number: 21200740081
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 4255
Property Number: 21200740082
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 04480
Property Number: 21200740083
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 04485
Property Number: 21200740084
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldgs. 04487, 04488
Property Number: 21200740085
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 04489
Property Number: 21200740086
Fort Hood
Ft. Hood TX 76544
Status: Excess
Reason: utilized

Bldgs. 4491, 4492
Property Number: 21200740087
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldgs. 04902, 04905
Property Number: 21200740088
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldgs. 04914, 04915, 04916
Property Number: 21200740089
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 20102
Property Number: 21200740091
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 20118
Property Number: 21200740092
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 29027
Property Number: 21200740093
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 56017
Property Number: 21200740094
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 56202
Property Number: 21200740095
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 56224
Property Number: 21200740096
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 56305
Property Number: 21200740097
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 56311
Property Number: 21200740098
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 56327
Property Number: 21200740099
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 56329
Property Number: 21200740100
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

9 Bldgs.
Property Number: 21200740101
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 92043
Property Number: 21200740102
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 92072
Property Number: 21200740103
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 92083
Property Number: 21200740104
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldgs. 04213, 04227
Property Number: 21200740189
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldg.4404
Property Number: 21200740190
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 56607
Property Number: 21200740191
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 91041
Property Number: 21200740192
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

5 Bldgs.
Property Number: 21200740193
Fort Hood
93010, 93011, 93012, 93014
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 94031
Property Number: 21200740194
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

GSA

Land

Cottonwood Bay
Property Number: 54201010004
14th St/Skyline Rd.
Grand Prairie TX
Status: Surplus
GSA Number: 7–N–TX–846
Reason: expression of interest

FAA Outermarker—Houston
Property Number: 54201040001
Spring TX 77373
Status: Surplus
GSA Number: 7–U–TX–1110
Reason: expression of Interest

Utah

Processing and Disposal Site
Property Number: 54201030008
Monticello UT 84535
Status: Surplus
GSA Number: 7–B–UT–431–AO
Reason: expression of interest

Virginia

Army

Building

Bldg. T2827
Property Number: 21200320172
Fort Pickett
Blackstone Co: Nottoway VA 23824
Status: Unutilized
Reason: occupied

Bldg. T2841
Property Number: 21200320173
Fort Pickett
Blackstone Co: Nottoway VA 23824
Status: Unutilized
Reason: occupied

Bldg. 01014
Property Number: 21200720067
Fort Story
Ft. Story VA 23459
Status: Unutilized
Reason: occupied

Bldg. 01063
Property Number: 21200720072
Fort Story
Ft. Story VA 23459
Status: Unutilized
Reason: occupied

Bldg. 00215
Property Number: 21200720073
Fort Eustis
Ft. Eustis VA 23604
Status: Unutilized
Reason: occupied

4 Bldgs.
Property Number: 21200720074
Fort Eustis
01514, 01523, 01528, 01529
Ft. Eustis VA 23604
Status: Unutilized
Reason: occupied

4 Bldgs.
Property Number: 21200720075
Fort Eustis
01534, 01542, 01549, 01557
Ft. Eustis VA 23604
Status: Unutilized
Reason: occupied

Bldgs. 01707, 01719
Property Number: 21200720077
Fort Eustis
Ft. Eustis VA 23604
Status: Unutilized
Reason: occupied

Bldg. 01720
Property Number: 21200720078
Fort Eustis
Ft. Eustis VA 23604
Status: Unutilized
Reason: occupied

Bldgs. 01721, 01725
Property Number: 21200720079
Fort Eustis
Ft. Eustis VA 23604
Status: Unutilized
Reason: occupied

Bldgs. 01726, 01735, 01736
Property Number: 21200720080
Fort Eustis
Ft. Eustis VA 23604
Status: Unutilized
Reason: occupied

Bldgs. 01734, 01745, 01747
Property Number: 21200720081
Fort Eustis
Ft. Eustis VA 23604
Status: Unutilized
Reason: occupied

Bldg. 01741
Property Number: 21200720082
Fort Eustis
Ft. Eustis VA 23604
Status: Unutilized
Reason: occupied

Bldg. 02720
Property Number: 21200720083
Fort Eustis
Ft. Eustis VA 23604
Status: Unutilized
Reason: occupied

GSA

Sewell's Point Substation
Property Number: 54201030009
Hampton Blvd.
Norfolk VA 23505
Status: Excess
GSA Number: 4–N–VA–0753
Reason: conveyence pending

Washington

Air Force

Bldg. 404/Geiger Heights
Property Number: 18200420002
Fairchild AFB
Spokane WA 99224
Status: Unutilized
Reason: mission effort

11 Bldgs./Geiger Heights
Property Number: 18200420003
Fairchild AFB
Spokane WA 99224
Status: Unutilized
Reason: mission effort

Bldg. 297/Geiger Heights
Property Number: 18200420004
Fairchild AFB
Spokane WA 99224
Status: Unutilized
Reason: mission effort

9 Bldgs./Geiger Heights
Property Number: 18200420005
Fairchild AFB
Spokane WA 99224
Status: Unutilized
Reason: mission effort

22 Bldgs./Geiger Heights
Property Number: 18200420006
Fairchild AFB
Spokane WA 99224
Status: Unutilized
Reason: mission effort

51 Bldgs./Geiger Heights
Property Number: 18200420007
Fairchild AFB
Spokane WA 99224
Status: Unutilized
Reason: mission effort

Bldg. 402/Geiger Heights
Property Number: 18200420008
Fairchild AFB
Spokane WA 99224
Status: Unutilized
Reason: mission effort

5 Bldgs./Geiger Heights
Property Number: 18200420009
Fairchild AFB
222, 224, 271, 295, 260
Spokane WA 99224
Status: Unutilized
Reason: mission effort

5 Bldgs./Geiger Heights
Property Number: 18200420010
Fairchild AFB
102, 183, 118, 136, 113
Spokane WA 99224
Status: Unutilized
Reason: mission effort

Army

Bldg. 05904
Property Number: 21200240092
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Status: Excess
Reason: mission use

GSA

Fox Island Naval Lab
Property Number: 54201020012
630 3rd Ave.
Fox Island Co: Pierce WA 98333
Status: Surplus
GSA Number: 9–D–WA–1245
Reason: advertised for sale

West Virginia

Naval Reserve Center
Property Number: 54200930014
841 Jackson Ave.
Huntington WV 25704
Status: Excess
GSA Number: 4–N–WV–0555
Reason: expression of interest

Harley O. Staggers Bldg.
Property Number: 54201020013
75 High St.
Morgantown WV 26505
Status: Excess
GSA Number: 4–G–WV–0557
Reason: expression of interest

Wisconsin

VA

Bldg. 8
Property Number: 97199010056
VA Medical Center
County Highway E
Tomah Co: Monroe WI 54660

Status: Underutilized
Reason: unsafe conditions

[FR Doc. 2011–2785 Filed 2–11–11; 8:45 am]

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H.R. 366/P.L. 112-1
To provide for an additional temporary extension of programs under the Small Business Act and the Small Business Investment Act of 1958, and for other purposes. (Jan. 31, 2011)

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